

DRAFT rule revisions for 1/9/2020 Rule Development Meeting

Comments on this draft may be sent to DNRRNR700input@wisconsin.gov.

Subject matter (group/subgroup): Other / Timelines

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Changes (include treatment, list in order of rules):

NR 700.11 (1) (a) and Note are repealed and recreated to read:

NR 700.11 (1) (a) Responsible parties shall submit site progress reports on a reporting form provided by the department that include the following:

1. A summary of the completed work and additional work planned to adequately complete the response action at the site or facility
2. A proposed schedule for the project, including dates for completing additional work planned to complete the response action
3. A description of any imminent threats related to the hazardous substance discharge and environmental pollution identified and any immediate actions taken within the reporting period.

Note: Copies of site progress reporting forms may be obtained at <https://dnr.wi.gov/topic/Brownfields/Professionals.html>.

NR 700.11 (1) (am) is created to read:

NR 700.11 (1) (am) The site progress reports required under par. (a) shall be submitted to the department on or before every January 1 and July 1 until 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 706.05. The department may require progress reports be submitted at a different frequency than semi-annually.

NR 700.11 (5) is created to read:

NR 700.11 (5) ENFORCEMENT. The department may implement any applicable enforcement tools set forth under ch. NR 728 for violations of this section and, additionally, the department shall impose penalties pursuant to s. 292.99 (1), Stats., for violations of this section.

Note: Section 292.99 (1), Stats., states "...any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue."

Note to readers: additional proposed revisions to Wis. Admin. Code s. NR 700.11 are available in the draft titled, [A first draft of miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes](#), presented at the September 5, 2019, Rule Development Meeting.

NR 716.15 (7) is created to read:

NR 716.15 (7) DEPARTMENT REVIEW. In cases where the department is reviewing a site investigation report under this chapter, the department may do any of the following:

- (a) Require that additional information be submitted.
- (b) Require revisions to the report.
- (c) Establish a schedule for the responsible parties to provide additional information and revisions to the department.

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NR 724.13 (3) is revised to read:

NR 724.13 (3) PROGRESS REPORTS. In addition to the general progress reporting requirements in s. NR 700.11, responsible parties shall submit semi-annual operation and maintenance progress reports to the department. Progress reports shall be sequentially numbered, starting with the first report which is due no later than 6 months after the remediation system begins operation. Information related to operation and maintenance 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.

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/files/PDF/forms/4400/4400-194.pdf>.

NR 726.05 (5) and Note are repealed and NR 726.05 (5) is recreated to read:

NR 726.05 (5) COMPLETENESS.

(a) The department may review a case closure request if a responsible party or other person seeking case closure has submitted to the department a case closure request that is complete and meets the documentation requirements of ss. NR 726.09 and 726.11, if applicable.

(b) The department may deny incomplete closure requests. The department may apply a fee for an incomplete closure request to a site investigation review on a case-by-case basis, and the department may then require that a new closure request and closure fee to be submitted.

(b) The department shall not approve case closure for a site or facility until all submittals required under chs. NR 700 through NR 758 for the site or facility are received by the department, including, where applicable, all of the following:

1. Semi-annual site progress reports required under ch. NR 700.
2. Reports and documentation for any immediate or interim actions required under ch. NR 708.
3. All professional certifications and signatures that are required to be included with applicable submittals under ch. NR 712.
4. Work plans and site investigation reports required under ch. NR 716.
5. Remedial action options report required under ch. NR 722, with the selected remedial action identified.
6. Design, construction documentation, operation, maintenance and monitoring plans and reports required under ch. NR 724.
7. Submittals that confirm that continuing obligations have been identified and affected property owners have been notified pursuant to ch. NR 725.
8. Forms and requirements for closure pursuant to ch. NR 726.
9. Payment of fees pursuant to ch. NR 749, including closure and database fees.

Note to readers: changes to this subsection were initially made in a second draft of rules presented at the Nov. 6, 2019, Rule Development Meeting, titled, [A second draft of miscellaneous proposed rule revisions including updates to terminology, submittal format requirements, and other changes](#) (see page 10). The changes above include and supercede changes made in the earlier draft.

NR 726.13 (2) (d) is amended to read:

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NR 726.13 (2) (d) If the department determines that the applicable local, state and federal 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.~~

NR 726.13 (2) (h) is created to read:

NR 726.13 (2) (h) Where additional conditions of closure must be met per par. (d), (e) and (f) the department may establish a schedule for response. The department may require an additional closure fee if any of the following apply:

1. The person requesting closure does not comply with the schedule.
2. The remaining closure requirements are not completed within 18 months.
3. The department has applied the closure fee to another submittal pursuant to sub. (5).

Plain language explanation/analysis:

Please see the [white paper](#) on this topic, presented at the July 9, 2019, Rule Development Meeting, for background and a plain language explanation of the rule changes.

Comparable state or federal rules or policies:

Not applicable.

Economic impact comments:

The rule revisions will provide for clear and informative semi-annual progress reports and a timeframe for complete site investigation report submissions, which would provide better department oversight and ability to require sites to progress through the investigation and remediation progress as required under Wis. Stat. ch. 292. The rule revisions relating to timing and submission requirements may have an economic impact if they are drafted to be more stringent than a reasonable interpretation of statutory requirements for investigation and cleanup.