

**Rule Development Meeting (Emergency Rule Input Session)
Remediation and Redevelopment Program**

June 23, 2020, 10:30 a.m. to noon (via Skype)

Attendees: Ashenfelter, Barry (DNR); Berrington, Jeff (Xcel); Bower, Phillip (DNR); Breuer, Delanie (WPC); Brunette, Margaret M (DNR); Conway, Steven (American Chemistry Council); Dombrowski, Frank (WEC Energy Group); Driessen, Tracey (Essity); Fassbender, Judy (DNR); Foss, Darsi (DNR); Gallo, Don (Axely); Haag, Christine (DNR); Heilman, Cheryl (DNR); Herkert, Toni (Office of Senator Cowles); Larson, Gena (DNR); Manley, Scott (WMC); Miller, Evan (Office of Senator Cowles); Nelson, William (DNR); Parsons, Laurie (Ramboll); Peotter, Jodie (DNR); Prager, Michael (DNR); Raimonde, Michael (Foth Infrastructure & Environment, LLC); Risotto, Steve (ACC); Schmidt, Molly (DNR); Scobee, Paige (Hamilton Consulting/WMC); Skwarok, Michael (DNR); Soyer, Jenna (DNR); Thimke, Mark (Foley Lardner); Wishart, Vanessa (Stafford Rosenbaum Law/MEG); Wynn, Dave (Wisconsin Technical College)

Meeting Notes:

1. Welcome, introductions, and background on emergency rule RR-11-17E.

Mick Skwarok, Outreach Team Leader in the DNR Remediation and Redevelopment Program, welcomed attendees and introduced himself. He provided instructions for the meeting's use of Skype and then asked attendees to introduce themselves.

Jodie Peotter, Brownfields, Outreach, and Policy Section Chief in the DNR Remediation and Redevelopment Program, provided an overview of the proposed rule (RR-11-17E) and the rule development process. She stated that the rule consists of two new chapters, chs. NR 756 and NR 758, and related revisions throughout code. The new chapters provide direction and procedures for financial assurance, which is required for certain types of contaminated sediment sites. 2015 Wis. Act 204 created these new financial assurance requirements in March 2016. Act 204 is based on recommendations in the Brownfields Study Group's 2015 report, Investing in Wisconsin. The act amended Wis. Stat. ch. 292, which regulates the investigation and cleanup of contaminated sites. Act 204 changed how contaminated sediments are investigated and cleaned up, and included new financial assurance requirements relating to certain contaminated sediment sites. Section 36 of Act 204 directed the department to promulgate these rules using the emergency rulemaking procedures, without the finding of an emergency.

While developing the proposed rules, DNR held 12 public input sessions between February 2019 and January 2020, plus one additional subgroup session focused on the emergency rules. During the public input sessions stakeholder comments were received and incorporated into draft rules prepared for the Natural Resources Board (NRB) meeting in May; however, written comments sent to the NRB prior to the May NRB meeting differed from those previously received during public input sessions. The department decided to pull the emergency rule board order from the NRB agenda and to hear additional input from the public and stakeholders prior to taking the emergency rules to NRB for adoption.

DNR is holding two public input sessions, this being the first, to hear additional comments and receive additional input on the emergency rules prior to going back to NRB for adoption. Changes to the draft emergency rules will be considered based on input received during the public input sessions as well as the comments that were received prior to the May NRB meeting. In addition to the two planned public

input sessions, the second scheduled for July 6, you can make additional comments prior to the NRB meeting where the emergency rules will be proposed for adoption (anticipated in August). If the emergency rules are adopted by NRB, a public hearing will be held after the emergency rules become effective.

The proposed emergency rules were drafted concurrent to the proposed permanent rule changes to the NR 700 series. Additional opportunities for public comment on the proposed permanent rule changes will be available during the public hearing anticipated this fall and prior to the NRB meeting at which the proposed permanent rules will be presented for adoption, anticipated this winter.

The purpose of this meeting is for DNR to listen to comments, concerns, and input on the emergency rules, or receive questions on the emergency rules. Following this meeting, DNR will evaluate comments, input and questions received as they pertain to the proposed emergency rule draft. We will hold a second session on July 6 to provide feedback on the comments received as a result of this meeting, as well as listen to any further comments, input and questions.

The proposed rule consists of two new rule chapters (NR 756 and NR 758), along with revisions in chs. NR 700 through 754 that relate to the new chapters. These chapters provide the procedures and requirements for meeting Act 204 financial assurance requirements at two types of contaminated sediment sites.

The proposed Chapter NR 756 addresses the first set of new financial assurance requirements created under Act 204. These requirements apply at sites where an engineering control is used to address contaminated sediment. An example an engineering control is a cap over the remaining contamination. At sites where an engineering control is used, the department may require a plan and compliance schedule and proof of financial responsibility for the maintenance of the engineering control. In addition, when a structural impediment (such as a bridge footing) prevented the complete investigation or cleanup of the sediment, the department may require a plan and compliance schedule and proof of financial responsibility for investigation and cleanup should removal of that structure occur.

The proposed chapter NR 758 addresses financial assurance requirements created in Act 204. Interested persons may apply to the Voluntary Party Liability Exemption (VPLE) program for sites with contaminated sediments. In addition, VPLE applications may obtain partial cleanup approval of the upland portion of a VPLE site with contaminated sediment, which allows development of the upland portion to move forward. The conditions for obtaining these liability exemptions include providing financial assurance to cover certain contaminated sediment cleanup costs. The two proposed rule chapters establish the procedures, forms, and requirements necessary to implement the statutory requirements.

These rules are also being promulgated as permanent rules. The larger permanent rule package includes other rule changes needed following Act 204, as well as other code clarifications and updates. We anticipate presenting the permanent rule package to the board in late 2020 or early 2021. The program drafted the emergency and permanent rules concurrently following the NRB's approval of two scope statements in January of 2019.

2. Comments and input session on emergency rule RR-11-17E.

Michael Prager, Land Recycling Team Leader in the DNR Remediation and Redevelopment Program, asked persons submitting comments to use either the Skype instant message feature or his email address to allow him to facilitate comments.

An attendee asked whether the rules would apply to Superfund sites. Another attendee stated that, in his experience the federal provisions would apply. DNR staff replied that these rules would apply as ARARs (Applicable or Relevant and Appropriate Requirements) at certain Superfund sites, and asked DNR legal counsel to confirm. DNR counsel stated that once the rules become final and effective, they may apply at certain Superfund sites; however, it would vary depending on the stage of the process and the progress of the enforceable documents (e.g., consent decree) relating to the specific site. DNR staff added that the EPA may make the decision at certain sites regarding applicable rules and standards and DNR would work with them.

An attendee stated that he wanted to express some concerns that Wisconsin Manufacturers & Commerce (WMC) had with the scope of the emergency rule, stating that these concerns are shared by the Wisconsin Water Quality Coalition which is made up of other groups including the Wisconsin Paper Council, Midwest Food Products, American Chemistry Council, Wisconsin Dairy Alliance, and others. The main concern, from a process standpoint, was that legislature gave narrow exemption for emergency rule for two specific sections of Act 204 – the sections related solely to proof of financial responsibility for requirements for contaminated sediment and insurance coverage for voluntary parties – and the scope statement had articulated some policies articulated beyond the statutory authority. The organizations requested that DNR scale the scope of the rules back to ensure consistency with the grant of emergency rulemaking authority that the legislature provided in Act 204.

He added that although the organizations had other concerns, they would wait for permanent rulemaking to discuss them further. For now, they requested that emergency rule provisions be limited to the scope of statutory authority.

DNR staff thanked the attendee for his comment and confirmed that staff were taking a serious look at the comments submitted today and previously. Staff added that today's meeting would focus on receiving input and that staff could discuss changes at the meeting on July 6.

An attendee stated the original intent behind the emergency rule provision in the act was to allow for the progress of one project, which had since lapsed. He asked whether there was an immediate need to proceed with the rule.

DNR staff stated that, if a site comes in, DNR may need these rules to proceed. DNR has been very flexible in working with these sites. There is a "shall" in the language of Act 204 regarding emergency rules – DNR must promulgate them before the permanent rules -- and it could be helpful to sites that come in.

3. Overview of next steps.

Molly Schmidt, Policy Analyst in the DNR Remediation and Redevelopment Program, provided an overview of next steps. She stated that following this meeting, DNR staff would evaluate comments, input and questions received regarding the proposed emergency rule draft including written comments submitted to the NRB before the planned May meeting. On July 6, 2020, DNR would hold a second session to provide any feedback on the comments received as a result of this meeting, and would also

listen to any further comments, input and questions on the emergency rules. Also, those wishing to comment further outside of the meetings may submit comments by email at: DNRRRNR700input@wisconsin.gov.

Following the meetings, the emergency rules would continue to move through the emergency rulemaking process. DNR would request the Natural Resources Board's adoption of the rule. If adopted, the rule would be sent to the Governor for approval. It would then become effective upon publishing in State Journal. Public hearings for the rule would be held simultaneously with permanent rule hearing.

4. Conclude and adjourn.

Jodie Peotter thanked attendees for their time and comments.