

The attached guidance, "Post-Closure Modifications: Covers and Changes in Property Boundaries", RR 987, was developed for use by environmental consultants and DNR staff when preparing or reviewing post-closure modifications at closed hazardous substance discharge sites, where contamination remained and continuing obligations were required. This draft guidance applies to sites closed with a continuing obligation for a cover, for sites where a continuing obligation may need to be updated, or for sites where property boundaries have changed since closure was approved. It provides the general process to be followed for such requests, and defines the applicable ch. NR 749, Wis. Adm. Code fees and documentation needs for these submittals.

This guidance will eventually be used in conjunction with further guidance on post-closure modifications under ch. NR 727, Wis. Adm. Code, as well as with RR 606, "Guidance on Case Closure and the Requirements for Managing Continuing Obligations".

Once the public notice period is complete, all comments will be considered, revisions will be made to the guidance as needed, and the final guidance will be made available via the Publications and Forms link on the Remediation and Redevelopment web page <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

Comments related to this draft guidance should be sent to Jane Lemcke, Jane.Lemcke@wisconsin.gov; (608) 267-0554.

Post-Closure Modifications: Changes to Property Conditions after a State-Approved Cleanup (Interim Guidance)

DNR RR-987
November 2015

The attached table provides the basic process and fees to be used for modifications (see first box) that are proposed for a property where the state has issued a case closure letter with continuing obligations. The purpose of this guidance is to provide information on the process used to adjust continuing obligations (see second box) on a property where site conditions, land use, or property boundaries are changing. This guidance is for use by environmental consultants and responsible parties, as well as Department of Natural Resources (DNR) staff.

The attached interim guidance, also known as the “cover table,” outlines a variety of common post-closure modifications, and defines the fees, the process used to review and approve the changes, and typical documentation needed or provided. The guidance is based on the requirements in chs. NR 727: Continuing Obligation Requirements and Reopening Closed Cases, and ch. NR 749: Fees for Providing Assistance: Remediation and Redevelopment Program.

For sites where a closure letter was issued by the Department of Natural Resources (DNR) or by the Department of Commerce or Safety and Professional Services, the post-closure modification request should be submitted to the 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 the 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 (for consultants and responsible parties). 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 the fall of 2015. Direct your questions on this draft guidance to [Jane Lemcke](#), (608) 267-0554.

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.

Continuing obligations are site specific actions or laws 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.

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.



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DRAFT for public notice (for parties external to DNR)

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

Category	Examples	Fee	Process and Documentation
<p>1. Cover continuing obligation remains in effect. No decrease in extent or in 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 (e.g., utility work)</p>	<p>No fee</p>	<p>Requestor notifies DNR about a change, submits plan for review, no fee</p> <p>DNR provides initial approval/notice to proceed</p> <p>Requestor submits documentation of change: photographs of updated cover and/or site conditions, updated maintenance plan as appropriate</p> <p>DNR provides written approval, updates GIS PDF</p>
<p>2. Changes to Footprint of Cover</p> <p>No change in type of land use – but the extent of cover changes from that approved at closure</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 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 any 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 result of soil grading, movement or importation, in compliance with ch. NR 718,</p>	<p>Post-closure modification fee: \$1050 and Database fees: \$300 and/or \$350</p>	<p>Requestor notifies DNR about a change, submits plan for review with fees</p> <p>DNR provides initial approval/notice to proceed</p> <p>Requestor submits documentation of change: revised maintenance plan, photos, monitoring well abandonment forms, cover location maps</p> <p>DNR provides closure letter addendum, updates GIS PDF</p>

	Wis. Adm. Code.		
<p>3. Changes in site conditions will 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></p>	<p>a) an infiltration and direct contact cover is changing and will now be for direct contact only</p> <p>b) removal of a continuing obligation, due to satisfaction of the continuing obligation</p> <p>c) cover is no longer required, as groundwater is less than ch. NR 140 enforcement standard (Note: preventive action limit (PAL) exemption may be needed)</p> <p>d) site or property now meets ch. NR 720 residual contaminant levels (RCLs) or enforcement standards (Note: PAL exemption may be needed)</p> <p>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 s. NR 727.13, Wis. Adm. Code</p> <p>f) excavation for soil remediation modifies closure conditions</p> <p>g) cover removal/replacement with movement of soil on the property (*soil management plan included in post-closure modification request)</p>	<p>Post-closure modification fee: \$1050 and Database fees: \$300 and/or \$350</p>	Requestor notifies DNR about a change, submits plan for review with fees
			DNR provides initial approval/notice to proceed
			Requestor submits documentation of change: revised maintenance plan, photos, monitoring well abandonment forms, cover location maps
			DNR provides closure letter addendum, updates GIS PDF
<p>4. Splitting or Joining Properties or Sites, usually requiring a change to the maintenance plan.</p>	<p>a) change to property boundaries, deeds</p> <p>b) construction of new roadways/rights-of-way in areas with continuing obligations</p> <p>c) a property with a continuing obligation is subdivided: splitting an uncontaminated parcel from a contaminated property</p> <p>d) splitting a property into multiple properties due to sale/other action</p>	<p>Post-closure modification fee: \$1050 and Database fees: \$300 and/or \$350</p>	Requestor notifies DNR about a change, submits plan for review with fees
			DNR provides initial approval/notice to proceed, requires revised maintenance plan/s as applicable
			Requestor submits documentation of change: revised maintenance plan/s, photos, monitoring well abandonment forms, location maps, deeds with legal descriptions
			DNR provides closure letter addendum, updates GIS PDF

	e) joining multiple sites or properties		
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***Soil Management Plans:** In some situations, a soil management plan may be required under ch. NR 718, Wis. Adm. Code. A technical assistance fee will be required if the soil management plan is the only document submitted for review.

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.

Reopened Cases:

If any of the s. NR 727.13, Wis. Adm. Code 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.

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 s. 292.15, Wis. Stats., or fails to maintain or comply with a continuing obligation.

Additional fees will be required for any reviews requested. Possible scenarios include a new or unexpected source is found, associated with the original “site” that was closed, or another exposure pathway is found, or use of the property is changed to one not protected by the continuing obligation 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 (COC), contact the Land Recycling Team Leader for further assistance, given the complexity of the VPLE law.

Note: For some continuing obligations or situations, the closure letter may contain a requirement that the party must notify the DNR before making certain changes, and obtain written approval before proceeding with those changes, per s. NR 726.15, Wis. Adm. Code. See Prohibited Activities for Covers and Vapor Mitigation Systems. Other continuing obligations require notification before making changes to land/property use, so that the DNR can determine if additional actions are needed. These requirements are also found in ch. NR 727, Wis. Adm. Code.

Environmental or Geotechnical Sampling: The disturbance 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 s. 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.