

## Remediation and Redevelopment Program | Rule Development Meeting | Meeting Notes

September 5, 2019 | 10:00 a.m. to 2:00 p.m.

Wisconsin Dept. of Natural Resources  
GEF 2 | Room G27A  
101 S. Webster St. | Madison, WI 53701

Meeting materials are available at: <https://dnr.wi.gov/topic/Brownfields/RuleChanges.html>.

**Attendees:** Molly Schmidt, Michael Prager, Gena Larson, Jodie Peotter, Judy Fassbender, Jenna Soyer, Renee Exum, Carrie Webb, Bill Nelson, Blaine Schroyer, Shelly Hildebrandt, Sam Tobias, Clara Jeong, Mike Stuntz, Jennifer Hagan, Shelly Hildebrandt, Mark Thimke, Margaret Brunette, Melody Marshall

### Agenda:

#### 1. Welcome and Introductions.

Staff explained the purpose of the meetings and provided an overview of the process, scope, and timeline for drafting rules.

#### 2. First draft of proposed rule revisions relating to changes made by 2015 Wis. Act 204 to the definition of “agency with administrative authority” at Wis. Stat. s. 292.12.

Staff presented a summary of the draft rule (see draft rule and presentation). No comments.

#### 3. First draft of proposed miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes.

Staff presented a summary of the draft rule (see draft rule and presentation). No comments.

#### 4. Introductory white paper regarding proposed rule revisions relating to remedial action confirmation samples.

Staff provided a summary of the white paper (see presentation and paper). No comments.

#### 5. First draft of proposed rule revisions relating to contaminated sediments.

Staff presented a summary of the draft rule (see draft rule and presentation). An attendee asked whether proposed language within Wis. Admin. Code ch. NR 722 was intended to act as criteria or standards, and whether the responsible party would be required to meet a numeric standard. Staff replied that action for sediment should ultimately comply with surface water; those criteria would apply and would lead to the standards. An attendee asked how compliance would be measured. Staff replied that the current requirements were in ch. NR 722 at this point. An attendee asked whether the proposed new language within ch. NR 722 regarding contaminated sediment standards should be interpreted in light of the various references to other laws. An attendee asked whether an existing human health advisory would prevent closure. Staff replied that the intent of the language had been to prevent closure at contaminated sediment sites where a human health advisory exists, because the advisory represented a potential exposure. In contrast, if the contamination were solely in groundwater, a responsible party could still prevent exposure

with a remedy. Staff added that they may look further into the varying levels of fish advisories, which are administered by another DNR program. An attendee suggested clarifying the language and breaking up the longer provision into smaller subdivisions for readability. The attendee asked whether language regarding “ecological effects” belonged at its current location in the draft. Staff replied that this was currently the only location for that rule language, but changes could be considered prior to the second draft. An attendee asked whether DNR staff would make any required ordinary high water mark determinations. Staff replied that DNR staff were the only ones authorized to make these determinations. Another staff member added that there is a narrow exception to this, and that the rule may need to clarify this exception.

An attendee asked whether a landowner was required to provide access to the responsible party or representative maintaining a sediment cap. Another attendee answered that access requirements were included in the statute. Staff added that access may need to be clarified in the management plan.

An attendee asked whether there would be a definition of “structure” included in future drafts. Staff replied that the current draft provided a definition of “structural impediment”. At sites with remaining structures preventing remediation, responsible parties were required to remove structures where feasible. An attendee encouraged staff to provide guidance on this topic.

An attendee asked how, logistically, the program would deal with recording and managing information regarding water body and riparian issues. Staff replied that this issue was still being worked out. Staff added that internal implementation and data management may be determined separate from rule drafting.

An attendee stated that the proposed addition of real estate disclosure requirements at Wis. Admin. Code s. NR 726.15(1)(e) may draw criticism from stakeholders. Staff stated that the intent of the draft rule was to provide notice of the already-existing laws. Staff may look at rewording for more clarity.

An attendee stated that staff should include information in the rule where possible, given that the process for creating guidance had grown more difficult.

**6. Second draft of proposed rule revisions relating to changes made by 2017 Wis. Act 70, regarding the definition of “property” and property boundary changes in the Voluntary Party Liability Exemption (VPLE) program.**

Staff presented a summary of the draft rule (see draft rule and presentation). Staff asked whether a definition of the term “contiguous” may help clarify situations where a roadway divides two parcels. Other staff replied that the changes should be consistent with the statute, which provided a definition of “property”. Staff and attendees suggested various resources for staff to follow up on the issue.

**7. Conclude and Adjourn.**

Staff stated that the next rule development meeting is Oct. 1, 2019, in Madison. Staff would present:

- A first draft of rule revisions relating to emerging contaminants;
- A first draft of rule revisions related to remedy selection;
- A first draft of rule revisions relating to notification and closure;
- A second draft rule regarding rule revisions implementing new Act 204 requirements for financial responsibility for sites where an EC is being used to address contaminated sediment; and
- A second draft rule regarding revisions implementing Act 204 requirements for financial assurance at VPLE sediment sites.