

Post-Closure Modifications: Changes to Property Conditions after a State-Approved Cleanup

DNR RR-987
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This document describes the process in Wis. Admin. § NR 727 used to adjust “continuing obligations” (see text box on the right) when site conditions, land use or property boundaries are changing at a property that received a case closure letter from the Department of Natural Resources (DNR). This guidance is for use by environmental consultants and responsible parties, as well as DNR staff.

This document lists appropriate fees, process steps and documentation required by Wisconsin Administrative Code chapters NR 727: Continuing Obligation Requirements and Reopening Closed Cases, and NR 749: Fees for Providing Assistance: Remediation and Redevelopment Program.

For sites where a closure letter was issued by DNR, Department of Commerce or Department of Safety and Professional Services, the post-closure modification request should be submitted to DNR. For sites where a closure letter was issued by the Department of Agriculture, Trade and Consumer Protection (DATCP), the post-closure modification request should be submitted to DATCP, but the GIS fees need to be submitted to DNR.

This guidance was developed to work in concert with an existing guidance, [RR-606: Guidance on Case Closure and the Requirements for Managing Continuing Obligations](#), and with an upcoming guidance, RR 982: Post-Closure Modifications and Reopening Closed Sites. RR-606 is undergoing revisions to reflect the 2013 NR 700 rule series changes. RR-982 is expected to go out for public comment in 2016. This guidance will be updated as needed. Comments and concerns may be sent to [Jane Lemcke](#).

Actions and processes in this document apply to changes at a closed site that do not trigger the “reopener” criteria in Wis. Admin. § NR 727.

Continuing obligations are site-specific actions required to minimize exposure to remaining contamination.

Typical continuing obligations include:

- the use of covers or barriers; structural impediments (e.g. buildings, power lines, etc.) that limit the ability to complete the site investigation or cleanup,;
- restricting property use to industrial when industrial soil standards were applied for the remedial action; and
- the operation and maintenance of a vapor mitigation system or restrictions on use of the property when vapor intrusion risk is tied to specific uses of the property.

Post-closure modifications are changes made to a site or property that has received closure approval with one or more continuing obligations.

Post-closure modifications cover a wide variety of situations. In some cases, land use changes result in the need for removal of, or a change in continuing obligations. In other cases, changes to property boundaries, either splitting a property, or combining properties, results in the need to clarify or redefine the continuing obligations applied to specific areas or parcels.

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov, search “brownfield”



Post-Closure Modifications (PCM) (Non-Reopener): Covers and Changes in Property Boundaries

Category	Examples	Fee	BRRTS Action Code (AC) (for DNR use), Process and Documentation	
<p>1. Cover continuing obligation remains in effect. No decrease in extent or protectiveness of cover.</p> <p>This does <u>not</u> include modifications that require site regrading</p>	<p>a) replace cover with same material, over the same extent, and no soil removal/disturbance</p> <p>b) replace cover with another, equally or more protective cover (e.g., asphalt to concrete), over same extent, and no soil removal/disturbance</p> <p>c) repair/replacement of cover with same material or equally protective material, over the same extent, and soil disturbance but replacement of soil in same excavation or soil goes to a landfill (utility work)</p>	<p>No fee</p>	<p>AC 191</p>	<p><i>Post-Closure Modification Notification Received without Fee</i> Requestor notifies DNR about a change, submits plan for review - no fee</p>
			<p>AC 193</p>	<p><i>Post-Closure Modification Initial Approval</i> DNR Project Manager (PM) provides written approval of request via email or letter response <i>(email from DNR staff OK for this category only)</i></p>
			<p>AC 194</p>	<p><i>Post-Closure Modification Final Documentation Received</i> Requestor submits documentation of change; photographs of updated cover, updated maintenance plan as appropriate</p>
			<p>AC 101</p>	<p><i>Continuing Obligation Modification Approved</i> DNR PM provides written approval (email or letter)</p>
			<p>DNR updates BRRTS on the Web (BOTW) with final written approval of completed action, updated photos and/or maintenance plan. PM puts paper copy in case file.</p>	
			<p>AC 100</p>	<p>QAQC of PDF</p>
<p>2. Changes to Footprint of Cover No change in type of land use – <i>but the extent of cover changes from that approved at closure</i></p>	<p>a) A site is redeveloped, (commercial to commercial) and some residual contamination is removed, so that the cover is no longer needed over a portion of the site. The rest of the cover remains.</p> <p>b) During redevelopment, a building is placed in an area where a cover was, and now acts as part or all of the cover. The cover footprint is expanded or contracted. There is no other exposure pathway of concern.</p> <p>c) Construction where a cover is replaced with a building and new utility work is associated with the development:</p> <ul style="list-style-type: none"> • inhabited • occupational • storage <p>d) Addition to or replacement of the cover is a</p>	<p>Post-closure modification fee: \$1050 and Database fees: \$300 and/or \$350</p>	<p>AC 181</p>	<p><i>Continuing Obligation Request Received with Fees</i> Requestor notifies DNR about a change, submits plan for review with fees</p>
			<p>AC 193</p>	<p><i>Post-Closure Modification Initial Approval</i> Team Supervisor or Closure Committee approves action; DNR Project Manager provides written approval of request</p>
			<p>AC 194</p>	<p><i>Post-Closure Modification Final Documentation Received</i> Requestor submits documentation of change; revised maintenance plan, photographs, monitoring well abandonment forms, cover location maps</p>
			<p>DNR provides closure letter addendum: DNR closure/VPLE committee reviews submittal, as appropriate. DNR Project Manager prepares the closure letter addendum for Team Supervisor signature.</p>	
			<p>AC 101</p>	<p><i>Continuing Obligation Modification Approved</i> Date of closure letter addendum confirming final approval of activities and documentation</p>
			<p>DNR updates BOTW with closure letter addendum, revised maintenance plan and photographs, and cover location maps. PM puts paper copy in case file.</p>	

	result of soil grading, movement or importation, in compliance with ch. NR 718, Wis. Adm. Code.		AC 100	QAQC of PDF			
			AC 105	<i>Continuing Obligation Request Not Approved</i> Date of a denial of post-closure modification request			
3. Changes in site conditions may result in a change to one or more continuing obligations, or to removal of one or more continuing obligations. <i>This may apply to a single site or property, and to either the source property or an affected property</i>	a) an infiltration and direct contact cover is changing and will now be for direct contact only b) removal of a continuing obligation, due to satisfaction of the continuing obligation c) cover is no longer required, as groundwater is less than enforcement standard (PAL exemption may be needed) d) site or property now meets RCLs or enforcement standards (PAL exemption may be needed) e) land use change triggers need to evaluate whether the cover is protective of the new use, or if changes are needed to either the cover or continuing obligations, but does not trigger the criteria to reopen in Wis. Admin. § NR 727.13 f) excavation for soil remediation modifies closure conditions g) cover removal/replacement with movement of soil on the property (*soil management plan included in post-closure modification request)	Post-closure modification fee: \$1050 and Database fees: \$300 and/or \$350	AC 181	<i>Continuing Obligation Request received with Fee</i> Requestor notifies DNR, submits plan for review with fees			
			AC 193	<i>Post-Closure Modification Initial Approval</i> DNR Project Manager provides written approval of request, requires a revised maintenance plan/s as applicable			
			AC 194	<i>Post-Closure Modification Final Documentation Received</i> Requestor submits documentation of change; revised maintenance plan, photos, monitoring well abandonment forms, cover location maps			
			DNR provides closure letter addendum: DNR closure/VPLE committee reviews submittal, Project Manager prepares the closure letter addendum for Team Supervisor signature.				
			AC 101	<i>Continuing Obligation Modification Approved</i> Date of DNR closure letter addendum.			
			DNR updates BOTW with the closure letter addendum, revised maintenance plan, photos and maps. DNR PM puts paper copy in case file.				
			AC 100	QAQC of PDF			
			AC 105	<i>Continuing Obligation Request Not Approved</i> Date of a denial of post-closure modification request			
			4. Splitting or Joining Properties or Sites, usually requiring a change to the maintenance plan	a) change to property boundaries, deeds b) construction of new roadways/rights-of-way in areas with continuing obligations c) a property with a continuing obligation is subdivided: splitting an uncontaminated parcel off from a contaminated property d) splitting a property into multiple properties due to sale/other action e) combining multiple sites or properties	Post-closure modification fee: \$1050 and Database fees: \$300 and/or \$350	AC 181	<i>Continuing Obligation Request received with Fee</i> Requestor notifies DNR about a change, submits plan for review with fees
						AC 193	<i>Post-Closure Modification Initial Approval</i> DNR Project Manager provides written approval of request, requires a revised maintenance plan/s as applicable
AC 194	<i>Post-Closure Modification Final Documentation Received</i> Requestor submits documentation of change: revised maintenance plan, photos, monitoring well abandonment forms, cover location maps, deeds with legal descriptions						
DNR provides closure letter addendum: DNR closure/VPLE committee reviews submittal, Project Manager prepares the closure letter addendum for Team Supervisor signature.							

			AC 101	<i>Continuing Obligation Modification Approved</i> Date of DNR closure letter addendum.
				DNR updates BOTW with the closure letter addendum, revised maintenance plan, photos, maps, updated deeds with legal descriptions. DNR PM puts paper copy in case file.
			AC 100	QAQC of PDF
			AC 105	<i>Continuing Obligation Request Not Approved</i> Date of a denial of post-closure modification request

***Soil Management Plans:** In some situations, a soil management plan may be required under Wis. Admin. § NR 718. A technical assistance fee will be required if the soil management plan is the only document submitted for review. If the soil management plan is submitted with the post-closure modification request, the review of both documents is covered by the post-closure modification fee.

For all categories: When other reports or requests are submitted separately, or as directed by a Team Supervisor, an additional \$700 technical assistance fee may also be required.

Note: For some continuing obligations or situations, Wis. Admin. § NR 727.07, requires that property owners must notify the agency with administrative authority at least 45 days before making certain changes, including changes to land use. The notification requirement, as well as a requirement for obtaining written approval prior to making certain changes, consistent with Wis. Admin. § NR 726.15, are also found in deed restrictions and in closure letters. See the Prohibited Activities section for covers and vapor mitigation systems.

Environmental or Geotechnical Sampling: The disturbance of a cover for the purpose of collecting soil samples does not require either notification of the DNR or a fee. Repair of the cover is required.

Note: Situations where notification of the Department regarding a post-closure modification, and/or where written approval from the Department is required, are defined in Wis. Admin. § NR 727.07 or in the closure letter. Where notification and/or written approval are not required, post-closure modification requests are considered voluntary, but are recommended for clarity in future transactions.

Reopened Cases: If any of the Wis. Admin. § NR 727.13 criteria are triggered, a site may be reopened, and the case will then follow the same process as a new/open case from investigation through closure.

Wis. Admin. § NR 727.13 reopening criteria include:

- (1) if additional information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety, or welfare or to the environment,
- (2) if the property owner does not comply with the conditions of closure, with any deed restrictions applied to the property, or with a certificate of completion issued under Wis. Stat. § s. 292.15, or fails to maintain or comply with a continuing obligation.

Additional fees will be required for any reviews requested. Possible scenarios include a new source is found, or another exposure pathway is found, or use of the property is changed to one not protected by the CO applied at closure. Sites found to be out of compliance with one or more continuing obligations will first be given the opportunity of regaining compliance, before the DNR would consider reopening the case. For VPLE sites which have received a Certificate of Completion, under s. 292.15, Wis. Stats., contact the Land Recycling Team Leader for further assistance, given the complexity of the VPLE law. Under Wis. Admin. § NR 727.13 (4), certain parties may also request that the site be reopened.