Form 1100-001
(R 2/11)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.A.2

SUBJECT: Hearing authorization for Order RR-04-11, proposed rules affecting chs. NR 700 to 754 regarding the investigiation and cleanup of Brownfield's and other contaminated properties.

FOR: JANUARY, 2012 **BOARD MEETING**

TO BE PRESENTED BY / TITLE: Mark Gordon/Policy and Technical Resources Section Chief

SUMMARY:

The Remediation and Redevelopment Program proposes to revise a majority of the rules in the NR 700 administrative rule series. These rules provide comprehensive requirements for the investigation and remediation of contaminated property. Although several additions and revisions to these rules have been made since they were originally promulgated over 15 years ago, those changes were focussed on some very specific issues. These proposed changes are intended to address the many statutory, policy and technical changes that have occurred since that time.

The major policy issues being addressed by these rule revisions are: 1) modifying many of the rules to remove the references to deed restrictions which were replaced with passage of Wisconsin Act 418; 2) removal of the simple site process which was originally included to provide responsible parties with the ability to self certify closure as this option has not been used in many years; 3) eliminating ch. NR 710 because the statutory provision to inventory sites was repealed and use of the hazard ranking system is no longer needed to evaluate sites; 4) consolidating the sections in NR 718 on management of contaminated soil, 5) revising NR 720 to account for updated methodology developed by U.S. EPA for calculating site specific soil cleanup standards, 6) revising NR 722 to require an evaluation of sustainability for the selected remedy, 7) simplifying the case closure requirements by spliting NR 726 into 3 separate rules as the current rule is lengthy and complicated, 8) adding provisions to NR 726 and several other rules that provide options for addressing the vapor intrusion pathway, 9) removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites that are either seldom used or are technically unsound, and 10) increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

RECOMMENDATION: That the Board authorize the Department to hold hearings on Order RR-04-11.

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes	☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes	☐	Attached
No	☐	Background Memo	Yes	☑	Attached

APPROVED:

Bureau Director — Date 12/16/11

Administrator — Date 12/21/11

Secretary, Cathy Stepp — Date 12/22/11

cc: NRB Liaison
DNR Rules Coordinator

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: December 14, 2011

TO: Natural Resources Board Members

FROM: Cathy Stepp, Secretary

SUBJECT: Background Memo on Public Hearing Authorization for Order RR-04-11, Pertaining to Revision of chs. NR 700 to 754, Wis. Adm. Code Regarding the Investigation and Cleanup of Brownfield's and other Contaminated Property.

Why are these rule changes being proposed?

Revisions are being proposed in order to update the existing rule series by incorporating a number of statutory, policy, and technical changes that have occurred since the rule was originally promulgated over 15 years ago.

What event or action triggered the proposal?

No one event or action triggered this rulemaking proposal. Instead, the overall process for evaluating and remediating contaminated sites has evolved over the many years since the last major rulemaking occurred. These revisions would make the rules more complete, easier to comply with and consistent with the approach currently being used to address contaminated sites.

What issues are addressed by this rule?

The major issues being addressed by this rule making are summarized below:

- Modifying many of the rules by removing the references to deed restrictions which were replaced with passage of Wisconsin Act 418 in June 2006,
- Removal of the simple site process which was originally included to provide responsible parties with the ability to self certify closure as this option has not been used in many years,
- Eliminating ch. NR 710 because the statutory provision to inventory sites was repealed and use of the existing hazard ranking system is no longer needed to evaluate sites,
- Consolidating the sections in ch. NR 718 on management of contaminated soil in order to make the requirements consistent and more readily understandable,
- Revising NR 720 to account for updated methodology developed by U.S. EPA for calculating site specific soil cleanup standards,
- Revising NR 722 to require an evaluation of sustainability for the selected remedy,
- Simplifying the case closure requirements by splitting NR 726 into 3 separate rules as the current rule is lengthy and complicated,
- Adding provisions to NR 726 and several other rules clarifying that the vapor intrusion pathway needs to be assessed and adequately addressed, if necessary,
- Removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites as they are either technically unsound or are seldom used, and
- Increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

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In addition to these changes, the Department is also using this opportunity to fix a number of editorial problems, typographical errors and other minor problems that have been identified over the years.

Summary of the rules.

The NR 700 series rules provide a comprehensive, consistent and uniform set of requirements related to the investigation and cleanup of contaminated property. The rules also provide direction on addressing spill situations, carrying out public participation and notification, undertaking enforcement and cost recovery, selecting environmental consultants for state-funded actions, and awarding environmental construction contracts. The proposed rule changes have been developed and modified over the last 3 years in cooperation with a number of external stakeholders, in particular the Brownfields Study Group and the Technical Focus Group.

How does the proposal affect existing policy?

Experience obtained as part of the on-going implementation of the program has revealed that certain changes are necessary in order for the NR 700 rule series to be consistent with existing policy and practice. A number of new or revised guidance documents have been issued since the last time the rules were revised including: 1) Guidance on Soil Performance Standards, 2) Guidance for Hazardous Waste Remediation, 3) Guidance on Case Closure and the Requirements for Managing Continuing Obligations, and 4) Addressing Vapor Intrusion at Remediation and Redevelopment Sites in Wisconsin. As with rule development, preparation of these documents is done in cooperation with our external stakeholders. Program guidance provides direction to Responsible Parties (RP's) and others on investigating and cleaning up contamination.

Has the Board dealt with these issues before? If so, when and why?

The last time the Board dealt with changes to the NR 700 series was in 2001 and 2002, when the Department added rule language to establish a GIS Registry to provide web based mapping information on sites that were closed with contamination above the established standards.

Who will be impacted by the proposed rule? How will they be impacted?

Anyone who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance must take the action necessary to restore the environment to the extent practicable. This is not a change from current requirements. This typically affects individuals, large and small business, and local units of government. Others affected include environmental consultants, attorneys as well as those individuals or companies that are interested in redeveloping contaminated property.

The overall impact of these proposed changes should be modest since the vast majority are already being implemented either through new statutory authority or through the development of program guidance. Restructuring of the rules should make it easier for interested parties to locate and comply with appropriate requirements.

Information on environmental analysis.

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III action. A Type III action is one that normally: 1) does not have the potential to cause significant environmental effects, 2) does not significantly affect energy usage and 3) does not involve unresolved conflicts in the use of available resources.

Small business analysis.

The major purpose of this rule making effort is to incorporate requirements set forth by statutes and to address policy changes that have been implemented over the years. Another major change is to streamline and consolidate the rule language so that out-of-date provisions are removed and the current regulatory requirements are easier to understand and comply with. As such, the promulgation of these rule changes should not have a significant impact on small businesses.

The one area of these rule revisions that have the potential to impact some small businesses is the proposal to increase the fees set out in ch. NR 749. These fees have not been increased since they were originally promulgated in 1998 and the average increase typically ranges from $200 to $300 depending on the type of submittal. The fee increases should not affect most small businesses for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who causes the discharge must take action to restore the environment. Second, the NR 700 rule series is largely self-implementing which means that the Responsible Party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing a cleanup.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R05/2011)

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ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter Title and Number

Chs. NR 700 to 754, Environmental Protection - Investigaiton and Remediation, Order RR-04-11

3. Subject

Proposed revisions to rules for the investigation and cleanup of Brownfield's and other contaminated preperties.

4. State Fiscal Effect:

☐ No Fiscal Effect	☒ Increase Existing Revenues	☐ Increase Costs ☐ Yes ☐ No May be possible to absorb within agency's budget.
☐ Indeterminate	☐ Decrease Existing Revenues	☐ Decrease Costs

5. Fund Sources Affected:

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

6. Affected Ch. 20, Stats. Appropriations:

s. 20.370(2)(dh)

7. Local Government Fiscal Effect:

☐ No Fiscal Effect	☐ Increase Revenues	☒ Increase Costs
☐ Indeterminate	☐ Decrease Revenues	☐ Decrease Costs

8. Local Government Units Affected:

☒ Towns ☒ Villages ☒ Cities ☒ Counties ☐ School Districts ☐ WTCS Districts ☐ Others:

9. Private Sector Fiscal Effect (small businesses only):

☐ No Fiscal Effect	☐ Increase Revenues	☒ Increase Costs
	☐ Decrease Revenues	☐ Yes ☒ No May have significant economic impact on a substantial number of small businesses
☐ Indeterminate	☐ Yes ☐ No May have significant economic impact on a substantial number of small businesses	☐ Decrease Costs

10. Types of Small Businesses Affected:

Small business with contaminated properties that specifically request DNR assistance would pay higher fees under these proposed rule revisions. The changes do not affect which small businesses are subject to complying with the rules or when a small business is required to pay a fee.

11. Fiscal Analysis Summary

The fees in ch. NR 749 have not been increased since the rule was originally promulgated in 1998. The proposed increases are based on cost-of-living changes since that time and the additional revenue would be used to ensure that the 9 positions currently fundeded by fees could be maintained. It is estimated that the increase in fees will result in approximately $170,000/year of additional state revenue being received.

The proposed fee increases should not affect most small businesses, local governments or other entities for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who cause the discharge must take action to restore the environment. Most small businesses and many local governments do not have to address this situation. Second, the NR 700 rule series is largely self-implementing which means that the Responsible Party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a review fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing the cleanup.

The $170,000/year was calculated by taking the amount of revenue received in FY '11, reducing it by 10% based on average annual decreases in revenue and then applying a 40% increase to account for the new fees. How these fee increases would potentially affect a typical site was determined by reviewing past history of fee related requests. This evaluation indicated that most sites do not request DNR review of any additional documents besides case closure and that most sites have some contamination remaining at the completion of the cleanup. It was therefore assumed that most parties responsible for completing a cleanup, including small businesses and local governments, would request DNR review of case closure for a site that has both residual soil and groundwater contamination. In this scenario, the total increase in fee related costs would be $500. This example illustrates the most common situation and the actual cost increase will be dependent on the specific needs and requests of the Responsible Party.

12. Long-Range Fiscal Implications

The long-range fiscal implications for Responsible Parties that need to complete the cleanup of contamination should be neutral to positive. For those sites where the cleanup is completed and case closure is obtained, no future work (or additional costs) should be necessary. If the Responsible Party ultimately plans to sell the property, having a letter from the Department indicating that the cleanup was properly completed can make the property more marketable and valuable.

13. Name - Prepared by Mark Gordon	Telephone Number 608-266-7278	Date
14. Name – Analyst Reviewer Gail Hermann for Jeffrey Volty	Telephone Number 266-0818	Date 12/16/11
Signature – Secretary or Designee	Telephone Number 608-741-2794	Date 12-16-11

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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, AMENDING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend chs. NR 700, 706, 708, 712, 716, 718, 720, 722, 724, 728, 734, 736, 738, 749 and 750, and NR 169; to repeal ch. NR 710, repeal and recreate chs. 714, 726 and 746; and to create chs. NR 725 and 727, relating to environmental cleanups.

RR-04-11

Analysis Prepared by Department of Natural Resources

1. Statutes Interpreted: In promulgating these rules, ch. 227, 281, 287, 289, 291 and 292, Stats. have been interpreted as authorizing rule revisions.

2. Statutory Authority: Sections 227.11(2) (a), s. 281.19(1), 287.03, 289.05, 289.06, 291.05(6) (f), 292.11(5), 292.11(7) (d), 292.12(2) (c), 292.13(3), 292.15(2) (a), 292.15(2) (ae), 292.15(5), 292.31(2), 292.41, 292.65, 292.68(11), and 292.94, Wis. Stats.

3. Explanation of agency authority to promulgate the proposed rules under the statutory authority:
Section 227.11(2) (a) allows the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.
Section 281.19(1) allows the Department to issue orders and to adopt rules for the construction, installation, use and operation of systems, methods and means for preventing and abating pollution of the waters of the state, after an opportunity to be heard has been provided to interested parties.
Section 287.03(1)(a) requires the Department to promulgate rules necessary to regulate solid waste management and disposal.
Section 289.05 requires the Department to promulgate rules establishing minimum standards regarding solid waste facilities and the closure, long term care, and maintenance of such facilities, and establishing standards for the reuse of high volume industrial waste.
Section 289.06 requires the department to promulgate rules that are consistent with and implement the provisions of ch. 289, Wis. Stats. (solid waste facilities), and ss. 292.31 (remedial action – environmental repair) and 292.35 (remedial action – local governmental unit negotiation and cost recovery).
Section 291.05(6) (f) requires the Department to adopt rules which prescribe requirements for corrective actions under s. 291.37, Wis. Stats. (response actions to address hazardous or solid waste)
Section 292.11(5) requires the Department to establish by rule, criteria and procedures for the development, establishment and amendment of a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances.
Section 292.11(7) (d) allows the Department to negotiate and enter into agreements for conducting nonemergency actions with a responsible party if the discharge does not endanger public health, and with a local governmental unit in certain cases; and allows the Department to charge fees in accordance with promulgated rules to offset costs of negotiating and entering into agreements, and to refer violations of these agreements to the Department of Justice for enforcement.
Section 292.12(2) (c) requires the Department to promulgate rules to identify limitations or conditions that may be imposed, related to residual contamination at a property, to ensure that conditions remain protective of public health, safety, welfare and the environment, and as applicable to promote economic development. These statutory changes were passed in 2006. The changes repealed the use of deed restriction to enact continuing obligations, replacing deed restrictions with approval letters when continuing obligations were imposed to address residual contamination. These approvals are issued either at the time of closure or remedial action plan approval, or when the department directs an action be taken by a local governmental unit or economic development corporation.
Section 292.13(3) allows the Department to assess and collect fees in accordance with promulgated rules, to offset the costs of issuing determinations concerning liability.
Section 292.15(2) (a) and (ae) define when voluntary parties are exempt from provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8) and rules promulgated under those provisions, with respect to discharges of hazardous substances on or originating from a property, and with respect to the use of natural attenuation, under certain, specified conditions . In order to obtain the liability exemption, the voluntary party must meet

certain criteria, including conducting a cleanup in accordance with rules promulgated by the Department, maintaining and monitoring the property as required under rules promulgated by the Department.
Section 292.15(5) allows the Department to assess and collect fees from a voluntary party to offset the cost of the Department's activities, in accordance with promulgated rules.
Section 292.31(2) requires the Department to promulgate rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution.
Section 292.41 requires the Department, in consultation with other affected federal, state and local agencies and private organizations to adopt rules and procedures for the development, establishment and amendment of a contingency plan for the taking of emergency actions in relation to abandoned containers.
Section 292.65(3) requires the Department to promulgate rules to administer the dry cleaner environmental response program.
Section 292.94, Wis. Stats., requires the Department to promulgate rules regarding fee assessment and collection, and allows the Department to assess and collect fees from those subject to an order or other enforcement action for a violation of s. 292.11or 202.31 to cover costs incurred by the Department in regard to an environmental investigation or cleanup that the party was required to conduct.
Section 299.45(7) requires the Department to adopt rules prescribing the methods and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs.

4. Related statute or rules: Chapter NR 169, Dry Cleaner Environmental Response Program, is also being revised, as a result of repealing ch. NR 710.

5. Plain language analysis of the proposed rules: The major policy issues being addressed by these rule revisions are 1) modifying many of the rules to remove references to deed restriction which were replaced with passage of WI Act 418; 2) removal of the simple site process which was originally included to provide responsible parties with the ability to self certify closure as this option is almost never used; 3) eliminating ch. NR 710 because the statutory provisions to inventory sites was repealed and use of the hazard ranking system is no longer needed to inventory sites; 4) consolidating the NR 718 provisions on managing contaminated soil; 5) revising NR 720 to account for EPA's updated methodology for calculating site specific soil cleanup standards, 6) revising NR 722 on Remedy Selection to require an evaluation of sustainability; 7) simplifying the case closure requirements by splitting NR 726 into 3 separate rules as the current rule is lengthy and complicated; 8) removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites that are seldom sued or are technically unsound, and 9) increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

6. Summary of and preliminary comparison with any existing or proposed federal regulation: combined with #7.
7. Comparison of similar rules in adjacent states:
Comparison with Federal Rules and Rules in Adjacent States – Since the NR 700 rule series has been in-place for over 15 years, this comparison focuses on the 4 most important issues addressed by the proposed rule changes. These include: 1) The Process for Establishing Soil Cleanup Standards, 2) Requirements for Addressing the Vapor Intrusion Pathway, 3) Fees for Review of Cleanup Related Documents, and 4) Regulatory Closure of Contamination Cases. Below is a summary of the issues and a comparison of Wisconsin's approach to how EPA and the adjacent states address the topic.

1. <u>The Process for Establishing Soil Cleanup Standards</u> – The Department's rule on soil cleanup standards allows Responsible Parties to use either soil performance standards (i.e. engineering controls) or compound specific soil cleanup values. Both options are being retained as part of the proposed revisions. The Department currently uses a process developed by EPA in the mid 1990's for determining numeric soil cleanup standards. EPA has since developed a new web calculator for determining soil cleanup standards. The proposed rule revisions utilize the new EPA methodology.

The approach for developing site specific soil cleanup standards is complex and very state specific. All of the surrounding states use EPA's risk range and compound specific toxicity information in determining soil cleanup levels. Not all states account for cumulative risk from multiple contaminants.

Each of the surrounding states have similar approaches for determining site specific soil cleanup standards although none are exactly the same. For example, all neighboring states provide values for an extensive list of compounds and those values are within the Federal excess cancer risk guidelines of 1:10,000 to 1:1,000,000. Illinois, Michigan and Minnesota rely on their Health Departments to set compound specific toxicity values, while Iowa and Wisconsin use the hierarchy established by EPA's Superfund Program.

Michigan and Illinois do not account for cumulative risk from multiple contaminants while Minnesota, Iowa and Wisconsin do. Minnesota uses a cumulative risk limit of 1:100,000 for soil exposure. Iowa allows cumulative risk up to 1:10,000 but their approach differs from the other states in that "cumulative" accounts for the aggregated exposures from contaminants in air, water and soil. In Illinois the risk posed by each individual compound can not exceed 1:1,000,000 while in Michigan individual compound risk can not exceed 1:100,000. Wisconsin uses a 1:1,000,000 excess cancer risk for individual compounds with the cumulative risk from all compounds not to exceed 1:100,000.

2. Requirements for Addressing the Vapor Intrusion Pathway – Vapor intrusion occurs when subsurface contaminants volatilize and then migrate through the soil into homes or other buildings. Assessing the vapor intrusion pathway is a relatively new issue for many states. U.S. EPA developed guidance for assessing the vapor pathway in 2002. As experience increased and additional data became available, EPA determined their guidance had several technical problems and it is currently making significant revisions. Wisconsin released draft guidance for external review last year. Feedback indicated that the guidance was technically sound and provided appropriate direction on how to evaluate the vapor intrusion pathway. The guidance was ultimately finalized in December, 2010 and training was provided to interested external parties in March, 2011.
The surrounding states have several different approaches for dealing with vapor intrusion. Michigan and Minnesota use general statutory and/or rule authority along with detailed guidance to address vapor intrusion. Illinois and Iowa don't have rules or guidance, but Illinois is in the process of developing rules. Currently, both states only address the vapor pathway when the responsible party requests assistance. Wisconsin uses an approach similar to Michigan and Minnesota's, although Wisconsin has more detailed statutory and rule authority related to vapor intrusion than either of these states.

3. Fees for Review of Cleanup Related Documents – The Department has had authority to charge fees for providing technical assistance since 1998. Fees are paid if the Responsible Party requests DNR review or other technical assistance. Most Responsible Parties request a case closure determination from the Department and pay the associated fees. Otherwise, the rule is largely self-implementing which means Responsible Parties can generally proceed without DNR approval and without paying review fees.

None of the surrounding states or EPA have a flat fee system like Wisconsin. All states have a variety of funding sources including some combination of the following: Federal grants, general purpose revenue (GPR), waste tipping fees, professional registration fees, tank registration fees and generator fees. Several of the states also charge hourly fees for the technical oversight they provide, typically for sites choosing to become part of their voluntary cleanup program. EPA is largely funded directly through the Federal budget although the Superfund Program has the ability to bill Responsible Parties for any oversight costs incurred.

4. Case Closures – The Department has the authority to issue "case closure" decisions when a responsible party has completed an investigation and cleanup in accordance with state rules. Responsible Parties typically want a letter from the regulatory agency to document that the cleanup was completed properly. In addition, case closure letters are important for property transactions so that potential purchasers are aware that any known contamination has been properly addressed.

All four of the surrounding states have authority to issue a letter indicating that cleanup of environmental contamination was completed in accordance with state standards. All of the surrounding states also rely on engineering controls to ensure the remedy remains protective into the future. States apply these controls differently and in some cases use deed restrictions, restrictive covenants or other site specific agreements to impose the necessary controls.

Since a number of the Federal cleanup programs have been delegated to the states to implement, EPA typically doesn't issue many "no further action letters". EPA uses restrictive covenants to impose

engineering controls and other long-term obligations at sites where it has lead responsibility. This occurs primarily at Federal lead Superfund sites.

Several years ago the Wisconsin legislature approved changes in state law which allowed the case closure letter to be used as the legally enforceable document to impose any necessary on-going requirements such as maintaining engineering controls. This change largely did away with deed restrictions, which were used extensively in Wisconsin prior to that time. The use of GIS mapping that shows the location of all contaminated sites and our on-line database that contains the status of cleanup provides an easy and comprehensive method for tracking the status of contaminated sites.

8. Summary of factual data and analytical methodologies that the agency used in support of the proposed rules and how any related findings support the regulatory approach chosen for the proposed rules:

Since most of the changes are legal and administrative clarifications, the Department did not conduct analysis or use specific data to support these changes to the rule. Analytical changes made include removing references to specific analytical techniques, sample containers and holding times, and replacing them with a requirement that the sampling and analytical techniques used be appropriate for the sample media and type and potential concentration of contaminant.

9. Any analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small business under s. 227.114, Stats., or that was used when the agency prepared an economic impact report: Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III action. A Type III action is one that normally: 1) does not have the potential to cause significant environmental effects, 2) does not significantly affect energy usage and 3) does not involve unresolved conflicts in the use of available resources.

10. Effects on small business, including how the rule will be enforced: The major purpose of this rule making effort is to incorporate requirements set forth by statutes and to address policy changes that have been implemented over the years. Another major change is to streamline and consolidate the rule language so that out-of-date provisions are removed and the current regulatory requirements are easier to understand and comply with. As such, the promulgation of these rule changes should not have a significant impact on small businesses.

The one area of these rule revisions that have the potential to impact some small businesses is the proposal to increase the fees set out in ch. NR 749. These fees have not been increased since they were originally promulgated in 1998 and the average increase typically ranges from $200 to $300 depending on the type of submittal. The fee increases should not affect a significant number of small businesses for several reasons. First, the NR 700 rule series is largely self-implementing which means that Responsible Parties typically decide whether or not they want agency review of the documents they prepare, and only pay a fee if a written DNR response is requested. Second, the fees are often a one-time expenditure and generally are a small percentage of the overall cost for completing a cleanup.

11. Agency Contact Person: Mark Gordon, (608) 266-7278.

12. Place where comments are to be submitted and deadline for submission:
Mark Gordon, RR/5
101 S. Webster Street
Madison, WI 53707
608-266-7278
Mark.Gordon@wisconsin.gov

Hearing dates and deadline for submission of comments are to be determined.

SECTION 1. NR 169.05 (12 m) is created to read:

NR 169.05 (12m) “High priority site” means the site of a discharge of dry cleaning product if at least one of the following applies:
(a) Dry cleaning product is present at or above preventive action limits in any well used to provide water for human consumption.
(b) Concentration of dry cleaning product in groundwater exceeds one-tenth solubility levels expected for that product.
(c) Enforcement standards in groundwater are exceeded within 1,200 feet of a well operated by a public utility or within 100 feet of any other well used to provide water for human consumption.
(d) Vapors from dry cleaning product at or above a vapor action level are confirmed within occupied buildings, except for operating dry cleaning facilities and dry stores.
Note: Vapor concentrations within occupied buildings are confirmed through time-integrated air sampling and the use of laboratory methods to achieve detection levels appropriate to human inhalation risk for the contaminants.

SECTION 2. NR 169.05 (16g) and (16r) are created to read:

NR 169.05 (16g) “Low priority site” means a site that does not meet the definition of a high or medium priority site.
(16r) “Medium priority site” means the site of a discharge of dry cleaning product if at least one of the following applies and the site does not meet the definition of a high priority site:
(a) Contaminants from dry cleaning product in groundwater, soil, or soil vapor extend beyond the boundary of the source property.
(b) Vapor concentrations at or above a vapor risk screening level are confirmed beneath buildings but a vapor action level is not exceeded within occupied buildings regardless of the location or use of the buildings.
Note: Vapor concentrations beneath buildings are confirmed through time-integrated air sampling and the use of laboratory methods to achieve detection levels appropriate to human inhalation risk for the contaminants.

SECTION 3. NR 169.05 (29g) and (29r) are created to read:

NR 169.05 (29g) "Vapor action level" has the meaning specified in s. NR 700.03 (66r).
Note: Section NR 700.03 (66r) defines “vapor action level” as “the concentration of vapors from volatile compounds is at or above the 1-in-100,000 (1x10-5) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens”.
Note: Generic tables of risk based concentrations for air in residential and industrial land use scenarios can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/Generic_Tables/index.htm.
(29r) "Vapor risk screening level" has the meaning specified in s. NR 700.03 (66t).
Note: Section NR 700.03 (66t) defines “vapor risk screening level” as “the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level multiplied by an appropriate attenuation factor”.
Note: Vapor risk screening levels are applied to sub-slab, soil gas and groundwater samples.

SECTION 4. NR 169.11(1) (c) 9. is amended to read:

NR 169.11(1) (c) 9. After receiving departmental approval for the site investigation report, submit a complete reimbursement application on a form developed by the department and specified in s. NR 169.19 which documents all eligible actions and associated costs. The
owner or operator may submit an application for the reimbursement of site investigation costs prior to the ~~approval~~ submittal of the site investigation report ~~if a change order to the approved site investigation scope of work is necessary.~~ The minimum eligible reimbursement request shall be $15,000 and no more than 3 reimbursement requests,-each accompanied by ~~a change order or orders~~ a summary of work completed, may be submitted prior to submittal of the site investigation report. Only one interim reimbursement request may be submitted during any fiscal year.
Note: Forms are available at no charge on the DNR Web site (www.dnr.state.wi.us/org/aw/rr) and from the remediation and redevelopment program in any department regional or central office.

SECTION 5. NR 169.13 (2) (f) 3. is created to read:

NR 169.13 (2) (f) 3. Costs that do not exceed $15,000 that the department determines are integral to the response action for dry cleaning solvent discharged from a dry cleaning facility and are incurred for any of the following purposes:
a. To remove existing structures, fixtures, and building components in order to access and investigate, treat, or remove contaminated soil or water.
b. To reinstall existing structures, fixtures, and building components.
c. To replace existing building components destroyed or damaged beyond reuse by removal. Existing building components shall be salvaged and reused to the extent possible, but existing building components destroyed or damaged beyond reuse by removal may be replaced by building components of comparable or lesser value than the value of the destroyed or damaged components before removal.
Note: Building components include windows, siding, and interior and exterior concrete, asphalt, walls, and doorways.
Note: All other costs to construct, repair, replace, improve, relocate, or demolish a structure, fixture, or building component are ineligible costs under sub. (3).

SECTION 6. NR 169.13(3) (a) 6 is amended to read:

NR 169.13 (3) (a) 6. Costs to construct, repair, replace, improve, relocate or demolish any building or fixture except as allowed by sub. (2)(f) 3.

SECTION 7. NR 169.15 is renumbered NR 169.15(1) and (2) and as renumbered is amended and to read:

NR 169.15 Site hazard categorization system. (1) The department project manager shall assign a preliminary high, medium or low priority to the site ~~consistent~~ in accordance with ~~ch. NR 710 after reviewing site information provided in an interim action or an interim site investigation reimbursement application submitted by an eligible applicant~~ s. NR 169.05(12m), (16g), and (16r).
(2) To determine reimbursement priorities pursuant to s. NR 169.17, the department project manager shall assign a final high, medium or low priority to the site ~~consistent with ch. NR 710~~ after approving a complete site investigation report submitted to the department.
~~Note: Section NR 710.11 (4) states that the department may develop and implement a prioritization system for each program to quickly estimate the environmental impact of a site or facility and to establish a general priority for department action.~~

SECTION 8. NR 169.19 (4) (c) is amended to read:

NR 169.19 (4) (c) An owner or operator who incurs costs for a ch. NR 716 site investigation may submit a request for reimbursement ~~when a change order to the site investigation scope of work is submitted. The department may not pay the reimbursement request until it has approved the change order and the work accomplished on the site investigation during the period covered by the reimbursement request~~ prior to completing the site investigation report. The minimum reimbursement request shall be $15,000 and only one reimbursement request may be submitted within any fiscal year. No more than 3 reimbursement requests, each accompanied by ~~a change order or orders and~~ a summary of work ~~accomplished~~ completed through the date of the last invoice may be submitted prior to submittal of the site investigation report. A final reimbursement request may be submitted upon department approval of the site investigation report.

SECTION 9. NR 169.23 (9) (b) 1. d. is amended to read:

NR 169.23 (9) (b) 1. d. The maximum deductible amount per claim of the policy that provides the coverage specified in subd. 1. a. ~~is [INSERT AMOUNT].~~
~~**Note:** "Insert amount" means the licensed agent should include a statement that lists the maximum deductible amount of the policy.~~

SECTION 10. NR 700 General Requirements Table of contents is amended to read:

Chapter NR 700

GENERAL REQUIREMENTS
NR 700.01 Purpose.

NR 700.02 Applicability.
NR 700.03 Definitions.
NR 700.05 Confidentiality of information.
NR 700.07 Incorporation by reference.
NR 700.08 Superfund site assessment.
~~NR 700.09 Site or facility classification.~~
NR 700.10 Identification of responsible parties.
NR 700.11 Submittals.
NR 700.13 Sample preservation and analysis.

SECTION 11. NR 700.01 (1) and (2) are amended to read:

NR 700.01 Purpose. (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to ~~750~~754, to incorporate by reference specified regulations or materials, and to grant confidential status for records, reports and other information furnished to or obtained by the department for use in the administration of chs. NR ~~702~~700 to ~~750~~754.
(2) The purpose of chs. NR 700 to ~~750~~754 is to establish consistent, uniform standards and procedures that allow for site−specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under ~~s. 292.11, 292.15, 292.31 or 292.41~~ chs. 289 and 292, Stats. The department intends that responsible parties and other interested persons should be able to efficiently move through the process set forth in chs. NR 700 to ~~736~~754 with minimal department oversight, except where the department has specified that more in-depth oversight is needed such as under s. 292.15 or s. 292.65, Stats., ~~requires department oversight~~ or through an enforceable order or agreement. These rules are adopted pursuant to ss. 227.11 (2), 281.19 (1), 287.03 (1) (a), 289.05 (1), 289.06, 289.31 (7), 289.43 (8), 291.05 (6), ~~292.11, 292.15, 292.31 and 292.41,~~ Stats., and ~~ch.~~ chs. 292 and 160, Stats.

SECTION 12. NR 700.01(2) Note is repealed.

SECTION 13. NR 700.02 (1), (2), Notes and (2m) are amended to read:

NR 700.02 Applicability. (1) This chapter and chs. NR 702, 704 and 708 to ~~750~~754 apply to actions taken by the department under the authority of ~~s. 292.11, 292.15, 292.31 or 292.41~~, chs. 289, and 292, Stats.
(2) This chapter and chs. NR 706~~, 708, 712~~ to ~~728~~ 754apply to actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ~~s.~~ 292~~.11 or 292.31~~ chs. 289, and 292, Stats., regardless of whether there is direct involvement or oversight by the department.
Note: The department of agriculture, trade and consumer protection has the authority under s. 94.73, Stats., to issue corrective action orders to parties who are responsible for the discharge of an agricultural chemical, to require that the responsible parties take action that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. The ~~department of natural resources has been informed that the~~ department of agriculture, trade and consumer protection ~~intends~~ has confirmed their intention to require that this chapter and chs. NR 708 ~~and 712~~ to ~~726~~727, and 749 be applied to actions taken by responsible parties as directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats. For actions directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats., submittals under chs. NR 708 ~~and 712~~ to ~~726~~ 727and 749 shall be sent to the department of agriculture, trade and consumer protection, and approvals required by these chapters shall be obtained from the department of agriculture, trade and consumer protection.
Note: Persons who are not responsible parties and who voluntarily take a response action at a site or facility that is subject to regulation under ch. 289, Stats., or s. 292.31 or 292.11, Stats., are not required to comply with the standards and procedures in chs. NR 700 to ~~72~~4 754unless the person is seeking the liability exemption under s. 292.15, Stats. However, the department ~~is~~ may not ~~likely to~~ consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to ~~72~~4 754 have been complied with, and a person who did not originally fall within the definition of a responsible party may become a responsible party if the actions taken by that person cause or worsen the discharge of a hazardous substance or if the person takes possession or control of the site or facility.
Note: Persons who wish to conduct response actions that will ~~meet~~ be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 ~~(1)~~ or a negotiated agreement under s. 292.11(7)(d), Stats.

However, a CERCLA−quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to ~~724~~ 754 in order to ~~satisfy~~ be consistent with CERCLA and the NCP.
(2m) This chapter and chs. NR ~~708, 712~~ 706 to 728, 750, and ~~750~~ 754 apply to actions taken by persons who are seeking ~~the~~ a liability exemption under s. 292.15, Stats.

SECTION 14. NR 700.02(2) Note is created to read: (first note)

NR 700.02 (2) Note: The department of safety and professional services has the authority under s. 101.144 Stats., to administer a program under which responsible parties investigate, and take remedial action in response to, those discharges of petroleum products from petroleum storage tanks that are classified as either medium risk or low risk. The department of safety and professional services has confirmed their intention to require that this chapter and chs. NR 708 to 727 and 749 be applied to actions taken by responsible parties as directed by the department of safety and professional services under s. 101.144, Stats. For actions directed by the department of safety and professional services under s. 101.144, Stats., submittals under chs. 708 to 727, and 749 shall be sent to the department of safety and professional services, and approvals required by these chapters shall be obtained from the department of safety and professional services.

SECTION 15. NR 700.02(3), (4) and (5) are repealed.

SECTION 16. NR 700.02(6) is renumbered as NR 700.02(3), and as renumbered is amended to read:

NR 700.02 ~~(6)~~ (3) The department may exercise enforcement discretion on a case−by−case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially
applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.
Note: Sites or facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to these statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

SECTION 17. NR 700.03 is amended to read:

NR 700.03 Definitions. The following definitions apply to chs. NR 700 to ~~750~~754:

SECTION 18. NR 700.03(1a) is created to read:

NR 700.03 (1a) "Agency with administrative authority" or "agency" has the meaning specified in s. 292.12(1) (a), Stats,
Note: Section 292.12(1)(a) defines “agency with administrative authority” to mean “the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73, Stats., the department of safety and professional services with respect to a site over which it has jurisdiction under s. 101.144(2) (a), Stats., or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11(7), Stats.

SECTION 19. NR 700.03(1m) and Note are created to read:

NR 700.03 (1m) "Attenuation factor" means the ratio of the indoor air concentration arising from vapor intrusion to the subsurface vapor concentration at a point or depth of interest in the vapor intrusion pathway.
Note: The department allows the use of default attenuation factors from U.S. EPA guidance, or the responsible party may collect enough information to develop a site-specific attenuation factor.

SECTION 20. NR 700.03(2) (a) is amended tor read:

NR 700.03 (2) "Background soil quality" means: (a) Soil quality that is attributable to the parent material from which the soil was derived and the natural processes which produce soil, or from contamination ~~from~~ attributable to atmospheric deposition including but not limited to the following constituents; lead, polynuclear aromatic hydrocarbons or polychlorinated biphenyls ~~attributable to atmospheric deposition~~, but not attributable to hazardous substance discharges or the discharge of pollutants, as that phrase is defined in s. 283.01, Stats.

SECTION 21. NR 700.03(3m) is created to read:

NR 700.03 (3m) "Case closure" has the meaning specified in s. 292.12(1) (b), Stats.
Note: Under s. 292.12(1)(b), Stats., "case closure" means "a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site.

SECTION 22. NR 700.03(4m) is created to read:

NR 700.03 (4m) "CERCLIS" means the comprehensive environmental response, compensation and liability information system, as compiled by the U.S. EPA.
Note: The federal CERCLIS list is available from the U. S. EPA, by writing to: WI Freedom of Information Act Officer, U.S. EPA Region V, 77 W. Jackson Blvd, Chicago, IL 60604.

SECTION 23. NR 700.03(6) is amended to read:

NR 700.03 (6) "Consultant" means a person or business under contract to perform a response action taken under, or subject to regulation under, chs. NR 702 to ~~736~~ 754.

SECTION 24. NR 700.03(7m) and Note are created to read:

NR 700.03 (7m) "Contaminated site boundary" or "contaminated site boundaries" means any area within which a hazardous substance has been discharged such that the air, land, or waters have been affected by a discharge or where environmental pollution exists.
Note: Included with the "contaminated site boundary" may be both the source property, on which the original discharge occurred, as well as other properties affected by the discharge, often through migration of the hazardous substance discharged through the soil or groundwater.

SECTION 25. NR 700.03(11m) and Note are created to read:

NR 700.03 (11m) "Department database" means the publically accessible database available on the internet as required by ss. 292.12, 292.31, and 292.57, Stats.
Note: The internet accessible Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the web has information on properties where a hazardous substance discharge has or may have taken place. RR Sites Map also provides data via a web-based mapping system that allows a user to view the information using a geographic information system (GIS) tool.

SECTION 26. NR 700.03(17) is amended to read:

NR 700.03 (17) "Engineering control" ~~means an action designed and implemented to contain contamination and minimize the spread of contamination within a media or to another media. Engineering controls include, but are not limited to: the installation of a cover with low permeability; groundwater extraction and treatment; slurry walls; solidification; and stabilization.~~ has the meaning specified in s. 292.12(1) (c), Stats.

SECTION 27. NR 700.03 (17) Note is created to read:

NR 700.03(17) Note: Under s. 292.12(1) (c), Stats., "engineering control" means "an action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap or soil cover."

SECTION 28. NR 700.03(27) is amended to read:

NR 700.03 (27) "High groundwater level" ~~has the meaning specified under s. NR 214.03 (11). **Note:** Section NR 214.03 (11) defines"high groundwater level" to mean "~~ means the higher of the elevation to which the soil is saturated and observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile.~~"~~

SECTION 29. NR 700.03(28) Note is amended to read:

NR 700.03(28) Note: Examples of immediate actions may be found in s. NR 708.05 (4). If further action will be required after a non−emergency response action is taken, that action would meet the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non−emergency, immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non−emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09 which apply at the completion of an immediate action.

SECTION 30. NR 700.03(28m) Note is amended to read:

NR 700.03 (28m) Note: Examples of industrial land uses include manufacturing and assembly plants; warehouses; scrap salvage operations; foundries and forging plants; metal pressing, stamping and spinning plants; electroplating facilities; tanneries; chemical processing facilities; electrical generating plants and electrical substations; slaughter houses and meat processing plants; fertilizer and pesticide packaging plants; bottling plants; wholesale bulk fuel storage and distribution facilities; railroad yards; and businesses that sell and repair motor vehicles, recreational vehicles, transportation containers or construction machinery and equipment.

SECTION 31. NR 700.03(30g) is created to read:

NR 700.03 (30g) "Limit of detection" has the meaning specified in s. NR 149.03(41).
Note: Section NR 149.03(41) defines "limit of detection" or "LOD" to mean "the lowest concentration or amount of analyte that can be identified, measured, and reported with confidence that the concentration is not a false positive value. For department purposes, the LOD approximates the method detection limit (MDL) and is determined by the method cited in s. NR 149.03(46) (MDL). See sub.(33m) for MDL.

SECTION 32. NR 700.03 (30r) is created to read:

NR 700.03 (30r) "Limit of quantitation" has the meaning specified in s. NR 149.03(42).
Note: Section NR 149.03(42) defines "limit of quantitation" or "LOQ" to mean "the lowest concentration or amount of an analyte for which quantitative results can be obtained."

SECTION 33. NR 700.03 (33m) is created to read:

NR 700.03 (33m) "Method detection limit" or "MDL" has the meaning specified in s. NR 149.03(46).
Note: Section NR 149.03(46) defines the "method detection limit" to mean "the minimum concentration of an analyte that can be measured and reported with 99% confidence that the stated concentration is greater than zero, determined from analyses of a set of samples containing the analyte in a given matrix. The method detection limit is generated according to the protocol specified in 40 CFR 136, Appendix B. "

SECTION 34. NR 700.03 (34m) is created to read:

NR 700.03 (34m) "Minority business" means a business certified by the department of safety and professional services pursuant to s. 16.287(2), Wis. Stats.

SECTION 35. NR 700.03 (36) is amended to read:

NR 700.03 (36) "Municipality" has the meaning specified in s. ~~299.01 (8)~~ 292.01 (11), Stats.

Note: Section ~~299.01 (8)~~ 292.01 (11), Stats., defines "municipality" to mean, "any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district".

SECTION 36. NR 700.03 (39m) is created to read:

NR 700.03 (39m) "Non-residential setting" means a facility other than a residential setting, used for commercial or industrial purposes.

SECTION 37. NR 700.03 (43) is amended to read:

NR 700.03 (43) "Person" has the meaning specified in s. ~~299.01 (10)~~ 292.01(13), Stats.
Note: Section ~~299.01 (10)~~ 292.01(13), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency."

SECTION 38. NR 700.03 (43g), (43r) and Note are created to read:

NR 700.03 (43g) "Phase I environmental site assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.
(43r) "Phase II environmental site assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase I environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.
Note: The department recommends that at a minimum, the current ASTM standards be followed when conducting Phase I and Phase II environmental assessments. When a person is seeking liability protections under CERCLA the person should follow EPA's requirements. See EPA's web page at: www.epa.gov for more information.

SECTION 39. NR 700.03 (45g) is created to read:

NR 700.03 (45g) "Property" means a contiguous area of land the entire legal description of which is found in one deed.

SECTION 40. NR 700.03 (45m) is amended to read:

NR 700.03 (45m) ''Property boundary'' means the boundary of the ~~total contiguous parcel of land~~ property owned or leased by a common owner or lessor, regardless of whether public or private roads run through the ~~parcel~~ property

SECTION 41. NR 700.03 (46m) is created to read:

NR 700.03 (46m) "RCRA" means the federal resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

SECTION 42. NR 700.03 (49g), (49r) and Note are created to read:

NR 700.03 (49g) "Residential setting" means any dwelling designed or used for human habitation, and includes educational, childcare, and elder care facilities.
(49r) "Residual contamination" means that some contamination remains after a cleanup is completed and approved. Residual contamination includes all phases of remaining contamination including vapor, dissolved, adsorbed and free-phase.
Note: The term "residual contamination" does not have the same meaning as the terms "residual phase", "residual concentration" or "residual contaminant level". The terms "residual phase" and "residual (phase) concentration" are used in some publications and are used when referring to the free-phase or separate non-aqueous phase liquid in soil or groundwater. The term "residual contaminant level" is used in chapter NR 720 to refer to soil standards developed under that chapter.

SECTION 43. NR 700.03 (51) is amended to read:

NR 700.03 (51) “Responsible party” or “responsible parties” means any of the following: (a) any person who is required to conduct a response action under ch. 292, Stats., (b) ~~or is~~ persons liable to reimburse the department for the costs incurred by the department to take response action under ~~s. 292.11, 292.31 or 292.41~~ chs. 289 and 292, Stats., or (c) owners and operators of solid waste facilities that are subject to regulation under ch. NR 508.

SECTION 44. NR 700.03 (52m) is created to read:

NR 700.03 (52m) “Right–of–way” means the strip of land over which railroad tracks run, or within which a public street or highway has been constructed, regardless of whether the strip of land is owned by the railroad or the entity that maintains the public street or highway. For the purposes of this chapter, a “right–of–way” includes corridors created by dedication, by the granting of an easement and by the acquisition of fee title.

SECTION 45. NR 700.03 (55m) is created to read:

NR 700.03 (55m) “Sensitive receptor” means a receptor that is affected by slight differences or changes in environmental conditions.

SECTION 46. NR 700.03 (59m) is created to read:

NR 700.03 (59m) "Source property" means the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred.

SECTION 47. NR 700.03 (60) is amended to read:

NR 700.03 (60) “Submittal” means any document, report, plan, set of specifications, engineering design or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR ~~702~~700 to ~~750~~754.

SECTION 48. NR 700.03 (60m) is created to read:

NR 700.03 (60m) "Sub-slab" means beneath the lowermost building foundation floor slab.

SECTION 49. NR 700.03 (62m) is created to read:

NR 700.03 (62m) “Sustainable remedial action” means achieving protection of human health, safety, and the environment, while incorporating and balancing certain practices, processes, and technologies throughout all phases of the remedial action to deliberately generate a net positive impact on the environment, economy, and society.

SECTION 50. NR 700.03 (64m) is created to read:

NR 700.03 (64m) “TSCA” means the toxic substance control act, 15 USC.

SECTION 51. NR 700.03 (65m) and Note are created to read:

NR 700.03 (65m) “Unconsolidated material” means soil, sediment or other granular material, such as fill, not including debris.
Note: Section NR 700.03 (58) defines “soil” as unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste. Section NR 700.03 (54) defines “sediment” as particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water. Section NR 700.03 (10) defines “debris” as material resulting from the construction, demolition or razing of buildings, roads and other structures and materials that have been discarded at a site or facility.

SECTION 52. NR 700.03(66) Note: is amended to read:

NR 700.03 (66) Note: This definition of "underground storage tank" is based on the definition found in s. Comm ~~10.01 (98)~~ 10.050(122).

SECTION 53. NR 700.03 (66p) and Note, (66t) and Note, and (66w) are created to read:

NR 700.03 (66p) "Vapor action level" means the concentration of vapors from volatile compounds is at or above the 1-in-100,000 ($1x10^{-5}$) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens.
Note: Generic tables of risk based concentrations for air in residential and industrial land use scenarios can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/Generic_Tables/index.htm.
(66t) "Vapor risk screening level" means the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level multiplied by an appropriate attenuation factor.
Note: Vapor risk screening levels are applied to sub-slab, soil gas and groundwater samples.
(66w) "Vapor mitigation system" means a system that prevents or reduces the migration of contaminant vapors into a building and does not have the primary purpose of remediating vapor contaminant sources.

SECTION 54. NR 700.05 (1) and (2) are amended to read:

NR 700.05 Confidentiality of information. (1) Except as provided under sub. (2), any record, report or other information furnished to, or obtained by, the department in the administration of chs. NR 700 to ~~750~~ 754 is a public record subject to the provisions of ss. 19.21, 19.31 to 19.39, Stats., and s. NR 2.195.
(2) If confidential status is sought for any record, report or other information furnished to or obtained by the department under chs. NR 700 to ~~750~~ 754, the standards and procedures in s. NR 2.19 are applicable to all sites and facilities, and the standards and procedures in s. 289.09 (2), Stats., are applicable to the owners and operators of solid waste facilities.
Note: Under s. NR 2.19, the department may grant confidential status if: (1) the standards for granting confidential status found in s. 289.09 or 291.15, Stats., are met; (2) confidential treatment is in the public interest using the balancing test in *State ex rel. Youmanns v. Owens*, 28 Wis. 2d 672 (1965); or (3) a specific statutory or common law right to confidential treatment is applicable.

SECTION 55. NR 700.07 is amended to read:

NR 700.07 Incorporation by reference. The material listed in this section is incorporated by reference at the paragraph noted: "SW–846, Test Methods for Evaluating Solid Waste", by the U.S. Environmental Protection Agency, Office of Solid Waste, loose–leaf manual, ~~dated November 1986, as amended by December 1987 update and November 1990 update II~~ "The Third Edition of SW 846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB and IV", referenced in s. NR 716.13 ~~(3)~~(12).
Note: These materials are available for inspection in the offices of the department of natural resources, 101 S. Webster Street, Madison, Wisconsin, or may be accessed at the following web site: http://www.epa.gov/epaoswer/hazwaste/test/main.htm or may be purchased for personal use from:
National Technical Information Service
U.S. Department of Commerce
Springfield, VA 22161

SECTION 56. NR 700.08 is created to read:

NR 700.08 Superfund site assessment. A site or facility may be evaluated by the department to determine eligibility for the federal superfund program, under CERCLA and the NCP. The department also may conduct federal site assessment activities, in cooperation with the U.S. EPA. Assessment activities may include, but are not limited to:
(1) Identifying sites for addition to CERCLIS;
(2) Reviewing files by department staff in the form of preliminary assessments;
(3) Collecting data both on–and–off–site by conducting field sampling;
(4) Preparing or reviewing federally prepared hazard ranking system scores, using the federal hazard ranking system; and

(5) Nominating sites or facilities to the national priorities list.

SECTION 57. NR 700.09 is repealed.

SECTION 58. NR 700.10 is created to read:

NR 700.10 Identification of responsible parties. The department may attempt to identify potentially responsible parties during any phase of response action by any one of the following methods:
(1) Interviewing local officials, neighboring residents, persons involved with the operations of the site or facility, and past and present site or facility owners or operators.
(2) Reviewing operational records of the site or facility.
(3) Reviewing department records.
(4) Determining current and past ownership of the site or facility.
(5) Collecting and analyzing samples.
(6) Other appropriate means.

SECTION 59. NR 700.11 (1) is amended to read:

NR 700.11 Submittals. (1) ~~SIMPLE SITE PROCESS. If the site or facility meets the criteria specified in s. NR 700.09 (1) and the responsible party chooses to proceed with the simple site process, all of the following shall apply:~~ GENERAL.

SECTION 60. NR 700.11 (1) (a) is amended to read:

NR 700.11 (1) (a) Unless otherwise directed by the department, responsible parties shall comply with the following:
1. Responsible parties shall submit site progress reports that summarize the completed work and additional work planned to adequately complete the response action at the site or facility to the department at 6 month intervals until ~~a letter of compliance is submitted as required by par. (b)~~ case closure is granted by the department. The first site progress report shall be submitted to the department no later than 6 months after the responsible party notifies the department of the discharge in accordance with s. NR ~~158.06 or 705.05~~ 706.05. Progress reports shall be provided on a reporting form supplied by the department. The department may require progress reports be submitted at a different frequency than semi-annually.

SECTION 61. NR 700.11(1) (a) 1. Note, as renumbered, is created to read:

NR 700.11 (1) (a) 1. Note: Copies of progress reporting forms may be obtained at: http://dnr.wi.gov/org/aw/rr/.

SECTION 62. NR 700.11 (1) Notes are repealed.

SECTION 63. NR 700.11 (1) (b) – (f) are repealed.

SECTION 64. NR 700.11 (2) and (2) (a) are repealed.

SECTION 65. NR 700.11 (2) (b) is renumbered as NR 700.11(1) (a) 2. – 4. and as renumbered is amended to read:

NR 700.11 (1) (a) ~~(b) Responsible~~ 2. Unless otherwise directed by the department, responsible parties shall submit a site investigation work plan meeting the requirements of s. NR 716.09 to the department within 60 days of receiving notification that a site investigation is required.
3. Responsible parties shall submit a site investigation report~~, pursuant to ch. NR 716~~ meeting the requirements of s. NR 716.15 to the department within ~~30~~ 60 days after completion of the ~~report unless the site is exempt from this requirement under par. (c), and a draft~~ field investigation and receipt of the laboratory data.
4. Responsible parties shall submit a remedial action options report meeting the requirements of ~~chs. NR 722~~ s. NR 722.13 to the department within ~~30~~ 60 days after ~~completion of the report unless~~ submittal of the site ~~is exempt from this requirement under par. (f)~~ investigation report.

SECTION 66. NR 700.11(2) (c) is renumbered as NR 700.11(1) (b) and as renumbered is amended to read:

NR 700.11 (1) ~~(c)~~(b) The department shall provide written acknowledgement of receipt of the ~~site investigation report and draft remedial options report~~ reports listed in subds. 2. to 4. within 30 days ~~and specify the estimated date for completion of department review~~.

SECTION 67. NR 700.11(3), (a) and (b) are renumbered as NR 700.11(2) and as renumbered is amended to read:

NR 700.11 ~~(3)~~ (2) ~~ADDITIONAL SUBMITTALS OR~~ MORE EXTENSIVE REVIEW. The department may perform ~~require additional submittals or~~ more extensive ~~department~~ review ~~than is provided for in sub. (1) or (2) in the following circumstances:~~
~~(a) Where the owners or operators of a site or facility are eligible for reimbursement under s. 101.143, Stats.~~
~~**Note:** Section 101.143, Stats., is the petroleum storage remedial action statute, under which the department of industry, labor and human relations administers the petroleum environmental cleanup fund act, known as PECFA. Section NR 700.11 (3) (a) applies to the owners or operators of sites who are eligible under the PECFA program to receive reimbursement for response actions from the PECFA. Department of natural resources' review and approval is required for these sites by ch. Comm 47, DNR review of PECFA−eligible sites will be more frequent than that described in the simple site review process under s. NR 700.11 (1).~~
~~(b) Where~~ where an application is submitted to the department by a person seeking a liability exemption under s. 292.15, Stats., or where a person is participating in the dry cleaner environmental response program under s. 292.65, Stats.
Note: Section 292.15, Stats., applies to persons ~~acquiring~~ who conduct remediation of contaminated property to obtain an exemption from liability. ~~Department review of submittals is required by s. 292.15, Stats., to be more frequent than that described in the simple site review process under s. NR 700.11 (1) to determine if a thorough investigation of the property has been conducted and the environment has been satisfactorily restored and the harmful effects from any release of a hazardous substance has been minimized.~~

SECTION 68. NR 700.11(3) (c), Note, and (d) are repealed.

SECTION 69. NR 700.11(4) is repealed.

SECTION 70. NR 700.11(3) and Notes are created to read:

NR 700.11 (3) NUMBER OF SUBMITTALS. One paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed by the department. The electronic copy shall be submitted on optical disk media and may not be submitted as electronic mail attachments unless specifically approved in advance by the department. Electronic copy files shall have a minimum resolution of 300 dots per inch, and may not be locked or password protected. The department may request that the electronic copy of sampling results be submitted in a format that can be managed in software. An electronic copy of certain types of voluminous attachments or appendices may be substituted for the paper copy, if specifically approved in advance by the department. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible.
Note: Guidance for GIS Registry submittals outlines how electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. This guidance can be accessed at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR690.pdf.
Note: The department strongly recommends the use of 2-sided copies for the paper copy of the report, and the use of accordion folders for larger reports instead of 3-ring binders, to help address file space issues.
Note: An example of a voluminous attachment is a laboratory quality assurance and control report.
Note: Examples of formats that can be managed in software are spreadsheets, plain text tabular files, hypertext markup language files (HTML) and extensible markup language files (XML).

Note: The department intends to implement an electronic document management system in the future that may require the submittal of all plans or reports in electronic format that can be managed in software.

SECTION 71. NR 700.13 (1) is renumbered as NR 700.13(1) and (2) and as renumbered are amended to read:

NR 700.13 Sample preservation and analysis. (1) ~~PETROLEUM PRODUCTS. Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for compliance with chs. NR 700 to 736 shall be completed in accordance with the "Modified GRO, Method for Determining Gasoline Range Organics" and the "Modified DRO, Method for Determining Diesel Range Organics", as specified in s. NR 149.03 (5).~~ All sampling, preservation, extraction and analytical methods used for compliance with NR 700 to 754 shall be according to the requirements in s. NR 716.13.
(2) USE OF GASOLINE RANGE ORGANICS/DIESEL RANGE ORGANICS ANALYSIS**.** Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for screening purposes shall be completed in accordance with the "Modified GRO, Method for Determining Gasoline Range Organics" and the "Modified DRO, Method for Determining Diesel Range Organics".

SECTION 72. NR 700.13(2) Note is created to read:

NR 700.13 (2) Note: For purposes of this section, the term "screening purposes" means sampling conducted during site investigations, environmental assessments or other activities in compliance with NR 700 to NR 754 for purposes of determining whether a discharge has occurred or to estimate the degree and extent of contamination. The "Modified GRO, Method for Determining Gasoline Range Organics: (WI-PUBL-SW-141) and "Modified Diesel Range Organics" (WI-PUBL-SW-14) are available online at http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/SW140.pdf. This method is referenced in s. NR 149, Appendix III, List of Authoritative Sources.

SECTION 73. NR 700.13(2) and (3) are repealed. (renumbered as 716.13 (11) and amended.)

SECTION 74. NR 706 Table of Contents is amended to read:

NR 706
Hazardous Substance Discharge Notification and Source Confirmation Requirements

~~**Subchapter I – General Provisions**~~
NR 706.01 Purpose.
NR 706.02 Applicability.
NR 706.03 Definitions.

~~**Subchapter II – General Discharge Notification Requirements**~~
NR 706.05 ~~Discharger responsibilities~~ General requirements for responsible parties.
NR 706.07 Exemptions.

~~**Subchapter III – Discharge Notification and Source Confirmation Requirements for Underground Storage Tank Systems**~~
NR 706.11 ~~Discharger~~ Additional responsibilities for owners or operators of underground storage tank systems.
~~NR 706.13 Indication of a discharge from an UST discharge monitoring system.~~
~~NR706.15 UST discharge source confirmation.~~
~~NR 706.17 Underground storage tank response action status report.~~

SECTION 75. NR 706.01 is amended to read:

NR 706 ~~**Subchapter I — General Provisions**~~
NR 706.01 Purpose. The purpose of this chapter is to adopt by administrative rule notification requirements for discharges of hazardous substances. ~~In order to retain authorization to implement the federal underground storage tank program in Wisconsin, subch. III contains requirements that are mandated by U.S. EPA, that are only applicable to discharges from underground storage tanks~~. This chapter is adopted pursuant to ss. 227.11 (2) and 292.11, Stats.

SECTION 76. NR 706.01 Note is repealed.

SECTION 77. NR 706.02 (2) is amended to read:

NR 706.02 (2) ~~Subchapter II~~ Section 706.05 applies to all persons who have responsibility under s. 292.11, Stats., for any hazardous substance discharge that may occur. ~~Subchapter III~~ Section 706.11 contains additional requirements that only apply to the owners and operators of underground storage tank systems that are subject to regulation under 42 USC s. 6991 *et seq.* and 40 CFR part 280, or ch. Comm 10, for hazardous substance discharges that are related to the underground storage tank system.

SECTION 78. NR 706.02(3) is amended to read:

NR 706.02 (3) Persons and facilities subject to the release notification requirements in CERCLA s. 103(a), 42 USC 9603(a), or the emergency notification and notification requirements in s. 166.20, Stats., and 42 USC 11004, 11021, 11022 and 11023, are required to comply with those requirements in addition to complying with the notification requirements of this chapter, except that notification of a hazardous substance discharge which is given to the department in compliance with the requirements of this chapter constitutes notification of the ~~state emergency response board~~ division of emergency management as required by s. ~~166.20~~ 166.215, Stats., if the notification contains all of the information specified in 42 USC 11004(b)(2).

SECTION 79. NR 706.03(1) is repealed.

SECTION 80. NR 706.03(2) is renumbered NR 706.03(1).

SECTION 81. NR 706.03(3) is repealed.

SECTION 82. NR 706.03(4) is renumbered NR 706.03(2).

SECTION 83. NR 706.03(5) is renumbered NR 706.03(3).

SECTION 84. NR 706.03 (3) Note, as renumbered, is amended to read:

NR 706.03 (3) Note: Section 94.681 (1) (c), Stats., defines “nonhousehold pesticide” as “a pesticide that is not a household pesticide or an industrial pesticide.” “Household pesticide” is defined in s. 94.681 (1) (a), Stats.

SECTION 85. NR 706.03(6) is renumbered NR 706.03(4).

SECTION 86. NR 706.03(7) is renumbered NR 706.13(5) and as renumbered is amended to read:

NR 706.03 ~~(7)~~(5) “Petroleum ~~products~~ product “ ~~mean gasoline products, diesel-like products and light crude oils, medium grade crude oils and intermediate products, and heavy crude oils and residual products~~ means any refined petroleum based substance or blend intended for use as motor fuel, turbine fuel, lubrication, cooling, machine cutting or heating.

SECTION 87. NR 706.03 (7) Note is repealed.

SECTION 88. NR 706 Subchapter II title is repealed.

SECTION 89. NR 706.05 title and NR 706.05 (1) (a) are amended to read:

NR 706.05 ~~Discharger responsibilities~~General requirements for responsible parties. (1) DISCHARGE NOTIFICATION. (a) Unless the discharge is specifically exempted under s. NR 706.07, persons who cause the discharge to the environment of a hazardous substance or who possess or control a hazardous substance which is discharged to the environment shall immediately notify the department of the discharge. ~~For the purpose of determining if a substance is hazardous and whether its discharge is required to be reported, responsible parties shall consider the quantity, concentration and physical, chemical and infectious characteristics of the substance and the location where the discharge occurred, and whether the substance has been discharged to the environment.~~ Discharges to the

environment may include, but are not limited to; recent discharges, historic discharges, and discharges to the environment caused by long-term application of a substance. A hazardous substance that is "discharged" into a secondary containment structure, that is completely contained and can be recovered with no discharge to the environment, is not subject to the discharge notification requirements in s. 292.11 (2), Stats.

SECTION 90. NR 706.05 (1) (b) and Note are amended to read:

NR 706.05 (1) (b) Hazardous substance discharges shall be immediately reported to the department by telephoning, ~~telefaxing, or visiting a department office during normal business hours or by telephoning~~ a department–designated 24–hour hotline telephone number ~~after normal business hours~~. The department may allow alternate notification procedures on a case-by-case basis.
Note: Use of the department-designated 24-hour hotline is for notification of spills. The ~~24–hour~~ hotline operated by the division of emergency management in cooperation with the department can be reached at 1–800–943–0003. ~~Directories for the telephone numbers of the department's offices can be found in local telephone books and in various department guidance documents.~~

SECTION 91. NR 706.05 (1) (c) and Note are created to read:

NR 706.05 (1) (c) Hazardous substance discharges discovered through soil, water or other analyses may be reported by telefaxing a completed discharge notification form provided by the department, or by alternate notification procedures approved by the department. Laboratory results shall be included with the completed discharge notification form.
Note: Use of the discharge notification form is intended only for notification of discharges typically found through tank closure assessment, phase II environmental assessments, or by other discoveries through soil, water or other media analysis. The discharge notification form can be obtained at the following web address: http:\dnr.wi.gov./org/aw/rr/archives/pubs/4400-225.pdf.

SECTION 92. NR 706.05 (1) (c) is renumbered NR 706.05 (1) (d) and amended to read:

NR 706.05 (1) ~~(c)~~ (d) The notification required by this subsection shall contain the following information to the extent practicable or applicable:

NR 706.05 (1) (c) 3., is renumbered NR 706.15 (d) 3. and 4., and as renumbered is amended to read:

NR 706.05 (1) (d) 3. Date, time, and duration of the discharge. ~~And~~
4. ~~location~~ Location of the discharge including street address, ~~if appropriate,~~ county, town, city or village, if appropriate, ~~1/4, 1/4~~ quarter-quarter section, township, range, geographic position obtained in accordance with the requirements of s. NR 716.15(5)(d), and legal description of lot, if located in a platted area.

SECTION 93. NR 706.05 (1) (d) 4. Note is created to read:

NR 706.05 (1) (d) 4. **Note:** The provisions in s. NR 716.15(5) (d) require that all geographic position data shall be obtained and submitted to the department in accordance with the following requirements: 1) for properties that are not more than 200 feet wide or long, a single point geographic position shall be obtained at least 40 feet within the boundaries of the property, or as close to the center of the property as possible if the property is less than 80 feet wide or long. For properties that are more than 200 feet wide or long, coordinates describing the approximate location of the property's boundaries, forming a polygon, shall be obtained: and 2) geographic position data shall be originally collected in Wisconsin Transverse Mercator '91 or projected onto Wisconsin Transverse Mercator '91.

SECTION 94. NR 706.05 (1) (c) 4. through 10. are renumbered NR 706.05 (1) (d) 5. through 11.

SECTION 95. NR 706.05 (1) (c) 11. is renumbered NR 706.50(1) (d) 12. and as renumbered, is amended to read:

NR 706.05(1) (d) ~~11~~12. Other agencies on–scene during the ~~spill~~ discharge incident.

SECTION 96. NR 706.05 (2) is amended to read:

NR 706.05 (2) CONTAINMENT, CLEANUP, DISPOSAL AND RESTORATION. Responsible parties shall comply with the requirements of chs. NR 700 to ~~726~~ 754 for response actions to discharges of hazardous substances.

SECTION 97. NR 706.07 intro and (1) are amended to read:

NR 706.07 Exemptions. The exemptions in this section are limited to notification or penalty provisions. Responsible parties shall comply with the response requirements of s. NR 706.05(2) for all situations.
(1) STATUTORY NOTIFICATION EXEMPTIONS. The following persons are not required to notify the department of a hazardous substance discharge that falls within any of the following categories:

SECTION 98. NR 706.07 (1) (b) and Note are repealed.

SECTION 99. NR 706.07 (1) (c) is renumbered NR 706.07(1)(b):

SECTION 100. NR 706.07 (1) (d) is renumbered NR 706.07(1) (c) and as renumbered is amended to read:

NR 706.07 (1) ~~(d)~~(c) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial ~~agromonic~~ agronomic rates, is exempt with respect to that pesticide or fertilizer application.

SECTION 101. NR 706.07 (2) (b) 1. is amended to read:

NR 706.07 (2) (b) 1. The discharged substance has not evaporated or has not been cleaned up in compliance with the requirements of chs. NR 700 to ~~726~~ 754.

SECTION 102. NR 706.07 (3) is created to read:

NR 706.07 (3) EXEMPTION FROM PENALTIES. Law enforcement officers or members of fire departments using hazardous substances in carrying out their responsibility to protect public health, safety or welfare are exempted from the penalty requirements of s. 292.11(9), Wis. Stats., but shall report to the department any discharges of a hazardous substance occurring within the performance of their duties.

SECTION 103. NR 706 Subchapter lll title is repealed.

SECTION 104. NR 706.11 Title is amended to read:

NR 706.11 ~~Discharger~~ Additional responsibilities for owners or operators of underground storage tank systems.

SECTION 105. NR 706.11 (1) is repealed.

SECTION 106. NR 706.11(2) is renumbered NR 706.11(1).

SECTION 107. NR 706.11(3) is renumbered NR 706.11(2) and as renumbered is amended to read:

NR 706.11 ~~(3)~~ (2)CLOSURE ASSESSMENT REPORTS. The owner or operator of an UST system shall submit to the department any tank closure assessment report that is generated to document compliance with the requirements of ~~s. Comm 10.734 or 10.805~~ ch. Comm 10 regardless of whether a discharge of a hazardous substance was detected during the site assessment.

SECTION 108. NR 706.11 (3) is created to read:

NR 706.11 (3) SOURCE AND CAUSE OF DISCHARGES. At the time the owner or operator of an UST system reports a discharge from an UST system, they shall also provide information to the department on the source and cause of the discharge. Sources include: tanks, piping, dispensers,

submersible turbine pump areas, delivery problems, and other sources not specifically identified herein. Causes include: spills, overfills, physical or mechanical damage, corrosion, installation problems, other sources not specifically identified herein, and those situations where the cause is unknown.

SECTION 109. NR 706.11(4) is repealed.

SECTION 110. NR 706.13, 706.15 and 706.17 are repealed.

SECTION 111. NR 708 Table of Contents is amended to read:

NR 708
IMMEDIATE AND INTERIM ACTIONS
NR 708.01 Purpose.
NR 708.02 Applicability.
NR 708.03 Definitions.
NR 708.05 Immediate actions.
NR 708.07 Additional response actions.
NR 708.09 No further response action.
NR 708.11 Interim actions.
NR 708.13 Free product removal.
NR 708.15 Interim action reports.
NR 708.17 Local governmental unit or economic development corporation exemptions.

SECTION 112. NR 708.01 is amended to read:

NR 708.01 Purpose. This chapter establishes criteria for emergency and non–emergency immediate actions and interim actions to be taken by responsible parties, or interim actions taken by local governmental units or economic development corporations when directed by the department, to protect public health, safety and welfare and the environment; and establishes the documentation requirements associated with these response actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 289.06, ~~292.11, 292.15 and 292.31,~~ and ch. 292, Stats.

SECTION 113. NR 708.02(1) is amended to read:

NR 708.02 Applicability. (1) This chapter applies to emergency and non–emergency immediate actions and interim actions taken by the department under the authority of ~~s. 292.11, 292.31 or 292.41~~ ch. 292, Stats. In this chapter, where the term "responsible parties" appears, it should be read to include the department in situations where a department–funded response action is being taken.

SECTION 114. NR 708.02(2) Note is amended to read:

NR 708.02 (2) Note: Persons who wish to conduct response actions that will ~~meet~~ be consistent with the requirements of CERCLA and the NCP may request that the department enter into a contract with them pursuant to s. 292.31, Stats., or a negotiated agreement under s. 292.11(9)(e) 4., Stats. However, a CERCLA–quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to ~~724~~ 754 in order to ~~satisfy~~ be consistent with CERCLA and the NCP.

SECTION 115. NR 708.02(2r) is created to read:

NR 708.02 (2r) Section NR 708.17 applies to response actions taken by a local governmental unit or economic development corporation when directed by the department under s. 292.11(9) (e) 4, Stats.

SECTION 116. NR 708.03 introduction is amended to read:

NR 708.03 Definitions. ~~The definitions in s. NR 700.03 apply to this chapter.~~ In this chapter:

SECTION 117. NR 708.03 (1), (2) and Note are created to read:

NR 708.03 (1) "Economic development corporation" has the meaning described in s. 501(c) of the Internal Revenue Code, as defined in s. 71.22 (4), Wis. Stats., that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code, or an entity wholly owned and operated by such a corporation, with respect to property acquired to further the economic development purposes that exempt the corporation from federal taxation.
(2) "Local governmental unit" has the meaning specified in s. 292.11(9)(e) 1. Stats.
Note: Section 292.11(9) (e) 1. defines "local governmental unit" to mean "a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority or a housing authority."

SECTION 118. NR 708.05 (3) (b) 2. is amended to read:

NR 708.05 (3) (b) 2. The response does not result in the excavation and disposal, treatment or storage of more than 100 cubic yards of contaminated soil, debris, sediment or a combination of these media from a
single site or facility, unless an alternative volume is approved by the department.

SECTION 119. NR 708.05 (3) (b) 4. Note is amended to read:

NR 708.05 (3) (b) 4. **Note:** If further action is required after a non–emergency response action is taken, that action meets the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non–emergency~~,~~ immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action~~,~~ but not with a non–emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

SECTION 120. NR 708.05 (5) (b) is amended to read:

NR 708.05 (5) (b) Contaminated soils, as defined in s. NR 718.03 ~~(4)~~ (5), that are excavated as part of an immediate action are exempt from the storage requirements of s. NR 718.05 and the solid waste regulatory requirements of ch. 289, Stats., and chs. NR 500 to 536, for a period of 72 hours after the initial excavation of the contaminated soils.

SECTION 121. NR 708.05 (6) (c) 3. is amended to read:

NR 708.05 (6) (c) 3. Location of the site or facility, or discharge incident, including street address; quarter–quarter section~~;~~, township, range and county; and the location information specified in s. NR 716.15(5) (d); latitude and longitude, and legal description of lot, if located in platted area.

SECTION 122. NR 708.09 (2) and (2) (a) are amended to read:

NR 708.09 (2) SITE INVESTIGATION. The department shall require responsible parties to conduct a site investigation in accordance with the requirements of ch. NR 716 if a hazardous substance discharge ~~from a UST~~ meets any of the following conditions:
(a) There is evidence that groundwater wells have been affected by a discharge of a hazardous substance~~, including any evidence found during the release confirmation procedures required in ch. NR 706~~.

SECTION 123. NR 708.09(3) and Note are amended to read:

NR 708.09 (3) REOPENING A CASE. The department may require that additional response actions be conducted by responsible parties in compliance with the requirements of chs. NR 700 to ~~726~~ 754 if additional information indicates that residual contamination at a site or facility poses a threat to public health, safety or welfare or the environment.
Note: Although the department may determine at this time that no further response action is necessary pursuant to chs. NR 700 to ~~726~~754, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

SECTION 124. NR 708.11 (1) is renumbered NR 708.11 (1) (a):

SECTION 125. NR 708.11 (1) Note is amended to read:

NR 708.11 (1) Note: The principal distinction between a non–emergency~~,~~ immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non–emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

SECTION 126. NR 708.11(1) (b) is created to read:

NR 708.11 (1) (b) The department may require the use of a vapor mitigation system, or other engineering control, when vapor concentrations beneath a slab, foundation or building exceed a vapor risk screening level.

SECTION 127. NR 708.11(2) (d) is amended to read:

NR 708.11 (2) (d) Constructing a temporary engineering control, such as a low permeability cover, or installing and operating a vapor mitigation system.

SECTION 128. NR 708.11(4) (b) is amended to read:

NR 708.11 (4) (b) On–site engineering control or barrier, including a landfill cover or groundwater barrier system, or a vapor mitigation system other than a radon-type sub-slab depressurization system.

SECTION 129. NR 708.15 (1) and (2) are amended tor read:

NR 708.15 (1) GENERAL. Responsible parties shall prepare and submit to the department an interim action report, in accordance with this section and s. NR 700.11(4), describing each interim action taken. The interim action report shall be submitted as part of the remedial action report or the site investigation report, unless otherwise directed by the department or unless sub. (2) is applicable.
(2) FREE PRODUCT REMOVAL. For interim actions conducted to remove free product that was discharged from a UST, responsible parties shall prepare and submit ~~a written~~ an interim action report to the department within 45 days after confirming a discharge in accordance with the requirements of ch. NR 706, unless otherwise directed by the department.

SECTION 130. NR 708.15 (3) (b) is amended to read:

NR 708.15.(3) (b) Location of the site or facility, or discharge incident, including street address; quarter–quarter section~~;~~, township, range and county; the location information specified in s. NR 716.15(5)(d); latitude and longitude, and legal description of lot, if located in platted area.

SECTION 131. NR 708.15 (3) (k) is created to read:

NR 708.15 (3) (k) An operation and maintenance plan for any engineering control or barrier employed, including but not limited to a cover, a groundwater barrier system, or a vapor mitigation system.

SECTION 132. NR 708.17 is created to read:

NR 708.17 Local Governmental Unit or Economic Development Corporation Exemptions. (1) GENERAL. (a) If, after considering the intended development and use of a property, the department determines under s. 292.11 (9) (e) 4., Stats., that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department may direct the local governmental unit or economic development corporation to take that necessary action.
(b) Actions directed by the department may include, but are not limited to, removal of soil contamination, investigations beneath demolished buildings, replacement of infiltration barriers, or installation of vapor migration barriers.
(c) The local governmental unit or economic development corporation directed to take action by the department shall prepare and submit a plan to the department for review and approval for the design, construction, operation and maintenance of the necessary actions.

(d) Plan review fees for the plans submitted under (c) shall be paid by the local governmental unit or economic development corporation in accordance with chs. NR 749 and NR 750.
(2) AGENCY AUTHORITY. The department may direct that any of the following actions be taken by a local governmental unit or economic development corporation if contamination remains on a site after the conclusion of actions directed by the department under s. 292.11(9) (e) 4., Wis. Stats.
(a) Require maintenance of an engineering control on the site.
(b) Require the performance of any necessary actions to reduce to acceptable levels any substantial threat to public health or safety, if a building or other structural impediment is removed that had prevented previous access to the area.
(c) Require actions to ensure that conditions at the site remain protective of public health and safety when the property is developed or put to its intended use.
(d) If a previously approved response action included a condition regarding a structural impediment, the property owner shall notify the department prior to removal of the building, or other structural impediment, to determine what further action may be necessary.
(e) Any additional response actions that the department determines shall be taken at sites where a remedial action has not been maintained as required.
(3) DEPARTMENT DATABASE AND FEES. (a) *Department Database.* If the department has directed that a local governmental unit or economic development corporation take a response action under s. 292.11 (9) (e) 4. Stats. for a site, the department shall list the site on the department database. The letter directing the local governmental unit or economic development corporation to take a response action, and the information required under par. (c) shall be associated with the site or facility record in the department database.
(b) *Fees.* 1. For sites meeting par. (a), the fee or fees listed in ch. NR 749 for adding a site to the department database shall be submitted to the department at the completion of the required response action.
2. For sites that have been included on the department database, a local government unit, economic development corporation or other party may request that the department modify a site or property or information on the department database. For these cases, modification to the department database may not be considered by the department until proof of payment of the required fees has been received by the department's bureau for remediation and redevelopment
(4) DOCUMENTATION. (a) *Format Requirements*. For sites required to be included on the department database following a response action, the local governmental unit or economic development corporation shall submit the information in par. (b) to the department, in accordance with s. NR 700.11(3). In addition, paper copies may not be larger than 11 by 17 inches. Maps and cross-sections shall be to scale, and include a graphic scale and a north arrow.
Note: Under s. NR 700.11(3), one paper copy and one electronic copy shall be submitted to the department, unless otherwise directed by the department. Electronic copies files may not be locked or password protected. All documents shall be contained within a single portable document format file (PDF), and shall have a minimum resolution of 300 dots per inch. All documents except deeds and legal descriptions shall be digital format versions rather than scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible.
(b) *Database Information*. The information for the department database shall be submitted in the following order and format.
1. The geographic position of the property on which a response action was taken, as well as for any other properties affected by the release, in accordance with the requirements of s. NR 716.15 (5) (d).
Note: The geographic position, provided in WTM coordinates, can be obtained by using RR Sites Map, at http://dnrmaps.wisconsin.gov/imf/imf.jsp?site=brrts2, using the XY button.
2. A description of the response actions taken at the site or facility.
3. A copy of any required maintenance plan if a continuing obligation is required as part of the response action.
4. For sites or facilities with a cover or other performance standard, a structural impediment, a vapor mitigation system or a fence, or as otherwise required by the department; one or more photographs documenting the condition and extent of the feature at the conclusion of the response action required. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.
5. 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.
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. 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.
6. 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.
7. The parcel identification number(s) for each property.
8. A statement that the deeds with legal descriptions of all affected properties have been submitted.
9. 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 subd. 10.
10. 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 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.

SECTION 133. Chapter NR 710 is repealed.

SECTION 134. NR 712.01 is amended to read:

NR 712.01 Purpose. This chapter establishes minimum standards for experience and professional qualifications for persons who perform and provide certain services or scientific evaluations associated with specified environmental response actions. This chapter is adopted pursuant to ~~ss.~~ s. 227.11 (2), ~~292.11, 292.15, 292.31 and 292.41,~~ and ch. 292, Stats.

SECTION 135. NR 712.02 (2) and (3) are amended to read:

NR 712.02 (2) Except as provided in s. NR 712.11, this chapter applies to all sampling and field work conducted during any response action being taken to satisfy the requirements of chs. NR 700 to ~~726~~ 754, including the preparation of phase I or phase II environmental site assessments.
(3) Except as provided in s. NR 712.11, this chapter applies to any person who provides engineering services or performs any scientific evaluation associated with a remedial action or any of the interim actions specified in ~~s. NR 708.11 (4)~~ chs. NR 700 to 754 for a site, facility or portion of a site or facility that is subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to any person who provides engineering services or performs any scientific evaluation associated with a response action taken by a person seeking the liability exemption under s. 292.15, Stats.

SECTION 136. NR 712.02(4) and Note are amended to read:

NR 712.02 (4) The department may exercise enforcement discretion on a case−by−case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, upon receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.
Note: Sites, facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

SECTION 137. NR 712.03 (1) and (2) are amended to read:

NR 712.03 (1) "Hydrogeologist" ~~has the meaning specified in s. NR 600.03 (98).~~
~~**Note:** Section NR 600.03 (98) defines "hydrogeologist" to mean~~means ~~"~~a person who is licensed as a hydrologist or registered as a geologist with the department of safety and professional services, and is a graduate of an accredited institution of higher education and who has successfully completed 30 semester hours or 45 quarter hours of course work in geology. At least 6 semester hours or 9 quarter hours of the geology course work shall be hydrogeology, geohydrology or groundwater geology. This person shall also have acquired, through education and field experience, the ability to direct the drilling of borings and the installation and development of wells, describe and classify geologic samples and evaluate and interpret geologic and hydrogeologic data.~~"~~
~~**Note:** Section NR 600.03 no longer exists.~~
(2) "Professional engineer" means an engineer registered with the department of ~~regulation and licensing~~ safety and professional services.

SECTION 138. NR 712.05 (1) is amended to read:

NR 712.05 (1) GENERAL. All sampling, field work and development of plans for field activities for response actions being taken to satisfy the requirements of ss. NR 708.09 to 708.15 or chs. NR 716 to ~~726~~ 754 shall be conducted by or under the supervision of a professional engineer, hydrogeologist or scientist, unless sub. (2) or an exemption in s. NR 712.11 is applicable.

SECTION 139. NR 712.07 (1) is amended to read:

NR 712.07 (1) Submittals that are prepared to satisfy the requirements of s. NR 708.11 (4) or 708.13 or chs. NR 716 to ~~726~~754, which require the performance of engineering services or scientific evaluations, including phase I and phase II environmental site assessments shall be prepared by or under the supervision of a professional engineer, hydrogeologist or scientist, except as provided in s. NR 712.11. All phases of work necessary to obtain data, develop conclusions, recommendations and prepare submittals shall be conducted or supervised by the professional engineer, hydrogeologist or scientist.

SECTION 140. NR 712.07(1) Note is created to read:

NR 712.07 (1) Note: The department recommends that at a minimum, ASTM standards be followed when conducting Phase I and Phase II environmental site assessments. EPA's requirements contained in 40 CFR Part 312 must be followed in order to be eligible for the liability protections contained in CERCLA.

SECTION 141. NR 712.09(2) is amended to read:

NR 712.09 (2) The act of signing the certification means that the professional engineer, hydrogeologist or scientist certifies that, to the best of her or his knowledge, all information contained in the submittal is correct and the submittal was prepared in accordance with all of the applicable requirements of chs. NR 708 to ~~726~~754. Conclusions and recommendations in the submittal shall represent the certifier's best professional opinions and judgments.

SECTION 142. NR 712.09(3) (b) is amended to read:

NR 712.09 (3) (b) The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified hydrogeologist under s. NR 712.07 (2), (4) or (5):
"I, _____, hereby certify that I am a hydrogeologist as that term is defined in s. NR 712.03 (1), Wis. Adm. Code, am registered in accordance with the requirements of ch. GHSS 2, Wis. Adm. Code or licensed in accordance with the requirements of ch. GHSS 3, Wis. Adm. Code; and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

_____ _____
Signature and title Date

SECTION 143. NR 712.11(1) (a) is amended to read:

NR 712.11 (1) (a) Submittals related to research projects prepared by, or under the supervision of, ~~employes~~ employees of state or federal educational or research institutions who have the training, but not the experience, registration or education needed to be a professional engineer, hydrogeologist or scientist. This exemption applies only to persons preparing or supervising the preparation of a submittal pursuant to s. NR 712.07, not to field personnel covered under s. NR 712.05.

SECTION 144. NR 712.11(1) (d) is amended to read:

NR 712.11 (1) (d) Plans or specifications submitted to the department's bureau of ~~water supply~~ water quality for approval of lagoon or treatment system abandonment.

SECTION 145. NR 712.11(1) (f) is amended to read:

NR 712.11 (1) (f) Tank closure assessments performed in accordance with the requirements of ch. Comm 10 by a site assessor certified by the department of ~~industry, labor and human relations~~ safety and professional services, and any other plans, specifications or reports required by the department of ~~industry, labor and human relations~~ safety and professional services not specifically required by ~~ch. NR 706, 708, 716, 724 or 726~~chs. NR 700 to 754.

SECTION 146. NR 712.11(2) (a) 1. and 2. are amended to read:

NR 712.11 (2) (a) 1. The sampling is conducted by responsible parties or by an ~~employe~~ employee of the responsible parties in compliance with all of the requirements of chs. NR 700 to 726, except s. NR 712.05 (1) to (4).
2. The sampling is conducted by responsible parties or by an ~~employe~~ employee of the responsible parties in accordance with all applicable sampling protocols established by the department. A description of sampling and sample preservation methods shall be provided to the department by the responsible parties at the time that the sampling results are submitted.

SECTION 147. NR 712.11(2) (b) is amended to read:

NR 712.11 (2) (b) The department may reject any sampling results submitted under this subsection if the department determines that the samples were not taken in accordance with the requirements of this subsection and all other applicable sections of chs. NR 700 to ~~726~~ 754, or that the person taking the samples was not qualified to do so based on the statement submitted to the department under par. (a) 3. If the department rejects any sampling results, the department shall provide the responsible parties with specific reasons for the rejection in writing. The responsible parties shall hire a consultant who meets the qualifications of s. NR 712.05 to conduct any required sampling if the department directs them to do so in writing.

SECTION 148. NR 714 is repealed and recreated to read:

NR 714 Public Participation and Notification

NR 714.01 Purpose.
NR 714.02 Applicability.
NR 714.03 Definitions.
NR 714.05 Responsibilities of the department.
NR 714.07 Public participation and notification requirements for responsible parties.

NR 714.01 Purpose. The purpose of this chapter is to identify the required public participation-notification activities for response actions undertaken pursuant to chs. NR 700 to 754. Nothing in this chapter shall be construed to prevent the department or responsible parties from providing additional means for public participation and notification consistent with the provisions of this chapter. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1), and ch. 292, Stats.

NR 714.02 Applicability. This chapter applies to response actions taken under the authority of ch. 292, Stats.

Note: Persons who wish to conduct response actions that will meet the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 144.442, Stats. However, a CERCLA−quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 728 in order to satisfy CERCLA and the NCP.

NR 714.03 Definitions. In this chapter:
(1) "Public meeting" means a meeting held for general informational purposes and that is not required by statute.
(2) "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.

NR 714.05 Responsibilities of the department. The department shall conduct all of the following public participation and notification activities:
(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, but is not limited to, 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 s. 292.12(3), Stats. and s. 292.57, Stats.
Note: The department database may be accessed at the following web site:
http://dnr.wi.gov/org/aw/rr/clean.htm.
(2) PROPOSED DEPARTMENT-FUNDED REMEDIAL ACTIONS.
(a) For sites or facilities where a department-funded remedial action is proposed pursuant to s. 292.11 or 292.31, Stats., or both, the department shall publish a public notice as a class 1 notice under ch. 985, Stats., upon selection of a proposed remedial action in accordance with ch. NR 708 or 722. The availability of the department's proposed remedial action for public review shall be included in the public notice, including the identification of a department contact person, and his or her phone number and mailing address.
(b) The department shall be responsible for conducting or directing appropriate public participation and notification activities for sites or facilities where a response action is funded wholly or in part by the department and conducted pursuant to s. 292.11 or 292.31, Stats., and where the department is overseeing response actions conducted wholly or in part by responsible parties under a contract signed pursuant to s. 292.31, Stats.
(3) PUBLIC RECORDS. The department shall make available to the public for inspection upon request, in compliance with ss. NR 2.19 and 2.195, site or facility−specific information and decisions concerning response actions.
Note: The public may request a time to view department files regarding the investigation and remediation of contaminated property by contacting the regional environmental program associate. The list of environmental program associates may be accessed at
http://dnr.wi.gov/org/aw/rr/technical/lists/contact_rr.htm#epas.
(4) PUBLIC MEETINGS. The department may hold a public meeting to consider comments on any proposed investigation of contamination or any other proposed response action if there is sufficient public interest, or for any other reason.
(5) REQUESTS FOR SITE OR FACILITY SPECIFIC RESPONSES. Interested persons may request, in writing, that the department keep them informed of approvals or rejections of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:
(a) Site investigation workplans.
(b) Site investigation reports.
(c) Remedial action options reports.
(d) Requests for case closure.
(6) SUPERFUND. The department shall conduct appropriate public participation activities consistent with 40 CFR part 300, at sites or facilities on the national priorities list, unless U.S. EPA is conducting the public participation activities. The public participation activities shall include the posting of signs at the site or facility in accordance with s. NR 714.07 (4), either by the U.S. EPA, department or the potentially responsible parties.

NR 714.07 Public participation and notification requirements for responsible parties.

(1) EVALUATION OF NEED FOR PUBLIC PARTICIPATION AND NOTIFICATION. In order to promote effective and meaningful public participation and notification, responsible parties shall conduct all necessary public participation and notification activities, unless otherwise directed by the department. Responsible parties shall evaluate the need for and the level of public participation and notification, based on the following criteria:
(a) *Threats.* Known or potential threats to public health, safety or welfare or the environment that may be reduced by providing information to the public.
(b) *Public concern.* Level of public concern about a specific site, facility or discharge or the number or status of sites, facilities or discharges which require a response action within a particular geographic area.
(c) *Additional information needed.* The need to contact the public in order to gather information about the response action, including immediate or interim actions.
(d) *Other.* Any other factors which may be relevant to a specific site, facility or discharge or to a group of sites, facilities or discharges.
(2) CONTENT OF PUBLIC NOTIFICATION. If responsible parties or the department determine that public notification is necessary at a site or facility, responsible parties shall include, and the department may direct the responsible parties to include specific language regarding the following information as part of the public notification:
(a) *Description.* A description of the contamination, including the type, volume and characteristics of the contamination.
(b) *Mitigation.* Response actions that are planned or underway to contain, reduce or eliminate the threat of the contamination.
(c) *Contacts.* Phone number and address of persons to contact for more information.
(d) *Other*. Other information designated by the department.
(3) METHODS OF PUBLIC NOTIFICATION. Notice shall be provided to the public by means designed to reach those members of the public directly or indirectly affected by the discharge of a hazardous substance and the implementation and operation of any proposed or actual remedial action. The department may direct the responsible party to undertake any of the following public participation activities, and may require departmental approval of materials prepared by the responsible party in order to conduct these activities. The department may also undertake any of these activities, including personal contacts by department staff. Notice to the public may be provided by any of the following methods:
(a) Public notice in local newspapers.
(b) Block advertisements, including but not limited to posters in areas frequented by the public.
(c) Distributing leaflets door−to−door in the vicinity of the site or facility.
(d) Letters to individual households or personal contacts by responsible parties or their representatives.
(e) Contacting appropriate government officials, including but not limited to law enforcement, emergency response and health officials to inform them of the circumstances and the response actions that are underway to contain, reduce or eliminate the threat of the contamination.
(f) Contacting media by preparing radio, newspaper or television announcements, inlcuding public service announcements.
(g) Contacting any interested individuals who have asked to be kept informed of site or facility activities at various points in the process, including any other site-specific information itemized by the requestor that is available from the responsible party, inlcuding but not limited to sample results, emergency or interim actions, disposal of wastes removed from the site, requests for case closure or enforcement actions.
(h) Holding advertised public informational meetings designed to provide the public an opportunity to ask questions and receive answers from the responsible party, the department, or both.
(i) Establishing a clearinghouse, toll-free telephone number or internet location where the public may obtain more information about the site or facility and the proposed or actual remedial actions, as well as submit comments and receive responses regarding activities that may generate noise, dust, odors, traffic or similar local concerns.
(j) Using any other appropriate mechanisms to contact and inform the public, inlcuding the opportunity to submit public comments on proposed remedial activities and to receive written responses.
(4) POSTING OF SIGNS. (a) Unless otherwise directed by the department, responsible parties shall post one or more department−issued signs in the following manner, when any of the following conditions are found at a site or facility:
1. At the edge of the excavated contaminated soil being stored on the site or facility.
2. The specific locations within the facility or site where contaminated media present a direct contact threat to humans.
3. At the entry locations of buildings or structures contaminated with hazardous substances or environmental pollution that pose or may pose a threat to public health, safety or welfare, and where the building or structure will be addressed by one of the response actions for the site or facility.

4. At another location within a site or facility where the department believes unacceptable human exposure to contaminants exists.
(b) The responsible parties shall add to the department−issued sign required in par. (a) all necessary information, including:
1. Name, address and phone number of the owner or operator of the site or facility or responsible parties.
2. Types of hazardous substances or environmental pollution on the property.
3. Department−issued identification number for the site or facility.
4. For signs posted at contaminated soil piles, the anticipated month, day and year of removal of the soil pile.
5. Any other information the department may request.
(c) Responsible parties shall place the signs at locations on the site or facility in accordance with par. (a), so that they shall be visible to the general public, unless the department specifies the location of the sign or signs. At least one sign shall be placed at the edge of contaminated soil storage piles.
(d) Unless otherwise directed by the department, signs required under this subsection shall be maintained and legible for the duration of the response action until final case closure is received in accordance with ch. NR 726, or until no further action is required by the department in accordance with s. NR 708.09.
Note: In addition to the requirements of this chapter, responsible parties are also required to satisfy the public notification requirements in other chapters, including NR 716, NR 722 and NR 725. These requirements include providing information to owners and occupants of property affected by contamination for which the responsible party is conducting environmental response actions. This includes (1) notification of sampling results, and (2) notification that the responsible party will request approval of a remedial action where residual contamination will remain on the property. The department is required to provide notification of the conditions of the final case closure approval to all affected parties.

SECTION 149. NR 716 Table of Contents is amended to read:

NR 716 Site Investigations

NR 716.01 Purpose.
NR 716.02 Applicability.
NR 716.03 Definitions.
NR 716.05 General.
NR 716.07 Site investigation scoping.
NR 716.09 Site investigation work plan.
NR 716.11 Field investigation.
NR 716.13 Sampling and analysis requirements.
NR 716.14 Sample results notification requirements.
NR 716.15 Site investigation report.
NR 716.17 Additional requirements.

SECTION 150. NR 716.01 is amended to read:

NR 716.01 Purpose. The purpose of this chapter is to ensure that site investigations provide the information necessary to define the nature, degree and extent of contamination, define the source or sources of contamination, determine whether any interim actions, remedial actions, or both are necessary at the site or facility, and allow ~~a~~ an interim or remedial action option to be selected that complies with applicable environmental laws. Nothing in this chapter shall be construed to require plans or reports that are more detailed or complex than is justified by the known scope of contamination or the complexity of the site or facility. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 289.06, ~~292.11, 292.15 and 292.31~~ and ch. 292, Stats.

SECTION 151. NR 716.01 Note is repealed.

SECTION 152. NR 716.02 (1) (a) through (c) are amended to read:

NR 716.02 Applicability. (1) This chapter applies to all site investigations required under s. NR 716.05 and conducted by:
(a) The department under the authority of ~~s. 292.11 or 292.31~~ ch. 292, Stats. In this chapter, where the term “responsible parties” appears, it shall be read to include “the department” where department–funded response action is being taken.

(b) Responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11or 292.31~~ ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department.
Note: This chapter does not apply to site assessments undertaken for the sole purpose of gathering information prior to knowledge or discovery of contamination. However, upon the discovery of a discharge of a hazardous substance during a site assessment, s. 292.11, Stats., and ch. NR 706 require the responsible party to immediately notify the department of the discharge.
(c) Persons undertaking actions in order to obtain the liability exemption under s. 292.15, Stats. In this chapter, where the term ‘‘responsible parties” appears, it shall be read to include “the ~~purchaser~~ voluntary party” or ‘‘person under contract with the ~~purchaser~~ voluntary party” where an action is being taken to comply with s. 292.15, Stats.

SECTION 153. NR 716.02 (1) (d) is created to read:

NR 716.02 (1) (d) Other persons seeking closure under NR 726.

SECTION 154. NR 716.02 (2) and Note are amended to read:

NR 716.02 (2) The department may exercise enforcement discretion on a case–by–case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive ~~control~~ provision controls. The department shall, after receipt of a request from the responsible parties, provide a letter indicating which regulatory program or programs the department considers to be applicable to a site or facility.
Note: Sites~~,~~ or facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions or a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.
Note: Persons who wish to conduct response actions that will ~~meet~~ be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11(7)(d), Stats. However, a CERCLA–quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to ~~726~~754 in order to ~~satisfy~~ be consistent with CERCLA and the NCP.

SECTION 155. NR 716.03 (2) is amended to read:

NR 716.03 (2) “~~Field~~ Equipment blank” means a sample of water which, prior to use, is known to be free of contaminants, and which is processed through the sampling equipment in the field in the same manner as the actual water sample to determine if field procedures introduce contaminants into the samples. This is also known as a “rinse blank” or a "field equipment blank".

SECTION 156. NR 716.03(5) is repealed.

SECTION 157. NR 716.03(6) is renumbered NR 716.03(5):

SECTION 158. NR 716.03(7) is renumbered NR 716.03(6).

SECTION 159. NR 716.03(8) is renumbered NR 716.03(7) and as renumbered is amended to read:

NR 716.03 (~~8~~)(7) “Replicate sample” has the meaning specified in s. NR 149.03 (~~27~~70).
Note: Section NR 149.03 (~~27~~70) defines “replicate sample” to mean" 2 or more substantially equal aliquots ~~taken from the same sampling location and~~ analyzed independently for the same ~~constituent~~ parameter.” This is also known as a “duplicate.”

SECTION 160. NR 716.03(8) is created to read:

NR 716.13 (8) "Responsible parties" means, in this chapter, those parties defined under s. NR 700.03(51) as well as those parties identified under s. NR 716.02(1).

SECTION 161. NR 716.03 (9) and (10) are amended to read:

NR 716.03 (9) "Temperature blank" has the meaning specified in s. NR 149.03(15) (c).
Note: Section NR 149.03(15) (c) defines "temperature blank" to mean ~~means~~ a ~~water~~ sample ~~which undergoes the same cooling procedure used for the samples for analysis, but which is only checked~~ container, of at least 40 ml. capacity, filled with water and transported with each shipment of collected samples to determine the temperature of ~~the~~ other samples ~~upon~~ in the shipment on arrival at ~~the~~ a laboratory.
(10) "Trip blank" ~~has the meaning specified in s. NR 149.03(32).~~
~~**Note:** Section NR 149.03 (32) defines "trip blank" to mean~~ means ~~"~~a sample of reagent grade water which is used to determine possible contamination of samples from volatile organic chemicals while in transit to and from the laboratory.~~"~~

SECTION 162. NR 716.05(1) is amended to read:

NR 716.05 General. (1) ~~Responsible parties shall conduct a site investigation that meets the requirements of this chapter and s. NR 746.05, for discharges of petroleum products from petroleum storage tanks, when~~ When site–specific or facility–specific information indicates that soil, sediment, groundwater, surface water, air or other environmental media at a site or facility may have become contaminated, persons identified under sub. NR 716.02(1) shall conduct a site investigation consistent with this chapter. Unless sub. (2) is applicable, responsible parties shall use the factors in s. NR 708.09 (1) (a) through (n) and (2) (a) through (c) to determine whether or not a site investigation is necessary.

SECTION 163. NR 716.05 (2)(b) Note is amended to read:

NR 716.05 (2) (b) Note: ~~Department guidance on conducting site investigations is available. The publications *Guidance for Conducting Environmental Response Actions* and *Leaking Underground Storage Tank Analytical Guidance* may be obtained by contacting the Bureau of Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707.~~ The appropriate review fee specified in ch. NR 749 must accompany any request for the department to review a specific document.

SECTION 164. NR 716.07(8) (b) through (e) are renumbered NR 716.07(8) (a) through (d).

SECTION 165. NR 716.07(8) (d) Note is created to read:

NR 716.07 (8) (d) Note: Information on sites or facilities of historical or archeological significance may be found at the following State Historical Society websites:
Wisconsin National Register of Historic Places: http://www.wisconsinhistory.org/hp/register/welcome.asp
Office of the State Archeologist: http://www.wisconsinhistory.org/archaeology/osa/.

SECTION 166. NR 716.07 (12) is amended to read:

NR 716.07 (12) The need to gather data to determine the hydraulic conductivity of materials where contaminated groundwater is found ~~and, for sites with petroleum-product contamination discharged from a petroleum storage tank, to determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08~~.

SECTION 167. NR 716.09(1) is amended to read:

NR 716.09 (1) GENERAL. (a) *Timeframe.* Unless otherwise directed by the department, in cases where a site investigation ~~in~~ is required under s. NR 716.05, responsible parties shall submit a work plan to the department within 60 days of receiving notification that a site investigation is required, describing the intended scope and conduct of a field investigation ~~if the site or facility is classified as complex under s. NR 700.09 (2) or if the responsible party chooses to proceed with the complex site process under s. NR 700.11 (2)~~.

SECTION 168. NR 716.09(1) (b) is created to read:

NR 716.09 (1) (b) *Number of copies.* One paper copy and one electronic copy of the plan shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11(4).
Note: Guidance for GIS Registry submittals outlines how electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. This guidance can be accessed at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR690.pdf.

SECTION 169. NR 716.09(2)(a) is amended to read:

NR 716.09 (2) (a) Site name, address, and location by quarter–quarter section, township, range and county, ~~or a more precise location description if necessary to adequately define the location of the site or facility~~ and the location information specified in s. NR 716.15(5) (d).
Note: Paragraph NR 716.15(5) (d) requires submittal of Wisconsin Transverse Mercator (WTM) coordinates.

SECTION 170. NR 716.09 (2) (f) 3. is amended to read:

NR 716.09 (2) (f) 3. A description of sampling methods to be used, including methods for collecting, preserving and delivering samples, and leak detection methods.

SECTION 171. NR 716.09 (2) (f) 5. is amended to read:

NR 715.09 (2) (f) 5. A description of quality control and quality assurance procedures to be used per sampling method, including the items specified in s. NR 716.13.

SECTION 172. NR 716.09 (2) (f) 8. is amended to read:

NR 716.09 (2) (f) 8. A discussion of how the sampling and analysis results will be related to results of any previous investigations at the site or facility, and how the results will be used to determine the degree and extent of the contamination and the selection of a remedial action option including, where appropriate, natural ~~biodegradation~~ attenuation.

SECTION 173. NR 716.09(2) (g) is amended to read:

NR 716.09 (2) (g) A description of other procedures to be used for site management, including erosion control and repair of structural, soil or ground disturbance.

SECTION 174. NR 716.09(3) (b) is amended to read:

NR 716.09 (3) (b) Responsible parties that are not instructed to proceed under par. (a) shall wait before initiating the field investigation until the department has approved or conditionally approved the work plan, except that if the department has not reviewed the work plan within ~~60~~ 30 days after its receipt by the department, the responsible parties ~~may~~shall proceed with the field investigation.

SECTION 175. NR 716.09 (3) (d) Note is created to read:

NR 716.09 (3) (d) Note: The department will only provide an approval if a review was requested, and the appropriate fee was submitted.

SECTION 176. NR 716.11(2) (a), (b) and Note are created to read:

NR 716.11 (2) (a)The field investigation shall be initiated within 90 days of submittal of the work plan.
(b) In cases where the responsible party pays a fee for department review of the work plan, the field investigation shall be initiated within 60 days after department approval of the work plan.
Note: The intent of this subsection is to be able to measure that progress is being made toward conducting a site investigation. Initiation may include preparatory measures to conducting the actual fieldwork.

SECTION 177. NR 716.11(3)(c) is amended to read:

NR 716.11 (3) (c) Provide sufficient information to determine the hydraulic conductivity of materials where contaminated groundwater is found~~ and, for sites with petroleum- product contamination discharged from a petroleum storage tank, determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08~~.

SECTION 178. NR 716.11(3) (d) and Notes are created to read:

NR 716.11 (3) (d) Provide an estimate, along with all necessary supporting information, of the mass of contamination in the source area. This includes, but is not limited to sites involving free product or where natural attenuation is considered for part of the remedy.
Note: Methods and examples for estimating mass in the source zone, can be found in the following guidances: RR 699, Understanding Chlorinated Hydrocarbon Behavior in Groundwater: Investigation, Assessment and Limitations of Monitored Natural Attenuation at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR699.pdf; and RR 614, Guidance on Natural Attenuation for Petroleum Releases, at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR614.pdf.
Note: The intent of this paragraph is to address situations where a discrete area indicates a release of a hazardous substance. It is not intended for situations where there is no discrete source area, such as when there is area-wide contamination from aerial deposition, or widespread areas of fill such as foundry ash.

SECTION 179. NR 716.11(5) (e), (f), (g) and (h) are created to read:

NR 716.11 (5) (e) The extent of contamination in the source area, in soil and saturated materials, and in groundwater.
Note: The intent of this requirement is to collect samples in the general area where the contaminant was released, where the concentrations are generally expected to be the greatest, and to determine the presence of non-aqueous phase liquids, including but not limited to samples from the smear zone. For further information on the smear zone, copies of the department's guidance "Smear Zone Contamination" may be obtained by accessing the following web site: http://dnr.wi.gov/org/aw/rr/archives/pubs/RR712.pdf or from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P. O. Box 7921, Madison, Wisconsin 53707. This requirement is not intended to address sampling of landfill waste materials. In cases where clean soils exist between shallower contaminated soil, and groundwater, groundwater still needs to be assessed.
(f) The extent, both vertically and horizontally, of groundwater contamination. Piezometers shall be used to determine the vertical extent of contamination, as appropriate to the situation.
Note: The use of piezometers may not be appropriate for all situations, including at the source area, or where a documented upward gradient exists downgradient of a source area.
(g) The presence and concentration of vapors sub-slab.
(h) The presence and concentration of vapors in indoor air when the impact on an occupied structure needs to be determined.
Note: Indoor air samples are expected to be collected and analyzed in most cases where vapor migration into an occupied residential setting is likely. A residential setting may include single or multiple family housing, and educational, childcare, and elder care facilities. Sampling and analysis is conducted to determine levels of the contaminants of concern. Indoor air sampling is not recommended in locations where the contaminant of concern is currently used in commercial or industrial operations.

SECTION 180. NR 716.11(7) is created to read:

NR 716.11 (7) Responsible parties shall label all drums containing investigative wastes, including but not limited to drill cuttings and purge water, with the Bureau for Remediation and Redevelopment Tracking System activity number for the site, the site name, boring or well number, initial date of collection and the contents.

SECTION 181. NR 716.13(1) is amended to read:

NR 716.13 Sampling and analysis requirements. (1) Responsible parties shall use laboratory analyses of environmental media samples which are collected, handled and analyzed in compliance with subs. (2) to (~~1~~2

17) to confirm the nature and extent and evaluate the impacts of contamination, if a field investigation is required under s. NR 716.11 (1). Analytical methods used shall be suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the samples to be tested.

SECTION 182. NR 716.13(2) is renumbered NR 716.13(9).

SECTION 183. NR 716.13 (3)and Note is renumbered NR 716.13(12) and as renumbered is amended to read:

NR 716.13 ~~(3)~~(12) Responsible parties shall ensure that other samples ~~other than drinking water~~ taken for analysis are collected, handled and analyzed according to the procedures specified in "SW–846: Test Methods for Evaluating Solid Waste", ~~November 1986, including December 1987 and November 1990 updates~~ "The Third Edition of SW 846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB and IV", published by the U.S. EPA, unless the department approves the use of an alternative procedure. The department may approve the use of an alternative procedure from one of the authoritative sources listed in ~~s. NR 149.03 (5)~~ch. NR 149, Appendix III, an alternate test procedure approved by the U.S. EPA, or, if the department determines that an appropriate procedure is neither available from "SW–846: Test Methods for Evaluating Solid Waste" nor from one of the authoritative sources listed in ~~s. NR 149.03 (5)~~ch. NR 149, Appendix III, from another source.
Note: Copies of "SW–846: Test Methods for Evaluating Solid Waste" are available for inspection at the offices of the department of natural resources, the secretary of state, and the revisor of statutes. Copies may be obtained from the Government Printing Office, Room 190, Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 53202 and may be accessed at the following web site: http://www.epa.gov/epaoswer/hazwaste/test/main.htm. Other suitable procedures may include revised SW-846 methods found at the EPA Office of Solid Waste Methods Web Site,

SECTION 184. NR 716.13 (4), (5) and (6) are renumbered NR 716.13(2), (3) and (4), respectively.

SECTION 185. NR 716.13 (5) is created to read:

NR 716.13 (5) Maximum holding times for soils shall be in accordance with the sampling method, sample storage container and analytical methods used.

SECTION 186. NR 716.13(7) is renumbered NR 716.13(14) (a) and amended to read:

NR 716.13 ~~(7)~~(14) (a) Responsible parties shall inspect monitoring wells installed for field investigations conducted under this chapter at least annually to verify the integrity of the well labels, lock and seal, and to determine whether ~~they~~ the wells are providing a conduit to the subsurface, and shall take action to repair or abandon the well if necessary in accordance with ch. NR 141.

SECTION 187. NR 716.13(14) (b) and Note are created to read:

NR 716.13 (14) (b) Flush mounted wells shall include a magnet placed in the void between the cover and the annular space seal. In cases where flush-mounted wells are not used, wells installed in areas potentially subject to damage from vehicle traffic shall include appropriate protective traffic posts next to the well.
Note: Traffic posts can vary in design. Normally, properly anchored concrete filled metal posts should be used to protect wells. The magnet may aid in locating wells for abandonment.

SECTION 188. NR 716.13(8) is renumbered NR 716.13(15).

SECTION 189. NR 716.13(15) Note is created to read:

NR 716.13 (15) Note: Subsection NR 141.065(2) requires that the top of the well casing be referenced to the nearest benchmark for the national geodetic survey datum to an accuracy of 0.01 feet.

SECTION 190. NR 716.13(9) is renumbered as NR 716.13(16) and as renumbered is amended to read:

NR 716.13 ~~(9)~~(16) Where site investigation data or other information indicate it is appropriate, or when directed to do so by the department, responsible parties shall make a good faith effort to sample public or private water supply wells as part of a regular monitoring program or to determine the extent of groundwater

contamination, or both. ~~Responsible parties shall report all water supply well sample results to the department within 10 days after receiving the sampling results. The report shall include a preliminary analysis of the cause and significance of any contaminant concentrations that attain or exceed ch. NR 140 preventive action limits, as well as any other substances obvserved in the samples for which there are no ch. NR 140 groundwater quality standards.~~ Private and public water supply wells to be sampled shall include:
(a) Those wells that are known or suspected to be affected by the groundwater contamination.
(b) Other wells that the department determines have the potential to be affected by the groundwater contamination.

SECTION 191. NR 716.13(10) is renumbered NR 716.13(17).

SECTION 192. NR 716.13(11) is renumbered NR 716.13(6) and as renumbered is amended to read:

NR 716.13 ~~(11)~~ (6) Responsible parties shall provide for the following quality control and quality assurance procedures, at a minimum, when collecting samples for laboratory analysis for a field investigation conducted under this chapter:
(a) Chain of custody, which shall be documented ~~in a format~~ on a form specified by the department or on an equivalent form supplied by the certified laboratory, from the time of sample collection to the receipt of the sample by the analytical laboratory.
Note: Copies of the department's chain–of–custody ~~format~~ form, #4100-145, may be obtained at http://dnr.wi.gov/org/aw/rr/technical/index.htm#other ~~from Public Information Requests, Bureau of Remediation and Redevelopment, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707~~.
(b) For soil samples, one temperature blank for every ~~batch of samples~~ shipping container of samples that require cooling for preservation, unless samples are received by the laboratory on ice ~~and a temperature of no greater than 4° 6° C is maintained until their receipt by the laboratory~~, unless another temperature is required by the analytical method used.
(c) For water samples:
1. One replicate sample for every 10 or less samples.
2. One ~~field~~ equipment blank for every 10 or less samples, unless dedicated sampling equipment is used to prevent cross-contamination.
3. One trip blank for each ~~batch of samples~~ shipping container that ~~will be analyzed for~~ contained volatile ~~organic chemicals~~ samples.
4. One temperature blank for every ~~batch~~ shipping container of samples that require cooling for preservation, unless samples are shipped on ice ~~and a temperature of no greater than 4° 6° C is maintained until their receipt by the laboratory~~.
(d) Decontamination of all sampling instruments between each sampling event, unless dedicated or disposable sampling devices are used in a manner that prevents cross contamination or other unintended contamination of samples.

SECTION 193. NR 716.13(12) is renumbered NR 716.13(7).

SECTION 194. NR 716.13(12) (b) is renumbered NR 716.13(7) (b) and as renumbered is amended to read:

NR 716.13 (12) (b) A log of all routine and non-routine maintenance and calibrations performed on all instruments used during the field investigation.

SECTION 195. NR 716.13(8) and Notes are created to read:

NR 716.13 (**8)** For soil and water samples, the reporting limit for volatile organic compound analysis and petroleum volatile organic compound analysis shall be the method detection limit for the analytical method used. If the results are less than the method detection limit, the results shall be reported as less than the method detection limit, rather than no detect. Qualifiers used for the data shall also be reported.
Note: Paragraph NR 140.16(2) (c) requires that the analytical method selected meet one of the following criteria: 1) has a limit of detection and limit of quantitation below the preventive action limit or 2) produces the lowest available limit of detection and limit of quantitation if the limit of detection and limit of quantitation are above the preventive action limit. In addition, subsection NR 140.14(3) specifies whether a standard has been attained or exceeded if a preventive action limit or enforcement standard is equal to or less than the limit of quantitation.

Note: Chapter NR 720 specifies whether a soil cleanup standard has been exceeded if the standard is at or below the limit of quantitation.

SECTION 196. NR 716.13(10)and Note are created to read:

NR 716.13 (10) Responsible parties shall ensure that groundwater samples are collected and handled according to the procedures specified in s. NR 140.16(1), unless the department approves the use of an alternative procedure. The department may approve the use of an alternative procedure from one of the authoritative sources listed in s. NR 149, Appendix III, or an alternate test procedure approved by the U.S. EPA, or, if the department determines that an appropriate procedure is not available, from another source. Responsible parties shall select an analytical method that is suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the sample to be tested.
Note: Suitable analytical methods for VOCs and PVOCs in groundwater include EPA methods 5030/8021, 5030/8260, EPA Method 8310 for PAHs, EPA method 3510/8082 or 3520/8082 for PCBs, EPA Method 3020/7421 or 3020/6020 for Pb, EPA Method 3020/7131 or 3020/7130 for Cd, EPA Method 1664 for oil and grease and EPA Method 160.2 for Total Suspended Solids.

SECTION 197. NR 716.13(11) and Note are created to read: (moved from NR 700.13 (2))

NR 716.13 (11) Soil samples collected for analysis of volatile organic compounds for compliance with chs. NR 700 to 754 shall be preserved immediately after collection to minimize volatilization of contaminants from the sample to the greatest extent possible. Preservation techniques used shall be according to the analytical method to be used. Sampling techniques shall be used that minimize volatilization from the sample. Extraction techniques shall be according to the analytical method selected. Analytical methods used shall be suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the samples to be tested.
Note: Suitable preservation, extraction and analytical methods include those found in method SW 5035A in "Test Methods for Evaluating Solid Waste (SW-846)", and in the "Modified GRO, Method for Determining Gasoline Range Organics" (GRO for screening purposes). Other techniques may be found in the List of Authoritative Sources, ch. NR 149, Appendix III.

SECTION 198. NR 716.13 (13) is created to read:

NR 716.13 (13) Responsible parties shall collect samples and provide an analysis for the geochemical indicators and parameters, where natural attenuation is potentially a remedy or part of a remedy. These may include, but are not limited to dissolved oxygen, nitrate, dissolved manganese, total and ferrous iron, sulfate and methane, alkalinity, oxidation reduction potential, pH, temperature and conductivity.

SECTION 199. NR 716.14 (1) through (4) are created to read:

NR 716.14 Sample Results Notification Requirements. **(1)** SAMPLES FROM WATER SUPPLY WELLS. Responsible parties shall report all water supply well sampling results to the department and to the well owner, and occupant as applicable, within 10 business days after receiving the sampling results. The report to the department shall include the Wisconsin unique well number for drinking water wells, a preliminary analysis of the cause and significance of any contaminant concentrations observed in the samples and an identification of any substances that attain or exceed ch. NR 140 preventive action limits, as well as any other substances observed in the samples for which there are no ch. NR 140 groundwater quality standards. The responsible party shall notify both the remediation and redevelopment project manager and the regional drinking and groundwater specialist or water supply engineer of all water supply well sample results.
Note: The appropriate remediation and redevelopment project manager can be determined for the site in question at http://dnr.wi.gov/org/aw/rr/brrts/index.htm. The appropriate regional drinking and groundwater specialist or water supply engineer can be determined by viewing the staff listing at http://www.dnr.state.wi.us/org/water/dwg/county.htm.
Note: The department will provide information to well owners of the results of sampling in accordance with manual code 4822.1.
(2) SAMPLES FROM OTHER MEDIA. Responsible parties shall report all sampling results other than those for water supply wells, to the department and to the property owner, and occupants as appropriate, of the property from which the samples were collected, including the source property owner if the person conducting the investigation is not the property owner, within 10 business days of receiving the sample results.

(a) The report to the department shall include a preliminary analysis of the cause and significance of any contaminant concentrations observed in the sample, a list of names and addresses of those receiving a sampling notification, and the date of the sampling event and mailing.
(b) The written notification to an affected property owner, and occupant as appropriate, shall include information about how additional information may be obtained, in accordance with s. NR 714.05 (5). The department may waive the notification of occupants in limited situations, upon request.
(c) In addition, the notification to the property owners, and occupants as appropriate, shall include all the following information, in a letter or using a form provided by the department. Information to be included in the notification includes but is not limited to:
1. responsible party name, address and phone number,
2. site name and source property address,
3. department BRRTS number,
4. department contact person name and phone number,
5. reason for sampling, which may include, but is not limited to routine sampling, and sampling to determine an immediate health concern, including but not limited to, the ingestion, inhalation and dermal contact pathways,
6. contaminant type,
7. sample type, which may include but is not limited to groundwater, soil, sediment, soil vapor, outdoor or ambient air, and indoor air,
8. a map showing the sampling locations, which meets the requirements of s. NR 716.15(4),
9. collection date, specific contaminant levels per location, and whether the sample results attain or exceed state standards. A data table shall be used when multiple sample results are included.
10. A copy of the results from the laboratory attached to the notification.
Note: Notification of sampling results is intended for those samples taken from a property including results from both routine and long-term monitoring and those of a more immediate health or welfare concern to a property owner, or occupant as appropriate. Examples of sampling to determine the presence of an immediate public health or welfare concern are from potable wells, indoor air, surface soil, and soil vapor beneath an occupied structure. "All sampling results" means the results that show detections of contaminants as well as those that do not show detections.
Note: Assistance in evaluating the impact and meaning of the sample results may be requested of the department project manager or drinking water staff, or from staff with the Division of Public Health, with the Department of Health Services.
Note: The notification to occupants is not intended for situations where there are multiple units or a frequent change in occupancy.
Note: The form on which to provide sample results, “Notification of Sample Results”, Form 4400-xxx, can be found at http://dnr.wi.gov/org/aw/rr/archives/pub_index.html#forms.
(3) The department may approve of a different notification schedule on a case-by-case basis.
Note: In cases where routine monitoring is conducted, and where results are not expected to be of immediate health or welfare concern, the department may consider other schedules, such as quarterly or with the semi-annual status reports to be sufficient.
(4) The responsible party shall take the actions necessary to ensure any new occupants are also informed of the pertinent information required under s. NR 716.14(2)(c).

SECTION 200. NR 716.15 (1) and (a) are amended to read:

NR 716.15 (1) REPORT ~~REQUIREMENT~~ REQUIREMENTS. (a) ~~*Simple site.*~~ *Timeline.* Unless otherwise ~~directed~~ approved by the department, ~~responsible parties shall include the site investigation report information with the final report and accompanying compliance letter for the response action in accordance with s. NR 700.11 (1) (b), if the site or facility meets the criteria for a simple site classification, in s. NR 700.09 (1).~~
~~(b) *Complex site.* If, however, the site or facility is classified as a complex site in accordance with s. NR 700.09 (2) or if the responsible party chooses to proceed with the complex site process,~~
responsible parties shall submit~~:~~
~~1. A~~ a site investigation report to the department within ~~30~~ 60 days after completion of the ~~report unless the site is exempt under s. NR 700.11 (2) (e), in which case site investigation data are required to be submitted with the site closure request~~.
~~2. A draft remedial options report meeting the requirements of ch. NR 722 within 30 days after completion of the report unless the site is exempt under s. NR 700.11 (2) (f), in which case the submittal of a remedial action options report is not required unless requested.~~ field investigation and receipt of laboratory data.

SECTION 201. NR 716.15(1) (b) and Notes are created to read:

NR 716.15 (1) (b) *Number of copies.* One paper copy and one electronic copy of the report shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11(4).
Note: Ch. NR 716 does not include a size limit on paper copies. However, ch. NR 726 includes a size limit of 11 x 17 inches for paper copies submitted for inclusion on the department database.
Note: Electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR690.pdf.
Note: The department strongly recommends the use of 2-sided copies for the paper copy of the report, and the use of accordion folders for larger reports instead of 3-ring binders, to help address file space issues.

SECTION 202. NR 716.15 (2) is amended to read:

NR 716.15 (2) REPORT CONTENTS. The site investigation report shall include all of the following information required under this subsection, and under subs. (3) through (6):

SECTION 203. NR 716.15 (2) (b) is repealed.

SECTION 204. NR 716.15 (2) (c) is renumbered as NR 716.15 (2) (b) and as renumbered is amended to read:

NR 716.15 (2) ~~(c)~~ (b) *Executive summary.* A brief narrative describing the site investigation results, conclusions and recommendations for future actions, and the certification required under s. NR 712.09.

SECTION 205. NR 716.15 (2) (d) 1. – 7. are renumbered NR 716.15 (2) (c) 1. - 7.

SECTION 206. NR 716.15 (2) (d) 2. – 5. are renumbered NR 716.15 (c) 2. - 5. and as renumbered are amended to read:

NR 716.15 (2) (d) 2. Name, address, e-mail address and telephone number of the present property owner, lessee, operator and any individual or company responsible for the contamination.
3. Name, address, e-mail address and telephone number of any consultants or contractors involved with the response action at the site or facility.
4. Site or facility name, address and location by quarter–quarter section, township, range and county, along with the Wisconsin Transverse Mercator coordinates for the site. The location of the property and the contamination shall be given in sufficient detail to allow department personnel to inspect the property and the contaminated area.
Note: ~~Additional requirements for reporting locations of monitoring wells are contained in ch. NR 141.~~ The requirements for locating monitoring wells are contained in s. NR 141.065. Specifically regarding areal location, this section requires that the wells be shown on a plan map with a grid system that is located according to latitude and longitude, or according to a state plane coordinate system. The plan map must show the exact location of the installed well on a horizontal grid system which is accurate to within one foot.
5. Location ~~map~~ maps which meet~~s~~ the requirements of ~~par. (h) 1~~ sub. (4).

SECTION 207. NR 716.15 (2) (d) 7. is amended to read:

NR 716.15 (2) (d) 7. The geographic positions of all properties within and partially within the contaminated site boundaries, which have been directly located or interpolated from other features on a base map of 1:24000 scale or finer, or which were obtained using differentially corrected global positioning system data or another method of similar or superior accuracy that have been approved by the department. The geographic position data shall be obtained and submitted to the department in accordance with the requirements in ~~par. (k)~~ sub. (5) (d).

SECTION 208. NR 716.15 (2) (e) is renumbered NR 716.15(2) (d).

SECTION 209. NR 716.15 (2) (f) is renumbered NR 716.15 (2) (e) and as renumbered is amended to read:

NR 716.15 (2) ~~(f)~~(e) *Methods of investigation.* Descriptions of investigative techniques used to characterize the site or facility, including subsurface boring and probe methods; monitoring well construction, installation and development procedures; well and aquifer testing methods; modeling techniques; ~~and~~ sample collection, handling and analysis techniques, and leak detection methods. Where procedures were performed in accordance with methods described in a work plan for the same investigation that was previously submitted to the department or in exact accordance with published departmental guidance, the site investigation report may omit detailed descriptions by referring to the work plan or the department guidance in which the methods were described. Where procedures differed from methods described in the work plan, the site investigation report shall include a description of the procedures used.

SECTION 210. NR 716.15(2) (g) is renumbered NR 716.15 (3) and as renumbered is amended to read:

NR 716.15 ~~(2) (g)~~**(3)**~~*Results*~~ RESULTS. ~~A~~ Include in the site investigation report a detailed narrative description of the results of the site investigation, reference the appropriate visual aids under sub. (4), and include ~~including~~ all of the following:

SECTION 211. NR 716.15 (2)(g) 1. through 4. are renumbered NR 716.15(3) (a) through (d).

SECTION 212. NR 716.15(2) (g) 5., 6. and 7. are renumbered NR 716.15(3) (e), (f) and (g) and as renumbered are amended to read:

NR 716.15 (3) ~~5~~(e). For sites or facilities with 3 or more water table observation wells, ~~a map depicting the elevation of the water table and the apparent direction of groundwater flow, with additional water table maps as necessary to depict significant variations in water table elevation or groundwater flow direction.~~ a discussion of the depth to the water table, groundwater flow directions, rates, and any variations.

~~6~~(f). ~~For sites or facilities with 2 or more soil borings, a geologic cross section depicting~~ A discussion of the stratigraphy of the site. Identify soil and rock types at the site and the contaminant source location. Include a description of moisture contents, high and low water table elevations, and the location of any smear zone.

~~7~~(g). ~~Isoconcentration maps of hazardous substance concentrations in~~ A discussion of the contaminants and impacts on each environmental medium~~, as appropriate to the scope and complexity of the site and where sufficient data are available to estimate meaningful isoconcentrations~~.

SECTION 213. NR 716.15(2) (g) 8. is renumbered NR 716.15(3) (h).

SECTION 214. NR 716.15(2) (g) 9. is renumbered NR 716.15(3) (i) and as renumbered is amended to read:

NR 716.15 (3) ~~9~~(i). The hydraulic conductivity of materials where contaminated groundwater is found~~ and, for sites with petroleum-product contamination discharged from a petroleum storage tank, interpretations of data necessary to determine whether the site satisfies all of the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08~~.

SECTION 215. NR 716.15 (2) (h) and 1. are renumbered NR 716.15(4) and (a) and as renumbered are amended to read:

NR 716.15 ~~(h) *Visual aids.* Maps,~~ **(4)** VISUAL AIDS. Include in the site investigation report maps, figures, tables, graphs, ~~and~~ photographs and completed forms that are necessary to clarify and support results and interpretations. Visual aids shall present information in legible formats, shall be referenced in the report text, and shall meet all of the following requirements:

~~1~~(a). *General Requirements.* Maps, plan sheets, drawings, cross sections and fence diagrams shall:

SECTION 216. NR 716.15(2)(h) 1.a. is renumbered NR 716.15(4)(a) 1.

SECTION 217. NR 716.15(2)(h) 1. b. and Note are renumbered NR 716.15(4)(a) 2. and as renumbered are amended to read:

NR 716.15 (4) (a) ~~b~~2. Have a figure number, title, north arrow, legend of all symbols used, contain graphic horizontal and vertical scales, specify drafting or origination dates and indicate the source if not an original design.
Note: The source means the company or name of the original preparer of the visual aid.

SECTION 218. NR 716.15(2) (h) 1. c. and d. are renumbered NR 716.15(4)(a) 3. and 4.

SECTION 219. NR 716.15 (2)(h)1. e. is renumbered NR 716.15(4) (b) 1. and 2. and as renumbered are amended to read:

NR 716.15 (4) ~~e~~ (b). *Water table and potentiometric surface maps.* For water table maps and potentiometric surface maps, depict water level elevations measured on the same day, indicate the date of measurement on the map, and indicate apparent flow direction.
1. For sites or facilities with 3 or more water table observation wells, include a map depicting the elevation of the water table and the apparent direction of groundwater flow, with additional water table maps as necessary to depict significant variations in water table elevation or groundwater flow direction.
2. For potentiometric surface maps, additionally depict measurements taken from piezometers with similar screen lengths that intersect the same geologic zone and depth, and indicate any vertical gradients as well as the location and type of any confining layers. For sites with 3 or more piezometers, include a potentiometric surface map, with the apparent direction of groundwater flow, with additional potentiometric maps as necessary to depict significant variation in levels or flow direction.

SECTION 220. NR 716.15(2) (h) 1. f. is renumbered NR 716.15(4) (c) and as renumbered is amended to read:

NR 716.15 (4) ~~f.~~(c) *Isoconcentration maps.* For isoconcentration maps, depict the hazardous ~~substance~~ substances, concentrations ~~and indicate the hazardous substance~~, the environmental medium, the date measured and the unit of measurement. Submit isoconcentration maps of hazardous substance concentrations in each environmental medium, as appropriate to the scope and complexity of the site and where sufficient data are available to estimate meaningful isoconcentrations. For groundwater, use the appropriate groundwater elevation map as the base map.

SECTION 221. NR 716.15(2)(h) 2. is renumbered NR 716.15(4) (d) 1. and 2. and amended to read:

NR 716.15 (4) ~~2.~~(d) *Cross sections.* For sites or facilities with 2 or more soil borings, include one or more geologic cross sections.
1. Cross sections shall include a reduced inset diagram of the site layout map indicating the location of the cross section transect, and shall indicate the dates of measurements, stratigraphy, screened intervals of monitoring wells and water table surface.
2. Include the locations of any confining units; the contaminant source location, vertical and horizontal extent of contamination in both soil and groundwater, and highest and lowest water table and piezometric elevations and screen lengths, as applicable.

SECTION 222. NR 716.15(2) (h) 3. and a. are renumbered NR 716.15(4) (e) and 1. and as renumbered are amended to read:

NR 716.15 (4) ~~3.~~(e) *Tables.* Tables shall meet all of the following requirements:
~~a~~1. ~~Have~~ Include a table number, title and an explanation of any footnotes marked in the body of the table.

SECTION 223. NR 716.15(2) (h)3. b. through d. are renumbered NR 716.15(4) (e) 2. through 4.

SECTION 224. NR 716.15(4) (e) 5. and 6. are created to read:

NR 716.15 (4) (e) 5. Indicate depth and soil type for soil sample summary tables.
6. For groundwater elevation tables, indicate each well's top and bottom screen elevation.

SECTION 225. NR 716.15 (2) (h) 4. is renumbered NR 716.15(4) (f) and as renumbered is amended to read:

NR 716.15 (4) ~~4~~(f) *Photographs*. Photographs shall be in color, of sufficient size to clearly represent the purpose of the photograph, and shall be ~~accompanied~~ labeled by the date, orientation and topic.

SECTION 226. NR 716.15(2) (i) is renumbered NR 716.15(4) (g) and as renumbered is amended to read:

NR 716.15 (4) (~~i~~g) *Well and borehole documentation.* All forms shall be completed in accordance with the directions for the applicable form. All of the following department forms~~,~~ shall be used, where applicable to the site or facility:
1. 4400–89, groundwater monitoring well information.
2. 4400–113A, monitoring well construction.
3. 4400–113B, monitoring well development.
4. 4400–122, soil boring log information.
5. 3300–5B, well/drillhole/borehole abandonment.
Note: Copies of these well and borehole documentation forms may be obtained from the ~~Bureau of Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707~~ following internet site: http://www.dnr.state.wi.us/org/water/dwg/gw/forms.htm.

SECTION 227. NR 716.15 (4) (h) is created to read:

NR 716.15 (4) (h) Any department of transportation well construction permit for a well constructed in a right-of-way shall be submitted with the well construction form.

SECTION 228. NR 716.15(2) (j) is renumbered NR 716.15 (5) and as renumbered is amended to read:

NR 716.15 ~~(j) *Legal descriptions and parcel identification numbers.*~~ **(5)** DEED AND LOCATIONAL INFORMATION. All of the following information shall be included in the site investigation report for each property within or partially within the contaminated site boundaries:

SECTION 229. NR 716.15 (2) (j) 1. and 2. are renumbered NR 716.15 (5) (a) and (b).

SECTION 230. NR 716.15 (2) (j) 3. is renumbered NR 716.15(5) (c) and as renumbered is amended to read:

NR 716.15 (5) ~~3~~(c). The parcel identification number(s) for each property ~~if the county in which the property is located uses parcel identification numbers~~.

SECTION 231. NR 716.15 (2) (k) is renumbered NR 716.15 (5) (d) and as renumbered is amended to read:

NR 716.15 (5) (~~k~~d) *Geographic position.* All geographic position data shall be obtained and submitted to the department in the site investigation report in accordance with the following requirements:

SECTION 232. NR 716.15(2) (k) 2. is renumbered NR 716.15(5) (d) 2. and as renumbered is amended to read:

NR 716.15 (5) (d) 2. 'Coordinate system.' Geographic position data shall be originally collected in Wisconsin Transverse ~~Mercater~~ Mercator '91 or projected onto Wisconsin Transverse ~~Mercater~~ Mercator '91.
Note: Information about the Wisconsin Transverse Mercator '91 projection is available ~~at the Enterprise Data Management and GIS Analysis and Mapping Services sections' website found~~ on the internet at ~~www.dnr.state.wi.us/org/at/et/geo~~ http://dnr.wi.gov/maps/gis/wtm8391.html.

SECTION 233. NR 716.15(2) (l) is renumbered NR 716.15(6) and as renumbered is amended to read:

NR 716.15 ~~(l)~~ ~~*Conclusions and recommendations.*~~ **(6)** CONCLUSIONS AND RECOMMENDATIONS. ~~A~~The site investigation report shall include a summary of the results from the site investigation, and recommendations for further response actions necessary to protect public health, safety and welfare and the environment, and to meet the requirements of chs. NR 700 to 726.

SECTION 234. NR 716.17(4) is amended to read:

NR 716.17 (4) When a site investigation conducted under this chapter indicates that, based on the criteria in s. NR ~~726.05 (1)~~ 726.05, no further action is necessary to protect public health, safety or welfare or the environment, the responsible parties may request that the department close the case in accordance with ch. NR 726.

SECTION 235. NR 718 Title and Table of Contents is renumbered and as renumbered is amended to read:

NR 718
MANAGEMENT OF CONTAMINATED SOIL OR SOLID WASTES EXCAVATED DURING RESPONSE ACTIONS

NR 718.01 Purpose.
NR 718.02 Applicability.
NR 718.03 Definitions.
NR 718.05 Storage of excavated contaminated soil.
NR 718.07 Transportation of excavated contaminated soil.
NR 718.09 Treatment of excavated contaminated soil.
~~NR 718.11 On−site replacement of contaminated soil.~~
NR 718.12 Management of contaminated soil.
~~NR 718.13 Off−site disposal of contaminated soil at a response action site.~~
~~NR 718.14 Off−site disposal of contaminated soil at a location other than a response action site.~~
NR 718.15 Management of other solid wastes.
NR 718.17 Exemption for emergency immediate actions.

SECTION 236. NR 718.01 and Note are amended to read:

NR 718.01 Purpose. This chapter establishes minimum standards for the storage, transportation, treatment and disposal of contaminated soil and certain other solid wastes excavated during response actions conducted in accordance with the requirements of chs. NR 700 to ~~726~~754. Where responsible parties have chosen to comply with the requirements of this chapter, the responsible parties are exempt from the storage, transportation, treatment and disposal requirements in ch. 289, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this chapter. This chapter is adopted pursuant to ss. 287.03, 289.05, 289.06, 289.43 (8), 289.67, ~~292.11, 292.15, 292.31, and~~ 227.11 (2), and ch. 292, Stats.
Note: This chapter exempts responsible parties who conduct specific types of response actions from obtaining site–specific approvals from the state's solid waste program, when the response actions are conducted in accordance with this chapter. The exemptions that responsible parties may be eligible for under this chapter are from any one of the following solid waste program requirements:
1. Licensing of on–site and off–site contaminated soil storage piles.
2. Licensing of on–site and off–site contaminated soil treatment.
3. Licensing of transportation in vehicles containing contaminated soil when the vehicles are owned by the responsible parties.
4. Approval for disposal of contaminated soil and other solid wastes on the same property from which it was excavated.
5. Approval for disposal of specified types of contaminated soil on property other than that from which it was excavated.
~~The following portion of 40 CFR part 280 has been included in the text of this chapter: 40 CFR 280.62 (a) (4).~~

SECTION 237. NR 718.02 (1) (a) 1. and 2. and (b) 1. and 2. are amended to read:

NR 718.02 (1) (a) Contaminated soil which:

1. Is excavated as part of a response action conducted pursuant to chs. NR 700 to ~~726~~754, at sites or facilities subject to regulation under s. 289.67, ~~292.11, or 292.31~~ ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.; and
2. Is not a hazardous waste as defined in s. ~~NR 600.03 (87)~~ NR 660.10 (52) or 42 USC 6901–6991, as amended.
(b) Solid waste which:
1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to ~~726~~754, at sites or facilities subject to regulation under s. 289.67, ~~292.11, or 292.31~~ ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.;
2. Is not a hazardous waste as defined in s. ~~NR 600.03 (87)~~ NR 660.10 (52) or 42 USC 6901–6991, as amended.

SECTION 238. NR 718.02 (1) (a) Note is created to read:

NR 718.02 (1) (a) **Note:** Guidance document RR-705 entitled: "Guidance for Hazardous Waste Remediation" provides detailed information on the requirements that apply and the options that are available when dealing with cleanup and redevelopment issues at sites that are or may be contaminated with hazardous waste. A copy of the document can be found at: http://www.dnr.wi.gov/org/aw/rr/archives/pubs/RR705.pdf.

SECTION 239. NR 718.02 (1) (b) 1. and 2. are amended to read:

NR 718.02 (1) (b) Solid waste which:
1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to ~~726~~754, at sites or facilities subject to regulation under s. 289.67, ~~292.11, or 292.31~~ ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.;
2. Is not a hazardous waste as defined in s. ~~NR 600.03 (87)~~ NR 660.10(52) or 42 USC 6901–6991 as amended; and

SECTION 240. NR 718.03 (5) is amended to read:

NR 718.03 (5) "Contaminated soil" means soil which contains one or more hazardous substances or environmental pollution and which is not a hazardous waste as defined in s. ~~NR 600.03 (87)~~NR 660.10(52) or 42 USC 6901–6991, as amended.

SECTION 241. NR 718.03 (8) is amended to read:

NR 718.03 (8) "Leachate" has the meaning specified in s. NR 500.03 (~~75~~123).
Note: Section NR 500.03 (~~75~~123) defines "leachate" to mean "water or other liquid that has ~~been contaminated by dissolved or suspended materials due to contact with~~ percolated through or contacted solid waste or ~~with~~ gases generated by solid waste."

SECTION 242. NR 718.05 (1) is amended to read:

NR 718.05 (1) EXEMPTION FROM SOLID WASTE PROGRAM REQUIREMENTS. Sites or facilities where less than 2,500 cubic yards of excavated contaminated soil are stored by responsible parties for a period not to exceed 6 months, in accordance with all of the requirements of this section, are exempt from the solid waste program requirements for the storage of contaminated soil in ch. 289, Stats., and chs. NR 500 to ~~536~~538.

SECTION 243. NR 718.05 (2) (f) is amended to read:

NR718.05 (2) (f) *Signs.* Responsible parties shall post signs as required by s. NR 714.07(~~3~~4).

SECTION 244. NR 718.05 (2) (h) 5. is amended to read:

NR 718.05 (2) (h) 5. The address and location by quarter–quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property from which the soil was excavated.

SECTION 245. NR 718.05 (2) (h) 7. is amended to read:

NR 718.05 (2) (h) 7. The address and location by quarter–quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property where the soil is stored.

SECTION 246. NR 718.05 (2) (j) 5. is amended to read:

NR 718.05 (2) (j) 5. The address and location by quarter–quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property where the soil is stored.

SECTION 247. NR 718.05 (3) is amended to read:

NR 718.05 (3) REQUIREMENTS FOR TEMPORARY STOCKPILES. Sites or facilities where responsible parties temporarily store up to 2,500 cubic yards of excavated contaminated soil for 15 days or less, for the purpose of loading the soil into transfer vehicles or treatment units, are exempt from regulation under ch. 289, Stats., and chs. NR 500 to ~~536~~538 and are not subject to the general storage requirements in sub. (2) if the soil is stored in accordance with all of the following requirements:

SECTION 248. NR 718.05 (4) is amended to read:

NR 718.05 (4) REQUIREMENTS FOR CONTAINERIZED STORAGE. Sites or facilities where responsible parties store up to 2,500 cubic yards of excavated contaminated soil for 6 months or less in containers or in buildings are exempt from regulation under ch. 289, Stats., and chs. NR 500 to ~~536~~538, and are not subject to the general storage requirements in sub. (2), if the contaminated soil is stored in accordance with all of the following requirements:

SECTION 249. NR 718.05 (4) (b) is amended to read:

NR 718.05 (4) (b) Containers shall be labeled and buildings shall have a sign posted in accordance with the requirements of s. NR 714.07~~(3)~~(4).

SECTION 250. NR 718.09 (1) is amended to read:

NR 718.09 Treatment of excavated contaminated soil. (1) GENERAL. If excavated contaminated soil is treated at a non–commercial treatment unit or facility and the treatment unit or facility is operated by the responsible parties in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to ~~536~~538, except where solid waste program requirements are specifically referenced in this section. If contaminated soil is incorporated into hot–mix asphalt in accordance with sub. (5), the asphalt plant is exempt from solid waste program requirements for treatment of contaminated soil found in ch. 289, Stats., and chs. NR 500 to ~~536~~ 538, except where solid waste program requirements are specifically referenced in this section. If excavated soil contaminated solely with light petroleum products or light petroleum products in combination with agricultural chemicals regulated by the department of agriculture trade and consumer protection under s. 94.73, Stats., is treated by the responsible parties at a single–application landspreading facility in compliance with sub. (8), that landspreading facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to ~~536~~538, except where solid waste program requirements are specifically referenced in this section. Commercial treatment units or facilities, hot–mix asphalt plants where contaminated soil is treated by means other than incorporation into the asphalt mix, and thermal treatment units or facilities are required to be licensed under ch. 289, Stats., and chs. NR 500 to ~~536~~538, and are not exempt under this section.

Note: Treatment of contaminated soil that has not been excavated is not regulated as solid waste treatment under ch. 289, Stats., and chs. NR 500 to ~~536~~538. Design, operation and maintenance requirements for the treatment of unexcavated contaminated soil are established in ch. NR 724.

SECTION 251. NR 718.09 (2) (a) is amended to read:

NR 178.09 (2) LOCATION STANDARDS. (a) Unless approved under chs. NR 400 to 499, chs. NR 500 to ~~536~~538 where applicable, or par. (b), responsible parties may not treat excavated contaminated soil in any of the following locations:

SECTION 252. NR 718.09 (3) is amended to read:

NR 718.09 (3) NON–COMMERCIAL TREATMENT OF SOIL FROM MORE THAN ONE SITE. Non–commercial treatment units or facilities operated by responsible parties, where less than 2,500 cubic yards of excavated contaminated soil from 5 or fewer contamination sites are treated, are exempt from solid waste program requirements for the treatment of contaminated soil in ch. 289, Stats., and chs. NR 500 to ~~536~~538, if the treatment is conducted in compliance with the requirements of this section. Excavated contaminated soil from more than 5 properties may not be treated at the same site or facility unless the treatment site or facility is a licensed solid waste treatment facility. Responsible parties may not mix excavated contaminated soil from one property with soil from another property unless the same party owns all of the mixed soil or an approval has been granted under ch. NR 502. Contaminated soil which is stored prior to treatment shall be stored in compliance with the provisions of s. NR 718.05.

SECTION 253. NR 718.09 (4) (b) 2. is amended to read:

NR 178.09 (4) (b) 2. All locations of sites from which contaminated soil was excavated by address and location by quarter–quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15(5)(d), and the latitude and longitude.

SECTION 254. NR 718.09 (4) (b) 5. is amended to read:

NR 178.09 (4) (b) 5. The address and location by quarter–quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15(5)(d), and the latitude and longitude of the treatment site.

SECTION 255. NR 718.09 (5) (b) is amended to read:

NR 178.09 (5) (b) If excavated contaminated soil is incorporated into asphalt at a hot–mix asphalt plant operated in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to ~~536~~538, except where solid waste program requirements are specifically referenced in this section.

SECTION 256. NR 718.09 (5) (d) is amended to read:

NR 178.09 (5) (d) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a hot–mix asphalt plant for treatment other than incorporation into the asphalt mix unless the hot–mix asphalt plant has a current operating air permit under chs. NR 400 to 499, is in compliance with chs. NR 400 to 499 and has an approval for solid waste processing under ch. 289, Stats., and chs. NR 500 to ~~536~~538. Hot–mix asphalt plants which do not incorporate contaminated soil into the asphalt mix and structural concrete plants which do not incorporate contaminated soil into concrete shall store excavated contaminated soil in compliance with ch. NR 502.

SECTION 257. NR 718.09 (6) (b) is amended to read:

NR 178.09 (6) (b) Storage of excavated contaminated soil at thermal treatment units or facilities is exempt from the storage requirements in ch. 289, Stats., and chs. NR 500 to ~~536~~538 if it is in compliance with the following:

SECTION 258. NR 718.09(8) (b) 1. c. and Table 1 are amended to read:

NR 718.09 (8) (b) 1. c. At a minimum, the testing listed in Table 1 shall be performed on the contaminated soil based on the contaminant type.

TABLE 1
Minimum Testing Requirements For Landspreading
Soil Contaminated With Light Petroleum Products

Petroleum Contaminant Type	Laboratory Analysis
Gasoline; grades 80, 100, 100LL & aviation gasoline	~~GRO,~~ PVOC & Pb
Diesel; jet fuel; kerosene; & nos. 1 & 2 fuel oil	~~DRO,~~ PVOC & PAH

SECTION 259. NR 718.09 (8) (b) 1. d. is amended to read:

NR 718.09 (8) (b) 1. d. ~~The following analytical methods shall be used to complete the laboratory analyses required by this paragraph:~~

~~GRO: Gasoline range organics by the Wisconsin DNR Modified GRO Method, with a maximum detection level of 10 mg/kg.~~

~~DRO: Diesel range organics by the Wisconsin DNR Modified DRO Method, with a maximum detection level of 10 mg/kg.~~

~~PVOC: Petroleum volatile organic compounds by EPA Method 5030/8020 or GRO/PVOC run concurrently as specified in the GRO method.~~

~~PAH: Polynuclear aromatic hydrocarbons by EPA Method 8310 (HPLC) or 3540/8270 or 3550/8270.~~

~~Total lead (Pb): Combined inorganic and organic by methods approved under SW-846 with a maximum detection level of 1.~~

Soil samples shall be collected and analyzed in accordance with the provisions in s. NR 716.13 (11) and (12).

SECTION 260. NR 718.09 (8) (b) 2. b. and c. are amended to read:

NR 718.09 (8) (b) 2. b. The metal contaminant concentrations in the excavated contaminated soil to be landspread may not exceed the residual concentration levels ~~listed in s. NR 720.11, Table 2, except as provided in s. NR 720.11(5)~~ established in accordance with ch.NR 720.
c. The excavated contaminated soil to be landspread may not be a hazardous waste as defined in ~~ch. NR 600~~ s. NR 660.10(52).

SECTION 261. NR 718.09 (8) (c) 2. a. is amended to read:

NR 178.09 (8) (c) 2. a. If a facility approval application is not complete, the department shall notify the ~~application~~ applicant within 15 business days of receipt that it is not complete and identify the information necessary to complete the application.

SECTION 262. NR 718.09 (8) (d) 3. g. is amended to read:

NR 178.09 (8) (d) 3. g. Debris including pieces of plastic, bricks, metal and wood shall be removed from the contaminated soil prior to landspreading and shall be properly disposed of in accordance with chs. NR 500 to ~~590~~538.

SECTION 263. NR 718.09 (8) (d) 3. i. is amended to read:

NR 718.09 (8) (d) 3. i. The total organic compound contaminants and benzene landspread at the landspreading facility may not exceed the limit in s. NR 419.07 (4) (e)~~ or the emission rate for benzene in Table 3 of s. NR 445.04~~.

SECTION 264. NR 718.09 (8) (d) 3. i. Note is repealed.

SECTION 265. NR 718.09 (8) (d) 3. m. is amended to read:

NR 718.09 (8) (d) 3. m. The landspreading facility may not be seeded with a crop intended for human consumption prior to submittal of a ~~closure~~ treatment verification report which indicates that the contaminants have been reduced to comply with the residual contaminant levels ~~in tables 1 and 2 in~~ determined in accordance with the provisions of ch. NR 720.

SECTION 266. NR 718.09 (8) (d) 3. o. is amended to read:

NR 718.09 (8) (d) 3. o. Signs shall be posted at any access points to the facility in accordance with s. NR 714.07 ~~(3)~~(4). The boundaries of the landspreading facility shall be marked and maintained until facility closure.

SECTION 267. NR 718.09 (8) (d) 4. is amended to read:

NR 718.09 (8) (d) 4. If polynuclear aromatic hydrocarbons (PAHs) are detected in the waste characterization required under in par. (b) 1., responsible parties, or their agents or contractors, may landspread excavated contaminated soil only if they obtain a written approval of their operation plan from the department. The department shall notify the applicant, within 15 business days after receipt of the operation plan, if the plan is incomplete. The department shall approve of the operation plan if the plan satisfies the requirements of this paragraph and the levels of PAHs in the contaminated soils meet the criteria for residual contaminant levels specific to a site or facility under ~~s. NR 720.19 (3)~~ ch. NR 720. The department shall approve or disapprove of an application for an operation plan approval within 30 business days after receipt of a complete plan.

SECTION 268. NR 718.09 (8) (e) and 1. are amended to read:

NR 718.09 (8) (e) ~~Site closure~~ Treatment Verification. 1. 'Sampling.' The responsible party, their agent or contractor or the operator of a single–application landspreading facility shall submit to the department the results of a soil sampling program at the landspreading facility, to verify that all contaminants detected through the waste characterization under par. (b) 1. have been reduced to meet the residual contaminant levels specified in ~~s. NR 720.09 (4)~~ ch. NR 720. Samples shall be obtained from one location per every 100 yards of soil landspread. These sampling locations shall be evenly distributed over the landspreading facility. If less than 100 yards of soil is landspread, samples shall be collected from 2 sampling locations. At each sampling location 2 samples shall be obtained, one from the treatment zone and one obtained from 2 to 3 feet below the ground surface.

SECTION 269. NR 718.09 (8) (e) 2. a. and b. are amended to read:

NR 718.09 (8) (e) 2. a. If 20 or less samples are required under subd. 1., all samples shall be analyzed for all contaminants identified through the waste characterization under par. (b) 1. that exceeded the residual contaminant levels in ~~s. NR 720.09 (4)~~ ch. NR 720.
b. If more than 20 samples are required under subd. 1., the responsible party or agent may use field screening to reduce the number of samples to be analyzed. If the samples are screened in the field to determine relative VOC concentration, only 50% of the samples required to be taken or 20 samples, whichever is greater, need to be analyzed. The samples that are sent for analysis shall be those that showed the greatest contamination during the field screening, except that at least 25 % of the samples sent for analysis shall be those samples obtained from 2 to 3 feet below the ground surface. Samples shall be analyzed for all contaminants identified through the waste characterization under par. (b) that exceeded the residual contaminant levels in ~~s. NR 720.09 (4)~~ ch. NR 720.

SECTION 270. NR 718.09 (8) (e) 3., 4., and 5. are amended to read:

NR 718.09 (8) (e) 3. 'Sampling frequency.' Sampling shall be done within 18 months after landspreading commenced on the facility. If sampling results show that any contaminants still exceed the residual contaminant levels in ~~s. NR 720.09 (4)~~ ch. NR 720, additional sampling shall be done at least annually at all sample locations at which the levels were exceeded. The samples shall be analyzed for the contaminants which exceeded the residual contaminant levels in ~~s. NR 720.09 (4)~~ ch. NR 720 in the previous round of sampling. The department may waive the requirement to sample within the first year upon the request of the responsible party, their agent or contractor, or the operator of the landspreading facility, if it is apparent that the site does not yet meet ~~closure requirements~~ residual contaminant levels as determined in accordance with the provisions of ch. NR 720 and the sampling will serve no useful purpose.
4. 'Incomplete treatment.' If complete treatment of the contaminants which have been landspread has not been demonstrated to the department within 3 years after the contaminated soil was landspread, the responsible party, their agent or contractor shall submit a plan signed by a professional engineer to the department detailing the actions that they will take to enhance the treatment of the contaminants which still exceed the residual contaminant levels in ~~s. NR 720.09 (4)~~ ch. NR 720. This plan shall be submitted within 60 days after the end of the 3–year period and shall assure that cleanup is completed within 2 years. The department shall approve this plan, extending the landspreading treatment period for up to 2 years, if the plan demonstrates to the department that applicable soil cleanup standards will be met within that period of time. The department may require at any time groundwater monitoring to determine whether or not the landspread contaminants are impacting groundwater. At any time that the facility does not ~~to~~ appear to be remediating or if it still does not meet cleanup standards after 5 years of treatment, the department may require that additional measures be taken to remediate the site or require the recording of a deed notice at the register of deeds office in the county where the facility is located that gives notice of the existence of the solid waste landspreading facility in compliance with s. NR 518.10.
5. '~~Written closure~~ Treatment verification report.' Responsible parties shall submit a ~~written closure~~ treatment verification report to the department within 60 days after successful treatment of the contaminated soil. The report shall contain the results of sampling conducted under this paragraph.

SECTION 271. NR 718.11 is repealed.

SECTION 272. NR 718. 12 is created to read:

NR 718.12 Management of Contaminated Soil. (1) GENERAL. (a) If responsible parties manage contaminated soil at a site or facility in accordance with the provisions of this section, that site or facility is exempt from the solid waste program requirements in ch. 289, Stats., and chs. NR 500 to 538.
Note: Contaminated soil that can not be managed under s. NR 718.12 may be approved for disposal in a licensed solid waste disposal facility under ch. 289, Stats., and chs. NR 500 to 538.
(b) The response action shall be conducted in accordance with all of the applicable requirements in chs. NR 700 to 754.
(c) Responsible parties may not place or replace excavated contaminated soil in the following areas unless the department has granted a written exemption to these location standards, after considering all of the factors listed in par. (d):
1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.
3. Within 300 feet of any navigable river, stream, lake, pond or flowage.
4. Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.
5. Within 3 feet of the high groundwater level.
6. At a depth greater than the depth of the original excavation from which the contaminated soil was removed.
7. Where the contaminated soil poses a threat to public health, safety, welfare, or the environment.
(d) Responsible parties may manage contaminated soil in a location listed in par. (c) if the department has granted a written exemption from that location standard, after considering all of the following:
1. Waste characteristics and quantities.
2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
3. The unavailability of other environmentally suitable alternatives.
4. Compliance with other state and federal regulations.
5. The threat to public health, safety and welfare and the environment.
(e) Unless otherwise approved by the department, responsible parties shall sample and analyze all contaminated soil in accordance with the following requirements:

1. For each site or facility, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 yards with a minimum of 2 samples being collected. For volumes of contaminated soil that exceed 600 cubic yards, one sample for each additional 300 cubic yards shall be collected for analysis.
2. Samples shall be analyzed for all contaminants that were detected during a site investigation. In addition, available information shall be evaluated to determine what contaminants may have been discharged at the site or facility and samples shall be analyzed for those contaminants that are expected to be present based on past land use.
3. All soil samples shall be collected from areas most likely to contain residual soil contamination.
4. Responsible parties shall report all analytical results to the department in writing within 10 business days after receiving the sampling results.
Note: For those situations where an immediate action is being taken in accordance with s. NR 708.05 or where contamination is discovered as part of utility or other construction related work, the contaminated soil can generally be managed in accordance with the criteria set forth in s. NR 718.12(1). The department should be contacted upon discovery of contaminated soil during construction activities for direction on how to proceed.
(2) ADDITIONAL REQUIREMENTS FOR CONTAMINATED SOIL MANAGED AS PART OF AN INTERIM ACTION OR REMEDIAL ACTION.
(a) Responsible parties shall provide the department with written notice at least 7 days prior to initiating soil excavation activities.
(b) Prior to managing contaminated soil under s. NR 718.12, responsible parties shall submit a soil management plan to the department for review and approval. Unless otherwise approved, at a minimum soil management plans shall contain the following information:
1. The name, address, e-mail address and telephone number of the responsible party.
2. The volume of contaminated soil to be managed.
3. The address and location, by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15(5)(d), and the latitude and longitude of the site or facility where the contaminated soil originated.
4. The name, address and phone number of any consultants or contractors who are involved with the project.
5. A proposed schedule for implementation of the soil management plan.
6. The result of all analyses performed on the contaminated soil.
7. A description of how the contaminated soil will be managed.
8. Sufficient information to justify that the placement or replacement of contaminated soils will meet the requirements of s. NR 726.13(1)(b)1. to 5.
9. If management of the contaminated soil is proposed to take place at a location other than where it was excavated, the responsible party shall provide the following additional information:
a. The name, address and telephone number of the owner or owners of the property.
b. The address and location, by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15(5)(d), and the latitude and longitude of the site or facility where the contaminated soil is to be placed.
c. The geology and hydrogeology of the site or facility, including information from any previous remedial investigations. This also includes information from well logs or well construction records for nearby wells.
Note: If another report is being prepared to address the necessary response action, such as a remedial action plan, the soil management plan can be included as part of that report.
(c) If implementation of the soil management plan will result in the need for a continuing obligation on the property as defined by s. NR 725.05(2), the responsible party shall provide written notification to anyone meeting the criteria in s. NR 725.05(1) at least 30 days prior to submitting the soil management plan to the department for review. Unless otherwise approved by the department, notification letters shall meet the requirements contained in s. NR 725.07.
(d) For sites or facilities where the department approves a soil management plan or other remedial action that includes a continuing obligation which meets any of the criteria in s. NR 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. Unless otherwise approved by the department, all applicable database documentation requirements set forth in s. NR 726.11 shall be met. The fees required by ch. NR 749 shall be submitted to the department.
Note: Under s. 292.12(3) (b), Wis. Stats., the department has authority to charge a fee for placement on a department database.

Note: If the continuing obligation related to contaminated soil is being imposed as part of another department action for the same site (i.e. closure) separate fees for placement on the database will generally not be required.

SECTION 273. NR 718.13 and 718.14 are repealed.

SECTION 274. NR 718.15 is amended to read:

NR 718.15 Management of other solid wastes. If solid waste which contains waste other than contaminated soil is replaced at the site or facility from which it was excavated, as part of a response action conducted in compliance with all of the applicable requirements in chs. NR 700 to ~~726~~754, and the department has granted prior written approval for the action, the replacement of that solid waste on the site or facility from which it was excavated is exempt from the requirements of ch. 289, Stats., and chs. NR 500 to ~~536~~538.

SECTION 275. NR 718.15 Note is created to read:

NR 718.15 Note: Section NR 506.085 prohibits the following activities at solid waste disposal facilities which are no longer in operation unless specifically approved by the department in writing: 1) use of the waste disposal area for agricultural purposes, 2) establishment or construction of any buildings over the waste disposal area, and 3) excavation of the final cover or any waste materials. The department has developed detailed guidance to address the issue associated with building on historic fill sites and licensed landfills. This information can be found at: http://dnr.wi.gov/org/aw/rr/rbrownfields/historic_fill.htm.

SECTION 276. NR 718.17 is amended to read:

NR 718.17 Exemption for emergency immediate actions. For a period of 72 hours after an emergency immediate response is initiated in accordance with the requirements of ch. NR 708, the storage and transportation of contaminated soil that was excavated as part of the emergency immediate action are exempt from the requirements of ss. NR 718.05 and 718.07, and are exempt from meeting the solid waste storage and transportation requirements in ch. 289, Stats., and chs. NR 500 to ~~536~~538, provided that the department is immediately notified of the emergency immediate action being conducted in accordance with the requirements of ch. NR 708.

SECTION 277. NR 720 Table of Contents is amended to read:

NR 720
Soil Cleanup Standards

NR 720.01	Purpose.
NR 720.02	Applicability
NR 720.03	Definitions.
NR 720.05	General.
NR 720.07	~~Procedures for~~ General requirements when establishing soil cleanup standards applicable to a site or facility.
NR 720.08	Procedures for establishing soil performance standards.
NR 720.09	~~Determination of~~ Procedures for determining residual contaminant levels based on protection of groundwater.
NR 720.11	~~Determining~~ Procedures for determining residual contaminant levels based on protection of human health from direct contact with contaminated soil.
NR 720.13	Other pathways of concern.
~~NR 720.19~~	~~Procedure for determining soil cleanup standards specific to a site of facility.~~

SECTION 278. NR 720.01 is amended to read:

NR 720.01 Purpose. The purpose of this chapter is to establish soil cleanup standards, for the remediation of soil contamination, which result in restoration of the environment to the extent practicable, minimize harmful effects to the air, lands and waters of the state and are protective of public health, safety and welfare, and the environment as required by ~~ss. 292.11, 292.15, and 292.31,~~ ch. 292, Stats.,

and which are consistent with ch. 160, Stats., and ch. NR 140. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1), (2), ~~292.11, 292.15,~~ and ~~292.31~~, ch. 292, Stats.

SECTION 279. NR 720.02 (1), (a) and (b) are amended to read:

NR 720.02 Applicability. (1) ~~Except as provided in sub. (1m), this~~ This chapter applies to all remedial actions taken by responsible parties to address soil contamination after an investigation has been conducted at a site, facility or portion of a site or facility that is subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to soil contamination at all of the following:
(a) Solid waste facilities, where remedial action is required by the department pursuant to ~~s. NR 508.04 (4);~~ ch. NR 508;
Note: Chapter NR 720 does not apply to landspreading regulated under ch. NR 518 or solid waste facilities where ongoing operations are occurring, unless remedial action is required pursuant to ~~s. NR 508.04 (4)~~ ch. NR 508.
(b) Hazardous waste facilities, where the owner or operator is required to close the facility pursuant to s. 291.29, Stats., or ch. NR ~~685~~664, to institute corrective action pursuant to s. 291.37, Stats., or s. NR ~~635.17~~664.0100~~, or to meet requirements imposed by the department under s. NR 600.07 where a discharge has occurred~~. However, if U.S. EPA requires that states employ soil cleanup standards for hazardous waste facilities that are more stringent than the standards in this chapter, the department is obligated under the state's hazardous waste management act, ch. 291, Stats., and its hazardous waste program RCRA authorization to apply the more stringent soil cleanup standards.

SECTION 280. NR 720.02 (1m) and Note are repealed.

SECTION 281. NR 720.02 (3) is amended to read:

NR 720.02 (3) This chapter applies to remedial actions taken by the department where a department−funded response action is being taken under the authority of ~~s. 292.11 or 292.31~~ch. 292, Stats.

SECTION 282. NR 720.02 (5) Note is amended to read:

NR 720.02 (5) Note: Sites, facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ch 292, Stats., may also be subject to regulation under other statutes, including solid waste statutes, ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility. When necessary, the department will, to the best of its ability, facilitate coordination between the regulatory programs involved.

SECTION 283. NR 720.02 (8) and Note are created to read:

NR 720.02 (8) Sites with PCB contamination.
Note: U.S. EPA has independent authority to regulate soil contamination from PCB's under the toxic substances control act. The department and EPA have entered into an MOA that specifies how responsibility for these types of sites will be determined. The MOA can be found at: http://dnr.wi.gov/org/aw/rr/cleanup/ocp.pdf.

SECTION 284. NR 720.03 (1m) and Note are created to read:

NR 720.03 (1m) "Ceiling limit concentration" means a preset non-risk based concentration of an inorganic or semi-volatile chemical.
Note: This definition is consistent with the approach used in the U.S. EPA's Regional Screening Table which sets a ceiling limit concentration of 100,000 mg/kg or 10% by weight for a relatively non-toxic chemical in a soil sample. This definition is not the same as in other natural resources administrative rules For example, the term ceiling limit in ch. NR 204 refers to the concentration of certain metals in domestic sludge that if exceeded would result in the sludge not being eligible for land application.

SECTION 285. NR 720.03 (3m) and Note are created to read:

NR 720.03 (3m) "Dermal absorption" means systemic exposure via skin absorption. However, because dermal toxicity factors are not available, oral-to-dermal extrapolation is done by adjusting for gastrointestinal absorption in order to derive toxicity values in terms of a dermally-absorbed dose.
Note: Dermal toxicity values that are extrapolated from oral toxicity values may not take into account allergic contact responses or skin cancer.

SECTION 286. NR 720.03 (4) is amended to read:

NR 720.03 (4) "Direct contact" means human exposure to substances in soil through one or more of the following pathways: inhalation of particulate matter, dermal absorption, ~~or~~ incidental ingestion, or inhalation of vapors from the ~~of~~ soil.
~~**Note:** The definition of direct contact will be expanded in future revisions to include human exposures by inhalation of vapors and dermal absorption.~~

SECTION 287. NR 720.03(6) Note is amended to read:

NR 720.03 (6) Note: Hazard quotients and ~~the~~ hazard ~~index~~ indices are measures of the potential for noncarcinogenic ~~risk~~ effects.

SECTION 288. NR 720.03 (8) is amended to read:

NR 720.03 (8) "Inhalation of particulate matter" means inhalation by humans of contaminants adsorbed to respirable ~~air with contaminated~~ soil particles less than 10 microns in diameter.

SECTION 289. NR 720.03 (9), Note and (10) are repealed.

SECTION 290. NR 720.03 (9) is recreated to read:

NR 720.03 (9) "Inhalation of vapors" means inhalation by humans of soil contaminants that volatilized into outdoor air.

SECTION 291. NR 720.03 (11) is renumbered NR 720.03 (10).

SECTION 292. NR 720.03 (10) Note (as renumbered) is amended to read:

NR 720.03 (10) Note: ~~The~~ An example of the food chain pathway ~~for cadmium, for example, refers to cadmium being~~ is when a substance is taken up ~~in~~ from soil to plant tissue and the plant tissue ~~being~~ is then ingested by ~~an organism~~ a person.

SECTION 293. NR 720.03 (12) is repealed.

SECTION 294. NR 720.03 (11) is recreated to read:

NR 720.03 (11) "Performance standard" means a remedial action or, in some cases existing site conditions that prevent exposure to contaminants or will result in a decrease in contaminant concentrations, or both.

SECTION 295. NR 720.03 (13) and (14) are renumbered (12) and (13), respectively.

SECTION 296. NR 720.03 (14) and (15) are created to read:

NR 720.03 (14) "Soil cleanup standard" means either a residual contaminant level determined in accordance with ss. NR 720.09 or 720.11, or a soil performance standard determined in accordance with s. NR 720.08.
(15) "Soil saturation concentration" or "Csat" means the contaminant concentration in soil at which the absorptive limits of the soil particles, the solubility limits of the soil particles, the solubility limits of the soil pore-water, and saturation of soil pore-air have been reached. At concentrations greater than Csat, the soil contaminant may be present in free phase for contaminants that are liquid at ambient soil temperatures and pure solid phases for compounds that are solid at ambient soil temperatures.

SECTION 297. NR 720.05 (1) (b) and (c) are amended to read:

NR 720.05 (1) (b) Solid waste ~~in-field conditions~~ site investigation report prepared in accordance with the requirements ~~of s. NR 508(04(4)~~ch. NR 508.
(c) Investigation done under a hazardous waste closure plan or a RCRA facility investigation report, developed in accordance with the requirements of ch. NR ~~685~~ 664 or s. NR ~~635.17or 600.07~~664.0100.

SECTION 298. NR 720.05 (2) and (3) are amended to read:

NR 720.05 (2) Remedial actions conducted by responsible parties to address soil contamination shall be designed and implemented to restore the contaminated soil to levels that, at a minimum, meet the ~~soil cleanup~~ residual contaminant levels or performance standards for the site or facility determined in accordance with this chapter.
(3) If all soil contaminant concentrations meet applicable ~~soil cleanup~~ residual contaminant levels or performance standards after a remedial action is completed, the department may not require further remedial action for soils, unless the department determines that the residual soil contamination:
(a) Presents a threat to public health, safety or welfare or the environment at the site or facility;
(b) Will cause a violation of a groundwater quality standard contained in ch. NR 140;
(c) Will cause a violation of a surface water quality standard contained in chs. NR 102 to 106; or
(d) Will cause a violation of an air quality standard contained in chs. NR 400 to 499.

SECTION 299. NR 720.05 (4) and (5) are created to read:

NR 720.05 (4) SUBMITTALS. (a) Unless otherwise directed by the department, submittals under this chapter shall be included in the site investigation report or the draft remedial action options report required under s. NR 700.11 (1).
(b) Submittals to the department under this section shall include all of the following:
1. Complete background information and supporting documentation for the procedure to be used;
2. Documentation that the application of the procedure is valid for the site or facility under consideration;
3. Necessary data and documentation needed to fully evaluate the submittal; and
4. Legible copies of source documents or pertinent portions of source documents.
Note: In order to facilitate department review of submittals, legible copies of entire source documents or the pertinent portions of source documents sufficient to evaluate the method or procedure used should be included with the submittal.
(5) LAND USE CLASSIFICATION. (a) Responsible parties shall identify the current land use and zoning for the site or facility by the time the remedial action is selected, unless otherwise directed by the department.
(b) Responsible parties shall classify the land use of a site or facility as industrial if all of the following criteria are met:
1. The site or facility is currently zoned for, or otherwise officially designated for, industrial use, and
Note: A site or facility may be officially designated for industrial use by the issuance of a conditional use or special exception permit that allows an industrial use of that site or facility in a non-industrial zoning district or by the designation of an area as industrial in a county development plan or a municipal master plan, among other means.
2. More stringent non-industrial residual contaminant levels for soil are not necessary to protect public health on or off the site or facility.
Note: Situations where a non-industrial classification would apply include site or facilities which could otherwise be classified as industrial, but where proximity to a non-industrial land use, such as residential housing located across the street, makes a non-industrial classification more appropriate.
(c) An industrial land use classification may be applied to restricted access areas unless more stringent residual contaminant levels are necessary to protect public health on or off the site.
Note: A continuing obligation will be imposed as part of the case closure letter if residual contaminant levels are based on industrial exposure or if a soil performance standard is used.

SECTION 300. NR 720.07 Title is amended to read:

NR 720.07 ~~Procedures for~~ General requirements when establishing soil cleanup standards applicable to a site or facility.

SECTION 301. NR 720.07(1) (a) is amended to read:

NR 720.07 (1) (a) Responsible parties shall use information from the sources listed in s. NR 720.05 (1) to determine the residual contaminant levels or performance standards for each exposure or migration pathway of concern for each soil contaminant of concern at a site or facility in accordance with ~~ss. NR 720.09 to 720.19~~ this chapter.

SECTION 302. NR 720.07(1) (b) 1. and Note are amended to read:

NR 720.07 (1) (b) 1. The residual contaminant level of each contaminant in soil which is the lowest concentration ~~of those~~ from among the following as applicable: the ceiling limit concentration, the soil saturation concentration if the contaminant is a volatile, a land use specific direct contact level, a groundwater quality protective level, a concentration calculated for a pathway of concern set forth in s. NR 720.13 all of which are determined in accordance with the requirements of ~~ss. NR 720.09 to 720.19 (3)~~ this chapter; or

Note: ~~Numeric~~ For a single contaminant, a numeric land use specific residual contaminant ~~levels are~~ level is determined ~~separately for each exposure or migration pathway of concern at a site~~ based on aggregate exposure through incidental ingestion of soil, inhalation of soil vapors and particulates, and dermal contact with soil. ~~These residual contaminant levels are not the soil cleanup standard for the site. The soil cleanup standard for the site~~ When more than one contaminant is present, the residual contaminant level is determined ~~by selecting the lowest concentration from among the individual residual contaminant levels determined for each pathway~~ based on cumulative exposure and may have to be adjusted downward so that the cumulative risk does not exceed an excess cancer risk of 1-in-100,000 or a hazard index of 1 for non-carcinogens.

SECTION 303. NR 720.07(1) (b) 2 is amended to read:

NR 720.07 (1) (b) 2. A performance standard determined in accordance with s. ~~NR 720.19 (2)~~ NR 720.08.

SECTION 304. NR 720.07(1) (c) 3. Note is repealed.

SECTION 305. NR 720.07(1) (c) 4. is created to read:

NR 720.07 (1) (c) 4. Residual soil contamination at the site or facility shall not result in vapor concentrations reaching a substance's lower explosive limit.

SECTION 306. NR 720.07 (2) (b) is amended to read:

NR 720.07 (2) (b) Unless an alternative approach is approved by the department, ~~If~~ if a soil contaminant concentration in a sample exceeds the soil cleanup standard at or above the limit of quantitation for that soil contaminant, the soil cleanup standard shall be considered to have been exceeded.

SECTION 307. NR 720.07(2) (b) Notes are created to read:

NR 720.07 (2) (b) **Note:** When evaluating the direct contact pathways, it may be possible to average measured soil sample concentrations to determine whether the calculated residual contaminant level has been exceeded or not. If averaging of soil concentrations is being considered, the department recommends seeking DNR approval of the proposed sampling plan and analysis methodology as soon as possible, but prior to submitting a case closure request in order to avoid delays and other potential problems.

Note: Averaging soil concentrations should not be used as the sole method for addressing sites with areas of significant soil contamination.

SECTION 308. NR 720.07(2) (d) 2. is amended to read:

2. If a soil contaminant is reported above the limit of detection but below the limit of quantitation~~, the soil cleanup standard shall be considered to have been exceeded if the presence of that soil contaminant has been confirmed by the use of an appropriate analytical method.~~:

SECTION 309. NR 720.07(2) (d) 2. a. and b. are created to read:

NR 720.07 (2) (d) 2. a. The responsible party may accept the results and the soil cleanup standard shall be considered to have been exceeded, or
b. The responsible party may choose to have the soil sample reanalyzed by the use of an appropriate analytical method. If the soil contaminant is confirmed to be present between the limit of detection and the limit of quantitation, the soil cleanup standard shall be considered to have been exceeded. If the soil contaminant is not detected upon reanalysis of the soil sample, the soil cleanup standard shall not be considered to have been exceeded.

SECTION 310. NR 720.07 (3) and Note are created to read:

NR 720.07 (3) BACKGROUND. If the background concentration for a substance in soil at a site or facility is higher than the residual contaminant level for that substance determined using the procedures in this section, the background concentration in soil may be used as the residual contaminant level for that substance. The background concentration for a substance in soil shall be determined using a department−approved and appropriate method.
Note: Naturally occurring background concentrations of arsenic in soil, for example, may be higher than the calculated residual contaminant level for arsenic. In such instances, the naturally occurring background concentration should be used as the soil cleanup level.

SECTION 311. NR 720.08 is created to read:

NR 720.08 Procedures for establishing soil performance standards. (1) GENERAL. If a responsible party selects this option, performance standards shall be established and maintained so that the residual contaminants left in the soil do not pose a threat to public health, safety and welfare or the environment.
Note: Guidance document RR-528 indicates that it may not be necessary to determine numeric residual contaminant levels for contaminants as long as all contaminant pathways for all contaminants of concern are addressed by the remedial action, the extent of contamination is fully defined, the remedial action remains in place, is maintained as appropriate and remains effective. For example, if a cover is placed that addresses all pathways for the contaminated soil, then it isn't necessary to determine the numeric residual contaminant levels for as long as the cover adequately addresses the pathway and remains protective. It may be necessary to determine residual contaminant levels in the future if the remedy is changed or replaced.
(2) PROTECTION OF GROUNDWATER. Acceptable performance standard options to address the soil to groundwater pathway may include but are not limited to:
(a) Placement of a permanent engineering control such as a cap or cover to limit infiltration and thereby minimizing the leaching of soil contaminants to groundwater that is constructed and maintained until the threat to groundwater no longer exists,
(b) Use of natural attenuation to contain and remediate the contaminants present, or
(c) Operation of a system in compliance with ch. NR 724 until the lowest concentration that is practicable is achieved.
Note: A site or facility may use any combination of options listed above.
Note: As explained in more detail in guidance document RR-528, if there is no threat to groundwater from soil contamination, a soil remedy is not necessary. The lack of groundwater contamination may not always be sufficient to establish there is not threat to the groundwater pathway. An analysis to determine whether sufficient time has passed for the soil contamination to have reached the locations where groundwater is being monitored may be necessary. The factors that may need to be considered include: the age of the contaminant release, type of contaminants, geologic setting, depth to groundwater, and the proximity of the monitoring wells to the source of contamination.
(3) PROTECTION FROM DIRECT CONTACT. Acceptable performance standard options to address the direct contact pathway may include but are not limited to:
(a) Placement of a permanent engineering control such as a cap or cover that is constructed and maintained until the direct contact threat no longer exists, or
(b) Operation of a system in compliance with ch. NR 724 until the lowest concentration that is practicable is achieved.
Note: A site or facility may use a combination of options listed above.

SECTION 312. NR 720.09 Title is amended to read:

NR 720.09 ~~Determination of~~ Procedures for determining residual contaminant levels based on protection of groundwater.

SECTION 313. NR 720.09(1) through (4) are repealed.

SECTION 314. NR 720.09(1) and (2) are recreated to read:

NR 720.09 (1) GENERAL. If a responsible party selects this option, residual contaminant levels for soil based on protection of groundwater shall be developed using the enforcement standards established in ch. NR 140 or using procedures consistent with the methodology in ss. 160.13 and 160.15, Stats., and the criteria in s. NR 722.09 (2) (b) 2. when there is no enforcement standard as the target concentrations in groundwater. If the department of health has not developed a recommended enforcement standard and a federal maximum contaminant level exists, that value may be used for calculating a soil residual contaminant level.
Note: If no enforcement standard or maximum contaminant level exists, then the methodology set forth in guidance document RR-890 for determining residual contaminant levels protective of groundwater quality should be used.
Note: In developing a residual contaminant level, any relevant information shall be considered, including public welfare concerns for groundwater, such as taste and odor.
(2) METHODS. Responsible parties shall use one or more of the methods listed in this section based on scientifically valid procedures that are subject to department review and approval and site−specific geological, physical and chemical conditions to establish residual contaminant levels.
(a) A contaminant transport and fate model.
(b) Leaching tests appropriate for the site or facility in both application and extent.
(c) Any other appropriate method approved by the department for that specific site or facility, or other appropriate method suggested in department guidance.
Note: Guidance document RR-890 provides detailed instructions on one method the department considers scientifically valid for purposes of calculating site specific residual contaminant levels that are protective of groundwater quality. A table of residual contaminant levels that are calculated using the standard default exposure assumptions can be found at: www.dnr.wi.gov/org/aw/rr/.

SECTION 315. NR 720.11 Title is amended to read:

NR 720.11 ~~Determining~~ Procedures for determining residual contaminant levels based on protection of human health from direct contact with contaminated soil.

SECTION 316. NR 720.11(1) through (5) are repealed.

SECTION 317. NR 720.11(1) through (4) are recreated to read:

NR 720.11 (1) GENERAL. If a responsible party selects this option, residual contaminant levels for soil based on protection of human health from direct contact shall be developed using the following criteria:
(a) For individual compounds using an excess cancer risk of $1x10^{-6}$ and a hazard quotient for non−carcinogens of one; and
(b) The cumulative excess cancer risk will not exceed $1x10^{-5}$ and the hazard index for non−carcinogens will not exceed one for the site or facility.
(c) Risks for carcinogens and hazard quotients for non−carcinogens are presumed to be additive within each category, unless there is specific information that demonstrates that an alternative approach is more appropriate.
(d) If toxicological values for both carcinogenic and non−carcinogenic end points exist for a substance, both shall be evaluated and the method that generates the lowest residual contaminant level shall be used for the site or facility.
(2) METHODS AND PROCEDURES. Responsible parties shall determine a residual contaminant level to protect public health from direct contact with soil contamination using scientifically valid procedures and toxicological values approved by the department and the default exposure assumptions identified in sub. (3) or alternative assumptions specifically approved by the department in writing.

Note: The department will generally consider toxicological values in the following order: U.S. EPA's Integrated Risk Information System (IRIS); U.S. EPA's Provisional Peer Reviewed Toxicity Values (PPRTV); Agency for Toxic Substances and Disease Registry (ATSDR); California EPA (Cal EPA); U.S. EPA's Health Effects Assessment Summary Tables (HEAST); other pertinent toxicological information.

(3) DEFAULT EXPOSURE ASSUMPTIONS. (a) *Non−carcinogens*. When the contaminant is not a carcinogen, the following default exposure assumptions shall be used:

1. When the land use of a site or facility is classified as non−industrial, in accordance with s. NR 720.11 (2),

a. Incidental ingestion of soil shall be assumed to occur at the rate of 200 mg of soil per day for a 15 kg child for 350 days each year,

b. Dermal absorption of soil shall be determined assuming a child's daily exposed skin surface area of 2,800 cm^2 with a skin-soil adherence factor of 0.2 mg/cm^2 and a contaminant specific dermal absorption fraction,

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at a 24-hour daily exposure rate determined by the volatile's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of $1.36x10^9$ m^3/kg.

d. An averaging period for exposure shall equal the default exposure duration of 6 years.

2. When the land use of a site or facility is classified as industrial, in accordance with s. NR 720.11 (2),

a. Incidental ingestion of soil shall be assumed to occur at the rate of 100 mg of soil per day for a 70 kg adult worker for 250 days each year,

b. Dermal absorption of soil shall be determined assuming an adult outdoor worker's daily exposed skin surface of 3,300 cm^2 with a skin-soil adherence factor of 0.2 mg/cm^2 and a contaminant specific dermal absorption fraction,

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at an 8-hr daily exposure rate determined by the volatile contaminant's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of $1.36x10^9$ m^3/kg,

d. An averaging period of exposure shall equal the default exposure duration of 25 years.

(b) *Carcinogens.* When the contaminant is a carcinogen, the following default exposure assumptions shall be used:

1. When the land use of a site or facility is classified as non−industrial, in accordance with s. NR 720.11 (2),

a. Incidental ingestion of soil shall be assumed to occur at the rate of 200 mg of soil per day for 350 days each year for 6 years for a 15 kg child and the rate of 100 mg per day for 350 days each year for 24 years for a 70 kg adult,

b. Dermal absorption of soil shall be determined assuming a child's daily exposed skin surface area of 2,800 cm^2 with a skin-soil adherence factor of 0.2 mg/cm^2, and an adult's daily exposed skin-surface area of 5,700 cm^2 with a skin-soil adherence factor of 0.07 mg/cm^2 and a contaminant specific dermal absorption fraction,

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at a 24-hr daily exposure rate determined by the volatile contaminant's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of $1.36 x10^9$ m^3/kg. For mutagenic contaminants, age segmented exposure durations shall be assumed when age adjusted cancer slope factors are available,

d. An averaging period of 30 years of exposure consisting of 6 child years and 24 adult years shall be assumed during a 70 year lifetime.

2. When the land use of a site or facility is classified as industrial, in accordance with s. NR 720.11 (2),

a. Incidental ingestion of soil shall be assumed to occur at the rate of 100 mg of soil per day for 250 days each year for a 70 kg adult worker,

b. Dermal absorption of soil shall be determined assuming an adult outdoor worker's daily exposed skin surface of 3,300 cm^2 with a skin-soil adherence factor of 0.2 mg/cm^2 and a contaminant specific dermal absorption fraction,

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at an 8-hr daily exposure rate determined by the volatile contaminant's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of $1.36x10^9$ m^3/kg,

d. An averaging period of 25 years of exposure shall be assumed during a 70 year lifetime.

Note: EPA's regional screening level users guide provides a table containing contaminant specific dermal absorption factors and soil to air volatilization factors. The document can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/usersguide.htm

Note: Department approval of alternative exposure assumptions for a site or facility may be based on consultation with the department of health and social services. If EPA makes changes to the default exposure assumptions, the department would generally utilize the revised values.
Note: Guidance document RR-890 provides detailed instructions on one method the department considers scientifically valid for purposes of calculating site specific residual contaminant levels that are protective of the direct contact pathway. A table of residual contaminant levels that are calculated using the standard default exposure assumptions can be found at: www.dnr.wi.gov/org/aw/rr/.
(4) SOIL PARAMETER VALUES. Unless otherwise approved, when determining site specific residual contaminant levels the following soil parameter values shall be used. (a) *Direct contact*. 1. A dry soil bulk density of 1.5 gm/cm^3.
2. An air filled soil porosity of 0.28.
3. A total soil porosity of 0.43.
4. A water filled porosity of 0.15.
5. A soil particle density of 2.65 gm/cm^3.
6. A soil organic carbon content of 0.006.
(b) *Soil to groundwater.*
1. A dry soil bulk density of 1.5 gm/cm^3.
2. An air filled soil porosity of 0.13.
3. A total soil porosity of 0.43.
4. A water filled porosity of 0.30.
5. A soil particle density of of 2.65 gm/cm^3.
6. A soil organic carbon content of 0.002.

SECTION 318. NR 720.19 (1) – (5) are repealed.

SECTION 319. NR 720.19 (6) is renumbered NR 720.13.

SECTION 320. NR 720.13 Note, as renumbered is amended to read:

NR 720.13 Note: In some cases, the potential for contaminant migration or exposure to contamination through other pathways may be of concern at a site or facility. These situations could include contaminated soil in close proximity to a surface water where the potential for runoff from the site or facility to cause an impact on surface water quality exists or contaminated soil where potential for bioaccumulation through the food chain resulting in adverse impacts to human health or terrestrial ecosystems exists. ~~Section NR 720.19 (6)~~ This section requires responsible parties to establish appropriate residual contaminant levels protective of these pathways when necessary.

SECTION 321. NR 720.19 (7) and Note are repealed.

SECTION 322. NR 722 Table of Contents is amended to read:

NR 722

NR 722.01 Purpose.
NR 722.02 Applicability
NR 722.03 Definitions.
NR 722.05 General.
NR 722.07 Identification and evaluation of remedial action options.
NR 722.09 Selection of a remedial action.
NR 722.11 Risk assessments.
NR 722.13 Remedial action options report.
NR 722.15 Department response.
NR 722.17 Department database requirements for remedial actions approved with a continuing obligation.

SECTION 323. NR 722.01 is amended to read:

NR 722.01 Purpose. The purpose of this chapter is to establish minimum standards for identifying and evaluating remedial action options and selecting remedial actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 287.05, 289.06 (1) and (2), ~~292.11, 292.15~~ and ~~292.31~~ch. 292, Stats.

~~**Note:** The following portions of 40 CFR part 280 have been included in the text of this chapter: portions of s. 280.34 (a) (3); portions of s. 280.66 (a) and (b); and s. 280.66 (c). Additional portions of s. 280.34 (a) (3) are included in chs. NR 706, 708, 716 and 724. Additional portions of s. 280.66 (a) and (b) are included in chs. NR 708 and 724.~~

SECTION 324. NR 722.02 (1) through (3) are amended to read:

NR 722.02 Applicability. (1) ~~Except as provided in sub. (3m), this~~This chapter applies to all remedial actions taken by the department under the authority of ~~s. 292.11 or 292.31~~ ch. 292, Stats. This chapter does not apply to immediate actions or interim actions, unless specifically noted in ch. NR 708. In this chapter, where the term ”responsible parties” appears, it shall be read to include the department, where a department–funded remedial action is being taken.
(2) ~~Except as provided in sub. (3m),~~ Unless otherwise specified elsewhere in this rule series, this chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department, except for those sites or facilities being addressed under the dry cleaner response program.
Note: Sites being addressed under the dry cleaner response program are exempt because the comparison of remedies is accomplished through the remedial action bidding process, which requires 3 to 6 alternative bids to be compared before a remedy is selected.
(2m) ~~Except as provided in sub. (3m), this~~This chapter applies to all remedial actions taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term ”responsible party” appears, it shall be read to include the “voluntary party” where an action is being undertaken to comply with s. 292.15, Stats.
(3) In addition to being applicable to sites or facilities that are subject to regulation under ~~s~~ ch. 292~~.11 or 292.31~~, Stats., ch. NR 722 applies to the evaluation of proposed remedial action options for solid waste facilities where remedial action is required by the department pursuant to ~~s. NR 508.20(11)~~ ch. NR 508.
Note: Persons who wish to conduct response actions that will ~~meet~~ be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 ~~(1) (b)~~ or a negotiated agreement under s. 292.11(7)(d), Stats. However, a CERCLA–quality response action ~~may~~ will likely require compliance with additional requirements beyond those contained in chs. NR 700 to ~~736~~754 in order to ~~satisfy~~ be consistent with CERCLA and the NCP.

SECTION 325. NR 722.02 (3m) and Note are repealed.

SECTION 326. NR 722.02 (4) and Note are amended to read:

NR 722.02 (4) The department may exercise enforcement discretion on a case–by–case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.
Note: Sites~~,~~ or facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes~~,~~ in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility. ~~When necessary, the department will, to the best of its ability, facilitate coordination between the regulatory programs involved.~~

SECTION 327. NR 722.03 is amended to read:

NR 722.03 Definitions. ~~In~~The definitions in s. NR 700.03 apply to this chapter~~:~~.

SECTION 328. NR 722.03 (1) and (2) are repealed.

SECTION 329. NR 722.05(2) (b) is amended to read:

NR 722.05 (2) (b) Sites or facilities being addressed under a contract with the department under s. 292.31 ~~(1) (b)~~, Stats.

SECTION 330. NR 722.05 (2) (c) is amended to read:

NR 722.05 (2) (c) Department–funded response actions. For those sites or facilities where the department is responsible for selecting the appropriate remedy, significant consideration shall be given to options that provide for long-term sustainability.

SECTION 331. NR 722.05 (4) is amended to read:

NR 722.05 (4) To select a remedy or combination of remedies, responsible parties shall identify, evaluate and document an appropriate range of remedial action options to address each contaminated medium in accordance with the requirements of this chapter, when one of the following ~~is completed~~ happens:
(a) A site investigation report ~~developed~~ is completed in accordance with ch. NR 716.
(b) An ~~in–field conditions report prepared~~ evaluation of remedial action options is required in accordance with ch. NR 508.

SECTION 332. NR 722.05 (5) Note is amended to read:

NR 722.05 (5) Note: Each remedial action option identified may be ~~utilized~~ used to address more than one contaminated medium or migration or exposure pathway if that remedial action option would be protective of public health, safety and welfare and the environment for each media and migration or exposure pathway that it is proposed to address.

SECTION 333. NR 722.07 (2) Note is repealed.

SECTION 334. NR 722.07 (3) (a) is renumbered NR 722.07(3) (a), (b) and Note, and as renumbered are amended to read:

NR 722.07 (3) (a) Except as provided in par. ~~(b)~~(c), responsible parties shall use all of the criteria in sub. (4) to further evaluate appropriate remedial action options that have been identified for further evaluation under sub. (2), for each contaminated medium or migration or exposure pathway. This evaluation process shall be used to determine which remedial action option constitutes the most appropriate technology or combination of technologies to ~~restore~~:
1. Restore the environment, to the extent practicable, within a reasonable period of time, ~~and to minimize~~
2. Minimize the harmful effects of the contamination to the air, land or waters of the state,
3. Address the exposure pathways of concern, and
4. Effectively and efficiently address the source of the contamination.
Note: For cases involving a discharge and migration of organic contaminants that do not readily degrade in soil or groundwater, an active remedial action that will reduce the contaminant mass and concentration will typically be necessary. Natural attenuation, covers and barriers do not actively reduce contaminant mass and concentrations. Chlorinated compounds are the most common contaminants that fall under this provision. Some organic contaminants, such as PCBs and PAHs may not readily migrate, depending on site characteristics.
(b) Responsible parties shall document their evaluation of a remedial option or combination of options which would ~~utilize~~ use recycling or treatment technologies that destroy or detoxify contaminants, rather than transfer the contaminants to another media.
Note: The purpose of the technical and economic feasibility evaluation is to evaluate a range of remedial action options suitable for a particular site or facility to determine the practicability of implementing those options. If a particular option is not suitable for a particular site or facility, such as in situ air sparging in dense clay soils, it should not be evaluated. ~~The department would consider such an evaluation as simply an attempt to give the false impression that a wide range of options were considered.~~ Emphasis ~~must~~ should be placed on remedial action options suitable for a particular site or facility. Any remedy selected should attempt to limit secondary impacts including air and water discharges, destruction of ecosystems, and excessive use of energy.

SECTION 335. NR 722.07(3) (b) is renumbered NR 722.07(3) (c) and as renumbered is amended to read:

NR 722.07 (3) ~~(b)~~(c) A detailed evaluation based on the criteria in sub. (4) is not required in those cases where a remedial action option identified during the initial screening ~~meets one or both of the following requirements:~~
~~1.Landfill disposal of less than 250 cubic yards of untreated contaminated unconsolidated material, as measured *in situ*, is proposed.~~
~~2. The proposed remedial action option~~ results in the reuse, recycling, destruction, detoxification, treatment or any combination thereof of the hazardous substances present at the site and this proposed option:
~~a~~1. Is proven to be effective in remediating the types of hazardous substances present at the site, based on experience gained at other sites with similar site characteristics and conditions;
~~b~~2. Can be implemented in a manner that will not pose a significant risk of harm to human health, safety and welfare or the environment; and
~~c~~3. Is likely to result in the reduction or control, or both, of the hazardous substances present at the site to a degree and in a manner that is in compliance with the requirements of s. NR 722.09 (2) ~~and (3)~~to (4).
Note: Section NR 722.07 (3) ~~(b)~~(c) is intended to provide a streamlined evaluation process for certain remedial actions that are presumed to meet the evaluation and selection criteria in ss. NR 722.07 and 722.09. ~~A remedial action that results in landfill disposal of volumes of untreated contaminated soil or other unconsolidated material of 250 cubic yards or less can be reasonably expected to meet the technical feasibility and economic feasibility criteria in s. NR 722.07 (4) and further detailed evaluation of alternatives would not be warranted. Remedial actions meeting the requirements of s. NR 722.07 (3) (b) 2. can be reasonably expected to be appropriate and further detailed evaluation of alternatives would not be necessary as such remedial actions could be considered "presumptive remedies" as described in U.S. EPA OSWER Directive 9355.0-47FS.~~

SECTION 336. NR 722.07 (4) and (a) are amended to read:

NR 722.07 (4) EVALUATION CRITERIA. Except as provided in s. NR 722.07 (3) ~~(b)~~(c), the remedial action options identified by the initial screening shall be evaluated based on the following requirements and in compliance with the requirements of s. NR 722.09.
(a) *Technical feasibility.* The technical feasibility of each appropriate remedial action ~~options~~ option that effectively and efficiently addresses the sources of contamination shall be evaluated using the following criteria:

SECTION 337. NR 722.07(4) (a) 3. a. and b. are amended to read:

NR 722.07 (4) (a) 3. a. The technical feasibility of constructing and implementing the remedial action option at the site or facility given the type of contaminants and hydrogeologic conditions present.
b. The availability of materials, equipment, technologies and services needed to conduct the remedial action option taking into account the location and environmental impact of the selected materials and equipment.

SECTION 338. NR 722.07(4) (a) 3. c. Note is created to read:

NR 722.07 (4) (a) 3. c. **Note:** For example, evaluate the use of heavy equipment and cost of fuel to transport wastewater and leachate from a site compared to on-site treatment.

SECTION 339. NR 722.07(4) (a) 3. i. and j. are created to read:

NR 722.07 (4) (a) 3. i. The redevelopment potential of the site once the remedy has been implemented.
j. Reduction of greenhouse gases consistent with federal or state climate action policies.

SECTION 340. NR 722.07(4) (a) 4. d. is amended to read:

NR 722.07 (4) (a) 4. d. Current and potential use of the aquifer, including proximity to private and public water supplies and surface water bodies.

SECTION 341. NR 722.07 (4) (a) 4. g. is amended to read:

NR 722.07 (4) (a) 4. g. Effectiveness, reliability and enforceability of ~~institutional controls~~ continuing obligations.

SECTION 342. NR 722.07(4) (a) 4. i. and Note are created to read:

NR 722.07 (4) (a) 4. i. the degradation potential of the compounds.
Note: The biogeochemical environment and the contaminant of concern are critical factors in determining degradation potential. Not all compounds readily degrade in soil or groundwater, while others, such as certain petroleum compounds have a greater degradation potential.

SECTION 343. NR 722.07(4) (a) 4. h. Note is renumbered NR 722.07(4) (a) 4. i. Note and as renumbered is amended to read:

NR 722.07 (4) (a) 4. i. Note: ~~A longer restoration time frame may be appropriate to achieve the environmental laws and standards referenced in s. NR 722.07 (2) (a) and (b), if on–site treatment or recycling is selected or if engineering controls are selected for an industrial property to allow urban redevelopment.~~ The purpose of s. NR 722.07 ~~(5) (b) 4~~(4) (a) 4. is to provide criteria to determine how quickly environmental laws and standards must be achieved, due to the site–specific hazards that the contamination poses. It is not intended to authorize risk assessments, nor is it the intent of this provision to establish a generic time period that would be applied at all sites or facilities.

SECTION 344. NR 722.07(4) (b) is amended to read:

NR 722.07 (4) (b) *Economic feasibility.* The economic feasibility of each appropriate remedial action option that effectively and efficiently addresses the source of the contamination shall be evaluated, using the following criteria:

SECTION 345. NR 722.07(4) (b) 1. is repealed.

SECTION 346. NR 722.07(4) (b) 1. a. – c. are renumbered NR 722.07(3) (b) 1. – 3.

SECTION 347. NR 722.07(4) (b) d. is renumbered NR 722.07(3) (b) 4. and as renumbered is amended to read:

NR 722.07 (3) (b) ~~d~~4. Total present worth of the costs for all national priority list sites or facilities; sites or facilities where the department has entered into a contract pursuant to s. 292.31 (1) (b), Stats.; and sites or facilities where state environmental fund monies ~~or federal LUST trust funds~~ are being expended; and

SECTION 348. NR 722.07(4)(b) 1. e. is renumbered NR 722.07(4) (b) 5.

SECTION 349. NR 722.07(4) (b) 2. is repealed.

SECTION 350. NR 722.07(5) (a) Note is amended to read:

NR 722.07 (5) (a) Note: Engineering controls include on–site or off–site containment methods, such as ~~solid or hazardous waste landfill~~ covers, soil covers, engineered structures, liners, gas collection systems, armoring of sediments, erosion controls, vapor mitigation systems and groundwater slurry walls. Restricting access to a site or facility, such as constructing a fence, is ~~considered an institutional control,~~ not an engineering control.

SECTION 351. NR 722.07(5) (b) and (c) are amended to read:

NR 722.07 (5) (b) ~~*Institutional controls*~~ *Continuing Obligations*. Responsible parties shall consider the appropriateness of ~~utilizing institutional controls, including land–use and access restrictions, to supplement engineering controls and treatment remedial actions, as necessary~~ using continuing obligations to ensure that adequate protection of public health, safety and welfare and the environment is maintained over time.

(c) *Additional requirements.* Responsible parties shall comply with additional site–specific remedial action evaluation or documentation requirements that may be specified by the department due to the complexity of the site or facility, the persistence of certain compounds, or the severity of the potential or actual public health or environmental impacts.

SECTION 352. NR 722.09(2) (a) Note is amended to read:

NR 722.09 (2) (a) **Note:** Chapter NR 720 provides for ~~generic~~ residual contaminant levels ~~and for site–specific residual contaminant levels~~ or performance standards. ~~An on–site remedial action or combination of on–site actions that does not meet applicable residual~~ If residual contaminant levels ~~in Tables 1 and 2~~ are used instead of performance standards they must be determined in accordance with the requirements set forth in ch. NR 720 ~~may be selected, alone or in combination with off–site remedial actions, if site–specific residual contaminant levels or a performance standard are developed~~. A performance standard maintains a condition that is protective of human health, safety and welfare and the environment. Use of a performance standard will involve land use restrictions, maintenance agreements, long–term monitoring or a combination of these.

SECTION 353. NR 722.09 (2) (b) 1. is amended to read:

NR 722.09 (2) (b) 1. For substances that are listed in ch. NR 140, the groundwater restoration goal is the preventive action limits. The preventive action limits shall be achieved to the extent technically and economically feasible, pursuant to ss. NR 140.24 and 140.26, unless a PAL exemption is granted pursuant to s. NR 140.28.

SECTION 354. NR 722.09 (2) (b) 1. Note is repealed.

SECTION 355. NR 722.09 (2) (b) 2. is amended to read:

NR 722.09 (2) (b) 2. For substances which do not have an established standard in ch. NR 140, the department may take or require the responsible parties to conduct any necessary actions, such as developing site–specific environmental standards in cooperation with the department of health ~~and social~~ services, to protect public health, safety and welfare or to prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or non–consumptive uses.

SECTION 356. NR 722.09 (2) (d) is renumbered NR 722.09 (2) (d) 1. and 2. and as renumbered is amended to read:

NR 722.09 (2) (d) *Discharges to the air.* All emissions to the air shall comply with applicable requirements in ch. 285, Stats., chs. NR 400 to 499, and any other applicable federal or state environmental laws. In addition, for those sites or facilities where a discharge of volatile hazardous substances has occurred, the vapor intrusion pathway shall be evaluated to determine the likelihood of those substances entering the breathing space of a structure. Air contaminated from vapor intrusion shall be restored in accordance with the following requirements:

1. At sites or facilities where vapors have migrated from the source of contamination, active remedial actions shall be taken to limit or prevent, to the extent practicable, potential and actual hazardous substance discharges and environmental pollution that may attain or exceed vapor action levels.
2. The department may take or require the responsible parties to conduct any necessary actions, such as developing site–specific environmental standards in cooperation with the department of health services, to protect public health, safety and welfare or to prevent a significant damaging effect on indoor air quality for present or future use.

SECTION 357. NR 722.09(2) (e) 2. is amended to read:

NR 722.09 (2) (e) 2. Management of materials contaminated with polychlorinated biphenyls (PCBs) shall comply with the requirements of ch. NR 157 and the federal toxic substance control act, if applicable.

SECTION 358. NR 722.09 (2m) and Note are created to read:

NR 722.09 (2m) SUSTAINABLE REMEDIAL ACTION. Once the remedial action has been selected, the responsible party shall address the following criteria, as appropriate:
(a) Total energy use and the potential to use renewable energy.
(b) The generation of air pollutants, including particulate matter and greenhouse gas emissions.
(c) Water use and the impacts to water resources.
(d) The future land use and enhancement of ecosystems, including minimizing unnecessary soil and habitat disturbance and destruction.
(e) Reducing, reusing and recycling materials and wastes, including investigative or sampling wastes, and
(f) Optimizing sustainable management practices during long-term care and stewardship.
Note: Tradeoffs will exist when evaluating these criteria and responsible parties need to balance both the benefits and risks to human health and the environment when selecting and implementing the best overall approach. Additional information can be obtained from U.S. EPA at: http://www.clu-in.org/greenremediation/.

SECTION 359. NR 722.09 (4) is amended to read:

NR 722.09 (4) LANDFILL DISPOSAL OF UNTREATED CONTAMINATED UNCONSOLIDATED MATERIAL. Responsible parties may only select landfill disposal for untreated contaminated unconsolidated material if such disposal is in compliance with chs. NR 500 to ~~536~~538, the landfill's approved plan of operation and both of the following requirements:

SECTION 360. NR 722.09 (4) (b) 3. Note is amended to read:

NR 722.09 (4) (b) 3. **Note:** Material contaminated with polychlorinated biphenyls (PCBs) must be managed in accordance with the requirements of ~~ch. NR 157.~~ chs. NR 700 to 754. EPA has independent authority to regulate material contaminated with PCBs under the federal toxic substance control act. The department and EPA have entered into a memorandum of understanding that specifies how responsibility for government oversight at sites with PCB contamination will be determined. The memorandum of agreement can be found at: http://dnr.wi.gov/org/aw/rr/cleanup/ocp.pdf.

SECTION 361. NR 722.09 (5) is repealed and recreated to read:

NR 722.09 (5) CONTINUING OBLIGATIONS. All legal and administrative mechanisms that establish property-specific responsibilities shall be selected such that they are consistent with the provisions of ch. 292, Stats., ch. NR 726, and this chapter, and are protective of public health, safety, welfare and the environment.

SECTION 362. NR 722.11 (3) is amended to read:

NR 722.11 (3) When the department enters into a contract pursuant to s. 292.31 ~~(1) (b)~~, Stats., the department shall determine whether or not a risk assessment should be prepared and by whom.

SECTION 363. NR 722.13 (1) is amended to read:

NR 722.13 (1) GENERAL. Based on the evaluation and selection of remedial action options required in ss. NR 722.07 and 722.09, responsible parties shall document the evaluation and selection in a remedial action options report in compliance with the requirements of this section. Responsible parties shall submit the remedial action options report to the department within ~~30~~60 days after submitting the ~~completion of the~~ site investigation report, unless ~~the responsible parties are not required to submit it under s. NR 700.11 (1) or (2) (f), or are notified~~ otherwise specified by the department ~~that the report is not required to be submitted~~.

SECTION 364. NR 722.13 (2) (e) 1. is amended to read:

NR 722.13 (2) (e) 1. A brief summary of the rationale for choosing the remedial action, based on the evaluation required under s. NR 722.07. ~~If appropriate, this summary shall include a brief description of why landfill disposal of more than 250 cubic yards of contaminated media has been selected.~~

SECTION 365. NR 722.13 (2) (e) 3. is amended to read:

NR 722.13 (2) (e) 3. An estimate of the approximate total cost of implementing the selected remedial action option, including the costs listed in s. NR 722.07 (4) (b) ~~1~~.

SECTION 366. NR 722.13 (2) (e) 7. is created to read:

NR 722.13 (2) (e) 7. A description how the criteria is s. NR 722.09(3) regarding sustainable remedial action was addressed.

SECTION 367. NR 722.15(2) (e) 1. – 6. and Note are created to read:

NR 722.15 (2) (e) May, as a condition of approving the remedial action, do any of the following:
1. Require operation and maintenance of an engineering control on the site.
2. 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.
3. Require that the department be notified prior to a change in land use, if the proposed land use change would be such that any of the exposure assumptions on which a continuing obligation are based would no longer be protective of human health, safety, welfare or the environment.
4. Require vapor control technologies be used for any new construction on the site, or require interim actions to limit or prevent vapor intrusion be installed, operated and maintained.
5. Require site-specific actions or continuing obligations to adequately protect human health, safety, welfare or the environment.
6. Require the submittal of the information necessary for listing the site on the department database.
Note: The appropriate review fee specified in ch. NR 749 must accompany any request for the department to review a specific document.

SECTION 368. NR 722.15(3) is amended to read:

NR 722.15 (3) ~~AUTHORIZATION~~ NOTICE TO PROCEED. Unless otherwise directed, ~~responsible parties shall proceed to implement the selected remedial action in accordance with the following requirements:~~
~~(a) At~~ at sites or facilities where the department approves or conditionally approves of a remedial action report, the responsible parties shall initiate the design and construction of the selected remedial action within 90 days after department approval or conditional approval.

SECTION 369. NR 722.15 (3) (b) is repealed.

SECTION 370. NR 722.17 is created to read:

NR 722.17 Department database requirements for remedial actions approved with a continuing obligation. (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 s. NR 725.05(2) and s. NR 722.15(2)(e) , 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.
(2) The site or facility remedial action plan approval letter shall be associated with the site or facility record in the department database, for those sites required to be included on the department database.
(3) The fees required by ch. NR 749 shall be submitted to the department.
Note: Under s. 292.12(3) (b), Wis. Stats., the department has authority to charge a fee for placement on a department database.
(4) Documentation requirements shall meet s. NR 726.11, to the extent practicable.

SECTION 371. NR 724 Table of Contents is amended to read:

NR 724 Remedial and Interim Action Design, Implementation, Operation, Maintenance and Monitoring Requirements

NR 724.01 Purpose.
NR 724.12 Applicability
NR 724.03 Definitions.
NR 724.05 General submittal requirements.
NR 724.07 Department response.

NR 724.09 Design report.
NR 724.11 Design plans and specifications.
NR 724.13 Operation and maintenance.
NR 724.15 Documentation of construction and completion.
NR 724.17 Long-term monitoring.
NR 724.19 Application of new ~~soil or groundwater quality~~ environmental standards.

SECTION 372. NR 724.01 is amended to read:

NR 724.01 Purpose. The purpose of this chapter is to specify the requirements for the design, implementation, operation, maintenance and monitoring of remedial actions and certain types of interim actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, 289.06 (1) and (2), ~~292.11, 292.15 and 292.31~~ and ch. 292, Stats.

SECTION 373. NR 724.01 Note is repealed.

SECTION 374. NR 724.02 (1) and (a) are amended to read:

NR 724.02 Applicability. (1) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department:
(a) On–site treatment systems, including groundwater extraction and other remedial treatment systems.

SECTION 375. NR 722.02 (1) (c) and Note are created to read:

NR 724.02 (1) (c) Vapor mitigation systems.
Note: Remedial actions to actively remediate vapor contaminant sources fall under paragraphs (a) or (b).

SECTION 376. NR 724.02 (1) (c) is renumbered NR 724.02 (1) (d).

SECTION 377. NR 724.02 (2), (3) and (4) are amended to read:

NR 724.02 (2) The department may exercise enforcement discretion on a case–by–case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.
Note: Sites~~,~~ or facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.
Note: Persons who wish to conduct response actions that will ~~meet~~ be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11(7) (d), Stats. However, a CERCLA–quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to ~~728~~754 in order to ~~satisfy~~ be consistent with CERCLA and the NCP.
(3) This chapter applies to all remedial actions and to those types of interim actions that are specified in sub. (1) taken by the department under the authority of ~~s. 292.11 or 292.31~~ch. 292, Stats. In this chapter, where the term “responsible parties” appears, it is to be read to include the department in situations where a department–funded response action is being taken.
(4) This chapter applies to all remedial action and to those types of interim actions that are specified in sub. (1) taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term "responsible parties" appears, it shall read to include the ~~"purchaser"~~ "voluntary parties" where an action is being taken to comply with s. 292.15.

SECTION 378. NR 724.03 is amended to read:

NR 724.03 Definitions. The definitions in s. NR 700.03 apply to this chapter. In this chapter, where the term "responsible parties" appears, it shall be read to include ~~"purchasers"~~ "voluntary parties" where an action is being taken to comply with s. 292.15, Stats.

SECTION 379. NR 724.05 (1) is repealed.

SECTION 380. NR 724.05 (2) is renumbered NR 724.05 (1) and as renumbered is amended to read:

NR 724.05 ~~(2)~~~~COMPLEX SITES.~~ **(1)** GENERAL REQUIREMENTS. Unless otherwise directed by the department, ~~for sites or facilities classified as complex under s. NR 700.09 (2) and for sites and facilities where a responsible party chooses to proceed with the complex site process,~~ responsible parties shall submit the plans and reports required by this chapter in compliance with all of the following requirements:
(a) The plans, reports and specifications required by ss. NR 724.09, 724.11, 724.13 (2) and 724.17 (2) shall be submitted simultaneously and may be combined in a single report.
(b) ~~Two copies~~ One paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11(4).

SECTION 381. NR 724.05 (1) (b) Note, as renumbered, is created to read:

NR 724.05 (1) (b) **Note**: Electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR690.pdf.

SECTION 382. NR 724.05(1) (e) 2. d. and e. as renumbered, are amended to read:

NR 724.05 (1) (e) 2. d. Site name, address and location by~~, at a minimum,~~ quarter– quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15(5) (d), and the latitude and longitude of the property. ~~The location of the site or facility shall be given in sufficient detail to allow department personnel to locate and inspect the site or facility.~~
e. A location map that meets the requirements of s. ~~NR 716.15(2) (h) 1.~~ NR 716.15 (4) (a).

SECTION 383. NR 724.05 (3) is renumbered NR 724.05 (2).

SECTION 384. NR 724.07(2) Note is created to read:

NR 724.07 (2) **Note:** The appropriate review fee specified in ch. NR 749 must accompany any request for the department to review a specific document.

SECTION 385. NR 724.09 (1) is amended to read:

NR 724.09 (1) The information required in s. NR 724.05 ~~(2)~~ (1) (e).

SECTION 386. NR 724.09 (8) is amended to read:

NR 724.09 (8) A preliminary discussion of the types of, frequency of and schedule for monitoring of the remedial or interim action. This discussion shall address any water, soil, soil gas, air, vapor or other monitoring required for each component of the remedial or interim action.

SECTION 387. NR 724.11(6) (d) is amended to read:

NR 724.11 (6) (d) Use uniform, graphic scales.

SECTION 388. NR 724.13 (1) (a) and (b) are amended to read:

NR 724.13 (1) (a) Unless otherwise directed by the department, responsible parties shall conduct all necessary operation and maintenance activities in accordance with this section and in compliance with

all applicable state or federal public health and environmental laws, whichever are more stringent, until all applicable public health and environmental laws are complied with as required in chs. NR 700 to ~~726~~754.
(b) ~~Unless otherwise directed by the department, responsible~~ Responsible parties shall operate and maintain any ~~final covers~~ cover systems, liners, physical hydraulic containment systems, leachate collection systems and gas collection, extraction and management systems at sites or facilities for which they are responsible~~, for at least 30 years~~ until no longer required by the department.

SECTION 389. NR 724.13 (1) (c) and (d) are created to read:

NR 724.13 (1) (c) Responsible parties and property owners shall operate vapor mitigation systems for which they are responsible until no longer required by the department.
(d) Vapor mitigation systems and remedial actions designed to address vapor migration shall be monitored at a frequency determined by the department, to measure whether the action taken has been effective in meeting the vapor action level.

SECTION 390. NR 724.13 (2), (a) are amended to read:

NR 724.13 (2) OPERATION AND MAINTENANCE PLAN. Unless otherwise directed by the department, responsible parties shall submit to the department an operation and maintenance plan when on–site maintenance activities are necessary to implement, monitor or ensure the effectiveness of a remedial or interim action. The plan shall outline all operation, monitoring and maintenance activities, from design through case closure under ch. NR 726 or through post-closure under ch. NR 727, as appropriate, including all of the following information:
(a) The information specified under s. NR 724.05 ~~(2)~~(1) (e).

SECTION 391. NR 724.13 (2) (e) 2. is amended to read:

NR 724.13 (2) (e) 2. Reports to be submitted to the department, including the results of system and environmental monitoring and the results of the monitoring well inspections meeting the requirements of s. NR 716.13~~(7)~~ (14).

SECTION 392. NR 724.13 (2) (f) – (n) are created to read:

NR 724.13 (2) (f) A location map that includes the locations and extent of features that need to be maintained, as well as the extent of contamination.
(g) Final construction specifications on any engineering control feature.
Note: Engineering controls may include, but are not limited to a cover, barrier or a vapor mitigation system.
(h) A list of prohibited activities.
(i) A contact for questions on specific actions and the inspection log.
(j) A statement of where more site-specific information may be found.
Note: More site-specific information may be found in the department's files.
(k) For vapor mitigation systems; a diagram and photographs showing piping, venting, fans and manometer locations, vent height and location, a description of how to verify that the vapor mitigation system is operating properly, identification of prohibited activities to ensure the continued effectiveness of the vapor mitigation system and direction to notify the department before any action is taken which would disturb operation of the vapor mitigation system.
(L) Air emission reporting and permitting, as applicable.
(m) Monthly manometer checks.
(n) Annual inspection of system parts.

SECTION 393. NR 724.13 (3) is amended to read:

NR 724.13 (3) PROGRESS REPORTS. ~~Unless otherwise directed by the department, for sites or facilities classified as complex under s. NR 700.09 (2) and for sites or facilities where a responsible party chooses to proceed with the complex site process,~~ In addition to the general progress reporting requirements in s. NR 700.11, responsible parties shall submit ~~quarterly~~ semi-annual operation and maintenance progress reports to the department ~~in accordance with this subsection~~. Progress reports shall be sequentially numbered, starting with the first report which is due no later than ~~3~~ 6 months after the remediation system begins operation. ~~, and shall include all of the following:~~

~~(a) A brief discussion of the progress of the remediation system, including:~~
~~1. As applicable to the site or facility, total contaminant extraction and destruction to date in pounds of contaminant removed.~~
~~2. A discussion of any system operational problems, periods of shutdown, equipment malfunctions and any potential problems.~~
~~3. An overall evaluation of the effectiveness of the system, including an evaluation of whether or not any active remediation should be modified or turned off, based upon actual and projected contaminant destruction data, whether or not natural attenuation can be relied upon to effectively complete the remediation, whether or not natural attenuation monitoring will be required, and whether or not the site or facility is ready to apply for case closure under ch. NR 726.~~
~~4. Recommendations for future activities, if appropriate.~~
~~(b) A site map that indicates the location of pertinent equipment and sampling points at the site or facility.~~
~~(c) Sufficient tables, graphs and figures to efficiently and concisely summarize and portray relevant data and pertinent field measurements.~~
~~(d) Laboratory reports and chain-of-custody for any laboratory data, unless otherwise directed by the department.~~
~~(e) A completed remediation system~~ Information related to operation and maintenance ~~reporting~~ shall be provided on a reporting form supplied by the department~~, to be submitted semi-annually for those sites or facilities with active engineered remediation systems or annually for those sites or facilities with passive remediation systems~~. The department may require progress reports be submitted at a different frequency than semi-annually.
Note: Operation and maintenance progress reports should be submitted for both active and passive remediation systems. Progress reports required under this subsection are not the same as post-closure maintenance inspection logs for remedies such as performance standard covers.
Note: Copies of remediation system operation and maintenance reporting forms may be obtained from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, Wisconsin 53707, or at http://dnr.wi.gov/org/aw/rr/archives/pubs/4400-194.pdf.

SECTION 394. NR 724.13 (3) (f) is repealed.

SECTION 395. NR 724.13 (4) and (a) are amended to read:

NR 724.13 (4) OPERATION AND MAINTENANCE PLAN REVISIONS. When warranted by changes in the design, operation or maintenance of the interim or remedial action, or when requested by the department, responsible parties shall revise the appropriate section of the operation and maintenance plan. Plan revisions shall be submitted to the department and shall:
(a) Include the information required in s. NR 724.05 ~~(2)~~ (1) (e).

SECTION 396. NR 724.13 (4) (c) is amended to read:

NR 724.13 (4) (c) Document any changes in the time of anticipated case closure ~~and any conditions the department may place on case closure under ch. NR 726~~.

SECTION 397. NR 724.15 (3) (a) is amended to read:

NR 724.15 (3) (a) The information specified under s. NR 724.05 ~~(2)~~ (1) (e).

SECTION 398. NR 724.17(3) (a) is renumbered NR 724.17(3) (a) and (b) and as renumbered is amended to read:

NR 724.17 (3) LONG–TERM MONITORING RESULTS. (a) ~~Unless otherwise directed by the department, responsible~~ Responsible parties shall submit a ~~written~~ monitoring results report to the department after any sampling, unless otherwise directed by the department. Responsible parties shall submit the monitoring results report, including results from private and public wells, within 10 business days of receiving the sample results. Monitoring results shall be submitted in accordance with s. NR 716.14.
Note: Section 292.11, Stats. and ch. NR 706 require that the department be notified immediately of any hazardous substance discharge.

Note: Section NR 716.14 requires the submittal of specific monitoring result information in a letter or on a form provided by the department.
(b) The report shall include all of the following information:

SECTION 399. NR 724.17 (3) (b) 1. – 2., as renumbered, are amended to read:

NR 724.17 (3) (b) 1. The information specified under s. NR 724.05 ~~(2)~~ (1) (e).
2. Sampling results ~~on forms provided by the department or in an alternate format approved in advance by the department~~. ~~The department recommends that groundwater monitoring results be submitted to the department in an electronic (i.e., computer disk) format. However, hard copy (i.e., paper) forms may be used for the submittal of groundwater monitoring results~~.

SECTION 400. NR 724.17 (3) (b) 6., as renumbered, is amended to read:

NR 724.17 (3) (b) 6. A preliminary analysis of the cause and significance of any concentrations that attain or exceed specific environmental standards and any increases in concentrations of substances that previously attained or exceeded specific environmental standards, including the factors specified in s. NR 140.24 (1) (c) 1. to ~~9~~10. for groundwater.

SECTION 401. NR 724.17 (3) (b) and (c) and Note are repealed.

SECTION 402. NR 724.17 (4) (a) is amended to read:

NR 724.17 (4) DEPARTMENT REVIEW. (a) The department shall review and respond to the results of ~~long-term~~ monitoring data ~~every 5 years~~, if requested to do so by the responsible parties, to evaluate the effectiveness of the remedial action in achieving the environmental and public health laws.

SECTION 403. NR 724.17(4) (a) Note is created to read:

NR 724.17 (4) (a) **Note:** The appropriate review fee specified in ch. NR 749 must accompany any request for the department to evaluate environmental data.

SECTION 404. NR 724.17 (4) (c) is amended to read:

NR 724.17 (4) (c) The department may require additional remedial action, pursuant to ~~s. 292.11, Stats., or a contract under s. 292.31~~ch. 292, Stats., based on the evaluation of monitoring results.

SECTION 405. NR 724.19 (1) and (2) are amended to read:

NR 724.19 Application of new ~~soil or groundwater quality~~ environmental standards. (1) If, after a remedial action selected in accordance with the requirements of ch. NR 722 is implemented, ~~the soil cleanup~~ any applicable environmental standards ~~in ch. NR 720 or the groundwater quality standards in ch. NR 140~~ are modified by the department to be more stringent, or if ~~soil or groundwater quality~~ additional environmental standards are promulgated ~~for additional substances~~, the department shall require responsible parties to comply with the new or modified ~~soil or groundwater quality~~ environmental standards if the department determines that, for a specific site or facility, compliance with the more stringent standards is necessary to ensure that the interim action or remedial action will be protective of public health, safety and welfare and the environment.
(2) If, after a remedial action selected in accordance with ch. NR 722 is implemented, ~~the soil cleanup standards in ch. NR 720 or the groundwater quality~~ any applicable environmental standards ~~in ch. NR 140~~ are modified by the department to be less stringent, the department shall approve of case closure if requested by responsible parties once the new, less stringent standards are achieved, if the department determines that the new, less stringent standards will be protective of public health, safety and welfare and the environment at a specific site or facility that is the subject of a case closure request under ch. NR 726.

SECTION 406. NR 725 is created as:

NR 725 Notification Requirements for Residual Contamination and Continuing Obligations.

NR 725.01 Purpose.
NR 725.02 Applicability.
NR 725.03 Definitions.
NR 725.05 Situations where notification is required.
NR 725.07 General notification requirements.

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 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, 289.06 and ch. 292, Stats.

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 or persons receiving approval of a remedial action plan under ch. NR 722, when the department determines that notification is necessary.
(2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter also applies to the proposed closure of solid waste facilities where remedial action is required by the department.

NR 725.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

NR 725.05 Situations where notification is required. (1) PERSONS REQUIRING NOTIFICATION. Written notification shall be provided to the following parties if the property meets any of the criteria in sub. (2):
(a) The owner of each property within or partially within the contamination site or facility boundaries, other than properties owned by the responsible party,
(b) Occupants of those properties listed in par. (a), as appropriate,
Note: Notification of occupants may be done by providing copies of the notification letter to occupants or to the property owner to distribute, by posting the notification letter at the property, or by other means, as long as written notification is included.
(c) The clerk of the county, and town or village or city where a public street or highway right–of–way is located, and to the municipal department or state agency that is responsible for maintaining the public street or highway, and
(d) The railroad that maintains the railroad right–of–way.
Note: In cases where an owner of record cannot be located, responsible parties are encouraged to work with the agency project manager regarding notification.
(e) The owner of each property where a monitoring well was constructed, but where the monitoring well was unable to be located for abandonment, or where continued monitoring will be required.
Note: Monitoring wells need to be located before a closure request is prepared, so that all necessary notifications are completed in a timely manner.
Note: In some cases, continued monitoring of a well may be required of another responsible party, in which case responsibility for the abandonment of the well will be a condition for closure for that responsible party.
(2) SITUATIONS REQUIRING NOTIFICATION. Written notification shall be provided in the following situations:
(a) Groundwater contamination which attains or exceeds ch. NR 140 enforcement standards remains after completion of the remedial action,
(b) Soil contamination which attains or exceeds ch. NR 720 residual contaminant levels remains after completion of the remedial action,
(c) A monitoring well will not be abandoned upon completion of the remedial action because:
1. The well was unable to be located,
2. A property owner requested the responsible party not to abandon the well, to allow for continued monitoring by the property owner and the agency with administrative authority has approved the request, or
3. Continued monitoring of the well is required by the agency with administrative authority.
(d) Where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cap, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover or containment structure were removed.

(e) A building, soil cover, cover or engineered containment structure must be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720.
(f) A building or other structural impediment at a site or facility has prevented either the completion of an investigation to determine the degree and extent of contamination, or the completion of the remedial action.
(g) A property has been classified as industrial under ch. NR 720 and soil contamination on the property has only been remediated to the industrial residual contaminant levels.
(h) Sub-slab vapor risk screening levels have been exceeded following source removal and remedial actions taken to address contamination.
Note: Operation and maintenance of a vapor mitigation system will be required in order to limit or prevent vapor intrusion.
(i) Compounds of concern will continue to be used at the site after closure.
Note: Property use and occupancy restrictions will be applied to ensure that closure will be protective.
(j) Site-specific hydrogeology controls the vapor exposure pathway into a building and a vapor mitigation system designed for the site must be operated and maintained in order to limit or prevent vapor intrusion.
Note: Additional actions may be required to enable a vapor mitigation system to work, due to the hydrogeology.
(k) Vapor inhalation exposure assumptions for a non-residential setting will be applied for closure.
Note: Property use and occupancy restrictions will be applied to ensure that closure will be protective.
(L) Contamination in soil or groundwater from volatile compounds remains after completion of the remedial action, in an area that does not have buildings at the time of closure.
Note: A completed vapor pathway depends on the construction and use or occupancy of a building or structure and other exposure assumptions. Vapor mitigation or vapor control technologies may be needed to limit or prevent exposure in the future if a building is to be constructed, or if other land use changes or actions could result in a completed vapor pathway. NR 726 specifies closure conditions regarding the option of using vapor control technologies to limit or prevent future exposures.
Note: The department may also require notification for site-specific reasons upon review of a closure request, in accordance with s. NR 726.13 or upon review of a remedial action plan in accordance with s. NR 722.15(2)(e). Responsible parties are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

NR 725.07 General notification requirements. (1) APPENDIX A LETTER. The responsible party, or other party required to provide notification by the department, shall send a letter that contains the standard provisions in Appendix A. All notification letters 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.
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 Appendix A language regarding closure needs to be changed to reflect the applicable situation.
(2) NOTIFICATION METHOD. Unless otherwise directed by the department, notification letters shall be sent via certified mail, return receipt requested, or priority mail with signature confirmation. If the letters are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the owner of the property or other applicable party may refuse to sign for the letter.
Note: The department will not conduct a closure review until at least 30 days after the date on which the notification letter was received, in accordance with s. NR 726.13. Parties receiving the notification letter may notify the department within the 30 days to request additional time to finalize an agreement on continuing obligations, if needed.
(3) NOTIFICATION OF THE DEPARTMENT OF TRANSPORTATION. Notification letters for department of transportation rights-of-way shall be sent either electronically, or via certified mail, return receipt requested, or standard mail with use of a complete mailing address.
Note: Send notifications for DOT rights-of-way electronically to: DOTHazmatUnit@dot.wi.gov , or by mail to: Wis. DOT Bureau of Equity and Environmental Services, 4802 Sheboygan Ave. Room 451, PO Box 7965, Madison, WI 53707-7965. Include “Notification of Contamination” in the subject line of the e-mail. The Department of Transportation (DOT) sends a receipt electronically (e-mail).
(4) FACTSHEETS. (a) *Groundwater.* A department fact sheet that describes the use of natural attenuation as a final remedy, shall be enclosed with all letters that are sent to parties listed under s. NR 725.05(1)

with ch. NR 140 groundwater standard exceedances, where natural attenuation is to be used as a final remedy.
(b) *Liability and responsibilities of off-source property owners*. A department fact sheet that describes the responsibilities and limits of liability of a property owner under s. 292.12 and 292.13, Stats., shall be enclosed with all letters that are sent to owners of properties, sites or facilities meeting one or more of the conditions of sub. NR 725.05 (2), except for any property owned by the responsible party.
Note: Copies of department fact sheets may be obtained by accessing the following web site: http://dnr.wi.gov/org/aw/rr/archives/pub_index.html or from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P. O. Box 7921, Madison, Wisconsin 53707. The referenced fact sheets are RR 671 - "What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater" and RR 819 - "Continuing Obligations for Environmental Protection, Responsibilities of Wisconsin Property Owners".

NR 725 Appendix A
Notification Letter Template
Residual Contamination and Continuing Obligations

Use of this template letter is required under s. NR 725.07, Wis. Adm. Code, for notification of property owners and rights-of-way holders affected by residual contamination and continuing obligations. Only a subset of the obligations listed in this template will be required at any particular site.

Notification is required under Wis. Adm. Code:

- ch. NR 725, prior to placement of a continuing obligation by the agency with administrative authority through a closure letter, or
- ch. NR 722, as part of a remedial action plan approval, or
- ch. NR 708, for a local governmental unit directed to take an action at a site to maintain their liability exemption.

In addition to the instructions below, specific paragraph instructions are provided within the template, to identify which paragraphs should be used for specific situations. These directions are in ***bold italics***. Also, within paragraphs are additional instructions for site-specific detail. These directions are in *italics* and are highlighted in *gray*.

INSTRUCTIONS: *All letters sent to rights-of-way holders, or owners whose property meets any of the listed criteria shall, at a minimum, contain the specified provisions in order to satisfy the requirements of ch. NR 725, Wis. Adm. Code. You may also want to work with an environmental professional in preparing this letter.*

Follow paragraph-specific instructions. Use all applicable paragraphs. *If requesting remedial action plan approval, or if the Department has directed a local governmental unit to take an action at a site, modify the language regarding a 'closure request' to reflect the appropriate situation ("remedial action plan approval" or "liability clarification").*

Use this template if you will be providing notification for a site that meets one or more of the following criteria:

- *groundwater that attains or exceeds applicable standards remains after remedial action is complete,*
- *soil that attains or exceeds applicable standards remains after remedial action is complete,*
- *one or more monitoring wells have not been located for abandonment, or*
- *one or more monitoring wells will be kept for future monitoring,*
- *a cover (which includes soil covers or pavement) was used to address exposure by the groundwater pathway or by direct contact,*
- *a structural impediment (generally a building or other type of structure) prevented completion of a site investigation or remedial action,*
- *industrial land use soil standards were used for cleanup,*
- *the continued operation of a vapor mitigation system is necessary in order to limit or prevent vapor intrusion,*
- *compounds of concern will continue to be used in facility operations after closure,*
- *site-specific hydrogeology controls the vapor exposure pathway into a building and a vapor mitigation system designed for the site is necessary to limit or prevent vapor intrusion,*
- *vapor inhalation exposure assumptions for a non-residential setting will be applied for closure, and*

- *contamination in soil or groundwater from volatile compounds remains after completion of the remedial action, in an area that does not have buildings at the time of closure.*

The Department may also require a condition based on site-specific circumstances. If this is the case, consult with the project manager to determine what information to include in the notification of any affected property owner.

The agency cannot provide a response on a closure request until at least 30 days after this notification letter has been sent. Documentation that this letter has been sent must be provided to the agency with administrative authority for an approval or decision under ch. NR 726, Wis. Adm. Code.

NOTIFICATION LETTER TEMPLATE:

Dear [sir/madam],

> **[*Start the letter using the following two paragraphs to notify right-of-way holders, or property owners other than the source property owner (location where the release occurred) whose property has been affected by the contamination. To notify the source property owner, proceed to the next two paragraphs.*]**

"This letter is in regards to the investigation of a release of [*describe type of release*] on [*specify location of the source property*] that has shown that contamination has migrated onto your property. I have conducted a cleanup, and will be requesting that the Department of [*insert either "Natural Resources" or "Safety and Professional Services" or "Agriculture, Trade and Consumer Protection"*] grant case closure. Closure means that the Department will not be requiring any further investigation or cleanup action to be taken."

"As part of the cleanup, I am proposing that [*describe the remedy applied, and any resulting continuing obligation*] be used not only at [*specify location of the source property*], but also at your property. [*Describe the type and location of the continuing obligation(s).*]"

> **[*Start the letter using the following two paragraphs to notify the source property owner- when the party conducting the cleanup does not own the source property. These two paragraphs are only applicable for a letter to the source property owner.*]**

"This letter is in regards to the investigation of a release of [*describe type of release*] on [*specify location of the source property*] that has shown that contamination remains on your property. I have conducted a cleanup, and will be requesting that the Department of [*insert either "Natural Resources" or "Safety and Professional Services" or "Agriculture, Trade and Consumer Protection"*] grant case closure. Closure means that the Department will not be requiring any further investigation or cleanup action to be taken."

"As part of the cleanup, I am proposing that [*describe the remedy applied, and any resulting continuing obligation*] be used at [*specify location of the source property*]. [*Describe the type and location of the continuing obligation.*]"

> **[*Use the following four paragraph for all sites. Include the DNR fact sheet RR- 819, "Continuing Obligations for Environmental Protection, available at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR819.pdf.*]**

"The Department of *[insert* "Natural Resources*" or "*Safety and Professional Se*rvices" or "*Agriculture, Trade and Consumer Protection*"*] will not review my closure request for at least 30 days after the date of this letter. As an affected property owner, you have a right to contact the Department to provide any technical information that you may have that indicates that closure should not be granted for this site. If you would like to submit any information to the Department of [*insert "*Natural Resources*" or "*Safety and Professional Servic*es" or* Agriculture, Trade and Consumer Protection*"]* that is relevant to this closure request, you should mail that information to: [*insert name and address of agency contact for the site*]."

"Please review the enclosed legal description of your property, and notify me within the next 30 days if the legal description is incorrect."

"Before I request closure, I will need to inform the Department as to who will be responsible for the continuing obligation on your property. Under s. 292.12, Wis. Stats., the responsibility for maintaining all necessary

continuing obligations for your property will fall on you or any subsequent property owner, unless another person has a legally enforceable responsibility to comply with the requirements of the final closure letter. If you need more time to finalize an agreement on the responsibility for [*insert the type of the continuing obligation.*], you will need to request additional time from the Department contact identified in the last paragraph of this letter. [*Indicate if any agreement or contract has been worked out between the parties.*]"

"Under s. 292.12(5), Wis. Stats., occupants of this property are also responsible for complying with any continuing obligations. Please notify any current and future occupants that may be affected by a continuing obligation, by supplying them with a copy of this letter." The DNR fact sheet, RR-819, "Continuing Obligations for Environmental Protection", has been included with this letter, to help explain a property owner's responsibility for continuing obligations on their property. If the fact sheet is lost, you may obtain copies at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR819.pdf."

[Use the following paragraph if a cover; including but not limited to pavement, a building foundation , a soil cover, an engineered cover or other barrier was used , or if a vapor mitigation system or barrier was used. If the barrier is a cover, use #1-8. If the barrier is for a vapor mitigation system, use #1-9.]

"**Prohibited Activities:** The following activities will be prohibited on any portion of the property where [pavement, soil cover, an engineered cover or other barrier] is located, as shown on the attached map, unless prior written approval has been obtained from the Wisconsin Department of [*insert either* "Natural Resources*" or* "Safety and Professional Services*" or* "Agriculture, Trade and Consumer Protection*"*]: 1) removal of the existing barrier; 2) disturbing the barrier by planting trees or shrubs; 3) replacement with another barrier; 4) excavating or grading of the land surface; 5) filling on covered or paved areas; 6) plowing for agricultural cultivation; 7) construction or placement of a building or other structure, 8) changing the use or occupancy of the property to a residential setting, which may include certain uses such as single or multiple family residences, a school, day care, senior care, hospital or similar residential exposure settings, or 9) changing the construction of a building that has a passive or active vapor mitigation system in place."

Continuing Obligations:

[*Use the following paragraph for all sites. Attach a dated maintenance plan, if applicable.*]

"If closure for this site is approved, the following are some continuing obligations for which [*insert either "you and any subsequent property owner" or "I"*] will be responsible."

[*Use the following paragraph if groundwater contamination exceeds ch. NR 140 enforcement standards for the applicable property]*

"Groundwater contamination that appears to have originated on the property located at [*insert source property address]* has migrated onto your property at [*insert address of off–source property*]. The levels of [*insert names of substances*] contamination in the groundwater on your property are above the state groundwater enforcement standards found in chapter NR 140, Wisconsin Administrative Code. If you intend to construct a new well, or reconstruct an existing well, you'll need prior DNR approval."

[*Use the following two paragraphs if natural attenuation for groundwater is used for all or part of the final remedy for groundwater which attains or exceeds an enforcement standard. If the person conducting the cleanup is not the current owner of the source property, revise the first sentence to reflect the source location, and eliminate the reference to migration. In all cases, include the Department fact sheet RR-671, "What Landowners Should Know: Information About Using Natural Attenuation to Clean Up Contaminated Groundwater*".]

"However, the environmental consultants who have investigated this contamination have informed me that this groundwater contaminant plume is stable or receding and will naturally degrade over time. I believe that allowing natural attenuation to complete the cleanup at this site will meet the requirements for case closure that are found in chapter NR 726, Wisconsin Administrative Code, and I will be requesting that the Department of [*insert either* "Natural Resources*" or* "Safety and Professional Services*" or* "Agriculture, Trade and Consumer Protection"] accept natural attenuation as the final remedy for this site and grant case closure."

“The following DNR fact sheet (RR 671 – "What Landowners Should Know: Information About Using Natural Attenuation to Clean Up Contaminated Groundwater") has been included with this letter, to help explain the use of natural attenuation as a remedy. If the fact sheet is lost, you may obtain a copy at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR671.pdf.”

**[*Use the following two paragraphs for properties where the final remedy includes residual soil contamination that attains or exceeds applicable NR 720 soil standards.*
These paragraphs are also needed if using any of the following continuing obligations: cover/barrier, structural impediment, industrial land use soil standards, or vapor potential due residual soil contamination.]**

"Residual soil contamination remains at [*Specify location(s) of remaining soil contamination*]. The remaining contaminants include [*Specify contaminants of concern*]. The following steps have been taken to address any exposure to the remaining soil contamination. [*Insert a brief description of the remedy chosen to address potential or completed exposure pathways.*]"

"If soil in the specific locations described above is excavated, the property owner at the time of excavation must sample and analyze the excavated soil to determine if residual contamination remains. If sampling confirms that contamination is present the property owner at the time of excavation will need to determine whether the material would be considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable statutes and rules. In addition, all current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken during excavation activities to prevent a health threat to humans."

[*Use the following paragraph for sites where a monitoring well which has not been located will remain on a property at the time of the closure request. A condition of closure regarding future abandonment may be allowed if earnest attempts are made to locate the well prior to submittal of the closure request.*]

"I have been unable to locate a monitoring well that was installed on your property, at the location shown on the attached map [*attach surveyed well location map with well or wells identified by number*], due to the following reason(s) [*identify reason(s)*]. When located, wells are required to be filled and sealed in accordance with ch. NR 141, Wis. Adm. Code. This will be the responsibility of the property owner at that time."

[*Use the following paragraph for sites where the property owner has requested to keep a monitoring well, at the time of the closure request. A condition of closure regarding future abandonment may be allowed if a request, with an explanation, is included as part of the closure request.*]

"You have requested that I not fill and seal well(s) [*Specify identification number(s) and location(s) of applicable monitoring wells*]. I will include this request in the case closure request to [*Specify agency with administrative authority]* for approval. If the request to keep the well is approved, you will be required to conduct a yearly inspection of the integrity of the well, and an inspection log will need to be maintained and to be available to the [*Specify agency with administrative authority]*. Filling and sealing the well in accordance with ch. NR 141, Wis. Adm. Code is still required when use of the well ceases."

[*Use the following paragraph for sites where the agency has indicated it will require the continued monitoring of certain wells, at the time of the closure request.*]

“The [*specify the agency with administrative authority*] has indicated that they will be requiring continued monitoring of wells [*insert well ID numbers*] as a condition of closure. These wells will not be filled and sealed at this time, but will need to be filled and sealed upon completion of the monitoring required in the closure letter. Filling and sealing this well in accordance with ch. NR 141 will be the responsibility of the property owner at that time.”

[*Use the following paragraph for sites where the agency has indicated it will be transferring the responsibility for continued monitoring of certain wells to another party, at the time of the closure request. Check whether access has already been worked out.*]

“The [*specify the agency with administrative authority*] has indicated that they will be requiring continued monitoring of wells [*insert well ID numbers]* for another site. These wells will not be filled and sealed at this time. The party responsible for cleanup of the [*insert name of site to which responsibility is being transferred*] will be required to fill and seal the wells in accordance with ch. NR 141.”

[Use the following two paragraphs if a cover, including but not limited to pavement, a building foundation or a soil barrier, was used as the cleanup remedy.]

"The [*insert pavement, building foundation and/or soil cover*] that exists in the location shown on the attached map must be maintained in compliance with the attached maintenance plan in order to prevent direct contact with residual soil contamination that might otherwise pose a threat to human health."

"If you choose to remove any portion of the cover, you will need to notify the Department of [*insert either “Natural Resources” or “Safety and Professional Services” or "Agriculture, Trade and Consumer Protection*"], in order to determine what additional cleanup actions may be needed."

[Use the following sentence only if a building foundation is acting as a cover or barrier.]

"In this case, the building is also considered a structural impediment, and additional investigation and response requirements apply if the building is removed."

[*Use the following paragraph if soil standards applied for cleanup were based on industrial land use in accordance with ch. NR 720*.]

"Soil samples that are representative of currently remaining residual soil contamination on this property contained [*Insert names of contaminants that exceeded NR 720 non-industrial soil standards and met industrial standards*] in concentrations that met NR 720 industrial soil standards but exceeded the non-industrial soil standards. Under s. 292.12 (2) (c), Wis. Stats., the property may not be used or developed for a residential, commercial, agricultural or other non-industrial uses, unless (at the time that the non-industrial use is proposed) an investigation is conducted, to determine the degree and extent of [*type of contaminant*] contamination that remains on the property, and remedial action is taken as necessary to meet all applicable non-industrial soil cleanup standards. You will need to notify the Department of [*insert either “*Natural Resources*” or “*Safety and Professional Services*” or "*Agriculture, Trade and Consumer Protection*"*] prior to changing the use of this property, to determine what additional cleanup actions may be needed."

[*Use the following paragraph if a structural impediment, such as a building or other type of structure, remains on the property, which restricted completion of either the investigation or cleanup. This paragraph may also apply to site-specific situations which prevent a complete investigation or cleanup, such as an overhead power lines. Contact the agency with administrative authority first for site-specific situations. Revise the first sentence as needed in site-specific situations.]*

"Structural impediments existing at the time of cleanup, such as [*insert description of the impediments*], made complete investigation and remediation of the contamination on this property impracticable. Prior to the removal of the structural impediment, you will need to notify the Department of [*insert either “*Natural Resources*” or “*Safety and Professional Services*” or "*Agriculture, Trade and Consumer Protection"], in order to determine if further investigation and cleanup will be required. If the structural impediments on this property are removed, the property owner will need to investigate the degree and extent of [*type of contaminant*] contamination and is responsible for any further cleanup necessary."

[*Use the following paragraph for all vapor intrusion related continuing obligations*.]

"Vapor intrusion is the movement of vapors coming from volatile chemicals in the soil or groundwater, into buildings where people may breathe air contaminated by the vapors. Vapor mitigation systems are used to interrupt the pathway, thereby reducing or preventing vapors from moving into the building.”

[Use the following paragraph if continued operation of a vapor mitigation system will be needed to limit or prevent exposure to vapors.]

“Vapors of [*insert the type of compounds found in vapors at this site or property*] have migrated onto your property. A vapor mitigation system was installed. You will need to operate and maintain the vapor mitigation system, in accordance with the attached maintenance plan. This may include maintenance the floor of the building. The agency will require inspections of the system and define the frequency in the closure letter. The inspection log needs to be made available to the [*identify the agency with administrative authority*]. Submittal of the log may also be required. You will also need to notify any future owners or occupants of this property of the need to maintain this system."

[*Use the following paragraph if the compounds of concern are still being used in facility operations.*]

“The current use of the property is [*type of operation*]. The operations introduce [*type of contaminant*] into the indoor air space. Case closure is possible, based on site-specific conditions [*identify exposure assumptions applied, typically a non-residential exposure setting*]. Prior to changing the use or occupancy of this property to a residential exposure setting, the property owner will need to notify the Department of [*insert either “*Natural Resources*” or “*Safety and Professional Services*” or "*Agriculture, Trade and Consumer Protection”]. Depending on exposure conditions, additional response actions may be necessary.“

[Use the following paragraph if a vapor mitigation system is needed due to site-specific hydrogeologic conditions. Use this paragraph in conjunction with the paragraph above for continued operation of a vapor mitigation system.]

“The [*insert description of any hydrogeologic control system needed to control water or contamination from entering the building, or needed for the vapor mitigation system to work]* needs to be operated and maintained. [*Describe the reason for, location of, and need for the type of mitigation system involved.*] “

[*Use the following paragraph if site-specific exposure assumptions were used to address vapor migration at this site, and property use will be restricted to non-residential uses.*]

"Vapors of [*insert the type of compounds found in vapors at this site or property*] have migrated onto your property. The following are the exposure assumptions used to address exposure to vapors at this site: [*define and list what assumptions were used in addressing vapor migration and exposure at this site*]. Therefore, use of the property will be restricted to certain non-residential uses. Prior to changing the use or occupancy of this property to a residential exposure setting, the property owner will need to notify the Department of [*insert either “*Natural Resources*” or “*Safety and Professional Services*” or "*Agriculture, Trade and Consumer Protection*"*] and to assess whether the closure is still protective. Depending on exposure conditions, additional response actions may be necessary.”

[*Use the following two paragraphs if contamination in soil or groundwater from volatile compounds remains after completion of the remedial action that could be of concern for migration of vapors into a future building. This is especially important in cases where elevated residual soil concentrations or large volumes of soil contaminated with volatile compounds remain.*]

"Contamination of [*insert the type of contaminants found in soil or groundwater at this site or property*] has migrated onto your property. While vapors are not of concern at this time, they may pose a health issue if buildings are constructed on this property in the future. If a property owner intends to construct a building to be occupied, the property owner will need to first notify the Department of [*insert either “*Natural Resources*” or “*Safety and Professional Services*” or "*Agriculture, Trade and Consumer Protection"]. Vapor control technologies will be required for construction of occupied buildings unless the property owner assesses the vapor pathway and DNR concurs that conditions at the property are protective of the new use."

“In addition, depending on site-specific conditions, construction over contaminated materials may result in vapor migration of contaminants into enclosed structures or migration along newly placed underground utility lines. The potential for vapor inhalation and means of mitigation should be evaluated when planning any future redevelopment, and measures should be taken to ensure the continued protection of public health, safety, welfare and the environment at the site.”

Summary:

[*Use the following three paragraphs for all letters.*]

"Once the Department makes a decision on my closure request, it will be documented in a letter. If the Department grants closure, you will receive a copy of the closure letter. If you need to, you may also obtain a copy of the closure letter by requesting a copy from me, by writing to the agency address given above or by accessing the DNR Geographic Information System (GIS) Registry (via RR Sites Map) on the internet at http://www.dnr.wi.gov/org/aw/rr/gis/index.htm. The final closure letter will contain a description of the continuing obligation, any prohibitions on activities and will include any applicable maintenance plan. The final closure letter, any required maintenance plan and a map of the properties affected will be included as part of the site file attached on the GIS Registry."

"If this case is closed, all properties within the site boundaries where [*Select from the following options as applicable to the situation, you may select multiple options*: *"*groundwater contamination attains or exceeds chapter NR 140 groundwater enforcement standards*"; "*soil contamination attains or exceeds ch. NR 720 residual contaminant levels*"; "*a continuing obligation is required under ch. NR 726*"]* will be listed on the publically accessible Bureau for Remediation and Redevelopment Tracking System on the Web (BOTW) to provide public notice of remaining contamination and of any continuing obligations. In addition, information will be displayed on the Remediation and Redevelopment Sites Map (RR Sites Map); a mapping application, under the GIS Registry theme. This GIS Registry is available to the general public on the Department of Natural Resources' internet web site. DNR approval prior to well construction or reconstruction is required for all sites shown on the GIS Registry, in accordance with s. NR 812.09(4) (w), Wis. Adm. Code."

"Should you or any subsequent property owner wish to construct or reconstruct a well on your property, special well construction standards may be necessary to protect the well from the remaining contamination. Any well driller who proposes to construct a well on your property in the future will first need to obtain approval from a regional water supply specialist in DNR's Drinking Water and Groundwater Program. The well construction application, form 3300−254, is on the internet at http://www.dnr.state.wi.us/org/water/dwg/3300254.pdf., or may be accessed through the GIS Registry web address in the preceding paragraph."

> **[*Use the following paragraph for sites where contamination remains on a property other than the source property. Include the Department fact sheet RR-598, "Guidance for Dealing with Properties Affected by Off-Site Contamination*".**
> ***Do NOT use this paragraph if the property owner to whom the letter is addressed owns the source property.*]**

"The following fact sheet (Department of Natural Resources' publication #RR–589,"Guidance for Dealing with Properties Affected by Off-Site Contamination") has been included with this letter, to help explain the responsibilities you may have for maintenance of a certain remedy, the limits of any liability for investigation and cleanup of contamination, and how these differ. If the fact sheet is lost, you may obtain a copy at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR589.pdf."

> ***Use the following paragraph for all sites.***

"If you need more information about my proposed cleanup completion and request for closure, you may contact me at [*insert address and phone number*]. If you need more information about cleanups and closure requirements, or to review the Department's file on my case, you may contact [*insert the name of the agency contact*] at [*insert address and phone number*]."

Attachments: ***List attachments by name, and by figure number when applicable:***
fact sheets
RR 819 – Continuing Obligations for Environmental Protection
RR 671 – What Landowners Should Know: Information About Using Natural Attenuation to Clean Up Contaminated Groundwater
RR589 – Guidance for Dealing With Properties Affected by Off-Site Contamination
maintenance plan
any referenced site maps

SECTION 407. NR 726 is repealed and recreated as:

Chapter NR 726 CASE CLOSURE

NR 726.01 Purpose.
NR 726.02 Applicability.
NR 726.03 Definitions.
NR 726.05 General requirements for case closure.
NR 726.07 Department database requirements.
NR 726.09 Closure documentation requirements.
NR 726.11 Department database documentation requirements.
NR 726.13 Authority and approvals for case closure.
NR 726.15 Closure letters and continuing obligations.

NR 726.01 Purpose. The purpose of this chapter is to specify the minimum requirements and conditions that shall be met before the department may determine that a case related to a discharge of hazardous substances or environmental pollution at a specific site or facility may be closed. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, 289.06, and ch. 292, Stats.

NR 726.02 Applicability. (1) This chapter applies to the closure of all cases where a response action, other than an immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department, except that this chapter does not apply where the department determines under ch. NR 708 that no further action is necessary.
(2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter applies to the proposed closure of all of the following: (a) Solid waste facilities where remedial action is required by the department pursuant to ch. NR 508.
(b) Sites or facilities where remedial action has been taken by a person who is seeking a liability exemption under s. 292.15, Stats.
(3) The department may exercise enforcement discretion on a case–by–case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where there are overlapping restrictions or requirements, the more restrictive requirements shall control. The department shall, after receipt of a request and the appropriate fee under ch. NR 749 from the responsible parties, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.
Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

NR 726.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.
Note: "Agency with administrative authority" or "agency" is used in several sections of ch. NR 726 to distinguish between the actions for which the department is responsible, in contrast to those actions where all three agencies (Department of Natural Resources (DNR), Department of Safety and Professional Services (DSPS) and Department of Agriculture, Trade and Consumer Protection (DATCP)) have authority to review and approve closure requests, ensure that comment periods prior to closure approvals are followed, and to review information on the department database regarding compliance with conditions of closure.

726. 05 General Requirements for case closure. (1) The responsible party or other person requesting closure shall ensure compliance with all applicable federal, state and local public health and environmental laws, including chapters NR 700 through 754, NR 140 and NR 141, as applicable, prior to requesting case closure.
(2) NOTIFICATION. Where written notification is required under ch. NR 725, the notification requirements shall be satisfied prior to submitting a request for case closure to the agency. When a site-specific condition of closure is required for a site or facility under s. NR 726.13(1) (c), notification shall be in accordance with the requirements of s. NR 725.07.
(3) FEES. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site, the case closure fee and, if entry on the department database is required under s. NR 726.07, the fee or fees listed in ch. NR 749 for adding a site to the department database, shall be submitted to the department with each case closure request.
Note: Under s. 292.12(3) (b), Wis. Stats., the department has authority to charge a fee for placement on a department database.

(b) For sites or facilities contaminated with petroleum products discharged from a petroleum storage tank for which the department of safety and professional services has administrative authority under s. 101.144, Stats., and sites or facilities for which department of agriculture, trade and consumer protection has administrative authority under s. 94.73, Stats., that are required by s. NR 726.07 to be entered onto the department database, the fee or fees listed in ch. NR 749 for adding a site to the department database shall be submitted to the department before a case closure request is submitted to the appropriate agency. For these sites or facilities, a case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department's bureau for remediation and redevelopment tracking system, which is available on the department's internet site.
Note: The department's bureau for remediation and redevelopment tracking system can be found on the internet at http://dnr.wi.gov/org/aw/rr/brrts/index.htm
Note: "Petroleum storage tank" is defined in s. 101.144 (1) (bm), Stats., to mean "a storage tank that is used to store petroleum products together with any on–site integral piping or dispensing system." The term "petroleum storage tank" does not include a pipeline facility.
(4) For sites or facilities considering closure under this chapter, the closure request shall document that the remaining level of contamination is not likely to:
(a) Pose a threat to public health, safety or welfare or the environment.
(b) Cause a violation of ch. NR 140 groundwater quality enforcement standards at any applicable point of standards application, except where the department has granted an exemption under s. NR 140.28 for a specific hazardous substance or the criteria under s. NR 726.05(6) are met.
(c) Cause a violation of surface water quality standards in chs. NR 102 to 106.
(d) Cause a violation of air quality standards contained in chs. NR 400 to 499.
(e) Cause a vapor action level in indoor air to be attained or exceeded.
Note: Vapor action level is defined in s. NR 700.03(66r) as "the concentration of vapors from volatile compounds is at or above the 1-in-100,000 ($1x10^{-5}$) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens."
(5) A case closure request shall be complete and meet the documentation requirements of s. NR 726.09, and s. NR 726.11 if applicable.
Note: Incomplete closure requests may be denied. The review fee may be applied to review of the site investigation for grossly incomplete closure requests, on a case-by-case basis. A closure review fee would be required when a complete closure request is then submitted.
(6) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH GROUNDWATER CONTAMINATION. For sites or facilities with groundwater contamination that attains or exceeds ch. NR 140 enforcement standards at the time that case closure is requested, including sites or facilities contaminated with petroleum products discharged from a petroleum storage tank that are eligible for closure under chs. NR 726, the responsible party or other person requesting closure shall submit a case closure request to the agency for the site that documents that all of the following criteria are satisfied, if applicable:
(a). Adequate source control measures have been taken which include all of the following:
1. Whether regulated or registered under ch. Comm 10 or not, all existing underground storage tanks have been removed, permanently closed or upgraded to prevent new discharges of hazardous substances to the groundwater that would violate ch. NR 140. The same requirement applies to all new and replacement underground storage tanks not regulated under ch. Comm 10.
Note: The intent of this requirement is to ensure that source control measures are taken which prevent new or continuing releases, regardless of whether or not the tank is regulated under ch. Comm 10.
2. All new and replacement underground storage tanks regulated under ch. Comm 10 have been constructed and are being monitored in accordance with ch. Comm 10.
3. All other existing tanks, pipes, barrels or other containers which may discharge a hazardous substance have been removed, contained or controlled to prevent, to the maximum extent practicable, new discharges of hazardous substances to the groundwater that would violate ch. NR 140.
4. Where applicable, immediate and interim actions have been taken in accordance with ch. NR 708 to protect public health, safety and welfare and the environment.
5. Free product has been removed in accordance with the criteria in s. NR 708.13.
6. The concentration and mass of a substance and its breakdown products in groundwater have been reduced due to naturally occurring physical, chemical and biological processes as necessary to adequately protect public health and the environment, and prevent groundwater contamination from migrating beyond the boundaries of the property or properties which are required to be entered onto the department database.
(b). Natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time, considering the criteria in s. NR 722.07.

(c). The groundwater plume margin is stable or receding, and after case closure, groundwater contamination attaining or exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property that falls into either one of the following categories:
1. Properties for which a preventive action limit exemption has been granted.
2. Properties that have been identified as having existing groundwater contamination that attains or exceeds ch. NR 140 enforcement standards and that will be included on the department database.
(d). There is no existing or anticipated threat to public health, safety or welfare, or the environment.
(e). Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 700 to 754 and ch. NR 141, have been complied with.
(7) The following shall be required for case closure at all sites or facilities:
(a) All monitoring wells and boreholes installed during any response action taken for the site or facility shall be abandoned and documented as abandoned in accordance with s. NR 141.25, except for specific wells that the agency approves of retaining until sampling is no longer required.
(b) For sites or facilities where waste or contaminated media was generated during the response action and was stored or treated on–site, all the waste or contaminated media shall be handled and disposed of in accordance with applicable state and federal laws before a case closure request is submitted or approved.
(c) Groundwater samples used to determine compliance with ch. NR 140 shall be taken from monitoring wells constructed in accordance with ch. NR 141. The agency may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.
(8) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH VAPOR CONTAMINATION. A site or facility is not eligible for closure until:
(a) the vapor exposure pathway has been investigated in accordance with par. NR 716.11(5) (g). and
(b) where vapors were present above the vapor risk screening level:
1. a remedial action has been conducted and reduced the mass and concentration of volatile compounds to the extent practicable, and
Note: Vapor mitigation systems are not considered remedial actions, as they do not reduce the mass or concentrations of the contaminants. Vapor mitigation systems are used to interrupt the vapor migration pathway.
2. the vapor exposure pathway has been interrupted or mitigated.
(9) Any other condition for case closure that is necessary to protect public health, safety or welfare or the environment may be required.

NR 726.07 Department Database Requirements. (1) All sites or facilities meeting any of the criteria in s. NR 725.05 (2) or s. NR 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.
(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 a remedial action plan approval under s. NR 722.15, or in a closure approval under ch. NR 726.

NR 726.09 Closure documentation requirements. (1) CASE CLOSURE REQUEST FORM. A request for case closure shall be submitted on a form supplied by the agency and shall be accompanied by documentation that the criteria in s. NR 726.05 (1) – (8) are satisfied. One paper copy and one electronic copy of the complete closure request shall be submitted to the department, unless otherwise directed by the department. All information submitted shall be legible. Providing illegible information may result in a submittal being considered incomplete until corrected.
Note: Copies of the WDNR case closure request form (form 4400-202) and the associated department database forms (4400-245, 4400-246) for sites or facilities over which the department has administrative authority may be accessed at http://dnr.wi.gov/org/aw/rr/archives/pub_index.html#forms., or may be obtained from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, Wisconsin 53707.
Note: Electronic copies should be submitted in the Adobe portable document format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at http://dnr.wi.gov/org/aw/rr/archives/pubs/RR690.pdf.
(2) GENERAL REQUIREMENTS. In order to demonstrate that applicable federal, state and local public health and environmental laws have been complied with, and to provide information on the location and nature

of any residual contamination at the site or facility, the person who is requesting case closure shall submit all of the following information, that is applicable, as attachments to the case closure request, in the format that is specified in this subsection, and in the order that is specified in the form.
(a) Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24 (1) (b), or both.
(b) A description of the interim and remedial actions taken at the site or facility. For sites or facilities where residual soil contamination exceeds NR 720 soil standards at the time that case closure is requested, include a demonstration that the remedial action taken, and any interim action that was taken that constituted the final response action for soil contamination, satisfies the requirements of chs. NR 720 and 722, where applicable.
(c) . Maps and cross-sections shall be to scale, and use a graphic scale. The north arrow shall be pointing to the top of the map.
(d) For sites or facilities where soil excavation or active soil remediation occurred:
1. A table of soil analytical results with collection dates identified. Soil analytical data tables shall clearly indicate depth of sample, soil type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation occurred, the soil analytical data tables shall indicate whether the soil data point represents soil that was removed or soil that remains in place.
2. A map that shows the locations of all soil samples collected.
Note: Where a soil performance standard cover is the only action taken, that is not considered active soil remediation. This requirement applies to all sites where soil excavation or active soil remediation occurred, not just those to be included on the department database under s. NR 726.07.
(e) Where the agency has required groundwater quality sampling to be conducted, results from a minimum of 8 successive quarterly rounds of sampling to demonstrate compliance with either the applicable requirements of ch. NR 140 or the requirements of sub. NR 726.05(6), unless otherwise directed or approved by the agency.
Note: Under ch. NR 722, alternate sampling schedules may be proposed, based on site geology, contaminants of concern, remedial action applied and redevelopment plans. The department expects that more monitoring may be necessary at complex sites, or where statistical analysis will be used for data evaluation. Conversely, less post-remediation monitoring may be appropriate for certain sites with significant source removal, readily degradable compounds or other well-established site conditions.
(f) For sites or facilities with sediment contamination, or soil vapor contamination, sampling data demonstrating that the remedial action selected in accordance with ch. NR 722 has restored the environment to the extent practicable and minimized the harmful effects of the hazardous substances on the air, lands and waters of the state.
(g) Submit to the department documentation that all other closure conditions have been satisfied, within 120 days after the department provides a conditional closure response.
Note: This requirement is meant to cover well abandonment and any other minor condition identified in a conditional closure letter. It does not apply to the continuing obligations specified in the final closure letter. Ch. NR 141 requires the documentation of well abandonment on a form supplied by the department. The well abandonment form, 3300-005, can be accessed at http://www.dnr.state.wi.us/org/water/dwg/forms/3300005.pdf.
(h) Where attempts to locate monitoring wells for abandonment are unsuccessful, submit documentation of the efforts made, to the department.
(i) Any other information that the department specifically requests.
(3) NOTIFICATIONS. Responsible parties or other persons requesting closure shall submit a copy of all the notifications required under ch. NR 725 or under s. NR 726.13 (1) (c) with written proof of the date on which the letters were received.
Note: These notifications will be in the case file, but will no longer be included as part of the PDF on the department database. A list of addresses of all affected properties and a cover letter detailing the continuing obligations per property will be included as part of the PDF on the department database.

NR 726.11 Department database documentation requirements. (1) GENERAL REQUIREMENTS. Responsible parties or other persons requesting closure for any site or facility meeting the criteria in s. NR 725.05 (2) or as required under s. NR 726.13(1) (c), shall submit the applicable information in a separate attachment to the case closure request. The information shall be in the order specified in the closure request form.
(a) For sites or facilities meeting the criteria of sub. NR 726.07(1), the information required in sub. (2) through (7) shall be submitted, as applicable.
(b) Information shall be submitted in the following format, unless otherwise directed by the department:

1. One paper copy and one electronic copy shall be submitted to the department.
2. Paper copies may not be larger than 11 by 17 inches.
3. Electronic copies files shall have a minimum resolution of 300 dots per inch and may not be locked or be password protected.
4. All documents shall be contained within a single portable document format file (PDF).
5. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions.
(c) All information submitted shall be legible. Providing illegible information may result in a submittal being considered incomplete until corrected.
(2) MAINTENANCE PLANS. Responsible parties or other persons requesting closure shall submit a copy of a maintenance plan for any condition listed in s. NR 725.05 (2) (d) through (L) or s. NR 726.13(1) (c), as applicable, or as otherwise required by the department. The maintenance plan shall include the following information:
(a) a location map which shows the location and extent of the structure or feature to be maintained, in relation to other structures or features on the site. The map shall also include the extent and type of residual contamination, and include property boundaries.
(b) a brief description of the type, depth and location of residual contamination.
(c) a description of the maintenance actions required for maximizing effectiveness of the engineered control, feature or other action for which maintenance is required.
(d) an inspection log, to be maintained on site, or at a location specified in the maintenance plan or approval letter.
(e) a contact name, address and phone number of the individual or facility who will be conducting the maintenance.
Note: The closure approval letter will specify whether the inspection log is to be submitted to the department and the frequency of submittal, or simply maintained on site or at the location identified in the maintenance plan. The inspection log is reviewed by the department during audits conducted of sites with continuing obligations.
(3) PHOTOGRAPHS. For sites or facilities with a cover or other performance standard, a structural impediment or a vapor mitigation system, include one or more photographs documenting the condition and extent of the feature at the time of the closure request. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.
(4) DEED AND PARCEL INFORMATION. Responsible parties or other persons requesting closure shall submit 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.
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 off-source 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/org/aw/rr/gis/index.htm.
(5) MAPS AND CROSS-SECTIONS. All the following information shall be included in a department database attachment to the case closure request.
(a) A site location map that outlines all properties within the contaminated site boundaries on a United States Geological 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. (b).
(b) A detailed site map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring 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.
(c) For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested include:
1. A map that shows the location where all soil samples were collected and identifies, with a single contour, the horizontal extent of each area of contiguous residual soil contamination that exceeds residual contaminant levels, as determined under ch. NR 720, within the contaminated site boundaries.
2. A geologic cross–section showing the vertical extent of residual soil contamination that exceeds residual contaminant levels as determined under ch. NR 720, if one was required as a part of the site investigation report. If there is groundwater contamination on the site that attains or exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, one geologic cross–section may be submitted to show the vertical extent of both soil and groundwater contamination.
(d) For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested include:
1. A geologic cross–section, if one was required under ch. NR 716, that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any.
2. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map was required under ch. NR 716. An isoconcentration map shall show the areal extent of groundwater contamination attaining or exceeding ch. NR 140 preventive action limits and the areal extent of groundwater contamination attaining or exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. If an isoconcentration map was not required under ch. NR 716, submit a map showing the horizontal extent of contamination exceeding applicable standards based on the most recent data; or where standards have not been promulgated, the horizontal extent of contamination remaining after the remedial action.
3. A groundwater flow map, representative of groundwater movement at the site. If groundwater flow direction varies by more than 20 degrees over the history of water level measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.
(e) For sites or facilities where samples were collected other than soil or groundwater, include a map showing the sampling locations and results, with type of sample and collection date identified.
(6) DATA SUMMARY TABLES. For information submitted for sites or facilities where inclusion on a department database is required under sub. NR 726.07, shading and cross–hatching may not be used on data summary tables unless prior approval is obtained from the department. All the following information shall be included in a department database attachment to the case closure request.
(a) *Soil.* For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested include a table of the analytical results showing results for the most recent samples, for all contaminants found in pre–remedial sampling, with sample collection dates identified.
(b) *Groundwater.* For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested, include:

1. A separate table of only the 8 most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified.
2. A table including, at a minimum, the previous 8 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table.
3. A completed groundwater monitoring well information form.
Note: The Groundwater Monitoring Well Information Form is required in s. NR 716.15. It can be obtained at http://www.dnr.state.wi.us/org/water/dwg/gw/forms/4400_89.pdf.
(c) *Other.* For sites or facilities where samples other than soil or groundwater were collected, include a table specifying the sample type, sample number or location, sample results and collection date.
(7) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities where a monitoring well has not been abandoned in accordance with the requirements of ch. NR 141 at the time of case closure, the following information shall be included in a department database attachment to the case closure request.
(a) A site location map with the surveyed location(s) identified on the map for those groundwater monitoring wells that have not yet been abandoned,
(b) The well construction report for each monitoring well that needs to be abandoned, and
(c) The deed with legal description for each property on which a monitoring well is located.
Note: This would include wells that have not been located for abandonment, wells that the property owner has requested to keep and not abandon at this time, and those wells required by the agency under par. NR 726.05(7) (a) for continued monitoring after closure. Proper abandonment is required once the wells are no longer used. The well construction report, form 4400-113A can be obtained at http://www.dnr.state.wi.us/org/water/dwg/gw/forms.htm

NR 726.13 Authority and Approvals for Case Closure. (1) CLOSURE APPROVAL**.** (a) The agency may grant case closure under this section, if all the following conditions are met:
1. the fees required by ch. NR 749 have been paid to the department,
2. it has been documented, in the case closure request that is submitted to the agency in compliance with the requirements of s. NR 726.09, that all applicable public health and environmental laws, including chs. NR 700 to 754, have been complied with, or where ch. NR 140 enforcement standards are the only standards that are attained or exceeded, that the criteria in s. NR 726.05(6) are satisfied, and
3. a complete case closure request is submitted to the agency in accordance with ch. NR 726.
(b) The agency may not close a case under this chapter if, at any time in the future, the remaining level of contamination is likely to:
1. Pose a threat to public health, safety or welfare or the environment.
2. Cause a violation of ch. NR 140 groundwater quality enforcement standards at any applicable point of standards application, except where the department has granted an exemption under s. NR 140.28 for a specific hazardous substance or the criteria under sub. NR 726.05 (6) are met.
3. Cause a violation of surface water quality standards in chs. NR 102 to 106.
4. Cause a violation of air quality standards contained in chs. NR 400 to 499.
5. Cause a vapor action level in indoor air to be attained or exceeded.
Note: Vapor action level is defined in s. NR 700.03(66r) as "the concentration of vapors from volatile compounds is at or above the 1-in-100,000 ($1x10^{-5}$) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens."
(c) The agency may require any other condition for case closure that is necessary to protect public health, safety or welfare or the environment. The agency may require a site-specific condition of closure, and notification of any parties affected by that condition, including but not limited to situations where contamination remains in media other than soil, groundwater or vapors, or exposure or migration pathways are not otherwise addressed, that make a continuing obligation necessary to adequately protect human health, safety or welfare or the environment.
(d) The agency may not conduct a final closure review until all the following criteria are met:
1. Documentation has been received that all required notifications under ch. NR 725 have been provided;
2. At least 30 days has elapsed since the date of receipt of the notification letters required under s. NR 725.05 or s. NR 726.13(1) (c), unless all of the affected property owners waive their right to comment within 30 days on the proposed case closure and copies of the waivers are submitted to the agency.
(e) The agency may extend the 30 day period upon request by any party receiving a notification letter.
Note: In this chapter, the "agency: refers to the "agency with administrative authority", which is either DNR, DSPS or DATCP. "Agency" is specified in subsection (1) for actions involving granting closure approval, with or without conditions, and for ensuring comment time periods between notification and closure approval. Subsections (2) and (3) describe DNR responsibilities.

(2) DEPARTMENT REVIEW RESPONSES. (a) Within 60 days after receipt of a complete request for case closure under s. NR 726.09, the department shall either determine whether the case qualifies for closure in accordance with par. (b) or acknowledge in writing the request for case closure has been received, and provide an estimated date by which the department intends to determine whether the case can be closed.
(b) Following receipt of a request for case closure under this section, the department shall review the information provided under s. NR 726.09 to determine whether the applicable public health and environmental laws, including chs. NR 700 to 754 where applicable, have been complied with and whether any further threat to public health, safety or welfare or the environment exists at the site or facility. Based on this review, the department shall approve the case closure, or conclude that additional response actions, such as additional remedial action or long–term monitoring, are needed at the site or facility, or conclude that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with.
(c) If the department approves the request for case closure, the department shall mail written notice of the closure approval to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5).
(d) If the department determines that the applicable public health and environmental laws have not been complied with, the department shall notify the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5). The notification shall indicate what conditions must be met in order for the case to receive further consideration by the department for closure.
Note: In cases where minimal information or changes are needed, this notification is most often provided by phone or email.
(e) If the department determines that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with, the department shall mail written notice to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5). The notice shall indicate what additional information the department needs in order to determine whether the case can be closed.
(f) The department shall also mail written notice of the department's response to a request for case closure to the owners of any property required to receive notification under s. NR 725.05 or s. NR 726.13 (1) (c), in addition to those parties identified under par. (c), and (d) of this subsection.
(g) Closure letters shall be associated with the site or facility record in the department database.

NR 726.15 Closure Letters and Continuing Obligations. **(1)** For sites or facilities meeting the criteria of s. NR 725.05 (2) or s. NR 726.13 (1) (c), the closure letter shall include the following:
(a) a statement that the site will be included in the department database, and that if the property owner intends to construct or reconstruct a well, prior department approval is required, in accordance with s. NR 812.09 (4) (w), Wis. Adm. Code.
(b) a requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the closure letter that apply to the property. The closure letter may also require the property owner to notify affected occupants of the need for specific continuing obligations.
(c) for conditions of closure that restrict site conditions, occupancy or property use from what is conditioned or identified in the final closure letter; a requirement that the property owner at the time that the condition changes shall notify the agency of the change in site condition, occupancy or land use, so that the agency can determine if further actions are necessary to maintain protection of public health, safety, welfare and the environment.
(d) for conditions of closure that require maintenance; a requirement that the property owner operate and maintain the applicable system, cover or containment system in accordance with the operation and maintenance plan developed under ch. NR 724. The closure letter shall also include conditions regarding inspections, documentation, availability and submittal of an inspection log, at a frequency determined by the agency.
(2) For specific continuing obligations, the closure letters shall contain the following:
(a) *Residual groundwater contamination.* If there is residual groundwater contamination at the time of case closure, the final closure letter shall include a description of the extent of groundwater contamination.
(b) *Residual soil contamination.* If there is residual soil contamination at the time of case closure, the final closure letter shall include a description of the extent of soil contamination, and shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case

closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.
(c) *Monitoring well abandonment.*1. Where there is a monitoring well that has not been abandoned as required under ch. NR 141 at the time of case closure, the closure letter shall include a description of which wells still need to be abandoned, the surveyed location, and state that the property owner at the time the well is located shall properly abandon the well in accordance with the requirements of ch. NR 141.
2. Where either a request for retaining a monitoring well for continued monitoring has been approved, or continued monitoring is required by an agency with administrative authority, the closure letter shall also require the property owner to verify the integrity of the well at least annually until use of the well is discontinued and the well is properly abandoned. The closure letter shall require that an inspection log be maintained on-site, unless otherwise directed by the agency, and require that the responsible party or property owner make the inspection log available for review by agency staff upon request.
3. Where responsibility for continued monitoring of a well is being transferred to another responsible party, the closure letter shall also require that the responsible party or property owner not abandon the specified well at that time.
Note: Typically, when responsibility for a monitoring well is shifted to another responsible party, that party also becomes responsible for well abandonment in the future.
(d) *Building, cover or containment structure for protection of groundwater.* For sites or facilities where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cover, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover, or containment structure were removed, the closure letter shall include a description of the residual contamination and the location of the building, cover or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cover, or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, cover, or containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect the groundwater, as determined under ch. NR 720.
(e) *Building, soil cover, cover or containment structure for prevention of direct contact with soils.* For sites or facilities where a building, or an engineering control, such as a soil cover, cover, or engineered containment structure is required to be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720, the closure letter shall include conditions which require the property owner to ensure that the building, soil cover, or cover such as concrete or asphalt pavement, or a composite cover, or engineered containment structure will be repaired and maintained until it is no longer needed. The closure letter shall include a description of the residual contamination and the location of the building, soil cover, cover, or engineered containment structure, and shall restrict the use of the land where the building, soil cover, cover or engineered containment structure is located to ensure that the building, soil cover or cover, will function as intended, to prevent direct contact, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, soil cover, cover, or engineered containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect human health from direct contact, as determined under ch. NR 720.
(f) *Structural impediment.* For sites or facilities where a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, or the completion of a remedial action, the closure letter shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency and then conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible.
(g) *Industrial residual contaminant levels.* For sites or facilities where industrial residual contaminant levels under ch. NR 720 have been applied for closure, the closure letter shall include a condition that restricts the use of that property to an industrial land use until non–industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation.

(h) *Vapor mitigation system for sites where sub-slab levels attain or exceed the vapor risk screening level.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where sub-slab levels attain or exceed the vapor risk screening level. The closure letter shall include conditions which require the property owner to maintain the system until it is no longer needed. The closure letter may include conditions which require maintenance of certain structural features of existing buildings. The closure letter shall include conditions which require the immediate repair and replacement of system components that fail.

(i) *Vapor mitigation system where compounds of concern are in use.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where the site is using the compounds of concern in their daily operations, in accordance with (h). The agency may require restrictions on the use or occupancy of the property to ensure that closure will be protective. The closure letter shall require notification of the agency and evaluation of the vapor intrusion pathway prior to changing use to a residential setting. The closure letter shall include a description of the type and location of the residual contamination.

Note: This would include sites or facilities where closure was based on worker exposure conditions, which then change to a different use, with different exposure assumptions.

(j) *Vapor mitigation system for sites where vapor intrusion is of concern due to hydrogeologic conditions.* The agency may require installation and operation of a vapor mitigation system and any other systems necessary for the proper operation of the vapor mitigation system, for sites or facilities which present a vapor risk, based on site-specific hydrogeologic circumstances. The closure letter shall identify the specific hydrogeologic conditions and a description of any other system necessary for the proper operation of the vapor mitigation system.

Note: This may include, but is not limited to sites where contaminated groundwater enters the structure, or sites where the moisture content of soils below the slab is high or sub-slab samples are difficult to obtain, but where other conditions indicate the potential for vapor intrusion.

(k) *Site-specific exposure conditions.* The agency may restrict the use or occupancy of the property for sites or facilities based on specific exposure assumptions for vapor intrusion, to ensure that closure will be protective. The closure letter shall include the specific exposure assumptions on which the closure decision was based.

Note: This may include non-residential settings; sites or facilities where certain commercial or industrial exposures were applied at the time of closure, which later change to a residential setting, such as single or multiple family residences, educational, child or senior care facilities, where a residential exposure would apply.

(L) *Potential for future exposure to vapors.* For sites or facilities where residual soil or groundwater contamination from volatile compounds exists, but where no building is present, the agency may require protective measures to eliminate or control vapor intrusion into a future building. The closure letter may include conditions requiring that the agency be notified prior to any building construction, and a requirement that appropriate vapor control technologies be used in the construction of any building, unless an assessment is conducted which shows that the residual contaminant levels are protective of the new use.

Note: The potential for vapor migration into a future building is dependant on the type of building and the planned use of the building. Building control technologies may include but are not limited to passive barriers, passive venting, sub-slab depressurization, sub-membrane depressurization, sub-slab pressurization, building pressurization and indoor air treatment.

(m) *Site-specific conditions.* For sites or facilities where closure is requested, and where the agency determines that there are site-specific circumstances that warrant site-specific closure conditions, the closure letter shall specify the exposure assumptions, use or occupancy restrictions, and necessary maintenance and notification of the agency if conditions change such that the exposure assumptions used no longer apply to the site, facility or property. Site-specific circumstances may include but are not limited to situations where contamination remains in media other than soil, groundwater or vapors; or exposure and migration pathways not otherwise addressed make a continuing obligation necessary to adequately protect human health, safety, welfare or the environment, If there is contamination remaining in media other than soil, groundwater or vapor, the final closure letter shall also state that any sediments or other solids excavated in the future from an area that had residual contamination at the time of closure shall be sampled, analyzed, handled and disposed of in compliance with applicable state and federal laws.

SECTION 408. NR 727 is created as:

NR 727 Continuing Obligation Requirements and Reopening Closed Cases

NR 727.01 Purpose.
NR 727.02 Applicability.
NR 727.03 Definitions.
NR 727.05 Continuing Obligation Responsibilities.
NR 727.07 Continuing Obligation Notifications.
NR 727.09 Updating the Department Database or Continuing Obligations.
NR 727.11 Fees.
NR 727.13 Reopening Closed Cases.

NR 727.01 Purpose. The purpose of this chapter is to specify the minimum responsibilities of responsible parties and owners and occupants of properties with residual contamination, where continuing obligations have been imposed in a closure approval letter or in a remedial action plan approval, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, 289.06, and ch. 292, Stats.

NR 727.02 Applicability. (1) This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department.

NR 727.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

NR 727.05 Continuing obligation responsibilities. (1) A party or person who owns or occupies a property where a continuing obligation has been imposed under either s. NR 708.17, NR 722.15, or NR 726, shall:
(a) comply with the requirements imposed by the agency, without regard to when the person obtained or occupied the property. This may include any continuing obligation necessary to ensure that conditions at the property, site or facility remain protective of public health, safety and welfare and the environment.
Note: Ch. 292, Wis. Stats., allows for legally enforceable agreements (private contracts) between parties to address the continuing obligations imposed by an agency. Since the agency is not a party to these agreements, the property owner remains responsible for compliance with a continuing obligation if an issue arises.
(b) conduct the following actions in compliance with the conditions specified by the agency, as applicable:
1. operate and maintain the response required,
2. maintain an inspection log, and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed,
3. submit the inspection log electronically, on a form provided by the department, to the agency at the frequency required, and
4. conduct long-term monitoring.
(c) allow reasonable access to the agency for inspection of any required continuing obligations.
(d) manage any residual contamination in accordance with applicable state and federal laws.
(2) For cases where a continuing obligation is required under either s. NR 708.17, NR 722.15, or NR 726, the property owner shall notify anyone purchasing the property of the responsibility to comply with the continuing obligation.
(3) For cases where occupants are responsible for maintenance of a continuing obligation under either s. NR 708.17, NR 722.15, or NR 726, the property owner shall include the continuing obligation in the lease agreement.
(4) In order to maintain the off-site exemption under s. 292. 13, Stats., the property owner, or occupant if applicable, shall avoid:
(a) interference with response actions taken, and
(b) actions that may make the contamination worse or that would cause or worsen the discharge of a hazardous substance to the environment.

NR 727.07 Continuing obligation notifications (1) NOTIFICATION OF THE AGENCY WITH ADMINISTRATIVE AUTHORITY. For situations where a continuing obligation has been imposed under either s. NR 708.17, NR 722.15, or NR 726, the property owner shall notify the agency within 45 days prior to taking any of the following actions, to determine whether further action may be necessary to protect human health, safety, welfare and the environment.

(a) *Removal of a building, cover, barrier or engineered containment structure or a portion thereof*. This includes cases with a soil cover, barrier or engineered containment structure.
(b) *Removal of a structural impediment*. This includes cases with a structural impediment that prevented completion of the investigation and/or remediation.
(c) *Change from industrial to non-industrial land use.* This includes cases where soil standards applied at closure were based on industrial land use exposure assumptions.
(d) *Change in use of a vapor mitigation system*. This includes cases with a passive or active vapor mitigation system.
(e) *Change in use from non-residential setting to residential setting*. This includes cases where vapor risk screening levels were based on non-residential setting exposure assumptions at closure.
Note: This may include sites or facilities where exposures applicable to non-residential settings, (i.e., commercial or industrial uses, or continued use of the compound of concern), changes to a residential setting (i.e. single or multiple family dwellings, educational, child care and elder care facilities).
(f) *Construction of a building over residual soil or groundwater contamination by volatile compounds*. This includes cases where a building didn't exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway.
(g) *Site-specific conditions.* This includes any other situation where the agency required notification, on a case-by-case basis, including but not limited to changes in use or occupancy of a property.

727.09 Updating the department database or continuing obligations. In order to evaluate the situations in this section, the agency may require that the person requesting a change submit information, as necessary.
(1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The agency may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either s. NR 708.17, NR 722.15 or NR 726, in cases where compliance with the restriction, condition or continuing obligation has not been maintained.
Note: The department conducts audits of cases where continuing obligations have been imposed. In some cases, these audits identify a lack of compliance with the continuing obligation imposed, and measures are required to return the site to compliance.
(2) UPDATING A GROUNDWATER USE RESTRICTION. For cases that have been closed conditioned upon the recording of a groundwater use restriction, the responsible party or property owner may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, apply for unconditional case closure and may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for a preventive action limit exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140.28 are met. Once an exemption is granted under s. NR 140.28, the responsible party may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.
Note: Prior to November, 2001, cases with groundwater enforcement standard exceedances were closed with a deed restriction, called a groundwater use restriction. The groundwater use restriction required department review and approval of a water supply well constructed or reconstructed on an affected property. Since November, 2001, these sites have been closed by adding them to a department database. NR 812 contains the requirement for department review and approval of any well constructed or reconstructed on a property listed on the GIS Registry (department database). Responsible parties or property owners of sites or facilities or properties subsequently meeting groundwater enforcement standards may request to have the deed restriction updated and the site or property removed from the department database, or that the information on the database modified.
(3) UPDATING A DEED RESTRICTION. For cases that have been closed with a deed restriction that has since been satisfied, the responsible party or property owner may, at any time after the conditions necessitating a deed restriction have been either eliminated or satisfied and the restriction is no longer needed, request that the agency issue a written determination that can be referenced in an affidavit, confirming this situation. An affidavit can be then recorded at the county register of deeds office to give notice that some or all of the conditions, as applicable, in the previously recorded deed restriction are no longer required.
Note: Prior to June 3, 2006, cases meeting certain conditions were closed with a deed restriction in accordance with ch. NR 726. Since that time, the use of deed restrictions for closure have been replaced with conditions in a closure letter under ch. NR 726 or in a remedial action approval under ch. NR 722.
(4) REMOVAL FROM THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, NR 722.15 or ch. NR 726, the responsible party, property owner or other

party may apply to the agency for removal of the site or facility or property, as applicable, from the department database. A site may not be removed from the database until all applicable standards have been met, all requirements imposed have been satisfied or nullified. A request may be submitted to the agency at any time after:
(a) groundwater contaminant concentrations are below ch. NR 140 enforcement standards, or
(b) soil contaminant concentrations are below ch. NR 720 soil standards, or
(c) other requirements or continuing obligations imposed have been satisfied or nullified,
(5) MODIFICATON OF THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, NR 722.15 or ch. NR 726, the responsible party, property owner or other party may request that the department modify information on the department database at any time after:
(a) groundwater contaminant concentrations are below ch. NR 140 enforcement standards,
(b) soil contaminant concentrations are below ch. NR 720 soil standards, or
(c) other requirements or continuing obligations imposed have been satisfied or nullified.
Note: Cases may be included on the department database for more than one reason. If one or more, but not all of the conditions have been satisfied or nullified, but one or more remain, the information on the database can be changed to reflect current conditions.
Note: Fees are required under ch. NR 749 for the removal or modification of information on the department database.
(6) DEED NOTICES. (a)Deed notices that are required for modification or removal of a site or facility or property from the department database, or for another agency decision, shall be drafted in compliance with all of the following requirements:
1. The document shall be drafted as an affidavit in the format required by s. 59.43 (2m), Stats.
2. The property's legal description shall be typed onto the form or a copy of the legal description shall be attached and incorporated by reference.
3. The document shall be signed by the property owner or owners, and their signatures shall be notarized.
(b) If a deed notice is required under this section, responsible parties shall record the deed notice within 90 days after the agency specifies that a deed notice is required.

NR 727.11 Fees. A request for a review, a determination, or processing a change to the department database under this chapter may not be considered by the agency until proof of payment of the required fees has been received by the department's remediation and redevelopment program, in accordance with ch. NR 749.
(1) REVIEW FEE. For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for review of a request to update a deed restriction, or to modify or remove a site or facility or property from the department database shall be submitted to the department with each request.
(2) DEPARTMENT DATABASE PROCESSING FEE. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for processing the change to the department database shall be submitted to the department with each request.
(b) For sites or facilities where either the department of safety and professional services or the department of agriculture, trade and consumer protection have administrative authority to oversee the remediation of the site or facility, the fee for processing the change to the department database shall be submitted to the department of natural resources with each request.

NR 727.13 Reopening closed cases. (1) The department may require additional response actions, including monitoring, for any case which has previously been closed by the department, if:
(a) information regarding site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety or welfare or the environment, or
(b) a property owner fails to comply with a condition of closure, a deed restriction, or with the certificate of completion issued pursuant to s. 292.15, Stats., or fails to maintain or comply with a continuing obligation.
(2) If additional response action is required for a previously closed case, the department:
(a) Shall indicate in writing to the responsible parties that additional response action is needed at the site or facility and provide the responsible parties with information regarding the nature of the problem and category of response action that is needed.
(b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. NR 700 to 754where applicable, within a time period established by the department.

(3) The party who conducted the cleanup, or a person who owns the source property, or a person who owns an affected property, may request reopening of a closed case, or may conduct additional remedial actions.

SECTION 409. NR 728 Title and Table of Contents are amended to read:

NR 728 ENFORCEMENT AND COMPLIANCE AUTHORITIES

NR 728.01 Purpose.
NR 728.02 Applicability.
NR 728.03 Definitions.
NR 728.05 Referrals for rule violations.
NR 728.06 Fees related to enforcement actions.
NR 728.065 Interest on monies recovered.
NR 728.07 Environmental ~~repair contracts~~ agreements.
NR 728.09 Special orders.
NR 728.10 Entry of a property on the department database.
NR 728.11 Recording a notice of contamination.

SECTION 410. NR 728.01 is amended to read:

NR 728.01 Purpose. The purpose of this chapter is to describe the ~~enforcement~~ tools that are available to the department to ensure compliance with ~~enforce~~ chs. NR 700 to ~~750~~ 754 and to implement response actions at sites or facilities with environmental pollution, and sites or facilities where there has been a discharge of a hazardous substance. This chapter is adopted pursuant to ss. 227.11(2), 289.06(1), ~~292.31, 292.11, 292.15 and 292.41~~ and ch. 292, Stats.

SECTION 411. NR 728.02 is amended to read:

NR 728.02 Applicability. This chapter applies to ~~enforcement~~ actions taken by the department under the authorities of ~~s. 292.11, 292.15, 292.31 or 292.41~~ chs. 289 and 292, Stats.

SECTION 412. NR 728.03 (1) is amended to read:

NR 728.03 (1) "Environmental ~~repair contract~~ agreement" means an agreement entered into by one or more persons and the department pursuant to ~~s. 292.15 or 292.31~~ ch. 292, Stats., which requires the performance of
a response action at a site or facility which causes or threatens to cause environmental pollution.

SECTION 413. NR 728.03 (3) is created to read:

NR 728.03 (3) "Contested case" has the meaning specified in s. 227.01(3), Stats.
Note: Section 227.01(3), Stats., defines "contested case" to mean "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order." A contested case hearing is only conducted by the department in situations where state statutes allow an aggrieved party to request a hearing before an administrative law judge.

SECTION 414. NR 728.05 is amended to read:

NR 728.05 Referrals for rule violations. Any person who violates the requirements of chs. NR 700 to ~~750~~ 754 or ch. 292, Stats., may be referred to the office of the attorney general by the department. Any person who is referred to the office of the attorney general by the department shall be given written notice of the referral. Section 299.95, Stats., requires that the attorney general enforce chs. 289 to 292, Stats., and all rules promulgated to implement chs. 289 to 292, Stats.

SECTION 415. NR 728.06 and NR 728.065 are created to read:

NR 728.06 Fees related to enforcement actions. The department may assess and collect fees from a person who is subject to an order or other enforcement action to cover the costs incurred by the

department to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct.
Note: Section 292.94 allows the department to assess and collect fees to cover the costs incurred by the department. Chapter NR 749 specifies the fees that apply to these actions.

NR 728.065 Interest on Recovered Monies. (1) The department shall assess and collect interest on the unpaid balance of monies recovered by the department, when payments are made over time.
(2) The interest rate shall be established at the time of the settlement, and may not be changed during the repayment period. The interest rate shall be based on the amount of the unpaid balance of the monies owed, at the rate specified in s. 71.82 (1) (a), Stats,, compounded monthly.
(3) Interest is to be paid to the department on a monthly basis.
Note: Section 292.11 and 292.31, Wis. Stats., requires the department to assess interest on the unpaid balance of monies required to be reimbursed to the department, when these monies are to be paid over time.

SECTION 416. NR 728.07 title, (1) and (2) are amended to read:

NR 728.07 Environmental ~~repair contracts~~ agreements. (1) ~~APPLICABILITY~~ AGREEMENTS. The department may enter into an environmental ~~repair contract~~ agreement with any person for response actions pursuant to ~~s. 292.15 or 292.31~~ch. 292, Stats., or into intergovernmental agreements with local governments or municipalities pursuant to s. 66.0301, Stats.
(2) CONTENT. All environmental ~~repair contracts~~ agreements entered into pursuant to ~~s. 292.15 or 292.31~~ch. 292, Stats., shall contain at a minimum, all of the following provisions:

SECTION 417. NR 728.07 (2) (b) is amended to read:

NR 728.07 (2) (b) A listing of the parties to the ~~contract~~ agreement.

SECTION 418. NR 728.07 (2) (bm) is created to read:

NR 728.07 (2) (bm) A description of the roles and responsibilities of the persons who are parties to the agreement.

SECTION 419. NR 728.07(2) (c) and (d) are amended to read:

NR 728.07 (2) (c) A schedule for completing the response action covered by the ~~contract~~ agreement.
(d) Provision for stipulated penalties if the response action is not completed in accordance with the ~~contract~~ agreement schedule.

SECTION 420. NR 728.07(2) (f) is amended to read:

NR 728.07 (2) (f) The method for modifying the ~~contract~~ agreement.

SECTION 421. NR 728.07(2) (g) is created to read:

NR 728.07 (2) (g) Fees associated with the department's cost of review and approval as set forth in ch. NR 749.

SECTION 422. NR 728.09 (1m) is created to read:

NR 728.09 (1m) ORDERS FOR PREVENTION OF A DISCHARGE. (a) The department may require that preventive measures be taken by any person possessing or having control over a hazardous substance if the department finds that existing control measures are inadequate to prevent discharges.
(b) The department shall specify necessary preventive measures by order. The order shall be effective 10 days after issuance, unless the person named requests a hearing, in which case no order may become effective until the conclusion of the hearing.

SECTION 423. NR 728.09 (3) Note is created to read:

NR 728.08 (3) Note: Section 292.94, Stats. allows the department to assess and collect fees to cover the costs incurred by the department. Chapter NR 749 specifies the fees that apply to these situations.

SECTION 424. NR 728.10 is created to read:

NR 728.10 Entry of a property on the department database. (1) GENERAL. Where the department has information to demonstrate that the source of contamination is on the property and the property owner or other responsible party has failed to take adequate response action, the department may list the properties where contamination from a hazardous substance discharge has been identified on the department database. The department shall notify the property owner in writing of the department's intention to list the property on the department database in order to provide notice to the public of the contamination. If the property owner does not respond within 30 calendar days from the date on the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or provides information which clearly demonstrates that no further investigation or remediation of environmental contamination is necessary, the department may proceed to list all properties where contamination from a hazardous substance discharge has been identified on the database.
(2) SUBSEQUENT MODIFICATIONS. (a) If the property owner or other responsible party subsequently decides to investigate and remediate the remaining contamination the department shall modify or remove the property from the database in accordance with the provisions in ch. NR 727.
(b) If a deed affidavit was previously recorded for the property and subsequent action was taken that results in the need to modify or supplement the information contained within that affidavit the department shall record a second affidavit at the office of the register of deeds for the county in which the property is located to supersede the current affidavit. If any of the requirements in ch. NR 726 for listing a property on the database are met following completion of the additional investigation and remediation, the department will proceed with listing the appropriate property or properties concurrently with filing the subsequent affidavit
Note: Chapter NR 749 specifies the fees that must accompany all requests to add, modify or remove a site or property from the department database.

SECTION 425. NR 728.11 (1) is amended to read:

NR 728.11 Recording a notice of contamination. (1) GENERAL. Except for contamination caused by a discharge from a fuel oil tank used solely for residential purposes, the department may in addition to using the provisions in s. NR 728.10 and, after following the procedures in sub. (2), record an affidavit at the office of the register of deeds for the county in which the property is located which specifies the legal description of the property, indicates that contamination from a hazardous substance discharge has been identified on the property which has not been adequately defined or remediated and gives notice to the public, and any prospective purchaser, of the existing contamination and the environmental liability associated with the property.

SECTION 426. NR 734.01 and 734.02 are amended to read:

NR 734.01 Purpose. The purpose of this chapter is to establish procedures that apply to the procurement of professional services of consultants by the department for projects related to hazardous substance discharge and environmental repair response actions. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1) and (2), ~~292.11, 292.31 and 292.41~~ and ch. 292, Stats.

NR 734.02 Applicability. This chapter applies to the department's selection of, and contract negotiations with, consultants which the department proposes to hire to conduct response actions under the authority of ~~s. 292.11 or 292.31~~ch. 292, Stats.

SECTION 427. NR 734.03 (2) is amended to read:

NR 734.03 (2) "Consultant proposal" means those documents submitted by a consultant, indicating interest in providing professional services to the department for a proposed project. The documents shall identify the staff that would be employed to meet the requirements of the proposed project and other information, as requested by the department.

SECTION 428. NR 734.05 (2) is amended to read:

NR 734.05 (2) ~~Consultant~~ Updated consultant data record forms ~~may be requested by~~ or verification that the information currently on file is still accurate shall be submitted to the department ~~every 2 years~~ by January 15th of even numbered years in order to remain eligible for ~~the purpose of maintaining a list of consultants interested in~~ providing professional services to the department. ~~Invitations to submit a consultant data record form shall be published as a class 2 notice in the state's official newspaper.~~

SECTION 429. NR 734.05 (3) is repealed.

SECTION 430. NR 734.05 (4) is renumbered NR 734.05 (3).

SECTION 431. NR 734.05 (3) Note, as renumbered, is amended to read:

NR 734.05 (3) Note: Consultant data record forms may be obtained by contacting the DNR's ~~Bureau of Solid and Hazardous Waste Management, Emergency and Remedial Response Section,~~ Bureau for Remediation and Redevelopment, Fiscal and Information Technology Section, Public Information Request, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

SECTION 432. NR 734.13 title is amended to read:

NR 734.13 ~~Advertisement~~ Public notice for proposals.

SECTION 433. NR 734.13 (1) (f) is created to read:

NR 734.13 (1) (f) Name and phone number of the department contact.

SECTION 434. NR 734.15 (5) (g) is created to read:

NR 734.15 (5) (g) A proposed schedule for completing each phase of work.

SECTION 435. NR 734.21 (4) is amended to read:

NR 734.21 (4) Projects with a cost greater than ~~$30,000~~ $60,000 shall be signed by the governor, in addition to the signatures required pursuant to sub. (3).

SECTION 436. NR 736 Title is amended to read:

NR 736 ~~ADVERTISING~~ PUBLIC NOTICE, BIDDING AND AWARD OF ENVIRONMENTAL CONSTRUCTION CONTRACTS

SECTION 437. NR 736.01 and .02 are amended to read:

NR 736.01 Purpose. The purpose of this chapter is to establish procedures for the department to implement the ~~advertising and~~ award of contracts for environmental construction contracts pursuant to s. 23.41, Stats. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1) and (2), 292.11, 292.31 and 292.41, Stats.

NR 736.02 Applicability. This chapter applies to the department's ~~advertising,~~ bidding and award of environmental construction contracts with estimated construction costs that exceed ~~$30,000~~ $60,000, which the department proposes to enter into for response actions taken under the authority of s. 292.11, 292.31 or 292.41, Stats.

Note: Small environmental construction projects, with an estimated construction cost of ~~$30,000~~ $60,000 or less, will be processed by the department using expedited procedures not set forth in this chapter.

SECTION 438. NR 736.03 (1) is repealed.

SECTION 439. NR 736.03(2), (3) and (4) are renumbered NR 736.03 (1), (2) and (3).

SECTION 440. NR 736.03 (5) and (6) are renumbered NR 736.03 (4) and (5) and as renumbered are amended to read:

NR 736.03 ~~(5)~~(4) “Bidding period” means the time from the date of first ~~publication~~ posting of the ~~advertisement for proposals~~ public notice to the time of bid opening.
~~(6)~~(5) “Bid guarantee” means a properly executed ~~department~~ form of bid bond, a bank certified check or a cashier’s check, in an amount equal to 10% of the highest combination base bid or bids and alternate bids submitted.

SECTION 441. NR 736.03 (7) is repealed. (moved to NR 700)

SECTION 442. NR 736.03 (6) is created to read:

NR 736.03 (6) "Public notice" means a posting of a project and the procedures to be used to submit a bid for the project on a publicly accessible website.

SECTION 443. NR 736.03(8) is renumbered NR 736.03(7).

SECTION 444. NR 736. 05 (1), (2) and (3) are amended to read:

NR 736.05 ~~Advertising~~ Public notice. (1) All drawings and specifications for the project shall be available for distribution to prospective bidders on or before the date upon which the ~~advertisement~~ public notice for proposals shall be ~~published~~ posted. The ~~advertisement~~ public notice for proposals shall specify the following information:
(a) Location of the work.
(b) Identification of the department as the owner.
(c) Scope of the work, which describes the primary function of the project.
(d) That a 10% bid guarantee shall be required.
(e) Date and time receipt of bids shall close and public opening shall occur.
(f) Location where bids shall be received.
(g) Date, time and location where drawings and specifications shall be available.
(2) The department shall ~~advertise for proposals by publication of a class 1 notice under ch. 985, Stats., in the official state newspaper. The notice shall be published~~ post a public notice a minimum of 30 days prior to bid opening, unless the department indicates in writing that the bidding period will be for a lesser period of time.
(3) In addition to the ~~class 1~~ public notice ~~required in sub. (2)~~, the department may solicit and advertise for proposals by either or both of the following methods:
(a) An advertisement for proposals in trade publications, or newspapers within the locale of the project, which would have the potential of reaching prospective bidders.
(b) An advertisement for proposal mailed directly to potential bidders, if such measure is deemed necessary to encourage adequate competition in bidding.

SECTION 445. NR 736.07(3) is repealed.

SECTION 446. NR 736.07(4) is renumbered NR 736.07(3).

SECTION 447. NR 736.09(1), (2) and (3) are amended to read:

NR 736.09 Submittal and receipt of bids. (1) All bids shall be submitted in sealed envelopes unless otherwise directed by the department. The department may allow alternate methods of submitting and accepting bids.
(2) ~~The~~ For sealed bids, the bidder shall place all of the following information on the face of the envelope containing the bidder’s proposal:
(a) A statement that the envelope contains a sealed bid.
(b) Project name.
(c) Project number.
(d) Location of project.
(e) Bid date.
(f) Name and address of bidder.
(3) The bidder is responsible for the sealed bid being delivered to the place designated in the ~~published advertisement~~ public notice for proposals, on or before the date and time specified.

SECTION 448. NR 736.09 (5) is amended to read:

NR 736.09 (5) Sealed bids received by the department, after the date and time designated in the ~~advertisement for proposal~~ public notice, shall have the date and time of receipt stamped upon the face of the envelope and be returned to the bidder unopened.

SECTION 449. NR 736.15 (2) (a) is amended to read:

NR 736.15 (2) (a) ~~Submittal of~~ No bid bond ~~on a form other than that contained in the specification volume~~ was submitted.

SECTION 450. NR 738 Table of Contents is amended to read:

NR 738 TEMPORARY EMERGENCY WATER SUPPLIES

NR 738.01 Purpose.
NR 738.02 Applicability.
NR 738.03 Definitions.
~~NR 738.04 Determinations of eligibility.~~
~~NR 738.045 Contaminated wells.~~
NR 738.05 ~~Request for temporary emergency water supply.~~
~~NR 738.06~~ Eligible and ineligible services.
NR 738.07 ~~Department approval and payment.~~Request for temporary emergency water supply.
~~NR 738.08 Denial of requests or termination of funding.~~
NR 738.09 ~~Variances~~ Determination of eligibility.
NR 738.11 Department approval and payment.
NR 738.13 Denial of requests or termination of funding.
NR 738.15 Variances.

SECTION 451. NR 738.01, Note and .02 are amended to read:

NR 738.01 Purpose. The purpose of this chapter is to provide criteria for using state moneys from the environmental fund for temporary emergency water supplies, when water supply systems have been adversely affected by environmental pollution from a site or facility subject to s. 292.31, Stats., or by a hazardous substance discharge subject to s. 292.11, Stats. This chapter is adopted pursuant to ~~ss~~. s. 227.11 (2), ~~292.11 (7),~~ and ~~292.31 (3)~~ ch. 292, Stats.
Note: Section ~~144.027~~281.75, Stats., as implemented under ch. NR 123, provides for reimbursement from the well compensation fund for eligible costs associated with temporary and permanent water supply replacements. Also note, specific authority for this chapter is in s. 292.31 (3) (b) 7., Stats.

NR 738.02 Applicability. This chapter applies to actions taken by the department under ~~ss. 292.11 (7) and 292.31 (3),~~ch. 292, Stats., to provide temporary emergency water supplies to ~~persons~~ an affected party with a "contaminated well" or "contaminated private water ~~supplies~~ ~~adversely affected~~ supply" impacted by environmental pollution from a site or facility subject to s. 292.31, Stats., or ~~adversely affected~~ impacted by a discharge of a hazardous substance subject to s. 292.11, Stats. This chapter also applies to certain situations where the department provides potable water in accordance with the provisions set out in s. 281.77, Stats.

SECTION 452. NR 738.02 Note is created to read:

NR 738.02 Note: Section 281.77, Stats., as implemented under ch. NR 123, provides for reimbursement from the well compensation fund for eligible costs associated with replacement of a private water supply impacted by contamination caused by an approved facility, as defined in s. 28.01(3), Stats.

SECTION 453. NR 738. 03 (4) is amended to read:

NR 738.03 (4) "Contaminated well" or "contaminated private water supply" means a well which meets the criteria in ~~s. NR 738.045.~~ pars. (a) through (d), or meets the criteria of par. (e).

SECTION 454. NR 738.03 (4) (a) through (e) are created to read:

NR 738.03 (4) (a) The well serves potable water for humans or humans and livestock;
(b) The well is not a "public water supply" as defined in ch. NR 809;
(c) The well has been determined or is suspected by the department to have been adversely affected by a site or facility subject to s. 292.31, Stats., or by a hazardous substance discharge subject to s. 292.11, Stats.; and
(d) The well produces water that meets one or more of the following criteria:
1. Contains one or more substances of public health concern, other than bacteria or nitrate, in excess of a primary maximum contaminant level contained in ch. NR 809;
2. Contains one or more substances of public health concern, other than nitrate, in excess of an enforcement standard established in ch. NR 140; or
3. Is subject to a drinking water advisory from the department for substances other than bacteria or nitrate.
(e) Is located in an area of special eligibility for compensation as declared by the department under s. NR 738.05 (2) and meets the criteria under s. NR 738.05 (2) (a) and (b).

SECTION 455. NR 738.03 (6), (7) and Notes are created to read:

NR 738.03 (6) "Livestock" has the meaning specified in s. 95.80(1)(b) and includes poultry.
Note: Section 95.80(1)(b) defines livestock to mean "cattle, horses, swine, sheep, goats, farm-raised deer and other species of animals susceptible of use in the production of meat and meat products."
(7) "Livestock water supply" has the meaning specified in s. 281.75(1)(d).
Note: Section 281.75(1)(d) defines livestock water supply to mean "a well which is used as a source of potable water only for livestock and which is:
1. Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24; or
2. Constructed by boring or drilling."

SECTION 456. NR 738.03 (6) is renumbered NR 738.03 (8).

SECTION 457. NR 738.03 (9) and Note are created to read:

NR 738.03 (9) "Private water supply" has the meaning specified in s. 292.31(3) (b) 7.
Note: Section 292.31(3) (b) 7. defines private water supply to mean a "well which is used as a source of water for humans, livestock, as defined in s. 95.80(1)(b), or poultry."

SECTION 458. NR 738.08 (7) and (8) are renumbered NR 738.03(10) and (11).

SECTION 459. NR 738.03(9) and Note is renumbered NR 738.03(12) and amended to read:

NR 738.03 ~~(9)~~(12) "Well" ~~means an excavation or opening in the ground made by boring, drilling or driving for the purpose of obtaining a supply of groundwater. "Well" does not include dug wells and springs.~~ has the meaning specified in s. NR 812.03 (119) Wis. Adm. Code.
Note: Section NR 812.03 (119), Wis. Adm. Code defines well to mean "any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface constructed for the purpose of obtaining groundwater."

SECTION 460. NR 738.04 is repealed. (moved to NR 738.09)

SECTION 461. NR 738.045 is repealed. (moved to NR 738.03(4))

SECTION 462. NR 738.05 is repealed.

SECTION 463. NR 738.06 is renumbered NR 738.05.

SECTION 464. NR 738.05 (1) (a), (b) and (c) as renumbered, are amended to read:

NR 738.05 (1) (a) Obtaining a temporary emergency water supply for a maximum period of 6 months after the date of issuance of an advisory or until such time as the contaminated water supply

has been permanently replaced by an uncontaminated supply or is determined by the department to have returned to an uncontaminated condition, whichever occurs first. The department may grant a variance to authorize the extension of the temporary emergency water supply pursuant to s. NR ~~738.09~~ 738.15.
(b) Equipment used for treating the contaminated private water supply on a temporary emergency basis only if a skin contact or inhalation advisory has been issued by the department of health ~~and social~~ services.
(c) Bulk water supplied only if a skin contact or inhalation advisory has been issued by the department of health ~~and social~~ services.

SECTION 465. NR 738.05(2) is renumbered NR 738.05(3).

SECTION 466. NR 738.05(2) as renumbered, is created to read:

NR 738.05 (2) SPECIAL ELIGIBILITY FOR COMPENSATION. The department may approve a temporary emergency water supply funded by moneys from the environmental fund if the affected party is in a location that has been declared by the department to be an area of special eligibility for compensation for well contamination, based on contamination reported after December 31, 2005, if the following criteria are satisfied:
(a) Results of tests performed under s. NR 738.09 (3) establish that wells in the area are contaminated by fecal bacteria, and
(b) Evidence demonstrates that the bacterial contamination is caused by livestock.
Note: Special eligibility for compensation is outlined in s. 281.75 (2) (e) and s. 281.75 (11) (ae), Stats.

SECTION 467. NR 738.05(3)(d), as renumbered, is amended to read:

NR 738.05 (3) (d) Any costs incurred for the permanent replacement or treatment of the contaminated water supply except as approved by the department pursuant to s. NR ~~738.09~~ 738.15.

SECTION 468. NR 738.07 is repealed and recreated to read:

NR 738.07 Request for temporary emergency water supply. Any affected party may make a request to the department for provision of a temporary emergency water supply. The written request shall be submitted to the department's section chief for the fiscal and information technology section, bureau for remediation and redevelopment, and shall contain the following information:
(1) The affected party's name, address and telephone number, including the area code.
(2) A copy of the test analyses required in s. NR 738.09(3).
(3) A copy of the advisory which was issued or approved by the department as required in s. NR 738.09(4).
(4) A statement requesting that the department provide a temporary emergency water supply under this chapter.

SECTION 469. NR 738.08 is repealed.

SECTION 470. NR 738.09 is repealed and recreated to read:

NR 738.09 Determination of eligibility. Except as otherwise provided in this chapter, an affected party may receive a temporary emergency water supply funded with moneys from the environmental fund if all of the following criteria are met:
(1) The source of potable water is from a contaminated well or contaminated private water supply.
(2) The contamination is known or is suspected by the department to be from environmental pollution or a hazardous substance discharge subject to s. 292.11 or 292.31, Stats.
(3) Sampling is conducted in accordance with all of the following requirements:
(a) At least one sample shall be taken and analyzed. The department may require more than one sample be taken and analyzed.
(b) The samples shall be analyzed by the state laboratory of hygiene or by a laboratory certified under s. 299.11, Stats., using a methodology specified in ch. NR 809 or from a reference method authorized by ch. NR 219.
(c) Test results shall be sufficiently recent to reflect present water quality as determined by the department.

(4) An advisory is issued or approved by the department. If the department has issued an advisory, the sampling requirements of sub. (3) may be waived.

SECTION 471. NR 738.11 is created to read:

NR 738.11 Department approval and payment. (1) GENERAL. The department shall evaluate requests for a temporary emergency water supply in accordance with the criteria in ss. NR 738.07 and 738.09.
(2) OWNERSHIP. Provision of a temporary emergency water supply shall be contingent upon the affected party entering into a written agreement with the department that the affected party shall own and be responsible for the proper maintenance of any physical equipment constructed or provided as part of the temporary emergency water supply.
(3) APPROVAL. When the department determines that the eligibility criteria in subs. (1) and (2), have been met, the department shall approve the use of environmental fund moneys and shall:
(a) Provide the affected party with a written approval for the provision of a temporary emergency water supply within 14 days of receiving the written request.
(b) Make the necessary arrangements for provision of temporary emergency water supplies to the affected party.
(c) Select the most appropriate temporary emergency water supply.
(4) PAYMENT. The department shall pay 100% of the eligible costs for providing a temporary emergency water supply using moneys from the environmental fund as long as moneys are available in the fund.
Note: The department does not have statutory authority to use environmental fund moneys to provide temporary or permanent water supplies if the substances of public health concern are from naturally occurring sources of contamination. If the department discovers that the source of the substances is from natural processes after department funding is approved, the department will terminate funding of the temporary emergency water supply. The variance provision in s. NR 738.15 does not allow the department to continue to use environmental fund moneys where the source of a substance of public health concern is not from a hazardous substance discharge or environmental pollution from a site or facility.

SECTION 472. NR 738.13 is created to read:

NR 738.13 Denial of requests or termination of funding. The department shall deny a request or terminate the use of environmental fund moneys if one or more of the following applies to the affected party, contaminated well or contaminated private water supply:
(1) The request is not within the scope of this chapter as determined by the department.
(2) The affected party submits a fraudulent request.
(3) The request is for reimbursement of costs incurred before the date of issuance of an advisory.
(4) One or more of the contaminants was introduced into the well by the plumbing connected to the well.
(5) One or more of the substances upon which the request is based was introduced into the well or water supply intentionally by an affected party or a person who would be directly benefited by the provision of the temporary emergency water supply or a person who aids and abets the introduction of the substance, or a person who is a party to a conspiracy with another to commit, advise, hire, counsel or procure another to introduce the substances into the well or water supply.
(6) All of the substances upon which the request is based are naturally occurring substances and are not a result of environmental pollution or a hazardous substance discharge subject to s. 292.11 or 292.31, Stats., as determined by the department.
(7) The water supply is contaminated by bacteria or nitrate or both and is not contaminated by any other substance. This subsection does not apply to a residential well that is in an area of special eligibility for compensation as declared by the department under NR 738.05 (2).
(8) The request is submitted by an affected party who has been determined by the department to be a responsible party pursuant to s. 292.31 (8) or 292.11 (3), Stats.

SECTION 473. NR 738.15 is created to read:

NR 738.15 Variances. **(1)** GENERAL. The department may approve variances from provisions of this chapter when it is determined that variances do not conflict with statutory requirements, are essential to effect necessary actions or department objectives, and where special circumstances make variances in the best interests of the state.

(2) FINANCIAL HARDSHIP. (a) The department may grant a variance from s. NR 738.05 to allow payment of costs under this chapter toward a permanent replacement water supply if the following conditions are met:
1. The well owner is the affected party.
2. The well owner requests a variance based upon the financial hardship criteria in par. (c) and submits evidence, including family income, to justify the financial hardship claim.
3. The well owner has submitted a claim and has been issued an award or a proceed notice under s. NR 123.23.
4. The department determines that the cost of the permanent replacement water supply would create an unreasonable financial hardship for the well owner.
(b) The variance request may be incorporated as part of a claim under ch. NR 123.
(c) If the department grants a financial hardship variance to allow payment of costs toward a permanent replacement water supply, payment shall be based on the following:
1. If the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, as determined in accordance with s. NR 123.20, the department may pay 100% of the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of $250.
2. If the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, as determined in accordance with s. NR 123.20, the department may pay 50% of the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of $250.
3. Notwithstanding sub. (2), if an award or a proceed notice has been issued under s. NR 123.23, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, the department may pay the remaining eligible costs which are not covered by an award under s. NR 123.2, less a deductible amount of 5% of the annual family income.
4. The department may pay the greater share of the eligible costs computed under par. (2) (c).

SECTION 474. Chapter NR 746 is repealed and recreated as:

Chapter NR 746
AGENCY ROLES AND RESPONSIBILITIES FOR PETROLEUM CONTAMINATED SITES

NR 746.01 Purpose.
NR 746.02 Applicability.
NR 746.03 Definitions.
NR 746.04 Site Authority.
NR 746.05 Tracking of remediation progress.
NR 745.06 Classification and transfer of sites.
NR 746.07 Interagency staff training.
NR 746.08 Dispute resolution.

NR 746.01 Purpose. The purpose of this chapter is to identify the roles, processes and procedures that guide the departments of safety and professional services and natural resources in the administration of their respective responsibilities under ss. 101.143, 101.144, 292.11 and 292.31, and ch. 160, Stats., for oversight and supervision of high, medium and low risk sites where petroleum products have discharged from petroleum storage tanks. This chapter codifies a memorandum of understanding that is required by s. 101.144 (3m), Stats. Nothing in this chapter is intended to limit the independent authority of either agency to carry out responsibilities not specifically described in this chapter, including, without limitation, the authority of the department of safety and professional services to apply ch. Comm 47.

NR 746.02 Applicability. This chapter only applies to sites where petroleum products have discharged from petroleum storage tanks.

NR 746.03 Definitions. In this chapter:
(1) "Discharge" has the meaning specified in s. 292.01 (3), Stats.
Note: Under s. 292.01 (3), Stats., "discharge" means, but is not limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."
(2) "DNR" means the department of natural resources.
(3) "Enforcement standard" has the meaning specified in s. 160.01 (2), Stats. Note: Section 160.01 (2), Stats., defines "enforcement standard" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under ss. 160.07 and 160.09."

(4) “Groundwater” has the meaning specified in s. 160.01 (4), Stats. Note: Section 160.01 (4), Stats., defines “groundwater” to mean “any water of the state, as defined in s. 281.01 (18), occurring in a saturated subsurface geological formation of rock or soil.” Section 281.01 (18), Stats., defines “waters of the state” to include “those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.”
(5) “High–risk site” has the meaning specified in s. 101.144 (1) (aq), Stats. (as created by 1999 Wis. Act 9).
Note: Section 101.144 (1)(aq), Stats., defines “high–risk site” to mean “the site of a discharge of a petroleum product from a petroleum storage tank if at least one of the following applies:
1. Repeated tests show that the discharge has resulted in a concentration of contaminants in a well used to provide water for human consumption that exceeds a preventive action limit, as defined in s. 160.01 (6).
2. Petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements.
3. An enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.
4. An enforcement standard is exceeded in fractured bedrock.”
Note: Section NR 141.05 (5) defines “bedrock” to mean “the solid rock underlying any loose surficial material such as soil, alluvium or glacial drift. Bedrock includes but is not limited to limestone, dolomite, sandstone, shale and igneous and metamorphic rock.” In the absence of evidence to the contrary, the agencies consider all bedrock in Wisconsin to be fractured.
(6) “Low risk site” means the site of a discharge of a petroleum product from a petroleum storage tank where contaminants are contained only within the soil on the source property and there is no confirmed contamination in the groundwater.
(7) “Medium risk site” means the site of a discharge of a petroleum product from a petroleum storage tank where contaminants have extended beyond the boundary of the source property, or there is confirmed contamination in the groundwater, but the site does not meet the definition of a high–risk site.
(8) “Petroleum product” has the meaning specified in s. 101.143 (1) (f), Stats. Note: Section 101.143 (1)(f), Stats., defines “petroleum product” to mean “gasoline, gasoline alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel or used motor oil.” The term “petroleum product” includes substances that are, or once were, constituents of a petroleum product, including petroleum product additives.
(9) “Petroleum storage tank” has the meaning specified in s. 101.144 (1) (bm), Stats.
Note: Section 101.144 (1)(bm), Stats., defines “petroleum storage tank” to mean “a storage tank that is used to store petroleum products together with any on–site integral piping or dispensing system.” The term “petroleum storage tank” does not include a pipeline facility.
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(10) “Preventive action limit” has the meaning specified in s. 160.01 (6), Stats. Note: Section 160.01 (6), Stats., defines “preventive action limit” to mean “a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15.”
(11) “Remedial action” means a response action taken to control, minimize or eliminate the discharge of petroleum products so that they do not present an actual or potential threat to public health, safety or welfare or the environment. The term “remedial action” includes actions taken to restore the environment to the extent practicable and to meet applicable environmental standards, and includes natural attenuation. Examples include containment, treatment, excavation, disposal, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment.
(12) “Responsible person” has the meaning specified in s. 101.144 (1) (d), Stats. Note: Section 101.144(1)(d), Stats., defines “responsible person” to mean “a person who owns or operates a petroleum storage tank, a person who causes a discharge
from a petroleum storage tank or a person on whose property a petroleum storage tank is located.”
(13) “Site” means any area where a petroleum product has discharged.
Note: Because the term “discharge” has been interpreted by the Wisconsin supreme court to include the migration of hazardous substance contamination after it is released to the environment, the term “site” includes all areas to which petroleum product contamination has migrated, including areas not on the source property. The term “site” and “source property” are not synonymous. A “site” can be larger or smaller than a “source property.” The term “site” is synonymous with the term “occurrence” as that term is used by the department of safety and professional services in ch. Comm 47. The term “site” is used here

in order to establish common terminology that will be used by both the department of safety and professional services and the department of natural resources in the implementation of ch. NR 746.
(14) “Soil” has the meaning specified in s. NR 700.03 (58).
Note: Section NR 700.03(58) defines "soil" to mean "unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste.”

NR 746.04 Site authority. (1) ADMINISTRATIVE AUTHORITY. The administrative authority of the department of safety and professional services and DNR for a site includes enforcement, remediation supervision and direction, and decision–making regarding the granting or denying case closure and deciding whether or not further remedial action is required. DNR has the authority under s. 292.11 (7) (c), Stats., to issue orders to a person who possesses or controls a hazardous substance that was discharged, or who caused the discharge of a hazardous substance, specifying the remedial action that the responsible person is required to take under s. 292.11 (3), Stats. The department of safety and professional services has the authority under s. 101.144 (2) (a), Stats., to issue orders to a person who owns or operates a petroleum storage tank, a person who causes a discharge from a petroleum tank or a person on whose property a petroleum storage tank is located, to require that person to take remedial action in response to those discharges of petroleum products from petroleum storage tanks over which the department of safety and professional services has jurisdiction. The assignment of administrative authority for high–risk sites and medium and low risk sites, where discharges of petroleum products from petroleum storage tanks have occurred, shall be determined according to the following criteria:
(a) DNR shall have administrative authority for those sites that meet any of the following criteria:
1. Sites that have not been classified.
2. Sites that are classified as high–risk sites.
3. Sites with soil or groundwater that is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank, where the petroleum contamination is commingled with one or more hazardous substances other than petroleum products from a petroleum storage tank.
(b) The department of safety and professional services shall have administrative authority for those sites that meet both of the following criteria:
1. Sites that have been classified as low risk or medium risk.
2. Sites where petroleum contamination is not commingled with one or more hazardous substances other than petroleum products discharged from a petroleum storage tank.

NR 746.05 Tracking of remediation progress. By no later than January 1, 2001, and annually thereafter, responsible persons shall submit an annual report to the agency with administrative authority for the site, as required by s. 101.143 (2) (i) 2., Stats., with a summary of all monitoring data that have been collected, the status of remediation that has been conducted to date and an estimate of the additional costs that must be incurred to achieve case closure.

NR 746.06 Classification and transfer of sites.
(1) GENERAL. (a) The responsible person shall make a preliminary determination as to the classification of a site as high–risk, or medium or low risk based on the definitions in s. 101.144 (1) (aq), Stats., and s. NR 746.03 (6), (8) and (9), and the data that have been collected during the site investigation.
(b) Until a classification determination is made by the agency that receives a submittal under sub. (2) or (3), DNR has administrative authority for the site.
(2) SUBMITTAL OF SITE INVESTIGATION REPORTS TO THE APPROPRIATE AGENCY. Site investigation reports submitted after May 18, 2000 shall include a statement as to whether a site is believed to be high-risk, or medium or low risk and shall be submitted directly to the agency with administrative authority for the site under s. NR 746.04 (1). If a site falls under the authority of the department of safety and professional services, the responsible person shall provide DNR with a copy of the letter that transmits the site investigation report to the department of safety and professional services, which includes the Wisconsin Transverse Mercator coordinates for the site and supporting information, as required under s. NR 716.15 (2) (c)7. The DNR shall transfer the site file to the department of safety and professional services within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of the department of safety and professional services.
(3) SUBMITTAL OF CASE CLOSURE REQUESTS TO THE APPROPRIATE AGENCY. If the site investigation report was submitted without a determination of whether the site is believed to be high–risk, or medium or low risk, the closure request shall be submitted directly to the agency that is believed to have administrative authority for the site under s. NR 746.04 (1). If a site falls under the authority of the

department of safety and professional services, the responsible person shall provide DNR with a copy of the letter that transmits the closure request to the department of safety and professional services. The DNR shall transfer the site file to the department of safety and professional services within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of the department of safety and professional services.
(4) CHANGES IN CLASSIFICATION. If a site has been classified as high–risk, or medium or low risk, and the agency receiving the site investigation report or case closure request determines that the classification is incorrect and the site, as reclassified, falls under the other agency's administrative authority, the agency making the determination shall transfer the site file and all related data to the other agency within 14 days after making the determination that the site was incorrectly classified. The agency making the determination shall provide written notice to inform the responsible person that the site has been reclassified, which can be done by sending to the responsible person a copy of the reclassification letter that is addressed to the other agency. The written notice shall state the reasons for the reclassification.

NR 746.07 Interagency staff training. In order to ensure that employees understand the requirements of this chapter and the NR 700 rule series, and to ensure that the agencies will issue approvals when the requirements of the NR 700 rule series are satisfied, interagency staff training shall be held when necessary, as jointly determined by the departments of safety and professional services and DNR.

NR 746.08 Dispute resolution. Any disputes between the department of safety and professional services and DNR under this chapter shall be subject to the following dispute resolution process:
(1) Project managers shall discuss their differences, and the basis for them, in an attempt to resolve the dispute.
(2) If the dispute is not resolved by the project managers, the decision shall be referred to the DNR petroleum team leader and the safety and professional services advanced hydrogeologist.
(3) If the dispute is not resolved by the petroleum team leader and the safety and professional services advanced hydrogeologist, the decision shall be referred to the appropriate DNR regional team supervisor and safety and professional services site review section chief.
(4) If the dispute is not resolved by the appropriate DNR regional team supervisor and safety and professional services site review section chief, the decision shall be referred to the division administrators or deputy administrators.
(5) If the dispute still remains unresolved at the division administrator level, the department secretaries shall make the final decision.

SECTION 475. Section NR 749.01 is amended to read:

NR 749.01 Purpose. The purpose of this chapter is to establish fees to offset the department's costs of providing assistance under ch. 292, Stats. The department's authority to impose fees is found ~~is ss. 292.11 (7) (d) 2., 292.13 (3), 292.21 (1) (c) 1. d., 292.35 (13) and 292.55 (2)~~in ch. 292, Stats.

SECTION 476. NR 749.02 is amended to read:

NR 749.02 Applicability. This chapter applies to persons seeking department assistance under ch. 292, Stats., except that most oversight fees for those persons seeking department assistance under s. 292.15, Stats., shall ~~comply~~ be paid in accordance with ch. NR 750. As listed in Table 1, D. of s. NR 749.04, portions of this chapter apply to those persons seeking assistance under s. 292.15, Stats., and who are seeking closure with residual contamination that must be added to the department's database as required in s. 292.12(2) and (3) or s. 292.57, Stats.

SECTION 477. NR 749.04(1) second note is amended to read:

NR 749.04 (1) Note: ~~The department has prepared a document which provides additional~~ Additional information and guidance for implementing this rule including how to make a payment when a review is requested can be found at: http://dnr.wi.gov/org/aw/rr/Services_Fees/index.htm. ~~A copy can be obtained by contacting the Bureau for Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707.~~

SECTION 478. NR 749.04, Table 1 – Fee Schedule is repealed and recreated as:

TABLE 1 – FEE SCHEDULE

Type of Letter or Assistance	Statutory Citation	Fee
A. AGREEMENTS:		
1. Tax Assignment Agreement	ss. 75.106 (2) (d) and 292.55	$700
2. Tax Cancellation Agreement	ss. 75.105 (2) (d) and 292.55	700
3. Negotiated Agreements[a]	s. 292.11 (7) (d) 2.	1400
4. Enforcement Actions[a]	s. 292.94 (d)	
5. Negotiation and Cost Recovery[a]	s. 292.35 (13) (a)	

[a] Persons subject to or entered into such orders, agreements or processes shall pay fees for each service requested or required by the department.

Note: For Negotiated Agreements, the $1400 fee is for department time associated with reviewing the document. If the Negotiated Agreement identifies other reports or activities that require department review, there would be a separate review fee for each specified.

B. LIABILTY CLARIFICATION LETTERS:		
1. Off–site Exemption Letters	s. 292.13 (3)	700
2. Lease Letters – Single Properties	s. 292.55	700
3. Lease Letters – Multiple Properties	s. 292.55	1400
4. General Liability Clarification Letters	s. 292.55	700
5. Lender Assessments	s. 292.21 (1) (c) 1. d.	700
C. TECHNICAL ASSISTANCE:		
1. NR 708 No Further Action Letters[b]	s. 292.55	350
2. NR 716 No Further Investigation	s. 292.55	700
3. NR 716 Site Investigation Work Plan	s. 292.55	700
4. NR 716 Site Investigation Report	s. 292.55	1050
5. NR 720 Soil Cleanup Standards/Reports	s. 292.55	1050
6. NR 722 Remedial Action Options Report	s. 292.55	1050
7. NR 724 Remedial Design Reports	s. 292.55	1050
8. NR 724 Operation and Maintenance Reports	s. 292.55	425
9. NR 724 Construction Documentation Report	s. 292.55	350
10. NR 724 Long–term Monitoring Plans	s. 292.55	425
11. NR 726 Case Closure Action	s. 292.55	1050
12. NR 506 Exemption for Building on a historic waste site	s. 292.55	700
13. Other Technical Assistance	s. 292.55	700

[b] Immediate actions associated with emergency spill cleanup activities, including department signoff on the Notification for Hazardous Substance Discharge form, do not require a review fee.

D. DEPARTMENT DATABASE FEES: ss. 292.12 and 292.57

An administrative processing fee shall be submitted for all sites, regardless of agency jurisdiction, for entry on, or modification or removal from the department's database.

1. Sites with groundwater contamination that attains or exceeds ch. NR 140 Enforcement Standards	350
2. Sites with soil contamination that attains or exceeds ch. NR 720 RCLs	300
3. Sites not otherwise addressed above, where the department imposes any other limitation or condition in accordance with 292.12(2)	350

Note: This may include, but is not limited to sites where a vapor mitigation system is required as a condition of closure.

4. Cases submitted for closure with monitoring wells not properly abandoned, without residual groundwater contamination	350
5. Modification or removal of a site or property from the database	1050

Note: This fee applies each time a request is made for modification or removal of a site from the database.
Note: In accordance with s. 292.12 (3) and 292.57, responsible parties or local governments shall pay the appropriate fees to list, modify or remove sites with residual contamination on the department's database. This database includes sites with residual contamination and where the department has approved case closure under ch. NR 726 or a Certificate of Completion under s. 292.15, sites where the department requires listing on the database as a condition of approving a remedial action, or sites where the department requires a local government to take action under s. 292.11(9) (e) 4., and listing the site on the database is necessary due to residual contamination. More than one of these fees may apply to a site.

SECTION 479. NR 749.05 is created to read:

NR 749.05 Alternative fees for negotiated agreements. As part of a negotiated agreement, responsible parties may agree to pay the department an hourly fee for project oversight as determined by the provisions set forth in ch. NR 750.

SECTION 480. NR 750.01 is amended to read:

NR 750.01 Purpose. The purpose of this chapter is to establish the procedures and criteria that the department shall use to process applications and assess and collect fees to provide oversight to ~~parties~~ persons undertaking response actions in accordance with s. 292.15, Stats. This chapter is adopted pursuant to ss. 227.11 (2) and 292.15, Stats.

SECTION 481. NR 750.03 (2) through (10) are repealed.

SECTION 482. NR 750.03 (2), (3) and Note are recreated to read:

NR 750.03 (2) "Environmental investigation of the property" means a study of the entire property, including any discharges that have or may have migrated off the property, and approved by the department, consisting of a Phase I and Phase II environmental assessment and a site investigation, based on information documented in these environmental assessments.
(3) "Release" has the meaning specified in s. 292.15 (1) (d), Stats.
Note: Under s. 292.15 (1) (d), Stats., "release" means "the original discharge."

SECTION 483. NR 750.05 (1) and Note are amended to read:

NR 750.05 Application. (1) APPLICATION SUBMITTAL. An applicant shall submit to the department a completed application form for each property, requesting department oversight in reviewing and approving the proposed response actions. The applicant shall submit with ~~the~~ each application a non–refundable fee of $250.00, to cover the department's cost of reviewing and processing the application. The department may not review the application until the specified fee is submitted to the department. In addition to the application form, the applicant shall include any attachments required by the Department, including but not limited to a copy of the property deed and a map which clearly shows the boundaries of the property.
Note: The application form (Form 4400–178) is available by ~~telephoning the Contaminated Land Recycling Information Line at 1–800–367–6076 (in–state long distance) or (608) 264–6020 (Madison area or out of state long distance) or by~~ writing to ~~Public Information Requests,~~ the Bureau ~~of~~ for Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707–7921. The application form is also available ~~by request from the regional Land Recycling contact or by~~ ~~download from the Program's website~~ at ~~www.dnr.state.wi.us/org/aw/rr/archives/pubs/4400–178.pdf~~ www.dnr.wi.gov/org/aw/rr/liability/purchasers_0.html.

SECTION 484. NR 750.05(2) (a) 1. and 2. are amended to read:

NR 750.05 (2) (a) 1. The applicant is a "~~purchaser~~ voluntary party" under s. 292.15, Stats.
Note: 1995 Wis. Act 227 removed "purchaser". 1995 Wis. Act 227 created s. 292.15 (1) (f), Stats., which provides the definition for "voluntary party" which means "a person who submits an application to obtain an exemption under this section and pays any fees required under sub. (5)", of that section.

2. The ~~response actions that are proposed will be conducted by the person specified in~~ property is eligible to receive a liability exemption under s. ~~292.15(2) (a)~~ 292.15, Stats.

SECTION 485. NR 750.05 (2) (a) 3. is created to read:

NR 750.05 (2) (a) 3. The area of land for which the application was submitted meets the definition of a property in s. NR 700.03 (45am).

SECTION 486. NR 750.05 (2) (c) is amended to read:

NR 750.05 (2) (c) *Notification to applicant*. The department shall mail written notice to the applicant stating whether or not the department believes that the applicant and the property are eligible under s. 292.15, Stats. If the department finds that the applicant and property meets the criteria in par. (a) and the applicant chooses to proceed in the program, the applicant shall, at a minimum, submit to the department the appropriate fee in s. NR 750.07, and a Phase I environmental assessment, and a scope of work necessary to conduct an adequate Phase II environmental assessment. If the department finds that the applicant or the property does not meet the criteria in par. (a), the applicant will not receive department oversight under s. 292.15, Stats. The applicant may submit additional information to the department to try to establish that the applicant or the property does meet the criteria in par. (a), and may proceed to conduct a response action, while the department makes that determination, if the response action is conducted in compliance with the requirements of chs. NR 700 to ~~750~~ 754 and ss. 292.11 and 292.15, ~~Wis.~~Stats.

SECTION 487. NR 750.05 (4) and (5) are created to read:

NR 750.05 (4) INACTIVE APPLICANTS. Any time after an application is submitted to the department, if an applicant fails to make reasonable progress towards completion of the site investigation and remediation of the property, the department may withdraw the voluntary party from the process to obtain the liability exemption. If the voluntary party fails to provide requested reports or updates on the status of the investigation and remedial action to the department for 1 year or longer, the department may request for a written progress update from the applicant. If the progress update is not received within 60 days or does not show reasonable progress is being made, the department may withdraw the applicant from the process to obtain the liability exemption. The department shall provide a written determination to the applicant confirming withdrawal from the program. The department shall return any unused deposit, unless otherwise directed by the voluntary party. To re-enter the process, the voluntary party would need to pay the appropriate fees, and make a request to and to enter into an agreement with the department, in accordance with s. 292.11(7) (d), Stats.
(5) PROPERTY BOUNDARY CHANGES. Any time after an application is submitted, if the boundaries of the property change the applicant shall notify the department in writing. The notification shall occur no later than 60 days prior to the request for a certificate of completion on the property. The voluntary party or parties shall submit a revised application to clearly demonstrate the boundaries and legal descriptions of the properties for which the applicant is seeking the liability exemption.

SECTION 488. NR 750.07 (1) (a) is amended to read:

NR 750.07 (1) (a) Review of submittals required under this chapter, chs. NR 700 to ~~736~~754 or under ~~a contract~~ an agreement entered into under s. NR 728.07, or participation in meetings with the applicants or their representatives to discuss an application or proposed project.

SECTION 489. NR 750.07(1) (e) is amended to read:

NR 750.07 (1) (e) Providing assistance in response to any other request by the applicant after the applicant is notified that the department believes that the ~~applicant~~ property is eligible under s. 292.15, Stats.

SECTION 490. NR 750.07(1) (f) is created to read:

NR 750.07 (1) (f) Placement of the property on the department database, in accordance s. 292.12 (3) or s. 292.57, Stats., unless other fees are specified in ch. 749 to add sites to the database.

SECTION 491. NR 750.07 (3) (a) is amended to read:

NR 750.07 (3) DEPOSIT. ~~(a) For all applications submitted after March 1, 1996, the~~ The applicant shall submit to the department an advance deposit to cover oversight fees. The advance deposit shall be submitted within 30 days after the applicant is notified that the department believes that the ~~applicant~~ property is eligible under s. 292.15, Stats. The advance deposit shall be ~~$1,000~~ $2,000 for properties of one acre or less and ~~$3,000~~ $4,000 for properties larger than one acre.

SECTION 492. NR 750.07 (3) (b) is repealed.

SECTION 493. NR 750.07 (6) is repealed.

SECTION 494. NR 750.07(7) is renumbered NR 750.07 (6) and as renumbered is amended to read:

NR 750.07 ~~(7)~~(6) FAILURE TO PAY REQUIRED FEES. If the applicant fails to pay department oversight fees that are required under this section, the department shall cease to provide oversight to the applicant and may not issue a certificate of completion as provided under s. 292.15 ~~(2) (a) 3.~~, Stats.

SECTION 495. NR 750.09 is amended to read:

NR 750.09 Completion of response actions. At the completion of all response actions taken by an applicant who is seeking the liability exemption under s. 292.15, Stats., the applicant shall request case closure in accordance with the requirements in ch. NR 726. The department shall provide the applicant with a written certificate of completion, as provided in s. 292.15 ~~(2) (a) 3.~~, Stats., when all of the following requirements are satisfied:

SECTION 496. NR 750.09 (2) is amended to read:

NR 750.09 (2) The applicant satisfies all the requirements of s. 292.15, Stats., including conducting ~~a thorough~~ an environmental investigation of the property, including any discharges that have or may have migrated off the property.

SECTION 497. NR 750.09 (4) and (5) are created to read:

NR 750.09 (4) For properties where the voluntary party is seeking an exemption from liability for voluntary party remediation under s. 292.15 (2) (ae), Stats., where groundwater contamination is in concentrations that exceed enforcement standards and the department determines that natural attenuation will restore groundwater quality in accordance with rules promulgated by the department, the insurance requirements in ch. NR 754, have been satisfied.
(5) For properties with residual groundwater contamination that are closed in accordance with the requirements in s. NR 726.07 (2), the fees to add the property to the department database in accordance with ch. NR 749, have been paid.

SECTION 498.

SECTION 499. Effective date. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 500. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)