

Chapter NR 700

GENERAL REQUIREMENTS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 700.01 Purpose. (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to 754, to incorporate by reference specified regulations or materials, and to grant confidential status for records, reports and other information furnished to or obtained by the department for use in the administration of chs. NR 700 to 754.

(2) The purpose of chs. NR 700 to 754 is to establish consistent, uniform standards and procedures that allow for site-specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under chs. 289 and 292, Stats. The department intends that responsible parties and other interested persons should be able to efficiently move through the process set forth in chs. NR 700 to 754 with minimal department oversight, except where the department has specified that more in-depth oversight is needed such as under s. 292.15 or s. 292.65, Stats., or through an enforceable order or agreement. These rules are adopted pursuant to ch. 160, Stats., ss. 227.11 (2), 281.19 (1), 287.03 (1) (a), 289.05 (1), 289.06, 289.31 (7), 289.43 (8), 291.05 (6), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 700.02 Applicability. (1) This chapter and chs. NR 702, 704, and 708 to 754 apply to actions taken by the department under the authority of chs. 289 and 292, Stats.

(2) This chapter and chs. NR 706 to 754 apply to actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under chs. 289 and 292, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: The department of agriculture, trade and consumer protection has the authority under s. 94.73, Stats., to issue corrective action orders to parties who are responsible for the discharge of an agricultural chemical, to require that the responsible parties take action that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. The department of agriculture, trade and consumer protection has confirmed their intention to require that this chapter and chs. NR 708 to 727 and 749 be applied to actions taken by responsible parties as directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats. For actions directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats., submittals under chs. NR 708 to 727 and 749 shall be sent to the department of agriculture, trade and consumer protection, and approvals required by these chapters shall be obtained from the department of agriculture, trade and consumer protection.

Note: Persons who are not responsible parties and who voluntarily take a response action at a site or facility that is subject to regulation under ch. 289, Stats., or s. 292.31 or 292.11, Stats., are not required to comply with the standards and procedures in chs. NR 700 to 754 unless the person is seeking the liability exemption under s. 292.15, Stats. However, the department may not consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to 754 have been complied with, and a person who did not originally fall within the definition of a responsible party may become a responsible party if the actions taken by that person cause or worsen the discharge of a hazardous substance or if the person takes possession or control of the site or facility.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond

those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(2m) This chapter and chs. NR 706 to 728, 750, and 754 apply to actions taken by persons who are seeking a liability exemption under s. 292.15, Stats.

(3m) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to these statutes. In addition, federal laws such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; renum. (3) and (4) to be (5) and (6), cr. (3), Register, March, 1995, No. 471, eff. 4-1-95; cr. (4), Register, April, 1995, No. 472, eff. 5-1-95; am. (1), (3) (intro.), (a) and (b), (4), (5), cr. (2m), (3) (d), (4) (b), (5) (b), Register, February, 1996, No. 482, eff. 3-1-96; am. (2), Register, February, 1997, No. 494, eff. 3-1-97; correction in (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; correction in (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023: am. (1), (2), (2m), r. (3) to (5), renum. (6) to (3m) and am. Register October 2013 No. 694, eff. 11-1-13.

NR 700.03 Definitions. The following definitions apply to chs. NR 700 to 754:

(1e) "Agency with administrative authority" or "agency" has the meaning specified in s. 292.12 (1) (a), Stats.

Note: Section 292.12 (1) (a), Stats., reads: "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2) or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

(1m) "Approve" or "approval" means a written acceptance by the department of a plan, report or other document that has been submitted to the department for review.

(1s) "Attenuation factor" means the ratio of the indoor air concentration arising from vapor intrusion to the subsurface vapor concentration at a point or depth of interest in the vapor intrusion pathway.

Note: Under ch. NR 720, the department allows the use of default attenuation factors from US EPA guidance, or the responsible party may collect enough information to develop a site-specific attenuation factor.

(2) "Background soil quality" means:

(a) Soil quality that is attributable to the parent material from which the soil was derived and the natural processes which produce soil, or from contamination attributable to atmospheric deposition including the following constituents; lead, polynuclear aromatic hydrocarbons, or polychlorinated biphenyls, but not attributable to hazardous substance discharges or the discharge of pollutants, as that phrase is defined in s. 283.01, Stats.

(b) Soil quality that is found at or within reasonable proximity to the site or facility, at a depth comparable to that of the area to

be remediated, in the same soil layer and in an area unaffected by hazardous substances discharges or the discharge of pollutants.

(3) "Business days" means Monday through Friday excluding the holidays listed in s. 230.35 (4) (a), Stats.

(3m) "Case closure" has the meaning specified in s. 292.12 (1) (b), Stats.

Note: Under s. 292.12(1)(b), Stats., "case closure" means "a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site."

(4) "CERCLA" means the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 USC 9601 to 9675.

(4m) "CERCLIS" means the comprehensive environmental response, compensation and liability information system, as compiled by the U.S. EPA.

Note: The federal CERCLIS list is available from the U. S. EPA, by writing to: WI Freedom of Information Act Officer, U.S. EPA Region V, 77 W. Jackson Blvd, Chicago, IL 60604.

(5) "CFR" means the code of federal regulations.

(6) "Consultant" means a person or business under contract to perform a response action taken under, or subject to regulation under, chs. NR 702 to 754.

(6m) "Contaminated site boundary" or "contaminated site boundaries" means any area within which a hazardous substance has been discharged such that the air, land, or waters have been affected by a discharge or where environmental pollution exists.

Note: Both the source property and other properties affected by the discharge may be included within the "contaminated site boundary." Sub. (59m) defines "source property" as "the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred." Other properties may be affected by migration of the hazardous substance through soil or groundwater.

(7) "Contamination" or "contaminated" means:

(a) Where the air, land or waters of the state have been affected by the discharge of a hazardous substance; or

(b) Where environmental pollution exists.

(8) "Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a hazardous substance discharge or imminent threat of a hazardous substance discharge.

(9) "Day" means calendar day, except where the phrase "business day" is used.

(10) "Debris" means material resulting from the construction, demolition or razing of buildings, roads and other structures and materials that have been discarded at a site or facility.

(11) "Department" means the department of natural resources.

(11m) "Department database" means the publicly accessible database available on the internet as required by ss. 292.12, 292.31, and 292.57, Stats.

Note: The Remediation and Redevelopment Program maintains a database called the "Bureau for Remediation and Redevelopment Tracking System" or "BRRTS". The program also maintains an internet accessible version of this database, called "BRRTS on the Web", or "BOTW". "BOTW" includes information on properties where a hazardous substance discharge has or may have taken place. The program also maintains a web-based mapping system called "Remediation and Redevelopment Sites Map" or "RRSM", that allows users to view information from the BRRTS database using a geographic information system (GIS) application. Both these applications may be found at <http://dnr.wi.gov/topic/Brownfields/clean.html>.

(12) "Department-funded response action" means a response action undertaken by the department using the authority of s. 292.11, 292.31 or 292.41, Stats., which is funded in whole or in part by appropriations in s. 20.370 (2) or 20.866 (2), Stats.

(13) "Discharge" has the meaning specified in s. 292.01 (3), Stats.

Note: Under s. 292.01 (3), Stats., "discharge" means, but is not limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."

(14) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water in a manner which may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(15) "Emergency" means a situation which requires an immediate response to address an imminent threat to public health, safety, or welfare or the environment.

(16) "Enforcement standard" has the meaning specified in s. NR 140.05 (7).

Note: Section NR 140.05 (7) defines "enforcement standard" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12."

(17) "Engineering control" has the meaning specified in s. 292.12 (1) (c), Stats.

Note: Under s. 292.12 (1) (c), Stats., "engineering control" means "an action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap or soil cover."

(18) "Environment" means any plant, animal, natural resource, surface water (including underlying sediments and wetlands), groundwater, drinking water supply, land surface and subsurface strata, and ambient air within the state of Wisconsin or under the jurisdiction of the state of Wisconsin.

(19) "Environmental pollution" has the meaning specified in s. 291.01 (4), Stats.

Note: Section 291.01 (4), Stats., defines "environmental pollution" to mean "the contamination or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

(20) "Environmental standards" mean those cleanup standards, performance standards, standards of control and other substantive and procedural requirements, criteria or limitations promulgated as a regulation or rule under or pursuant to federal environmental or state environmental or facility citing laws that specifically address a hazardous substance, pollutant, remedial action, location or other circumstances found at a site or facility.

(21) "Facility" means "approved facility" as defined in s. 289.01 (3), Stats., "approved mining facility" as defined in s. 289.01 (4), Stats., and "nonapproved facility" as defined in s. 289.01 (24), Stats.

Note: Under s. 289.01 (3), Stats., "approved facility" means "a solid or hazardous waste disposal facility with an approved plan of operation under s. 289.30 or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 289.30." "Approved mining facility" means "an approved facility which is part of a mining site, as defined under s. 293.01 (12), used for the disposal of solid waste resulting from mining, as defined under s. 293.01 (9), or prospecting, as defined under s. 293.01 (18)." "Nonapproved facility" means "a licensed solid or hazardous waste disposal facility which is not an approved facility."

(22) "Free product" means a discharged hazardous substance or environmental pollution that is present in the environment as a floating or sinking non-aqueous phase liquid.

(23) "Groundwater" has the meaning specified in s. 160.01 (4), Stats.

Note: Section 160.01 (4), Stats., defines "groundwater" to mean "any waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil." See "waters of the state" definition in sub. (67).

(24) "Groundwater quality standards" mean site-specific standards developed pursuant to ch. NR 140 and groundwater quality standards adopted by the department in ch. NR 140, including enforcement standards, preventive action limits, indicator parameters and alternative concentration levels.

(25) "Hazardous substance" has the meaning specified in s. 299.01 (6), Stats.

Note: Section 299.01 (6), Stats., defines "hazardous substance" to mean "any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department."

(26) "Hazardous waste" has the meaning specified in s. 291.01 (7), Stats.

Note: Section 291.01 (7), Stats., defines "hazardous waste" to mean any "solid waste identified by the department as hazardous under s. 291.05" Federal laws and rules may have broader or different definitions than the state does. If so, federal hazardous waste laws must be complied with, in addition to state laws.

(27) “High groundwater level” means the higher of the elevation to which the soil is saturated and observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile.

(28) “Immediate action” means a response action that is taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution, to halt the discharge, contain or remove discharged hazardous substances or remove contaminated environmental media, in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety, or welfare that may exist. This term includes both emergency and non-emergency immediate actions.

Note: Examples of immediate actions may be found in s. NR 708.05 (4). If further action will be required after a non-emergency response action is taken, that action would meet the definition of “interim action” in s. NR 700.03 (29). The principal distinction between a non-emergency, immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the “no further action” criteria in s. NR 708.09 which apply at the completion of an immediate action.

(28m) “Industrial land use” means the utilization of a parcel of real estate for manufacturing operations that use machinery and mechanical power to produce products or services, including electrical power, or for a service business that provides storage facilities, product distribution or maintenance or repair services for machinery.

Note: Examples of industrial land uses include manufacturing and assembly plants; warehouses; scrap salvage operations; foundries and forging plants; metal pressing, stamping and spinning plants; electroplating facilities; tanneries; chemical processing facilities; electrical generating plants and electrical substations; slaughter houses and meat processing plants; fertilizer and pesticide packaging plants; bottling plants; wholesale bulk fuel storage and distribution facilities; railroad yards; and businesses that sell and repair motor vehicles, recreational vehicles, transportation containers or construction machinery and equipment.

(29) “Interim action” means a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety, or welfare or the environment, while other response actions are being taken or planned for the site or facility.

Note: Examples of interim actions may be found in s. NR 708.11. “Interim action” does not include emergency or non-emergency immediate actions. An interim action is followed by subsequent response actions at the site or facility, unless the department determines in compliance with the requirements of ch. NR 726, that no further response action is necessary after a site investigation has been conducted.

(30) “Interim action options report” means a report which identifies and evaluates various interim action options with the goal of selecting an option which meets the environmental standards for the interim action being undertaken.

(30g) “Limit of detection” has the meaning specified in s. NR 149.03 (41).

Note: Section NR 149.03 (41) defines “limit of detection” or “LOD” to mean “the lowest concentration or amount of analyte that can be identified, measured, and reported with confidence that the concentration is not a false positive value.” For department purposes, the LOD approximates the method detection limit (MDL) and is determined by the method cited in s. NR 149.03 (46) (MDL). See sub. (33m) for MDL.

(30r) “Limit of quantitation” has the meaning specified in s. NR 149.03 (42).

Note: Section NR 149.03 (42) defines “limit of quantitation” or “LOQ” to mean “the lowest concentration or amount of an analyte for which quantitative results can be obtained.”

(31) “Long-term monitoring” means systematic evaluation of the selected remedial or interim action option through collection and inspection of soil data, groundwater data, surface water data, sediment data, and other relevant data.

(32) “Management of a hazardous substance” means the treatment, storage or disposal, including recycling, of a hazardous substance.

(33) “Media” means air, surface water, groundwater, sediments and land surface and subsurface strata, including soil.

(33m) “Method detection limit” or “MDL” has the meaning specified in s. NR 149.03 (46).

Note: Section NR 149.03 (46) defines the “method detection limit” to mean “the minimum concentration of an analyte that can be measured and reported with 99% confidence that the stated concentration is greater than zero, determined from analyses of a set of samples containing the analyte in a given matrix. The method detection limit is generated according to the protocol specified in 40 CFR 136, Appendix B.”

(34) “Migration pathway” means natural geologic features or cultural features, including but not limited to water mains, sewage laterals, drain tiles and road beds, which allow the movement of a hazardous substance or environmental pollution in liquid, solid, dissolved or vapor phase.

(34m) “Minority business” means a business certified by the department of safety and professional services pursuant to s. 16.287 (2), Stats.

(35) “Municipal population” means the number of people residing in the municipality according to the most recent department of administration estimates.

(36) “Municipality” has the meaning specified in s. 292.01 (11), Stats.

Note: Section 292.01 (11), Stats., defines “municipality” to mean, “any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewage district.”

(37) “National priorities list” means the list, compiled by the U.S. environmental protection agency (EPA) pursuant to section 105 (8) (b) of CERCLA, of hazardous substance releases in the United States that are priorities for investigation and remedial action.

(38) “National contingency plan” or “NCP” means 40 CFR part 300.

(38m) “Natural attenuation” means the reduction in the concentration and mass of a substance and its breakdown products in groundwater, due to naturally occurring physical, chemical, and biological processes without human intervention or enhancement. These processes include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(39) “Naturally occurring background” means the quality of individual media in the vicinity of a discharge of a hazardous substance or environmental pollution that has not been affected by a hazardous substance discharge or environmental pollution.

(39m) “Non-residential setting” means a setting other than a residential setting, used for commercial or industrial purposes.

(40) “Operation and maintenance” means measures designed to monitor, operate and maintain the effectiveness of response actions.

(41) “Operator” has the meaning specified in s. 292.31 (8) (a) 1., Stats.

Note: Section 292.31 (8) (a) 1., Stats., defines “operator” to mean “any person who operates a site or facility or who permits the disposal of solid waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits the disposal of solid waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.”

(42) “Owner” has the meaning specified in s. 292.31 (8) (a) 2., Stats.

Note: Section 292.31 (8) (a) 2., Stats., defines “owner” to mean “any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.”

(42m) “Pathway” means the route a substance takes in traveling to a receptor or potential receptor or the specific portal of entry, such as lungs, skin or digestive tract, that the substance takes to potentially express its toxic effect, or both.

Note: The food chain pathway for cadmium, for example, refers to cadmium being taken up in plant tissue and the plant tissue being ingested by an organism.

(43) “Person” has the meaning specified in s. 292.01 (13), Stats.

Note: Section 292.01 (13), Stats., defines “person” to mean “an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, or federal agency.”

(43g) “Phase I environmental site assessment” means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include reviewing records, interviewing persons, and conducting physical inspections of the site.

(43r) “Phase II environmental site assessment” means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase I environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

Note: The department recommends that at a minimum, the current ASTM standards be followed when conducting Phase I and Phase II environmental assessments. When a person is seeking liability protections under CERCLA the person should follow EPA’s requirements. See EPA’s web page at: www.epa.gov for more information.

(44) “Point of standards application” has the meaning specified in s. NR 140.05 (15).

Note: Section NR 140.05 (15) defines “point of standards application” to mean “the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded.”

(45) “Practicable” means capable of being implemented, taking into account:

(a) The technical feasibility of a remedial action option, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and

(b) The economic feasibility of a remedial action option, considering the cost of the remedial action option compared to its technical feasibility.

(45e) “Property” means a contiguous area of land the entire legal description of which is found in one deed.

(45m) “Property boundary” means the boundary of the property owned or leased by a common owner or lessor, regardless of whether public or private roads run through the property.

(46) “Preventive action limit” has the meaning specified in s. NR 140.05 (17).

Note: Section NR 140.05 (17) defines “preventive action limit” to mean “a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15, Stats., and s. NR 140.10, 140.12 or 140.20.”

(46m) “RCRA” means the resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

(47) “Receptor” means environmental resources, including but not limited to, plant and animal species and humans, sensitive environments and habitats, water supply wells, and buildings or locations that have the potential to be, or have actually been, exposed to contamination.

(48) “Remedial action” or “remedy” means those response actions, other than immediate or interim actions, taken to control, minimize, restore, or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety, or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize, or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling, or reuse, and any monitoring required to assure that such actions protect public health, safety, and welfare and the environment.

(49) “Remedial action options report” means a report which identifies and evaluates various remedial action options with the goal of selecting an option in compliance with the requirements of s. NR 722.11.

(49g) “Residential setting” means any dwelling designed or used for human habitation, and includes educational, childcare, and elder care settings.

(49r) “Residual contamination” means that some contamination remains after a cleanup is completed and approved. Residual contamination includes all phases of remaining contamination including vapor, dissolved, adsorbed, and free-phase.

Note: The term “residual contamination” does not have the same meaning as the terms “residual phase”, “residual concentration” or “residual contaminant level.” The terms “residual phase” and “residual (phase) concentration” are used in some publications and are used when referring to the free-phase or separate non-aqueous phase liquid in soil or groundwater. The term “residual contaminant level” is used in ch. NR 720 to refer to soil standards developed under that chapter.

(50) “Response” or “response action” means any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions.

(51) “Responsible party” or “responsible parties” means any of the following:

(a) Any person who is required to conduct a response action under ch. 292, Stats.

(b) Persons liable to reimburse the department for the costs incurred by the department to take response action under chs. 289 and 292, Stats.

(c) Owners and operators of solid waste facilities that are subject to regulation under ch. NR 508.

(52) “Restore” or “restoration” means those actions necessary to return the environment to its original condition before the hazardous substance discharge or environmental pollution occurred. Such actions may include, but are not limited to, the replacement or removal of injured plant and animal life and treatment of contaminated soils.

Note: This definition was formerly found in s. NR 158.04 (5).

(52m) “Right-of-way” means the strip of land over which railroad tracks run, or within which a public street or highway has been constructed, regardless of whether the strip of land is owned by the railroad or the entity that maintains the public street or highway; and corridors created by dedication, by the granting of an easement and by the acquisition of fee title.

(53) “Risk assessment” means a site-specific characterization of the current or potential threats that may be posed to public health, safety, or welfare or the environment by contamination migrating to or in groundwater or surface water, discharging to the air, leaching through or remaining in soil, bioaccumulating in the food chain, or other exposure pathways.

(54) “Sediment” means particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water.

(55) “Sensitive environment” means an area of exceptional environmental value, where a discharge could pose a greater threat than a discharge to other areas, including but not limited to: wetlands; habitat used by state or federally designated endangered or threatened species; national or state fish and wildlife refuges and fish and wildlife management areas; state and federal designated wild and scenic rivers, designated state riverways and state designated scenic urban waterways; riparian areas; rookeries; cold water communities as defined in s. NR 102.04 (3) (b), Lakes Superior and Michigan and the Mississippi river, environmentally sensitive areas and environmental corridors identified in area-wide water quality management plans, special area management plans, special wetland inventory studies, advanced delineation and identification studies and areas designated by the U.S. EPA under section 404 (c) 33 USC 1344 (c); calcareous fens; state forests, parks, trails and recreational areas; state and federal designated wilderness areas; designated or dedicated state natural areas established under ss. 23.27 to 23.29, Stats.; wild rice waters as listed in s. NR 19.09; and any other waters identified as outstanding or exceptional resource waters in ch. NR 102.

(55m) “Sensitive receptor” means a receptor that is affected by slight differences or changes in environmental conditions.

(56) “Site” means:

(a) Any waste site as defined in s. 292.01 (21), Stats.; or

(b) Any area where a hazardous substance has been discharged.

Note: Section 292.01 (21), Stats., defines “waste site” to mean “any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.”

(57) “Site investigation” means an investigation undertaken in conformance with ch. NR 716.**(58)** “Soil” means unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste.**(59)** “Solid waste” has the meaning specified in s. 289.01 (33), Stats.

Note: Section 289.01 (33), Stats., defines “solid waste” to mean “any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source [material, as defined in s. 254.31 (10)], special nuclear [material, as defined in s. 254.31 (11)], or by-product material, as defined [in] s. 140.52 [s. 254.31 (1)].” The material in brackets is effective 1–1–97.

(59m) “Source property” means the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred.**(60)** “Submittal” means any document, report, plan, set of specifications, engineering design, or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR 700 to 754.**(60m)** “Sub-slab” means beneath the lowermost building foundation slab.**(61)** “Surface water” has the meaning specified in s. NR 103.02 (3).

Note: “Surface water” means “all natural and artificial, named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters.”

(62) “Superfund” means the federal environmental cleanup fund and program created by CERCLA.**(62m)** “Sustainable remedial action” means achieving protection of human health, safety, and the environment, while incorporating and balancing certain practices, processes, and technologies throughout all phases of the remedial action to deliberately generate a net positive impact on the environment, economy, and society.**(63)** “Treatment” means any method, technique or process, including thermal destruction, which changes the physical, chemical or biological character or composition of a hazardous substance or environmental pollution so as to render the contamination less hazardous.**(64)** “Treatability study” means the testing and documentation activities to evaluate the effectiveness of an interim or remedial action prior to full scale design and implementation. Treatability study includes, but is not limited to, bench scale studies and pilot scale studies.

Note: Treatability studies provide additional data for the detailed analysis of treatment alternatives and the engineering design of remedial alternatives under ch. NR 724.

(64g) “TSCA” means the toxic substance control act, 15 USC 2601 to 2692.**(64r)** “Unconsolidated material” means soil, sediment or other granular material, such as fill, not including debris.

Note: Section NR 700.03 (58) defines “soil” as “unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste.” Section NR 700.03 (54) defines “sediment” as “particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water.” Section NR 700.03 (10) defines “debris” as “material resulting from the construction, demolition or razing of build-

ings, roads and other structures and materials that have been discarded at a site or facility.”

(65) “U.S. EPA” or “EPA” means the United States environmental protection agency.**(66)** “Underground storage tank” or “UST” means any one or a combination of tanks, including connected pipes, that is used to contain an accumulation of hazardous substances, and the volume of which, including the volume of connected underground pipes, is 10 percent or more beneath the surface of the ground. The term does not include any of the following or pipes connected to any of the following:

(a) Septic tanks.

(b) Pipeline facilities, including gathering lines, regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.).

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.).

3. State laws comparable to the provisions of the law referred to in subd. 1. or 2. for intrastate pipeline facilities.

(c) Surface impoundments, pits, ponds or lagoons.

(d) Storm water or waste water collection systems.

(e) Flow-through process tanks.

(f) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(g) Storage tanks situated in an underground area, such as, but not limited to, a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

Note: This definition of “underground storage tank” is based on the definition found in s. ATCP 93.050 (122).

(66m) “Utility corridor” means any utility line that runs underground and any backfilled trench that was constructed to install a water main or lateral, a sewer main or lateral or other utility line.**(66p)** “Vapor action level” means the concentration of vapors from volatile compounds is at or above the 1-in-100,000 (1×10^{-5}) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens.

Note: Generic tables of risk based concentrations for air in residential and industrial land use scenarios can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/Generic_Tables/index.htm.

(66s) “Vapor mitigation system” means a system that prevents or reduces the migration of contaminant vapors into a building and does not have the primary purpose of remediating vapor contaminant sources.**(66w)** “Vapor risk screening level” means the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level multiplied [divided] by an appropriate attenuation factor.

Note: The correct word is shown in brackets. The scientific process for determining a vapor risk screening level is to divide, not multiply, the vapor action level by an appropriate attenuation factor. This error will be corrected in future rulemaking.

Note: Vapor risk screening levels are applied to sub-slab, soil gas, and groundwater samples.

(66y) “Vapors” mean chemicals that are sufficiently volatile and toxic to pose an inhalation risk to human health via vapor intrusion from a soil or groundwater source.**(67)** “Waters of the state” has the meaning specified in s. 281.01 (18), Stats.

Note: Section 281.01 (18), Stats., defines “waters of the state” to include “those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction.”

(68) “Wetlands” has the meaning specified in s. 23.32, Stats.

Note: Section 23.32, Stats., defines “wetland” to mean “those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.”

(69) “Work plan” means a plan which outlines the intended scope of a response action, or any phase of a response action,

including but not limited to intended methods, procedures and techniques to be used during the response action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (42m), Register, March, 1995, No. 471, eff. 4-1-95; am. (49), Register, April, 1995, No. 472, eff. 5-1-95; am. (intro.), Register, October, 1995, No. 478, eff. 11-1-95; am. (intro.), (60), Register, February, 1996, No. 482, eff. 3-1-96; cr. (38m) and (45m), Register, October, 1996, No. 490, eff. 11-1-96; emerg. cr. (66m), eff. 5-18-00; cr. (66m), Register, January, 2001, No. 541, eff. 2-1-01; CR 01-129: cr. (28m), Register July 2002 No. 559, eff. 8-1-02; CR 12-023: am. (intro.), renum. (1) to (1m), cr. (1e), (1s), am. (2) (a), cr. (3m), (4m), am. (6), cr. (6m), (11m), am. (17), (27), cr. (30g), (30r), (33m), (34m), am. (36), cr. (39m), am. (43), cr. (43g), (43r), (45e), am. (45m), cr. (46m), am. (48), cr. (49g), (49r), renum. (51) to (intro.) and am., cr. (51) (a) to (c), (52m), (55m), (59m), am. (60), cr. (60m), (62m), (64g), (64r), (66p), (66s), (66w), (66y) Register October 2013 No. 694, eff. 11-1-13.

NR 700.05 Confidentiality of information. (1) Except as provided under sub. (2), any record, report or other information furnished to, or obtained by, the department in the administration of chs. NR 700 to 754 is a public record subject to the provisions of ss. 19.21, 19.31 to 19.39, Stats., and s. NR 2.195.

(2) If confidential status is sought for any record, report or other information furnished to or obtained by the department under chs. NR 700 to 754, the standards and procedures in s. NR 2.19 are applicable to all sites and facilities, and the standards and procedures in s. 289.09 (2), Stats., are applicable to the owners and operators of solid waste facilities.

Note: Under s. NR 2.19, the department may grant confidential status if: (1) the standards for granting confidential status found in s. 289.09 or 291.15, Stats., are met; (2) confidential treatment is in the public interest using the balancing test in *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672 (1965); or (3) a specific statutory or common law right to confidential treatment is applicable.

(3) Records, reports and other information for which the department has granted confidential status may be:

(a) Used by the department in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific person or responsible party and the analyses or summaries do not reveal records or other information granted confidential status;

(b) Released by the department to the U.S. EPA or its authorized representative, if the U.S. EPA or its authorized representative agrees to protect the confidentiality of the records, reports or other information;

(c) Released for general distribution if the person who provided the information to the department expressly agrees to the release; and

(d) Released on a limited basis if the department is directed to take this action by a judge or administrative law judge under an order which protects the confidentiality of the record, report or other information.

Note: Sections 292.11 (8), 292.31 (1) (d) and (3) (e), and 292.41 (5), Stats., provide the department with authority to gain access to property for the purpose of conducting response actions, and access to records relating to abandoned containers, discharged hazardous substances and solid waste disposed of at a site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1), (2), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 700.07 Incorporation by reference. The material listed in this section is incorporated by reference at the paragraph noted: "SW-846, Test Methods for Evaluating Solid Waste", by the U.S. Environmental Protection Agency, Office of Solid Waste, loose-leaf manual, "The Third Edition of SW 846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB and IV", referenced in s. NR 716.13 (12).

Note: These materials are available for inspection in the offices of the department of natural resources, 101 S. Webster Street, Madison, Wisconsin, or may be accessed at the following web site: <http://www.epa.gov/epaoswer/hazwaste/test/main.htm> or may be purchased for personal use from:

National Technical Information Service
U.S. Department of Commerce
Springfield, VA 22161

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 700.08 Superfund site assessment. A site or facility may be evaluated by the department to determine eligibility for the federal superfund program, under CERCLA and the

NCP. The department also may conduct federal site assessment activities, in cooperation with the U.S. EPA. Assessment activities may include, but are not limited to:

- (1) Identifying sites for addition to CERCLIS;
 - (2) Reviewing files by department staff in the form of preliminary assessments;
 - (3) Collecting data both on-and-off-site by conducting field sampling;
 - (4) Preparing or reviewing federally prepared hazard ranking system scores, using the federal hazard ranking system; and
 - (5) Nominating sites or facilities to the national priorities list.
- History:** CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 700.10 Identification of responsible parties. The department may attempt to identify potentially responsible parties during any phase of response action by any of the following methods:

- (1) Interviewing local officials, neighboring residents, persons involved with the operations of the site or facility, and past and present site or facility owners or operators.
- (2) Reviewing operational records of the site or facility.
- (3) Reviewing department records.
- (4) Determining current and past ownership of the site or facility.
- (5) Collecting and analyzing samples.
- (6) Other appropriate means.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 700.11 Submittals. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall comply with the following:

(a) Responsible parties shall submit site progress reports that summarize the completed work and additional work planned to adequately complete the response action at the site or facility to the department at 6 month intervals 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. Progress reports 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: Copies of site progress report forms may be obtained at: <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

(bm) Unless otherwise directed by the department, responsible parties shall submit a site investigation work plan meeting the requirements of s. NR 716.09 to the department within 60 days of receiving notification that a site investigation is required.

(cm) Responsible parties shall submit a site investigation report meeting the requirements of s. NR 716.15 to the department within 60 days after completion of the field investigation and receipt of the laboratory data.

(dm) Responsible parties shall submit a remedial action options report meeting the requirements of s. NR 722.13 to the department within 60 days after submittal of the site investigation report.

(em) The department shall provide written acknowledgement of receipt of the reports listed in par. (bm) to (dm) within 30 days.

(3) MORE EXTENSIVE REVIEW. The department may perform more extensive review where an application is submitted to the department by a person seeking a liability exemption under s. 292.15, Stats., or where a person is participating in the dry cleaner environmental response program under s. 292.65, Stats.

Note: Section 292.15, Stats., applies to persons who conduct remediation of contaminated property to obtain an exemption from liability.

(3g) NUMBER OF SUBMITTALS. One paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed by the department. The electronic copy shall be submitted on optical disk media and may not be submitted as electronic mail attachments unless specifically

approved in advance by the department. Electronic copy files shall have a minimum resolution of 300 dots per inch, and may not be locked or password protected. The department may request that the electronic copy of sampling results be submitted in a format that can be managed in software. An electronic copy of certain types of voluminous attachments or appendices may be substituted for the paper copy, if specifically approved in advance by the department. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible.

Note: Guidance for GIS Registry submittals outlines how electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. This guidance can be accessed at <http://dnr.wi.gov/files/PDF/pubs/tr/RR690.pdf>.

Note: The department strongly recommends the use of 2-sided copies for the paper copy of the report, and the use of accordion folders for larger reports instead of 3-ring binders, to help address file space issues.

Note: An example of a voluminous attachment is a laboratory quality assurance and control report.

Note: Examples of formats that can be managed in software are spreadsheets, plain text tabular files, hypertext markup language files (HTML) and extensible markup language files (XML).

Note: The department intends to implement an electronic document management system in the future that may require the submittal of all plans or reports in electronic format that can be managed in software.

(3r) TECHNICAL ASSISTANCE. When requesting technical assistance or liability clarification from the department, the request shall be submitted on a form supplied by the department.

Note: The Technical Assistance and Environmental Liability Clarification Request form may be accessed at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>. Other forms are used for the following requests: off-site liability exemption or liability clarification requests, lender liability exemption requests, exemption to develop on a historic fill site, closure requests, or operation and maintenance requests. These forms may be accessed at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (3) (b), Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. (1) (b) and (2) (b), cr. (2) (e), eff. 5-18-00; am. (1) (b) and (2) (b), cr. (2) (e) and (f), Register, January, 2001, No. 541, eff. 2-1-01; correction in (2) (e) was made under s. 13.93 (2m) (b) 7., Stats., Register

July 2002 No. 559; CR 12-023: r. and recr. (1) (title), (intro.), am. (1) (a), r. (1) (b) to (f), cr. (1) (bm) to (em), r. (2), am. (3) (title), renum. (3) (intro.) to (3), r. (3) (a) to (d), cr. (3g), (3r), r. (4) Register October 2013 No. 694, eff. 11-1-13.

NR 700.13 Sample preservation and analysis.

(1) GENERAL REQUIREMENTS. All sampling, preservation, extraction, and analytical methods used for compliance with chs. NR 700 to 754 shall be according to the requirements in s. NR 716.13.

(1m) USE OF GASOLINE RANGE ORGANICS/DIESEL RANGE ORGANICS ANALYSIS. Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for screening purposes shall be completed in accordance with the "Modified GRO, Method for Determining Gasoline Range Organics" and the "Modified DRO, Method for Determining Diesel Range Organics." For purposes of this section, the term "screening purposes" means sampling conducted during site investigations, environmental assessments or other activities in compliance with chs. NR 700 to NR 754 for purposes of determining whether a discharge has occurred or to estimate the degree and extent of contamination.

Note: The "Modified GRO, Method for Determining Gasoline Range Organics" (WI-PUBL-SW-141) and "Modified Diesel Range Organics" (WI-PUBL-SW-14) are available online at <http://dnr.wi.gov/regulations/labcert/documents/methods/drosep95.pdf> and <http://dnr.wi.gov/regulations/labcert/documents/methods/grosep95.pdf>. These methods are referenced in s. NR 149, Appendix III, List of Authoritative Sources.

Note: The "Modified GRO, Method for Determining Gasoline Range Organics" (WI-PUBL-SW-141) and "Modified DRO, Method for Determining Diesel Range Organics" (WI-PUBL-SW-140) are available from the Department of Natural Resources, Emergency and Remedial Response Section, 101 S. Webster St., Madison, WI 53707.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12-023: am. (1), cr. (1m), r. (2), (3) Register October 2013 No. 694, eff. 11-1-13; correction in (1m) made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

Chapter NR 702

CONTINGENCY PLANNING FOR HAZARDOUS SUBSTANCE DISCHARGE RESPONSE BY STATE AGENCIES

NR 702.01 Purpose.
NR 702.02 Applicability.
NR 702.03 Definitions.

NR 702.05 Contingency plan development.
NR 702.07 Contingency plan amendment and review.
NR 702.09 Contingency plan criteria.

NR 702.01 Purpose. The purpose of this chapter is to establish criteria and procedures for use by the department in developing, establishing and amending a contingency plan, that complements and is consistent with federal, state and local contingency plans. The department's contingency plan is intended to provide for efficient, coordinated and effective response to hazardous substance discharges which may pose an imminent threat to public health, safety or welfare or the environment, and to minimize harmful effects to the air, land and waters of the state. This chapter is adopted pursuant to ss. 227.11 (2) and 292.11, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 702.02 Applicability. This chapter applies to the department's development, establishment and amendment of a contingency plan for the undertaking of emergency immediate actions in response to the discharge of hazardous substances, as required by s. 292.11, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 702.03 Definitions. In this chapter, "incident command system" means an organized approach used to effectively control and manage operations at the scene of an emergency immediate action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 702.05 Contingency plan development. (1) The department shall develop and establish a contingency plan for responding to hazardous substance discharges that pose an imminent threat to public health, safety or welfare or the environment, after consulting with local government, federal agencies and other state agencies which may be involved in an emergency immediate action within the state of Wisconsin. The contingency plan shall be developed to be consistent with the overall state emergency operations plan maintained by the division of emergency government. The department's contingency plan shall include all of the following:

- (a) Personnel protection measures.
- (b) Site investigation and documentation procedures.
- (c) Hazardous substance identification procedures.
- (d) Procedures for management of hazardous substances.
- (e) Duties and responsibilities of other state departments and agencies.
- (f) Procedures for restoration of affected lands or waters.

(2) The department may enter into memoranda of understanding with other state agencies or federal or local government agencies, for the purpose of defining roles and responsibilities for haz-

ardous substance discharges that require an emergency immediate action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 702.07 Contingency plan amendment and review. The contingency plan shall be amended by the department when necessary to improve emergency immediate actions in response to a hazardous substance discharge, after consultation with other affected agencies. At a minimum, the contingency plan shall be reviewed by the department at least every 4 years. The department shall maintain records of emergency actions and non-emergency immediate actions taken by the department in response to hazardous substance discharges and these records shall be taken into account when reviewing the contingency plan.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 702.09 Contingency plan criteria. The department shall consider all of the following criteria when developing the contingency plan:

(1) At the scene of a hazardous substance discharge, there may be response personnel from several different agencies, with each agency having its own specific responsibilities, authorities and capabilities. In these cases, primary decision-making authority shall rest with the agency having specific authority to deal with the concern of highest priority as ranked in this subsection. All other agencies' roles and activities shall be subordinated until the concern of highest priority is addressed. Subsequent activity then progresses to the agency having authority and the capability to deal with the next most immediate concern. When it is possible to cooperatively address more than one concern at the same time, actions shall be taken simultaneously. In every stage of decision making, the consequence of each decision on the subsequent response activities shall be weighed, and detrimental consequences minimized. Concerns shall be prioritized according to the following ranking:

- (a) Rescue and treatment of injured humans.
- (b) Prevention of injury to humans.
- (c) Protection of potable water supplies.
- (d) Protection of the air, lands or waters of the state.
- (e) Prevention and minimization of damage to human dwellings.
- (f) Protection of agricultural products and domestic animals used for foods.
- (g) Preservation of all indigenous animal and plant species and the quality of habitats of those species.
- (h) Re-establishment of transportation usage.

(2) When deemed appropriate to effectively coordinate all actions at the scene of a hazardous substance discharge, an incident command system shall be implemented.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

Chapter NR 704

CONTINGENCY PLANNING FOR ABANDONED CONTAINER RESPONSE

NR 704.01 Purpose.
 NR 704.02 Applicability.
 NR 704.03 Definitions.
 NR 704.05 Contingency plan development.

NR 704.07 Contingency plan amendment and review.
 NR 704.09 Criteria for abandoned container response.
 NR 704.11 Evaluation of hazardous substance management options.

NR 704.01 Purpose. The purpose of this chapter is to establish criteria and procedures for developing, establishing and amending a contingency plan to be used by the department when responding to abandoned containers of hazardous substances, other than buried containers. This chapter is adopted pursuant to ss. 227.11 (2) and 292.41, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 704.02 Applicability. This chapter applies to the department's development, establishment and amendment of a contingency plan for conducting emergency immediate actions in relation to abandoned containers of hazardous substances, as required by s. 292.41, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 704.03 Definitions. In this chapter:

(1) "Abandoned container" has the meaning specified in s. 292.41 (1), Stats.

Note: Section 292.41 (1), Stats., defines "abandoned container" to mean "any container which contains a hazardous substance and is not being monitored and maintained."

(2) "Container" means any vessel, tank, bag, box, carton, barrel or drum, which holds or encloses an actual or suspected hazardous substance and is not located under or partially under the land surface.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 704.05 Contingency plan development. (1) The department shall develop a contingency plan for responding to abandoned containers. The contingency plan shall include all of the following elements:

- (a) Personnel protection measures.
- (b) Procedures for obtaining access to the site.
- (c) Site investigation and documentation procedures.
- (d) Hazardous substance identification procedures.
- (e) Procedures for transportation of hazardous substances.
- (f) Procedures for proper management of hazardous substances.

(2) The contingency plan developed under this section shall be established as an appendix to the department's hazardous substance discharge response contingency plan, required in ch. NR 702.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 704.07 Contingency plan amendment and review. The contingency plan shall be amended by the department when necessary to improve response to abandoned containers of hazardous substances. At a minimum, the plan shall be reviewed by the department at least every 4 years. The department shall maintain records regarding abandoned container response actions and these records shall be taken into account in reviewing the contingency plan.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 704.09 Criteria for abandoned container response. The plan developed under s. NR 704.05 shall contain all of the following criteria to be considered by the department when evaluating a response action for an abandoned container:

- (1) Quantity, toxicity or other threats the hazardous substance presents to public health, safety or welfare or the environment.
- (2) Location and condition of the container.
- (3) Whether an emergency exists, considering the nature of the hazardous substance and the location and condition of its container.
- (4) Costs versus potential threats shall be considered when evaluating abandoned container responses in cases where the actual or potential threat to public health, safety or the environment is low.
- (5) Whether a responsible party can be identified and is able to adequately respond in a timely manner.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 704.11 Evaluation of hazardous substance management options. The contingency plan developed pursuant to s. NR 704.05 shall contain the following criteria for evaluating options for managing hazardous substances found in abandoned containers:

(1) Hazardous substances from abandoned containers shall be managed using technologies that minimize the amount of untreated waste, through the use of recycling or treatment, to the extent feasible.

(2) The following methods for addressing specific hazardous substances shall be considered and analyzed, in order of descending preference:

- (a) Reuse or recycling of any hazardous substance in-state or out-of-state at a facility in compliance with state and federal laws;
- (b) Treatment on-site or in-state in compliance with applicable state and federal laws;
- (c) Treatment at an out-of-state facility in compliance with state and federal laws;
- (d) Disposal on-site or in-state in an engineered unit designed to minimize future releases and in compliance with applicable state and federal laws; and
- (e) Disposal out-of-state at a facility in compliance with state and federal laws;

(3) Before selecting a hazardous substance management option, the department shall evaluate the facility or site selected for management of the hazardous substance, in order to determine, on the basis of available information, if the facility or site complies with current state and federal environmental regulations governing the recycling, treatment, storage or disposal of hazardous substances.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. Register, April, 1995, No. 472, eff. 5-1-95.

Chapter NR 706

HAZARDOUS SUBSTANCE DISCHARGE NOTIFICATION
AND SOURCE CONFIRMATION REQUIREMENTS

NR 706.01	Purpose.
NR 706.02	Applicability.
NR 706.03	Definitions.
NR 706.05	General requirements for responsible parties.

NR 706.07	Exemptions.
NR 706.11	Additional responsibilities for owners or operators of underground storage tank systems.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 706.01 Purpose. The purpose of this chapter is to adopt by administrative rule notification requirements for discharges of hazardous substances. This chapter is adopted pursuant to ss. 227.11 (2) and 292.11, Stats.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 706.02 Applicability. (1) This chapter applies to hazardous substance discharges that are subject to the requirements of s. 292.11, Stats.

(2) Section NR 706.05 applies to all persons who have responsibility under s. 292.11, Stats., for any hazardous substance discharge that may occur. Section NR 706.11 contains additional requirements that only apply to the owners and operators of underground storage tank systems that are subject to regulation under 42 USC 6991 *et seq.* and 40 CFR part 280, or ch. ATCP 93, for hazardous substance discharges that are related to the underground storage tank system.

Note: The definition of “underground storage tank” in s. NR 700.03, which applies to this chapter, is based on the definition of “underground storage tank” in ch. ATCP 93, which includes certain farm and residential motor fuel storage tanks and heating oil tanks that are excluded from the federal UST program definition in 42 USC 6991.

(3) Persons and facilities subject to the release notification requirements in CERCLA section 103 (a), 42 USC 9603(a), or the emergency notification and notification requirements in s. 323.60, Stats., and 42 USC 11004, 11021, 11022 and 11023, are required to comply with those requirements in addition to complying with the notification requirements of this chapter, except that notification of a hazardous substance discharge which is given to the department in compliance with the requirements of this chapter constitutes notification of the division of emergency management as required by s. 323.60, Stats., if the notification contains all of the information specified in 42 USC 11004(b)(2).

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; CR 12-023: am. (2), (3) Register October 2013 No. 694, eff. 11-1-13; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

NR 706.03 Definitions. In this chapter:

(2) “Fertilizer” has the meaning specified in s. 94.64 (1) (e), Stats., except that it does not include nitrates or other forms of nitrogen found in the environment that cannot be attributed to a discharge.

Note: Section 94.64 (1) (e), Stats., defines “fertilizer” to mean “any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. “Fertilizer” includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.”

(4) “Impervious” means incapable of being penetrated by a discharged substance.

Note: Asphalt and concrete, if intact and undamaged, are considered impervious surfaces. However, if hazardous substances are capable of penetrating asphalt

or concrete due to cracks or holes, or repeated discharges, the surface would not be considered impervious.

(5) “Nonhousehold pesticide” has the meaning specified in s. 94.681 (1) (c), Stats., except that it does not include pentachlorophenol, inorganic arsenical wood preservatives and coal tar creosote.

Note: Section 94.681 (1) (c), Stats., defines “nonhousehold pesticide” as “a pesticide that is not a household pesticide or an industrial pesticide.” “Household pesticide” is defined in s. 94.681 (1) (a), Stats.

(6) “Pesticide” has the meaning specified in s. 94.67 (25), Stats.

Note: Section 94.67 (25), Stats., defines “pesticide” to mean “any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.”

(7) “Petroleum product” means any refined petroleum based substance or blend intended for use as motor fuel, turbine fuel, heating fuel, a lubricant, a coolant, or for machine cutting.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; CR 12-023: r. (1), (3), am. (7) Register October 2013 No. 694, eff. 11-1-13.

NR 706.05 General requirements for responsible parties. (1) DISCHARGE NOTIFICATION. (a) Unless the discharge is specifically exempted under s. NR 706.07, persons who cause the discharge to the environment of a hazardous substance or who possess or control a hazardous substance which is discharged to the environment shall immediately notify the department of the discharge. Discharges to the environment may include recent discharges, historic discharges, and discharges caused by the long-term application of a substance. A hazardous substance that is “discharged” into a secondary containment structure, that is completely contained and can be recovered with no discharge to the environment, is not subject to the discharge notification requirements in s. 292.11 (2), Stats.

Note: The department believes that the dictionary definition of “immediately”, i.e. “occurring at once; next in line,” does not lend itself to quantification. An across-the-board time-period can’t be specified. In uncomplicated hazardous substance discharge situations, responsible parties are expected to provide notice to the department within a matter of a few minutes after they learned of the discharge. In other situations, especially where emergency action of some kind is being taken by the responsible party or where the responsible party does not have access to a telephone, notification may not be possible for several hours, but would still be considered “immediate” if promptly given.

(b) Hazardous substance discharges shall be immediately reported to the department by telephoning the department-designated 24-hour hotline telephone number. The department may allow alternate notification procedures on a case-by-case basis.

Note: Use of the department-designated 24-hour hotline is for notification of spills. The hotline operated by the division of emergency management in cooperation with the department can be reached at 1-800-943-0003.

(bm) Hazardous substance discharges discovered through soil, water or other analyses may be reported by telefaxing a completed discharge notification form provided by the department, or by alternate notification procedures approved by the department. Laboratory results shall be included with the completed discharge notification form.

Note: Use of the discharge notification form is intended only for notification of discharges typically found through tank closure assessment, phase II environmental assessments, or by other discoveries through soil, water or other media analysis.

The discharge notification form can be obtained at the following web address: <http://dnr.wi.gov/files/PDF/forms/4400/4400-225.pdf>.

(c) The notification required by this subsection shall contain the following information to the extent practicable or applicable:

1. Name, address, and telephone number of the person reporting the discharge.
 2. Name, address, and telephone number of the discharger, or owner and operator of the UST system and any other potentially responsible persons.
 3. Date, time, and duration of the discharge.
 - 3m. Location of the discharge including street address, county, town, city or village, if appropriate, quarter-quarter section, township, range, geographic position obtained in accordance with the requirements of s. NR 716.15 (5) (d), and legal description of lot, if located in a platted area.
- Note:** The provisions in s. NR 716.15 (5) (d) require that all geographic position data shall be obtained and submitted to the department in accordance with the following requirements: 1) for properties that are not more than 200 feet wide or long, a single point geographic position shall be obtained at least 40 feet within the boundaries of the property, or as close to the center of the property as possible if the property is less than 80 feet wide or long. For properties that are more than 200 feet wide or long, coordinates describing the approximate location of the property's boundaries, forming a polygon, shall be obtained; and 2) geographic position data shall be originally collected in Wisconsin Transverse Mercator '91 or projected onto Wisconsin Transverse Mercator '91.
4. Identity, physical state, and quantity of the material discharged.
 5. Physical, chemical, hazardous, and toxicological characteristics of the substance.
 6. Cause of the discharge.
 7. Immediate actions being taken and the name of the contractor or other person performing the action.
 8. Source, speed of movement, and destination or probable destination of the discharged hazardous substance.
 9. Actual or potential impacts to human health or the environment, including actual or potential impacts to drinking water supplies.
 10. Weather conditions existing at the scene, including presence of precipitation and wind direction and velocity.
 11. Other agencies on-scene during the discharge incident.

(2) CONTAINMENT, CLEANUP, DISPOSAL, AND RESTORATION. Responsible parties shall comply with the requirements of chs. NR 700 to 754 for response actions to discharges of hazardous substances.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. (title), (1) (a), (b), cr. (1) (bm), am. (1) (c) (intro.), 3., cr. (1) (c) 3m., am. (1) (c) 11., (2) Register October 2013 No. 694, eff. 11-1-13.

NR 706.07 Exemptions. The exemptions in this section are limited to notification or penalty provisions. Responsible parties shall comply with the response requirements of s. NR 706.05 (2) for all situations. While notification of the discharge is exempt under this section, a response to the discharge is still required under s. 292.11, Stats. The exemptions are as follows:

(1) STATUTORY NOTIFICATION EXEMPTIONS. The following persons are not required to notify the department of a hazardous substance discharge that falls within any of the following categories:

(a) Any person holding a valid permit under ch. 283, Stats., is exempt with respect to substances discharged within the limits authorized by the permit.

(bm) Any person discharging in conformity with a permit or program approved under chs. 280 to 299, Stats., is exempt with respect to substances discharged within the limits authorized by the permit or program.

(cm) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates, is exempt with respect to that pesticide or fertilizer application.

(2) DE MINIMIS EXEMPTIONS. (a) Except when reporting is required under par. (b), the following discharges do not require notification to the department:

1. A discharge of gasoline or another petroleum product that is completely contained on an impervious surface.
2. A discharge of gasoline if less than one gallon is discharged onto a surface that is not impervious or runs off an impervious surface.
3. A discharge of a petroleum product other than gasoline if less than 5 gallons is discharged onto a surface that is not impervious or runs off an impervious surface.
4. A discharge of a dry fertilizer if the amount is less than 250 pounds.
5. A discharge of a liquid fertilizer if the amount is less than 25 gallons, unless the reportable quantities listed for chemicals in 40 CFR part 117 or 302 are more restrictive, in which case the values in 40 CFR part 117 or 302 apply.
6. A discharge of pesticides registered for use in Wisconsin if the amount discharged when diluted as indicated on the pesticide label would cover less than one acre of land if applied according to label instructions, unless the reportable quantities listed for chemicals in 40 CFR part 117 or 302 are more restrictive, in which case the values in 40 CFR part 117 or 302 apply.
7. A discharge of substances specifically listed in 40 CFR part 117 or 302 if the amount discharged in any 24 hour period is less than the amount listed in 40 CFR part 117 or 302. If responsible parties are uncertain about how to interpret or apply 40 CFR part 117 or 302, they may report any discharge to the department.

Note: Notification requirements under this rule may not meet the obligations for responsible parties to report hazardous substance releases to the federal government. Questions on federal requirements should be directed to the US EPA Superfund hotline at 1-800-535-0202.

(b) Whenever, in light of site-specific conditions, any of the following criteria apply, hazardous substance discharges which would otherwise be exempt from notification under par. (a) shall be reported as required in s. NR 706.05:

1. The discharged substance has not evaporated or has not been cleaned up in compliance with the requirements of chs. NR 700 to 754.

2. The discharged substance has adversely impacted or threatens to adversely impact the air, lands or waters of the state either as a single discharge or when accumulated with previous discharges, even though the degree of the impact or threatened impact may not have been thoroughly evaluated.

Note: Where there is a sheen on surface water or the discharged substance has entered or is on the verge of entering the waters of the state, typically via a storm sewer, or drainage ditch, the department would consider the discharged substance to adversely impact or threaten to adversely impact the waters of the state.

3. The discharged substance has caused or threatens to cause acute or chronic human health impacts if immediate action, such as evacuation or in-place sheltering, is not taken. If the responsible party is unsure about potential human health effects, the responsible party shall consult with local or state health officials, and the responsible party shall make a notification decision based on that consultation.

4. The discharged substance presents or threatens to present a fire or explosion hazard or other safety hazards, such as slippery conditions on a roadway.

Note: In determining whether a threat exists under subd. 1., 2., 3., or 4., the standard of conduct to which the responsible party must conform is that of a reasonable person under the site-specific circumstances.

(3) EXEMPTION FROM PENALTIES. Law enforcement officers or members of fire departments using hazardous substances in carrying out their responsibility to protect public health, safety or welfare are exempted from the penalty requirements of s. 292.11 (9), Stats., but shall report to the department any dis-

charges of a hazardous substance occurring within the performance of their duties.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: cr. (intro.), am. (1) (title), r. (1) (b), renum. (1) (c) to (1) (bm), (1) (d) to (1) (cm), am. (2) (b) 1., cr. (3) Register October 2013 No. 694, eff. 11-1-13.

NR 706.11 Additional responsibilities for owners or operators of underground storage tank systems.

(2) ADDITIONAL INFORMATION. The owner or operator of an UST system shall document and submit to the department, within 72 hours of the original notification, any additional information that the owner or operator obtains concerning the discharge which was not included at the time of the original notification, unless otherwise directed by the department.

(3) CLOSURE ASSESSMENT REPORTS. The owner or operator of an UST system shall submit to the department any tank closure

assessment report that is generated to document compliance with the requirements of ch. ATCP 93, regardless of whether a discharge of a hazardous substance was detected during the site assessment.

(3m) SOURCE AND CAUSE OF DISCHARGES. At the time the owner or operator of an UST system reports a discharge from an UST system, they shall also provide information to the department on the source and cause of the discharge.

Note: Sources may include tanks, piping, dispensers, submersible turbine pump areas, delivery problems, etc. Causes may include spills, overfills, physical or mechanical damage, corrosion, installation problems, etc., and those situations where the cause is unknown.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12-023: am. (title), r. (1), cr. (3m), r. (4) Register October 2013 No. 694, eff. 11-1-13; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

Chapter NR 708

IMMEDIATE AND INTERIM ACTIONS

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NR 708.17	Local Governmental Unit or Economic Development Corporation Exemptions.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 708.01 Purpose. This chapter establishes criteria for emergency and non-emergency immediate actions and interim actions to be taken by responsible parties, or interim actions taken by local governmental units or economic development corporations when directed by the department, to protect public health, safety, or welfare or the environment; and establishes the documentation requirements associated with these response actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 289.06, Stats., and ch. 292, Stats.

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: portions of s. 280.34 (a) (3); s. 280.61 (b) and (c); s. 280.62 (a) (1) to (3) and (6); s. 280.62 (b); portions of s. 280.63 (a) and (b); s. 280.64 (a) to (d); s. 280.65 (a); and portions of s. 280.66 (a), (b) and (d). Additional portions of s. 280.34 (a) (3) are included in chs. NR 706, 716, 722 and 724. Additional portions of s. 280.63 (a) and (b) are included in chs. NR 706 and 716. Additional portions of 280.66 (a) to (d) are included in ch. NR 724.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am., Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 708.02 Applicability. (1) This chapter applies to emergency and non-emergency immediate actions and interim actions taken by the department under the authority of ch. 292, Stats. In this chapter, where the term “responsible parties” appears, it should be read to include the department in situations where a department-funded response action is being taken.

Note: The department has the authority under s. 292.11 (10), Stats., to waive the requirements of s. 292.11, Stats., to prevent an emergency condition threatening public health, safety, or welfare.

(2) This chapter applies to immediate actions and interim actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the NCP may request that the department enter into a contract with them pursuant to s. 292.31, Stats., or a negotiated agreement under s. 292.11 (9) (e) 4., Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(2m) This chapter applies to response actions taken by persons seeking the liability exemption under s. 292.15, Stats.

(2r) Section NR 708.17 applies to response actions taken by a local governmental unit or economic development corporation when directed by the department under s. 292.11 (9) (e) 4., Stats.

(3) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to the site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., may also be subject to regulation under the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291,

Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (2m), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1), cr. (2r) Register October 2013 No. 694, eff. 11-1-13.

NR 708.03 Definitions. In this chapter:

(1) “Economic development corporation” has the meaning described in s. 501 (c) of the Internal Revenue Code, as defined in s. 71.22 (4), Stats., that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code, or an entity wholly owned and operated by such a corporation, with respect to property acquired to further the economic development purposes that exempt the corporation from federal taxation.

(2) “Local governmental unit” has the meaning specified in s. 292.11 (9) (e) 1., Stats.

Note: Section 292.11 (9) (e) 1., Stats., defines “local governmental unit” to mean “a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority or a housing authority.”

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (intro.), cr. (1), (2) Register October 2013 No. 694, eff. 11-1-13.

NR 708.05 Immediate actions. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall immediately take action to halt a hazardous substance discharge or environmental pollution and to minimize the harmful effects of the discharge or environmental pollution to the air, lands or waters of the state.

Note: Section 292.11 (2) (a), Stats., and ch. NR 706 require that the department be notified immediately of hazardous substance discharges.

(2) EMERGENCIES. For hazardous substance discharges that pose an imminent threat to public health, safety or welfare or the environment, responsible parties shall conduct all necessary emergency immediate actions. Once the emergency situation is responded to, responsible parties shall conduct any further response actions needed to restore the environment to the extent practicable, unless the department determines that no further response is necessary in accordance with s. NR 708.09.

Note: Responsible parties are also required by s. 323.71 (1), Stats., to immediately conduct emergency action to protect public health and safety and to prevent damage to property in cooperation with local police and fire departments, county sheriffs, and county offices of emergency government.

(3) NON-EMERGENCIES. (a) Responsible parties shall take all necessary, non-emergency immediate actions to halt the discharge of a hazardous substance and to contain, treat or remove discharged hazardous substances, environmental media or both, in order to minimize the harmful effects of the discharge to the air, lands and waters of the state and to restore the environment to the extent practicable.

(b) A response to a hazardous substance discharge and any related contaminated media shall be considered by the department as a non-emergency immediate action when all of the following criteria are met:

1. The discharge does not pose an imminent threat to public health, safety, or welfare or the environment.

2. The response does not result in the excavation and disposal, treatment, or storage of more than 100 cubic yards of contami-

nated soil, debris, sediment, or a combination of these media from a single site or facility, unless an alternative volume is approved by the department.

3. The discharge is responded to immediately after the hazardous substance discharge occurs or is responded to immediately after discovery.

Note: Responsible parties are required to notify the department immediately of a hazardous substance discharge, in accordance with the requirements of ch. NR 706.

4. At the completion of the response action, no further action is required by the department under s. NR 708.09.

Note: If further action is required after a non-emergency response action is taken, that action meets the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non-emergency immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

(c) Responsible parties shall conduct sampling at the completion of an immediate action, in accordance with the requirements of ss. NR 712.05 and 716.13, when any of the following conditions are met:

1. The hazardous substance discharge or environmental pollution is in contact with groundwater.
2. The amount, identity or duration of the hazardous substance discharge or environmental pollution is unknown.
3. Where other site or facility conditions indicate that sampling is necessary to confirm the adequacy of the immediate action.

(4) SPECIFIC ACTIONS. Immediate actions may include any of the following:

- (a) Limiting public access to the site or facility.
- (b) Identifying, monitoring and mitigating fire, explosion and vapor hazards, which may include free product removal. Free product removal shall be conducted in accordance with the requirements of s. NR 708.13 and documented in accordance with s. NR 708.15.
- (c) Visually inspecting the site or facility and installing physical containment barriers such as berms, booms, dikes or trenches.
- (d) Preventing the flushing of hazardous substances to sewer systems, state waters or environmental media or habitats.
- (e) Plugging or overpacking leaking containers which contain or are suspected to contain hazardous substances.
- (f) Providing alternate water supplies to persons whose water supply has been or is likely to be affected by the migration of contamination.
- (g) Removing hazardous substances from leaking underground storage tank systems.
- (h) Removing the contaminated soil, debris or the hazardous substance that was discharged, in compliance with s. NR 708.11 (3) (e).

(i) Measuring for the presence of free product, visually or through field samples or other appropriate methods.

(5) EXEMPTIONS. (a) The provisions of chs. NR 712, 716 and 724 do not apply to immediate actions conducted by responsible parties, unless compliance with a portion of these chapters is specifically required in this chapter.

(b) Contaminated soils, as defined in s. NR 718.03 (5), that are excavated as part of an immediate action are exempt from the storage requirements of s. NR 718.05 and the solid waste regulatory requirements of ch. 289, Stats., and chs. NR 500 to 538, for a period of 72 hours after the initial excavation of the contaminated soils.

(6) DOCUMENTATION. (a) Unless par. (b) is applicable or unless otherwise directed by the department, responsible parties shall prepare and submit written documentation to the department describing the immediate actions taken at their site or facility and the outcome of those actions, within 45 days after the initial haz-

ardous substance discharge notification is given to the department in accordance with the requirements of ch. NR 706.

(b) Where a discharge from a UST has occurred, responsible parties shall prepare and submit written documentation to the department within 20 days after notifying the department of a hazardous substance discharge in accordance with the requirements of ch. NR 706.

(c) The written documentation required of the responsible parties pursuant to par. (a) or (b) shall include all of the following:

1. A statement expressing the purpose of the submittal and the desired department action or response.
2. Name, address and telephone number of the responsible parties.
3. Location of the site or facility, or discharge incident, including street address; quarter-quarter section, township, range, and county; and the location information specified in s. NR 716.15 (5) (d); latitude and longitude, and legal description of lot, if located in platted area.
4. Any information required under ch. NR 706 that has not been provided to the department previously.
5. The type of engineering controls, treatment or both and the effluent quality of any permitted or licensed discharge.
6. The type, total volume and final disposition of the discharged hazardous substance and contaminated materials generated as part of the immediate action, including legible copies of manifests, receipts and other relevant documents.

(d) Responsible parties may include the information required in par. (c) with a final report and letter of compliance required in s. NR 708.09 which documents that the immediate response action is complete and no further action is necessary to respond to a hazardous substance discharge or environmental pollution, provided that the information required in par. (c) is submitted within 45 days after the initial hazardous substance discharge notification is given to the department.

Note: It is the intent of the department to encourage submittal of the notification information required in s. NR 708.05 (6) with the no further action information required in s. NR 708.09, provided that the notification information is submitted within 45 days. If the 45 day limit cannot be met, then 2 separate submittals will be needed, if no further action is being documented for the immediate response action.

History: Cr Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (6) (d), Register, March, 1995, No. 471, eff. 4-1-95; am (6) (a), (b) and (c) 4., Register, February, 1997, No. 494, eff. 3-1-97; correction in (5) (b) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650; CR 12-023: am. (3) (b) 2., (5) (b), (6) (c) 3. Register October 2013 No. 694, eff. 11-1-13.

NR 708.07 Additional response actions. Unless s. NR 708.09 is applicable, responsible parties shall conduct all necessary additional response actions at the completion of an immediate action including, but not limited to, the actions listed in subs. (1) to (4), either at the direction of the department or where the responsible party has determined that site or facility conditions warrant an additional response action:

(1) Additional immediate action in accordance with this chapter.

(2) Interim action, in accordance with this chapter and, as applicable, ch. NR 724.

(3) A site investigation, in accordance with the requirements of ch. NR 716.

(4) Implementation of a preventive measures plan to minimize or prevent any further hazardous substance discharges.

History: Cr Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (intro.), Register, March, 1995, No. 471, eff. 4-1-95.

NR 708.09 No further response action. (1) GENERAL. Unless sub. (2) is applicable, responsible parties shall submit a final report for completed immediate action at the site or facility which addresses the following criteria, where applicable, and a letter of compliance documenting that the immediate response action is complete and no further action is necessary to respond to a hazardous substance discharge or environmental pollution:

(a) The type of hazardous substance discharged or the type of environmental pollution, including the toxicity, mobility and volume of the contamination.

(b) The duration of the discharge.

(c) Time until the discharge or environmental pollution was responded to and properly contained or eliminated.

(d) Any mitigation efforts that may have accelerated the migration of the environmental pollution or hazardous substances, such as any fire mitigation methods.

(e) Weather conditions at the site or facility, such as any precipitation that may have accelerated the migration of the contamination, from the time of the discharge until the response was completed.

(f) Migration potential of the contamination, including soil conditions, proximity to surface water bodies, location of drains or storm sewers, depth to groundwater and the integrity of any containment area.

(g) The nature and scope of any immediate action conducted.

(h) The results of any sampling conducted to confirm the adequacy of the response, taken in accordance with s. NR 708.05 (3) (c).

(i) Visual and olfactory evidence of contamination.

(j) Actual or potential environmental impacts.

(k) Proximity of contamination to receptors.

(L) Present and anticipated future land use.

(m) Whether or not routes of exposure are protective and the environment has been restored to the extent practicable.

(n) Any other information that the department considers relevant.

(2) SITE INVESTIGATION. The department shall require responsible parties to conduct a site investigation in accordance with the requirements of ch. NR 716 if a hazardous substance discharge meets any of the following conditions:

(a) There is evidence that groundwater wells have been affected by a discharge of a hazardous substance.

(b) Free product is found and removal is required under s. NR 708.13.

(c) There is evidence that contaminated soils may be in contact with groundwater.

(3) REOPENING A CASE. The department may require that additional response actions be conducted by responsible parties in compliance with the requirements of chs. NR 700 to 754 if additional information indicates that residual contamination at a site or facility poses a threat to public health, safety, or welfare or the environment.

Note: Although the department may determine at this time that no further response action is necessary pursuant to chs. NR 700 to 754, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (1) (intro.), Register, March, 1995, No. 471, eff. 4-1-95; am. (2) (a), Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. (2) (intro.), (a), (3) Register October 2013 No. 694, eff. 11-1-13.

NR 708.11 Interim actions. (1) GENERAL. (a) Responsible parties shall evaluate the need for interim action prior to initiating a site investigation and during a site investigation. Interim action shall be taken where it is necessary to contain or stabilize a discharge of a hazardous substance or environmental pollution, in order to minimize any threat to public health, safety, or welfare or the environment. When an interim action is warranted, responsible parties shall implement an interim action as soon as facility or site-related information makes it possible to do so, in compliance with the requirements of this chapter.

Note: The principal distinction between a non-emergency immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

(b) The department may require the use of a vapor mitigation system, or other engineering control, when vapor concentrations beneath a slab, foundation, or building exceed a vapor risk screening level.

(2) SPECIFIC ACTIONS. Interim actions may include any of the following:

(a) Restricting public access to the site or facility.

(b) Conducting source removal, such as excavation and treatment of highly contaminated soils, to prevent or limit further movement of the contamination.

(c) Extracting free product, leachate or groundwater to restrict migration of a contaminant plume.

(d) Constructing a temporary engineering control, such as a low permeability cover, or installing and operating a vapor mitigation system.

(e) Actions listed in s. NR 708.05 (4) (c), (g) or (i).

(3) SELECTION OF INTERIM ACTIONS. Unless otherwise directed by the department, responsible parties shall select and implement necessary interim action without prior department approval. The interim action selected by responsible parties shall comply with all of the following requirements:

(a) Be protective of public health, safety, and welfare and the environment for the exposure pathways being addressed and any solid or hazardous waste or the hazardous substances and contaminated environmental media being generated.

(b) Comply with all state and federal public health and environmental laws, whichever are more stringent, that apply to the type of interim action being taken and any solid or hazardous waste and contaminated environmental media that is being generated, treated, stored or disposed as part of the interim action.

(c) Use recycling or treatment to the extent practicable.

(d) Be consistent with the final remedial action that is likely to be selected for that pathway of exposure or contaminated environmental media that is being addressed by the interim action.

(e) Comply with one of the following requirements when disposal of contaminated soil, sediment or other granular material such as fill, not including debris, is proposed:

1. The volume of untreated contaminated soil, sediment or other granular material such as fill, not including debris, from a single site or facility that is proposed for off-site disposal does not exceed 100 cubic yards and is accepted by a landfill for daily cover that does not exceed on an annual basis the landfill's net daily cover needs or 12.5% of the annual volume of waste received by the landfill.

2. Volumes of contaminated soil, sediment or other granular material, not including debris, that exceed 100 cubic yards may be disposed of in a licensed landfill with a department-approved composite liner, or a liner that is equivalent to a composite liner in terms of environmental protection, as determined by the department, in compliance with the landfill's approved plan of operation.

(4) DESIGN AND IMPLEMENTATION REQUIREMENTS. For the types of interim actions listed in pars. (a) through (c), responsible parties shall prepare and submit to the department all reports and plans required by ch. NR 724 for department review and approval prior to proceeding to the next step in design, implementation or operation of an interim action under ch. NR 724, unless otherwise directed.

(a) On-site treatment system, including a groundwater extraction and treatment system.

(b) On-site engineering control or barrier, including a landfill cover or groundwater barrier system, or a vapor mitigation system other than a radon-type sub-slab depressurization system.

(c) Any other type of interim action option when the department notifies responsible parties, on a case-by-case basis, that a

design report is required prior to implementation of the interim action.

(5) ADDITIONAL RESPONSE ACTION. Unless otherwise directed by the department, responsible parties shall initiate and complete a site investigation in accordance with ch. NR 716 during the implementation of the interim action or as soon as it is feasible to do so after the completion of the interim action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (3) (e), Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023; renum. (1) to (1) (a), cr. (1) (b), am. (2) (d), (4) (b) Register October 2013 No. 694, eff. 11-1-13.

NR 708.13 Free product removal. Responsible parties shall conduct free product removal whenever it is necessary to halt or contain the discharge of a hazardous substance or to minimize the harmful effects of the discharge to the air, lands or waters of the state. When required, free product removal shall be conducted, to the maximum extent practicable, in compliance with all of the following requirements:

(1) Free product removal shall be conducted in a manner that minimizes the spread of contamination into previously uncontaminated zones using recovery and disposal techniques appropriate to the hydrologic conditions at the site or facility, and that properly reuses or treats discharges of recovery byproducts in compliance with applicable state and federal laws.

(2) Free product removal systems shall be designed to abate free product migration.

(3) Any flammable products shall be handled in a safe and competent manner to prevent fires or explosions.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 708.15 Interim action reports. (1) GENERAL. Responsible parties shall prepare and submit to the department an interim action report, in accordance with this section and s. NR 700.11 (4), describing each interim action taken. The interim action report shall be submitted as part of the remedial action report or the site investigation report, unless otherwise directed by the department or unless sub. (2) is applicable.

(2) FREE PRODUCT REMOVAL. For interim actions conducted to remove free product that was discharged from a UST, responsible parties shall prepare and submit an interim action report to the department within 45 days after confirming a discharge in accordance with the requirements of ch. NR 706, unless otherwise directed by the department.

(3) REPORT CONTENTS. The report required in sub. (1) or (2) shall include all of the following:

(a) Name, address and telephone number of the responsible party.

(b) Location of the site or facility, or discharge incident, including street address; quarter-quarter section, township, range, and county; the location information specified in s. NR 716.15 (5) (d); latitude and longitude, and legal description of lot, if located in platted area.

(c) The department-issued site or facility identification number.

(d) The name of the consultant or person who has implemented the measures.

(e) A description of the interim action implemented.

(f) The estimated quantity and type of contamination, including the thickness of free product observed or measured in wells, bore holes and excavations when applicable.

(g) The location and effluent quality of any permitted discharge, such as a wastewater discharge.

(h) The steps that have been or are being taken to obtain necessary permits for any discharge.

(i) The type, total volume and final disposition of any recovered hazardous substance discharged and contaminated environmental media generated, treated, stored or disposed of, including

legible copies of manifests, receipts and other relevant documents.

(k) An operation and maintenance plan for any engineering control or barrier employed, including a cover, a groundwater barrier system, or a vapor mitigation system.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (2), Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023; am. (1), (2), (3) (b), cr. (3) (k) Register October 2013 No. 694, eff. 11-1-13.

NR 708.17 Local Governmental Unit or Economic Development Corporation Exemptions. (1) GENERAL. (a)

If, after considering the intended development and use of a property, the department determines under s. 292.11 (9) (e) 4., Stats., that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department may direct the local governmental unit or economic development corporation to take that necessary action.

(b) Actions directed by the department may include removal of soil contamination, investigations beneath demolished buildings, replacement of infiltration barriers, or installation of vapor migration barriers.

(c) The local governmental unit or economic development corporation directed to take action by the department shall prepare and submit a plan to the department for review and approval for the design, construction, operation, and maintenance of the necessary actions.

(d) Plan review fees for the plans submitted under par. (c) shall be paid by the local governmental unit or economic development corporation in accordance with chs. NR 749 and NR 750.

(2) AGENCY AUTHORITY. The department may direct that any of the following actions be taken by a local governmental unit or economic development corporation if contamination remains on a site after the conclusion of actions directed by the department under s. 292.11 (9) (e) 4., Stats.

(a) Require maintenance of an engineering control on the site.

(b) Require the performance of any necessary actions to reduce to acceptable levels any substantial threat to public health or safety, if a building or other structural impediment is removed that had prevented previous access to the area.

(c) Require actions to ensure that conditions at the site remain protective of public health and safety when the property is developed or put to its intended use.

(d) If a previously approved response action included a condition regarding a structural impediment, the property owner shall notify the department prior to removal of the building, or other structural impediment, to determine what further action may be necessary.

(e) Any additional response actions that the department determines shall be taken at sites where a remedial action has not been maintained as required.

(3) DEPARTMENT DATABASE AND FEES. (a) *Department Database.* If the department has directed that a local governmental unit or economic development corporation take a response action under s. 292.11 (9) (e) 4., Stats., for a site, the department shall list the site on the department database. The letter directing the local governmental unit or economic development corporation to take a response action, and the information required under sub. (1) (c) shall be associated with the site or facility record in the department database.

(b) *Fees.* 1. For sites meeting par. (a), the fee or fees listed in ch. NR 749 for adding a site to the department database shall be submitted to the department at the completion of the required response action.

2. For sites that have been included on the department database, a local governmental unit, economic development corporation or other party may request that the department modify a site or property or information on the department database. For these

cases, modification to the department database may not be considered by the department until proof of payment of the required fees has been received by the department's bureau for remediation and redevelopment.

(4) DOCUMENTATION. (a) *Format Requirements.* For sites required to be included on the department database following a response action, the local governmental unit or economic development corporation shall submit the information in par. (b) to the department, in accordance with s. NR 700.11 (3g). Maps and cross-sections shall be to scale, and include a graphic scale and a north arrow.

Note: Under s. NR 700.11 (3g), one paper copy and one electronic copy shall be submitted to the department, unless otherwise directed by the department. Electronic copies files may not be locked or password protected. All documents shall have a minimum resolution of 300 dots per inch. All documents except deeds and legal descriptions shall be digital format versions rather than scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible.

(b) *Database Information.* The information for the department database shall be submitted in the following order and format.

1. The geographic position of the property on which a response action was taken, as well as for any other properties affected by the release, in accordance with the requirements of s. NR 716.15 (5) (d).

Note: The geographic position, provided in WTM coordinates, can be obtained by using RR Sites Map, at <http://dnrm.wi.gov/imf/imf.jsp?site=brts2>, using the XY button.

2. A description of the response actions taken at the site or facility.

3. A copy of any required maintenance plan if a continuing obligation is required as part of the response action.

4. For sites or facilities with a cover or other performance standard, a structural impediment, a vapor mitigation system or a fence, or as otherwise required by the department on a case-by-case basis; one or more photographs documenting the condition and extent of the feature at the conclusion of the response action required. Pertinent features shall be visible and discernible. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.

5. A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public-street or highway rights-of-way or railroad rights-of-way. It is only in the situation where the source of the contamination is in the right-of-way, that a right-of-way will be listed on the department database as a separate property.

6. A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

7. The parcel identification number or numbers for each property.

8. A statement that the deeds with legal descriptions of all affected properties have been submitted.

9. A site location map that outlines each property within or partially within the contaminated site boundaries on a United States geographic survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. If there is only one parcel, this map may be combined with the map required in subd. 10.

10. If available, a map of each property within or partially within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells, and potable wells. This map shall also show the location of all contaminated public-street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of contamination exceeding applicable standards.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 712

PERSONNEL QUALIFICATIONS FOR CONDUCTING ENVIRONMENTAL RESPONSE ACTIONS

NR 712.01	Purpose.
NR 712.02	Applicability.
NR 712.03	Definitions.
NR 712.05	Sampling and field work requirements.

NR 712.07	Requirements for submittal preparation.
NR 712.09	Submittal certification.
NR 712.11	Exemptions.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 712.01 Purpose. This chapter establishes minimum standards for experience and professional qualifications for persons who perform and provide certain services or scientific evaluations associated with specified environmental response actions. This chapter is adopted pursuant to s. 227.11 (2) and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am., Register, February, 1995, No. 482, eff. 3-1-96; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 712.02 Applicability. (1) Except as provided in s. NR 712.11, this chapter applies to work performed by environmental consultants hired by the department under the authority of s. 292.11 or 292.31, Stats.

(2) Except as provided in s. NR 712.11, this chapter applies to all sampling and field work conducted during any response action being taken to satisfy the requirements of chs. NR 700 to 754, including the preparation of phase I or phase II environmental site assessments.

(3) Except as provided in s. NR 712.11, this chapter applies to any person who provides engineering services or performs any scientific evaluation associated with a remedial action or any of the interim actions specified in chs. NR 700 to 754 for a site, facility or portion of a site or facility that is subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to any person who provides engineering services or performs any scientific evaluation associated with a response action taken by a person seeking the liability exemption under s. 292.15, Stats.

Note: Responsible parties who take an immediate action or interim action that does not involve the construction or operation of on-site treatment or an engineering control, as specified in s. NR 708.11 (4), are not required to hire personnel who meet the qualifications in this chapter, except that sampling and field work that is being done in conjunction with the immediate or interim action must comply with the requirements of this chapter.

(4) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility, or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, upon receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am. (3), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (2) to (4) Register October 2013 No. 694, eff. 11-1-13.

NR 712.03 Definitions. In this chapter:

(1) "Hydrogeologist" means a person who is licensed as a hydrologist or registered as a geologist with the department of safety and professional services, and is a graduate of an accredited institution of higher education and who has successfully completed 30 semester hours or 45 quarter hours of course work in geology. At least 6 semester hours or 9 quarter hours of the geology course work shall be hydrogeology, geohydrology or groundwater geology. This person shall also have acquired, through education and field experience, the ability to direct the drilling of borings and the installation and development of wells, describe and classify geologic samples, and evaluate and interpret geologic and hydrogeologic data.

Note: The term registered geologist means a Professional Geologist that has been licensed in accordance with the provisions in ch. GHSS 2, Wis. Adm. Code and the term licensed hydrologist means a Professional Hydrologist that has been licensed in accordance with the provisions in ch. GHSS 3, Wis. Adm. Code.

(2) "Professional engineer" means an engineer registered with the department of safety and professional services.

(3) "Scientist" means a person who is a graduate of an accredited institution of higher education and who has successfully completed the necessary credit hours to receive a degree in a field of scientific expertise applicable to environmental response actions, including, but not limited to, geology, chemistry, agronomy, crops and soils, soil science, toxicology and biology.

(4) "Supervised field experience" means experience collecting samples of air, soil, water or other media completed with guidance from, and oversight by, a person who meets the requirements of s. NR 712.05 (2).

(5) "Supervision" means personal, active oversight and control of the preparation of submittals.

Note: Supervision of field personnel may be by telephone or other form of remote communication, unless otherwise specified in this chapter.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; corrections in (1), (2) made under s. 13.92 (4) (b) 6., 7., Stats., Register February 2012 No. 674; CR 12-023: am. (1) Register October 2013 No. 694, eff. 11-1-13.

NR 712.05 Sampling and field work requirements.

(1) GENERAL. All sampling, field work and development of plans for field activities for response actions being taken to satisfy the requirements of ss. NR 708.09 to 708.15 or chs. NR 716 to 754 shall be conducted by or under the supervision of a professional engineer, hydrogeologist or scientist, unless sub. (2) or an exemption in s. NR 712.11 is applicable.

(2) SAMPLING FOR IMMEDIATE AND INTERIM ACTIONS NOT INVOLVING TREATMENT OR ENGINEERING CONTROLS. For immediate actions and interim actions that do not involve treatment or engineering controls, samples of air, soil, water or other media for field measurement or analytical laboratory analysis are not required to be collected under the supervision of a professional engineer, hydrogeologist or scientist, but shall be collected by one of the following, unless the sampling is exempt under s. NR 712.11 (2):

(a) A graduate of a vocational or technical school with course work in science or engineering who has 40 hours of supervised field experience; or

(b) Any person who has all of the following:

1. 40 hours of training in collecting, preserving, filtering and transporting environmental samples and decontaminating sampling equipment that meets the requirements of sub. (4) (a).

2. 80 hours of supervised field experience that meets the requirements of sub. (4) (a).

3. A letter or certificate that meets the requirements of sub. (4) (b).

(3) SAMPLING FOR INTERIM ACTIONS INVOLVING TREATMENT OR ENGINEERING CONTROLS AND REMEDIAL ACTIONS. For remedial actions and interim actions that involve treatment or engineering controls, samples of air, soil, water or other media for field measurements or analytical laboratory analysis shall be collected by a professional engineer, hydrogeologist, scientist or any one of the following working under the supervision of a professional engineer, hydrogeologist or scientist, unless the sampling is exempt under s. NR 712.11 (2):

(a) A graduate of a vocational or technical school with course work in science or engineering who has 40 hours of supervised field experience; or

(b) Any other person who has all of the following:

1. 40 hours of training in collecting, preserving, filtering and transporting environmental samples and decontaminating sampling equipment that meets the requirements of sub. (4) (a).

2. 80 hours of supervised field experience that meets the requirements of sub. (4) (a).

3. A letter or certificate that meets the requirements of sub. (4) (b).

(4) TRAINING AND EXPERIENCE. (a) Training and supervised field experience required by subs. (2) and (3) shall include sampling methods for all media that a person is expected to sample in the course of his or her employment.

(b) A letter or certificate documenting the supervised field experience and training shall be signed and dated by the person conducting the training. The person conducting the training must meet the qualifications specified in sub. (2). The letter or certificate shall be kept on file with the employer. Documentation of supervised field experience and training shall be provided to the department upon request.

(5) SOIL BORING LOGS. (a) The written descriptions of soil and rock on soil boring logs shall be prepared by a graduate of an accredited institution of higher education with a major in an appropriate science or engineering specialty. This person shall have acquired, through education and actual field experience, the ability to direct the drilling of borings, classify geologic samples and evaluate and interpret geologic and hydrogeologic data. The following academic disciplines are considered appropriate science specialties for preparers of soil boring logs: earth sciences, geochemistry, geology, geophysics, hydrogeology and soil science. The following engineering majors are considered appropriate engineering specialties for preparers of soil boring logs: environmental, civil, geological, geotechnical, mining, mineral, petroleum, agricultural and geophysical.

(b) The logs shall be developed in accordance with the requirements of ch. NR 141 and shall be signed by the person that developed the written description in the boring logs of the soil and rock.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; CR 12-023: am. (1) Register October 2013 No. 694, eff. 11-1-13.

NR 712.07 Requirements for submittal preparation.

(1) Submittals that are prepared to satisfy the requirements of s. NR 708.11 (4) or 708.13 or chs. NR 716 to 754, which require the performance of engineering services or scientific evaluations, including phase I and phase II environmental site assessments shall be prepared by or under the supervision of a professional engineer, hydrogeologist, or scientist, except as provided in s. NR 712.11. All phases of work necessary to obtain data, develop conclusions, recommendations and prepare submittals shall be con-

ducted or supervised by the professional engineer, hydrogeologist, or scientist.

Note: The department recommends that at a minimum, ASTM standards be followed when conducting Phase I and Phase II environmental site assessments. EPA's requirements contained in 40 CFR Part 312 must be followed in order to be eligible for the liability protections contained in CERCLA.

(2) Submittals prepared to satisfy the requirements of ch. NR 722 or 724 or s. NR 708.11 (4), including free product removal conducted in accordance with s. NR 708.13, for response actions taken to address groundwater contamination shall be jointly prepared by, or under the supervision of, a professional engineer and a hydrogeologist.

(3) Submittals prepared to satisfy the requirements of ch. NR 722 or 724 or s. NR 708.11 (4) for response actions that address any media other than groundwater shall be prepared by, or under the supervision of, a professional engineer.

Note: This chapter is not intended to authorize the practice of professional engineering in violation of ch. 443, Stats.

(4) Hydrogeologists shall prepare or supervise the preparation of submittals involving the assessment of groundwater conditions at a site or facility, when prepared to satisfy the requirements of ch. NR 716.

(5) Submittals addressing any media other than groundwater, which are prepared to satisfy the requirements of ch. NR 716 or 720, shall be prepared by or under the supervision of a professional engineer, a hydrogeologist or a scientist.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am. (5), Register, March, 1995, No. 471, eff. 5-1-95; am. (2) and (3), Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (1) Register October 2013 No. 694, eff. 11-1-13.

NR 712.09 Submittal certification. **(1)** Submittals prepared by, or under the supervision of, a professional engineer, a hydrogeologist or a scientist shall be dated and certified by the professional engineer, hydrogeologist or scientist using the appropriate certification set forth in sub. (3). The responsibility for signing the certification may not be delegated to others.

(2) The act of signing the certification means that the professional engineer, hydrogeologist or scientist certifies that, to the best of her or his knowledge, all information contained in the submittal is correct and the submittal was prepared in accordance with all of the applicable requirements of chs. NR 708 to 754. Conclusions and recommendations in the submittal shall represent the certifier's best professional opinions and judgments.

(3) The appropriate certification in pars. (a) to (c) shall be attached to all submittals to the department to demonstrate that the requirements of s. NR 712.07 have been met.

(a) The following certification shall be attached to any submittal that is required to be prepared by, or under the supervision of, a professional engineer under s. NR 712.07 (2), (3) or (5):

"I, _____, hereby certify that I am a registered professional engineer in the State of Wisconsin, registered in accordance with the requirements of ch. A-E 4, Wis. Adm. Code; that this document has been prepared in accordance with the Rules of Professional Conduct in ch. A-E 8, Wis. Adm. Code; and that, to the best of my knowledge, all information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

Signature, title and P.E. number

P.E. stamp

(b) The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified hydrogeologist under s. NR 712.07 (2), (4) or (5):

"I, _____, hereby certify that I am a hydrogeologist as that term is defined in s. NR 712.03 (1), Wis. Adm. Code, am registered in accordance with the requirements of ch. GHSS 2, Wis. Adm. Code, or licensed in accordance with the requirements of ch. GHSS 3, Wis. Adm. Code, and that,

to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code.”

Signature and title

Date

(c) The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified scientist under s. NR 712.07 (5):

“I, _____, hereby certify that I am a scientist as that term is defined in s. NR 712.03 (3), Wis. Adm. Code, and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code.”

Signature and title

Date

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; CR 12-023: am. (2), (3) (b) Register October 2013 No. 694, eff. 11-1-13.

NR 712.11 Exemptions. (1) GENERAL. The following submittals are exempt from the requirements of this chapter:

(a) Submittals related to research projects prepared by, or under the supervision of, employees of state or federal educational or research institutions who have the training, but not the experience, registration or education needed to be a professional engineer, hydrogeologist or scientist. This exemption applies only to persons preparing or supervising the preparation of a submittal pursuant to s. NR 712.07, not to field personnel covered under s. NR 712.05.

(b) Analytical laboratory reports prepared by laboratories that are certified or registered under ch. NR 149 or the U.S. EPA contract laboratory program.

(c) Plans or specifications for air emission treatment devices that are submitted to the department’s bureau of air management for approval.

(d) Plans or specifications submitted to the department’s bureau of water quality for approval of lagoon or treatment system abandonment.

(e) Plans and specifications submitted to the department to meet the requirements of ch. NR 108.

Note: Section NR 108.04 (2) (c) requires the final plans and specifications for wastewater treatment devices to be submitted under the signature and the seal of a professional engineer.

(f) Tank closure assessments performed in accordance with the requirements of ch. ATCP 93 by a site assessor certified by the department of agriculture, trade and consumer protection, and any other plans, specifications or reports required by the department of agriculture, trade and consumer protection not specifically required by chs. NR 700 to 754.

(g) Plans for the landspreading of soil contaminated only with fertilizers or regulated pesticides.

(2) SAMPLING. (a) Sampling that is conducted in compliance with all of the following conditions is exempt from the requirements of s. NR 712.05 (1) to (3), except as provided in par. (b):

1. The sampling is conducted by responsible parties or by an employee of the responsible parties in compliance with all of the requirements of chs. NR 700 to 726, except s. NR 712.05 (1) to (4).

2. The sampling is conducted by responsible parties or by an employee of the responsible parties in accordance with all applicable sampling protocols established by the department. A description of sampling and sample preservation methods shall be provided to the department by the responsible parties at the time that the sampling results are submitted.

3. A statement is included in the submittals that describes the education, training and experience that qualifies the person who collected the samples to take samples without meeting the requirements of s. NR 712.05 (2).

(b) The department may reject any sampling results submitted under this subsection if the department determines that the samples were not taken in accordance with the requirements of this subsection and all other applicable sections of chs. NR 700 to 754, or that the person taking the samples was not qualified to do so based on the statement submitted to the department under par. (a) 3. If the department rejects any sampling results, the department shall provide the responsible parties with specific reasons for the rejection in writing. The responsible parties shall hire a consultant who meets the qualifications of s. NR 712.05 to conduct any required sampling if the department directs them to do so in writing.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am. (1) (f), Register, February, 1997, No. 494, eff. 3-1-97; correction in (1) (f) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; correction in (1) (f) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12-023: am. (1) (d), (f), (2) (b) Register October 2013 No. 694, eff. 11-1-13; corrections in (1) (f) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 no. 694.

Chapter NR 714

PUBLIC PARTICIPATION AND NOTIFICATION

NR 714.01 Purpose.
NR 714.02 Applicability.
NR 714.03 Definitions.

NR 714.05 Responsibilities of the department.
NR 714.07 Public participation and notification requirements for responsible parties.

Note: Chapter NR 714 was repealed and recreated, Register October 2013 No. 694, eff. 11–1–13.

NR 714.01 Purpose. The purpose of this chapter is to identify the required public participation and notification activities for response actions undertaken pursuant to chs. NR 700 to 754. Nothing in this chapter shall be construed to prevent the department or responsible parties from providing additional means for public participation and notification consistent with the provisions of this chapter. This chapter is adopted pursuant to ss. 227.11 (2) and 289.06 (1), Stats., and ch. 292, Stats.

History: CR 12–023; cr. Register October 2013 No. 694, eff. 11–1–13.

NR 714.02 Applicability. This chapter applies to response actions taken under the authority of ch. 292, Stats.

Note: Persons who wish to conduct response actions that will meet the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31, Stats. However, a CERCLA–quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 728 in order to satisfy CERCLA and the NCP.

History: CR 12–023; cr. Register October 2013 No. 694, eff. 11–1–13.

NR 714.03 Definitions. In this chapter:

(1) “Public meeting” means a meeting held for general informational purposes and that is not required by statute.

(2) “Continuing obligations” are property–specific responsibilities of a property owner that are established either before or after the state approves an environmental cleanup, and that apply to the property regardless of changes of ownership. Continuing obligations include but are not limited to environmental limitations or conditions established in the state’s closure approval letter.

History: CR 12–023; cr. Register October 2013 No. 694, eff. 11–1–13.

NR 714.05 Responsibilities of the department. The department shall conduct all of the following public participation and notification activities:

(1) **DEPARTMENT DATABASE.** The department shall maintain a public database of contaminated sites that are known to the department, in accordance with s. 292.31 (1) (a), Stats. This database may include sites or facilities that have residual contamination, and shall include information about any continuing obligations to maintain structural or institutional safeguards in regard to the residual contamination, in accordance with ss. 292.12 (3) and 292.57, Stats.

Note: The department database may be accessed at the following web site: <http://dnr.wi.gov/topic/Brownfields/rasm.html>.

(2) **PROPOSED DEPARTMENT–FUNDED REMEDIAL ACTIONS.** (a) For sites or facilities where a department–funded remedial action is proposed pursuant to s. 292.11 or 292.31, Stats., or both, the department shall publish a public notice as a class 1 notice under ch. 985, Stats., upon selection of a proposed remedial action in accordance with ch. NR 708 or 722. The availability of the department’s proposed remedial action for public review shall be included in the public notice, including the identification of a department contact person, and his or her phone number and mailing address.

(b) The department shall be responsible for conducting or directing appropriate public participation and notification activi-

ties for sites or facilities where a response action is funded wholly or in part by the department and conducted pursuant to s. 292.11 or 292.31, Stats., and where the department is overseeing response actions conducted wholly or in part by responsible parties under a contract signed pursuant to s. 292.31, Stats.

(3) **PUBLIC RECORDS.** The department shall make available to the public for inspection upon request, in compliance with ss. NR 2.19 and 2.195, site or facility–specific information and decisions concerning response actions.

Note: The public may request a time to view department files regarding the investigation and remediation of contaminated property by contacting the regional environmental program associate. The list of environmental program associates may be accessed at <http://dnr.wi.gov/topic/Brownfields/Contact.html>.

(4) **PUBLIC MEETINGS.** The department may hold a public meeting to consider comments on any proposed investigation of contamination or any other proposed response action if there is sufficient public interest, or for any other reason.

(5) **REQUESTS FOR SITE OR FACILITY SPECIFIC RESPONSES.** Interested persons may request, in writing, that the department keep them informed of approvals or rejections of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:

- (a) Site investigation workplans.
- (b) Site investigation reports.
- (c) Remedial action options reports.
- (d) Requests for case closure.

(6) **SUPERFUND.** The department shall conduct appropriate public participation activities consistent with 40 CFR part 300, at sites or facilities on the national priorities list, unless U.S. EPA is conducting the public participation activities. The public participation activities shall include the posting of signs at the site or facility in accordance with s. NR 714.07 (4), either by the U.S. EPA, department or the potentially responsible parties.

History: CR 12–023; cr. Register October 2013 No. 694, eff. 11–1–13.

NR 714.07 Public participation and notification requirements for responsible parties. (1) **EVALUATION OF NEED FOR PUBLIC PARTICIPATION AND NOTIFICATION.** In order to promote effective and meaningful public participation and notification, responsible parties shall conduct all necessary public participation and notification activities, unless otherwise directed by the department. Responsible parties shall evaluate the need for and the level of public participation and notification, based on the following criteria:

(a) *Threats.* Known or potential threats to public health, safety, or welfare or the environment that may be reduced by providing information to the public.

(b) *Public concern.* Level of public concern about a specific site, facility, or discharge or the number or status of sites, facilities, or discharges which require a response action within a particular geographic area.

(c) *Additional information needed.* The need to contact the public in order to gather information about the response action, including immediate or interim actions.

(d) *Other.* Any other factors which may be relevant to a specific site, facility, or discharge or to a group of sites, facilities, or discharges.

(2) CONTENT OF PUBLIC NOTIFICATION. If responsible parties or the department determine that public notification is necessary at a site or facility, responsible parties shall include, and the department may direct the responsible parties to include specific language regarding the following information as part of the public notification:

(a) *Description.* A description of the contamination, including the type, volume, and characteristics of the contamination.

(b) *Mitigation.* Response actions that are planned or underway to contain, reduce, or eliminate the threat of the contamination.

(c) *Contacts.* Phone number and address of persons to contact for more information.

(d) *Other.* Other information designated by the department.

(3) METHODS OF PUBLIC NOTIFICATION. Notice shall be provided to the public by means designed to reach those members of the public directly or indirectly affected by the discharge of a hazardous substance and the implementation and operation of any proposed or actual remedial action. The department may direct the responsible party to undertake any of the following public participation activities, and may require departmental approval of materials prepared by the responsible party in order to conduct these activities. The department may also undertake any of these activities, including personal contacts by department staff. Notice to the public may be provided by any of the following methods:

(a) Public notice in local newspapers.

(b) Block advertisements, including posters in areas frequented by the public.

(c) Distributing leaflets door-to-door in the vicinity of the site or facility.

(d) Letters to individual households or personal contacts by responsible parties or their representatives.

(e) Contacting appropriate government officials, including law enforcement, emergency response, and health officials to inform them of the circumstances and the response actions that are underway to contain, reduce, or eliminate the threat of the contamination.

(f) Contacting media by preparing radio, newspaper, or television announcements, including public service announcements.

(g) Contacting any interested individuals who have asked to be kept informed of site or facility activities at various points in the process, including any other site-specific information itemized by the requestor that is available from the responsible party, including sample results, emergency or interim actions, disposal of wastes removed from the site, requests for case closure, or enforcement actions.

(h) Holding advertised public informational meetings designed to provide the public an opportunity to ask questions and receive answers from the responsible party, the department, or both.

(i) Establishing a clearinghouse, toll-free telephone number or internet location where the public may obtain more information about the site or facility and the proposed or actual remedial

actions, as well as submit comments and receive responses regarding activities that may generate noise, dust, odors, traffic, or similar local concerns.

(j) Using any other appropriate mechanisms to contact and inform the public, including the opportunity to submit public comments on proposed remedial activities and to receive written responses.

(4) POSTING OF SIGNS. (a) Unless otherwise directed by the department, responsible parties shall post one or more department-issued signs in the following manner, when any of the following conditions are found at a site or facility:

1. At the edge of the excavated contaminated soil being stored on the site or facility.

2. The specific locations within the facility or site where contaminated media present a direct contact threat to humans.

3. At the entry locations of buildings or structures contaminated with hazardous substances or environmental pollution that pose or may pose a threat to public health, safety, or welfare.

4. At the entry locations of a building or structure which will be the subject of one of the response actions for the site or facility.

Note: This provision describes situations where the response action involves demolition of the building or structure to access the subsurface contamination, but where the building materials themselves are not necessarily contaminated.

5. At another location within a site or facility where the department believes unacceptable human exposure to contaminants exists.

(b) The responsible parties shall add to the department-issued sign required in par. (a) all necessary information, including:

1. Name, address, and phone number of the owner or operator of the site or facility or responsible parties.

2. Types of hazardous substances or environmental pollution on the property.

3. Department-issued identification number for the site or facility.

4. For signs posted at contaminated soil piles, the anticipated month, day, and year of removal of the soil pile.

5. Any other information the department may request.

(c) Responsible parties shall place the signs at locations on the site or facility in accordance with par. (a), so that they shall be visible to the general public, unless the department specifies the location of the sign or signs. At least one sign shall be placed at the edge of contaminated soil storage piles.

(d) Unless otherwise directed by the department, signs required under this subsection shall be maintained and legible for the duration of the response action until final case closure is received in accordance with ch. NR 726, or until no further action is required by the department in accordance with s. NR 708.09.

Note: In addition to the requirements of this chapter, responsible parties are also required to satisfy the public notification requirements in other chapters, including chs. NR 716, 722, and 725. These requirements include providing information to owners and occupants of property affected by contamination for which the responsible party is conducting environmental response actions. This includes (1) notification of sampling results, and (2) notification that the responsible party will request approval of a remedial action where residual contamination will remain on the property. The department is required to provide notification of the conditions of the final case closure approval to all affected parties.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 716

SITE INVESTIGATIONS

NR 716.01	Purpose.
NR 716.02	Applicability.
NR 716.03	Definitions.
NR 716.05	General.
NR 716.07	Site investigation scoping.
NR 716.09	Site investigation work plan.

NR 716.11	Field investigation.
NR 716.13	Sampling and analysis requirements.
NR 716.14	Sample results notification requirements.
NR 716.15	Site investigation report.
NR 716.17	Additional requirements.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 716.01 Purpose. The purpose of this chapter is to ensure that site investigations provide the information necessary to define the nature, degree and extent of contamination, define the source or sources of contamination, determine whether any interim actions, remedial actions, or both are necessary at the site or facility, and allow an interim or remedial action option to be selected that complies with applicable environmental laws. Nothing in this chapter shall be construed to require plans or reports that are more detailed or complex than is justified by the known scope of contamination or the complexity of the site or facility. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), and 289.06, Stats., and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. Register October No. 694, eff. 11-1-13.

NR 716.02 Applicability. (1) This chapter applies to all site investigations required under s. NR 716.05 and conducted by:

(a) The department under the authority of ch. 292, Stats. In this chapter, where the term “responsible parties” appears, it shall be read to include “the department” where department-funded response action is being taken.

(b) Responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: This chapter does not apply to site assessments undertaken for the sole purpose of gathering information prior to knowledge or discovery of contamination. However, upon the discovery of a discharge of a hazardous substance during a site assessment, s. 292.11, Stats., and ch. NR 706 require the responsible party to immediately notify the department of the discharge.

(c) Persons undertaking actions in order to obtain the liability exemption under s. 292.15, Stats. In this chapter, where the term “responsible parties” appears, it shall be read to include “the voluntary party” or “person under contract with the voluntary party” where an action is being taken to comply with s. 292.15, Stats.

(d) Other persons seeking closure under NR 726.

(2) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive provision controls. The department shall, after receipt of a request from the responsible parties, provide a letter indicating which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality

response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (1) (c), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1) (a) to (c), cr. (1) (d), am. (2) Register October No. 694, eff. 11-1-13.

NR 716.03 Definitions. In this chapter:

(1) “Batch of samples” means a group of samples collected during one discrete sampling event and stored and transported in a single shipping container, regardless of the number of samples in the group.

(2) “Equipment blank” means a sample of water which, prior to use, is known to be free of contaminants, and which is processed through the sampling equipment in the field in the same manner as the actual water sample to determine if field procedures introduce contaminants into the samples. This is also known as a “rinse blank” or a “field equipment blank.”

(3) “Immunoassay” means a test for the presence or concentration of a substance that relies on the reaction of one or more antibodies with the substance.

(4) “Investigative waste” means all solid and liquid wastes and contaminated environmental media resulting from activities conducted during a site investigation, immediate action, interim action, remedial action, or a monitoring or sampling event at a site or facility. Investigative wastes include soil from drill cuttings; drilling fluids; contaminated water from construction, purging, development and sampling of monitoring wells; and wash waters used during sampling or decontamination activities.

(6) “Piezometer” has the meaning specified in s. NR 141.05 (30).

Note: Section NR 141.05 (30) defines “piezometer” as “a groundwater monitoring well, sealed below the water table, installed for the specific purpose of determining either the elevation of the potentiometric surface or the physical, chemical, biological or radiological properties of groundwater at some point within the saturated zone or both.”

(7) “Potentiometric surface” has the meaning specified in s. NR 141.05 (31).

Note: Section NR 141.05 (31) defines “potentiometric surface” to mean “an imaginary surface representing the total head of groundwater and is the level to which water will rise in a well.”

(8) “Replicate sample” has the meaning specified in s. NR 149.03 (70).

Note: Section NR 149.03 (70) defines “replicate sample” to mean “2 or more substantially equal aliquots analyzed independently for the same parameter.” This is also known as a “duplicate.”

(8m) “Responsible parties” means, in this chapter, those parties defined under s. NR 700.03 (51) as well as those parties identified under s. NR 716.02 (1).

(9) “Temperature blank” has the meaning specified in s. NR 149.03 (15) (c).

Note: Section NR 149.03 (15) (c) defines “temperature blank” to mean “a sample container, of at least 40 ml. capacity, filled with water and transported with each shipment of collected samples to determine the temperature of other samples in the shipment on arrival at a laboratory.”

(10) “Trip blank” means a sample of reagent grade water which is used to determine possible contamination of samples

from volatile organic chemicals while in transit to and from the laboratory.

(11) “Water table observation well” has the meaning specified in s. NR 141.05 (46).

Note: Section NR 141.05 (46) defines “water table observation well” to mean “any groundwater monitoring well, in which the screen or open borehole intersects a water table, which is installed for the specific purpose of determining either the elevation of the water table or the physical, chemical, biological or radiological properties of groundwater at the water table or both.”

History: Cr. Register, April, 1994, No. 460, eff. 5–1–94; correction in (10) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; CR 12–023; am. (2), r. (5), am. (8), cr. (8m), am. (9), (10) Register October No. 694, eff. 11–1–13.

NR 716.05 General. **(1)** When site-specific or facility-specific information indicates that soil, sediment, groundwater, surface water, air or other environmental media at a site or facility may have become contaminated, persons identified under sub. NR 716.02 (1) shall conduct a site investigation consistent with this chapter. Unless sub. (2) is applicable, responsible parties shall use the factors in s. NR 708.09 (1) (a) to (n) and (2) (a) to (c) to determine whether or not a site investigation is necessary.

(2) A site investigation is not required of the responsible parties at a site or facility, if:

(a) After notification to the department of a hazardous substance discharge in accordance with ch. NR 706, the department determines that no further action is required of the responsible parties, based on the factors in s. NR 708.09 (1) and (2).

(b) After completion of an immediate action, the department determines that no further action is required of the responsible parties, based on the factors in s. NR 708.09 (1) and (2).

Note: The appropriate review fee specified in ch. NR 749 must accompany any request for the department to review a specific document.

History: Cr. Register, April, 1994, No. 460, eff. 5–1–94; am. (2) (a), Register, February, 1997, No. 494, eff. 3–1–97; emerg. am. (1), eff. 5–18–00; am. (1), Register, January, 2001, No. 541, eff. 2–1–01; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; CR 12–023; am. (1) Register October No. 694, eff. 11–1–13.

NR 716.07 Site investigation scoping. Prior to conducting the field component of a site investigation required under s. NR 716.05, responsible parties shall evaluate all of the following relevant items, considering the location of the site or facility, to ensure that the scope and detail of the field investigation are appropriate to the complexity of the site or facility:

(1) History of the site or facility, including industrial, commercial or other land uses that may have been associated with one or more hazardous substance discharges at the site or facility.

(2) Knowledge of the type of contamination and the amount of the contamination.

(3) History of previous hazardous substance discharges or environmental pollution.

(4) Environmental media affected or potentially affected by the contamination.

(5) Location of the site or facility, and its proximity to other sources of contamination.

(6) Need for permission from property owners to allow access to the site or facility and to adjacent or nearby properties.

(7) Potential or known impacts to receptors, including public and private water supplies; buildings and other cultural features; and utilities or other subsurface improvements. This evaluation shall include mapping the location of all water supply wells within a 1,200–foot radius of the outermost edge of contamination.

(8) Potential for impacts to any of the following:

(a) Species, habitat or ecosystems sensitive to the contamination.

(b) Wetlands, especially those in areas of special natural resource interest as designated in s. NR 103.04.

(c) Outstanding resource waters and exceptional resource waters as defined in ss. NR 102.10 and 102.11.

(d) Sites or facilities of historical or archaeological significance.

Note: Information on sites or facilities of historical or archeological significance may be found at the following State Historical Society websites:

Wisconsin National Register of Historic Places: <http://preview.wisconsinhistory.org/Content.aspx?dsNav=Nrc:id-4294966367,N:4294966612&dsNavOnly=N:4294966362>

Office of the State Archeologist: <http://www.wisconsinhistory.org/archaeology/osa/>.

(9) Potential interim and remedial actions applicable to the site or facility and the contamination.

(10) Immediate or interim actions already taken or in progress, including any evaluations made of whether an interim action is needed at the site or facility.

(11) Any other items, including climatological conditions and background water or soil quality information, that may affect the scope or conduct of the site investigation.

(12) The need to gather data to determine the hydraulic conductivity of materials where contaminated groundwater is found.

History: Cr. Register, April, 1994, No. 460, eff. 5–1–94; emerg. cr. (12), eff. 5–18–00; cr. (12), Register, January, 2001, No. 541, eff. 2–1–01; CR 12–023; renum. (8) (b) to (e) to (8) (a) to (d), am. (12) Register October No. 694, eff. 11–1–13.

NR 716.09 Site investigation work plan. **(1)** GENERAL. Unless otherwise directed by the department, in cases where a site investigation is required under s. NR 716.05, responsible parties shall submit a work plan to the department within 60 days of receiving notification that a site investigation is required, describing the intended scope and conduct of a field investigation. One paper copy and one electronic copy of the plan shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11 (3g).

Note: Guidance for Electronic Submittals for the GIS Registry outlines how electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. This guidance can be accessed at <http://dnr.wi.gov/files/PDF/pubs/tr/RR690.pdf>.

(2) CONTENTS. The work plan shall include all of the following information, unless otherwise directed by the department:

(a) Site name, address, and location by quarter-quarter section, township, range and county, and the location information specified in s. NR 716.15 (5) (d).

Note: Section NR 716.15 (5) (d) requires submittal of Wisconsin Transverse Mercator (WTM) coordinates.

(b) Name and address of the responsible party or parties, and name and address of all consultants or contractors involved in the response action.

(c) Site location map, consisting of the applicable portion of a 1:24,000–scale topographic quadrangle published by the United States geological survey with the name of the quadrangle indicated, and a site layout map to approximate scale depicting the layout of buildings, roads, discharge location and other relevant features of the site.

(d) Information gathered during scoping of the project, including the applicable items in s. NR 716.07.

(e) Basic information on the physiographical and geological setting of the site necessary to choose sampling methods and locations, including:

1. The existing topography, including prominent topographic features.

2. The surface water drainage patterns and significant hydrologic features, such as surface waters, springs, surface water drainage basins, divides, wetlands and whether the site lies within a floodplain or floodway.

3. Texture and classification of surficial soils.

4. General nature and distribution of geologic materials, including the thickness and type of unconsolidated materials and the type and nature of bedrock.

5. General hydrogeologic information.

6. Potential hazardous substance migration pathways.

(f) Sampling and analysis strategy to be used during the field investigation, including:

1. A description of the investigative techniques to be used to characterize the site or facility.

2. Identification on a site layout map of the locations, both planimetric and vertical, from which samples of environmental media will be obtained. Where locations cannot be specified in advance, the work plan shall include a description of the strategy to be used for determining these locations in the field.

3. A description of sampling methods to be used, including methods for collecting, preserving and delivering samples, and leak detection methods.

4. An itemization of the parameters for which samples will be analyzed, as well as the analytical methods to be used and their method detection limits.

5. A description of quality control and quality assurance procedures to be used per sampling method, including the items specified in s. NR 716.13.

6. A description of the procedures to be used to prevent cross-contamination among samples.

7. A description of the type of investigative wastes that will be generated during the site investigation and how they will be collected, stored, transported and treated or disposed of.

8. A discussion of how the sampling and analysis results will be related to results of any previous investigations at the site or facility, and how the results will be used to determine the degree and extent of the contamination and the selection of a remedial action option including, where appropriate, natural attenuation.

(g) A description of other procedures to be used for site management, including erosion control and repair of structural, soil, or ground disturbance.

(h) A schedule for conducting the field investigation and reporting the results to the department.

(3) DEPARTMENT REVIEW OF SUBMITTED WORK PLANS. (a) The department may instruct responsible parties to proceed without departmental review of work plans submitted under this section.

(b) Responsible parties that are not instructed to proceed under par. (a) shall wait before initiating the field investigation until the department has approved or conditionally approved the work plan, except that if the department has not reviewed the work plan within 30 days after its receipt by the department, the responsible parties shall proceed with the field investigation.

(c) If the department disapproves a work plan submitted under this section, the department shall provide to the responsible parties, in writing, the basis for disapproval and a deadline for providing a revised work plan.

(d) The lack of a response from the department, after the department's receipt of a work plan, may not be construed to mean that the department has approved the work plan.

Note: The department will only provide an approval if a review was requested, and the appropriate fee was submitted.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (1), r. (3) (e), Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (1), (2) (a), (f) 3., 5., 8., (g), (3) (b) Register October No. 694, eff. 11-1-13.

NR 716.11 Field investigation. (1) Responsible parties shall conduct a field investigation as part of each site investigation required under this chapter, unless the department directs otherwise.

(2) The field investigation shall be conducted in accordance with a work plan approved or conditionally approved by the department, unless the department has directed the responsible parties to proceed with a field investigation without department review of the investigation work plan.

(2g) The field investigation shall be initiated within 90 days of submittal of the work plan.

(2r) In cases where the responsible party pays a fee for department review of the work plan, the field investigation shall be initiated within 60 days after department approval of the work plan.

Note: The intent of this subsection is to be able to measure that progress is being made toward conducting a site investigation. Initiation may include preparatory measures to conducting the actual fieldwork.

(3) The purposes of the field investigation shall be to:

(a) Determine the nature, degree and extent, both areal and vertical, of the hazardous substances or environmental pollution in all affected media.

(b) Provide sufficient information to permit evaluation of interim options pursuant to ch. NR 708, and remedial action options pursuant to ch. NR 722, and to permit a determination to be made regarding whether any of the interim or remedial action options require a treatability study or other pilot-scale study.

(c) Provide sufficient information to determine the hydraulic conductivity of materials where contaminated groundwater is found.

(d) Provide an estimate, along with all necessary supporting information, of the mass of contamination in the source area. This includes sites involving free product or where natural attenuation is considered for part of the remedy.

Note: Methods and examples for estimating mass in the source zone, can be found in the following guidances: RR 699, Understanding Chlorinated Hydrocarbon Behavior in Groundwater: Investigation, Assessment and Limitations of Monitored Natural Attenuation at <http://dnr.wi.gov/files/PDF/pubs/rr/RR699.pdf>; and RR 614, Guidance on Natural Attenuation for Petroleum Releases, at <http://dnr.wi.gov/files/PDF/pubs/rr/RR614.pdf>.

Note: The intent of this paragraph is to address situations where a discrete area indicates a release of a hazardous substance. It is not intended for situations where there is no discrete source area, such as when there is area-wide contamination from aerial deposition, or widespread areas of fill such as foundry ash.

(4) Responsible parties shall extend the field investigation beyond the property boundaries of the source area as necessary to fully define the extent of the contamination. If the responsible parties are unable to complete the required investigation beyond the source property because a property owner refuses access, the responsible parties shall notify the department within 30 days of the refusal, and shall document in writing the efforts undertaken to gain access when requested by the department.

(5) The field investigation shall include an evaluation of all of the following items:

(a) Potential pathways for migration of the contamination, including drainage improvements, utility corridors, bedrock and permeable material or soil along which vapors, free product or contaminated water may flow.

(b) The impacts of the contamination upon receptors.

(c) The known or potential impacts of the contamination on any of the resources listed in s. NR 716.07 (8) that were identified during the scoping process as having the potential to be affected by the contamination.

(d) Surface and subsurface rock, soil and sediment characteristics, including physical, geochemical and biological properties that are likely to influence the type and rate of contaminant movement, or that are likely to affect the choice of a remedial action.

(e) The extent of contamination in the source area, in soil and saturated materials, and in groundwater.

Note: The intent of this requirement is to collect samples in the general area where the contaminant was released, where the concentrations are generally expected to be the greatest, and to determine the presence of non-aqueous phase liquids, including samples from the smear zone. For further information on the smear zone, copies of the department's guidance "Smear Zone Contamination" may be obtained by accessing the following web site: <http://dnr.wi.gov/files/PDF/pubs/rr/RR712.pdf> or 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. This requirement is not intended to address sampling of landfill waste materials. In cases where clean soils exist between shallower contaminated soil, and groundwater, groundwater still needs to be assessed.

(f) The extent, both vertically and horizontally, of groundwater contamination. Piezometers shall be used to determine the vertical extent of contamination, as appropriate to the situation.

Note: The use of piezometers may not be appropriate for all situations, including at the source area, or where a documented upward gradient exists downgradient of a source area.

(g) The presence and concentration of vapors sub-slab, when investigation of soil, soil gas or groundwater indicates that vapors may migrate to the foundation of an occupied building, taking into account the biodegradability of vapors, preferential pathways of vapor movement, or other physical or chemical factors affecting vapor movement into occupied buildings.

(h) The presence and concentration of vapors in indoor air, when it is necessary to determine the impact on an occupied structure considering applicable attenuation factors, land use, building size and other site-specific factors that affect exposure to vapor.

Note: Indoor air samples are expected to be collected and analyzed in most cases where vapor migration into an occupied residential setting is likely. A residential setting may include single or multiple family housing, and educational, childcare, and elder care facilities. Sampling and analysis is conducted to determine levels of the contaminants of concern. Indoor air sampling is not recommended in locations where the contaminant of concern is currently used in commercial or industrial operations.

(6) Responsible parties shall manage investigative wastes in a manner that will not pose a threat to public health, safety, or welfare or the environment, and which is consistent with state and federal regulations.

(7) Responsible parties shall label all drums containing investigative wastes, including drill cuttings and purge water, with the Bureau for Remediation and Redevelopment Tracking System activity number for the site, the site name, boring or well number, initial date of collection, and the contents.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (3) (b), Register, April, 1995, No. 472, eff. 5-1-95; emerg. cr. (3) (c), am. (5) (a), eff. 5-18-00; cr. (3) (c), am. (5) (a), Register, January, 2001, No. 541, eff. 2-1-01; CR 12-023: cr. (2g), (2r), am. (3) (c), cr. (3) (d), (5) (e) to (h), (7) Register October No. 694, eff. 11-1-13.

NR 716.13 Sampling and analysis requirements.

(1) Responsible parties shall use laboratory analyses of environmental media samples which are collected, handled and analyzed in compliance with subs. (2) to (17) to confirm the nature and extent and evaluate the impacts of contamination, if a field investigation is required under s. NR 716.11 (1). Analytical methods used shall be suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the samples to be tested.

(2) All chemical and physical analyses for which accreditation is available under ch. NR 149 shall be conducted by a laboratory accredited under ch. NR 149.

(3) Responsible parties may use non-laboratory methods of sample analysis, including field screening with a photoionization detector or flame ionization detector, analysis with a field gas chromatograph, geophysical or downhole probe surveying, non-certified mobile laboratory analysis, immunoassays and other appropriate methods, to supplement the information derived from laboratory analysis of samples. If non-laboratory methods are used at a location from which a laboratory sample is collected, responsible parties shall use separate samples for the non-laboratory and the laboratory analyses, unless the target compound is not subject to loss or alteration through sample handling.

(4) All soil samples obtained during the field investigation for the purpose of defining the degree and extent of the contamination shall be discrete, not composite, samples, unless the department explicitly approves in advance composite sampling for a specific site situation.

(5) Maximum holding times for soils shall be in accordance with the sampling method, sample storage container, and analytical methods used.

(6) Responsible parties shall provide for the following quality control and quality assurance procedures, at a minimum, when collecting samples for laboratory analysis for a field investigation conducted under this chapter:

(a) Chain of custody shall be documented from the time of sample collection to the receipt of the sample by the analytical laboratory. Chain of custody documentation shall be in compliance

with ch. NR 149, and shall be submitted to the department with the sample results.

(b) For soil samples, one temperature blank for every shipping container of samples that require cooling for preservation, unless samples are received by the laboratory on ice, unless another temperature is required by the analytical method used.

(c) For water samples:

1. One replicate sample for every 10 or less samples.

2. One equipment blank for every 10 or less samples, unless dedicated sampling equipment is used to prevent cross-contamination.

3. One trip blank for each shipping container that contained volatile samples.

4. One temperature blank for every shipping container of samples that require cooling for preservation, unless samples are shipped on ice.

(d) Decontamination of all sampling instruments between each sampling event, unless dedicated or disposable sampling devices are used in a manner that prevents cross contamination or other unintended contamination of samples.

(7) Responsible parties shall ensure that the following items are documented during the field investigation and are made available to the department upon request:

(a) Procedures for sampling and all other routine activities associated with the site investigation.

(b) A log of all routine and non-routine maintenance and calibrations performed on all instruments used during the field investigation.

(c) Field notes describing in detail the sequence of activities that took place during the field investigation.

(8) For soil and water samples, the reporting limit for volatile organic compound analysis and petroleum volatile organic compound analysis shall be the method detection limit for the analytical method used. If the results are less than the method detection limit, the results shall be reported as less than the method detection limit, rather than no detect. Qualifiers used for the data shall also be reported.

Note: Section NR 140.16 (2) (c) requires that the analytical method selected meet one of the following criteria: 1) has a limit of detection and limit of quantitation below the preventive action limit or 2) produces the lowest available limit of detection and limit of quantitation if the limit of detection and limit of quantitation are above the preventive action limit. In addition, s. NR 140.14 (3) specifies whether a standard has been attained or exceeded if a preventive action limit or enforcement standard is equal to or less than the limit of quantitation.

Note: Chapter NR 720 specifies whether a soil cleanup standard has been exceeded if the standard is at or below the limit of quantitation.

(9) Responsible parties shall ensure that drinking water samples are collected, handled and analyzed according to the procedures specified in ch. NR 809.

(10) Responsible parties shall ensure that groundwater samples are collected and handled according to the procedures specified in s. NR 140.16 (1), unless the department approves the use of an alternative procedure. The department may approve the use of an alternative procedure from one of the authoritative sources listed in ch. NR 149 Appendix III, or an alternate test procedure approved by the U.S. EPA, or, if the department determines that an appropriate procedure is not available, from another source. Alternative procedures may include the most recent published method, or an older published version deemed acceptable by the department on the basis of the objectives of the data collection. Responsible parties shall select an analytical method that is suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the sample to be tested.

Note: Examples of suitable analytical methods for VOCs and PVOCs in groundwater include EPA methods 5030B/8260B, EPA Method 8310 or 8270C-SIM or 8270D-SIM for PAHs, EPA method 3510C/8082A or 3520C/8082A for PCBs, EPA Method 3020A/6020A or 3010A/6020A for Pb, EPA Method 3020A/6020A for Cd, and EPA Method 1664 (Revision B) for oil and grease.

(11) Soil samples collected for analysis of volatile organic compounds for compliance with chs. NR 700 to 754 shall be pre-

served immediately after collection to minimize volatilization of contaminants from the sample to the greatest extent possible. Preservation techniques used shall be according to the analytical method to be used. Sampling techniques shall be used that minimize volatilization from the sample. Extraction techniques shall be according to the analytical method selected. Analytical methods used shall be suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the samples to be tested.

Note: Suitable preservation, extraction and analytical methods include those found in method SW 5035A in "Test Methods for Evaluating Solid Waste (SW-846)," and in the "Modified GRO, Method for Determining Gasoline Range Organics" (GRO for screening purposes). Other techniques may be found in the List of Authoritative Sources, ch. NR 149 Appendix III.

(12) Responsible parties shall ensure that other samples taken for analysis are collected, handled and analyzed according to the procedures specified in "SW-846: Test Methods for Evaluating Solid Waste", "The Third Edition of SW 846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, and IV," published by the U.S. EPA, unless the department approves the use of an alternative procedure. The department may approve the use of an alternative procedure from one of the authoritative sources listed in ch. NR 149 Appendix III, an alternate test procedure approved by the U.S. EPA, or, if the department determines that an appropriate procedure is neither available from "SW-846: Test Methods for Evaluating Solid Waste" nor from one of the authoritative sources listed in ch. NR 149 Appendix III, from another source.

Note: Copies of "SW-846: Test Methods for Evaluating Solid Waste" are available for inspection at the offices of the department of natural resources, the secretary of state, and the revisor of statutes. Copies may be obtained from the Government Printing Office, Room 190, Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 53202 and may be accessed at the following web site: <http://www.epa.gov/epaoswer/hazwaste/test/main.htm>. Other suitable procedures may include revised SW-846 methods found at the EPA Office of Solid Waste Methods Web Site.

(13) Responsible parties shall collect samples and provide an analysis for the geochemical indicators and parameters, where natural attenuation is potentially a remedy or part of a remedy. These may include dissolved oxygen, nitrate, dissolved manganese, total and ferrous iron, sulfate and methane, alkalinity, oxidation reduction potential, pH, temperature, and conductivity.

(14) (a) Responsible parties shall inspect monitoring wells installed for field investigations conducted under this chapter at least annually to verify the integrity of the well labels, lock and seal, and to determine whether the wells are providing a conduit to the subsurface, and shall take action to repair or abandon the well if necessary in accordance with ch. NR 141.

(b) Flush mounted wells shall include a magnet placed in the void between the cover and the annular space seal. In cases where flush-mounted wells are not used, wells installed in areas potentially subject to damage from vehicle traffic shall include appropriate protective traffic posts next to the well.

Note: Traffic posts can vary in design. Normally, properly anchored concrete filled metal posts should be used to protect wells. The magnet may aid in locating wells for abandonment.

(15) Responsible parties shall measure and record to the nearest 0.01 foot the static water level elevation in each groundwater monitoring well prior to obtaining a groundwater sample from the well. The measurement point shall be the top of the well casing and shall be identified on the well itself if the top of the casing is not level.

Note: Section NR 141.065 (2) requires that the top of the well casing be referenced to the nearest benchmark for the national geodetic survey datum to an accuracy of 0.01 feet.

(16) Where site investigation data or other information indicate it is appropriate, or when directed to do so by the department, responsible parties shall make a good faith effort to sample public or private water supply wells as part of a regular monitoring program or to determine the extent of groundwater contamination, or both. Private and public water supply wells to be sampled shall include:

(a) Those wells that are known or suspected to be affected by the groundwater contamination.

(b) Other wells that the department determines have the potential to be affected by the groundwater contamination.

(17) If the responsible parties are unable to sample a public or private well because the property owner refuses access, the responsible parties shall notify the department within 30 days of the refusal, and shall document in writing the efforts undertaken to gain access when requested by the department.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: r. and recr. Register October No. 694, eff. 11-1-13.

NR 716.14 Sample results notification requirements. **(1)** SAMPLES FROM WATER SUPPLY WELLS. Responsible parties shall report all water supply well sampling results to the department and to the well owner, and occupant as applicable, within 10 business days after receiving the sampling results. The report to the department shall include the Wisconsin unique well number for drinking water wells, a preliminary analysis of the cause and significance of any contaminant concentrations observed in the samples and an identification of any substances that attain or exceed ch. NR 140 preventive action limits, as well as any other substances observed in the samples for which there are no ch. NR 140 groundwater quality standards. The responsible party shall notify both the remediation and redevelopment project manager and the regional drinking and groundwater specialist or water supply engineer of all water supply well sample results.

Note: The appropriate remediation and redevelopment project manager can be determined for the site in question at <http://dnr.wi.gov/topic/Brownfields/documents/rr/county.pdf>. The appropriate regional drinking and groundwater specialist or water supply engineer can be determined by viewing the staff listing at <http://dnr.wi.gov/topic/DrinkingWater/contact.html>.

Note: The department will provide information to well owners of the results of sampling in accordance with manual code 4822.1.

(2) SAMPLES FROM OTHER MEDIA. Responsible parties shall report all sampling results other than those for water supply wells, to the department and to the property owner, and occupants as appropriate, of the property from which the samples were collected, including the source property owner if the person conducting the investigation is not the property owner, within 10 business days of receiving the sample results.

(a) The report to the department shall include a preliminary analysis of the cause and significance of any contaminant concentrations observed in the sample, a list of names and addresses of those receiving a sampling notification, and the date of the sampling event and mailing.

(b) The written notification to an affected property owner, and occupant as appropriate, shall include information about how additional information may be obtained, in accordance with s. NR 714.05 (5). The department may waive the notification of occupants in limited situations, upon request.

(c) In addition, the notification to the property owners, and occupants as appropriate, shall include all the following information, in a letter or using a form provided by the department:

1. Responsible party name, address, and phone number.
2. Site name and source property address.
3. Department BRRTS number.
4. Department contact person name and phone number.
5. Reason for sampling, which may include routine sampling, and sampling to determine an immediate health concern, including the ingestion, inhalation, and dermal contact pathways.
6. Contaminant type.
7. Sample type, which may include groundwater, soil, sediment, soil vapor, outdoor or ambient air, and indoor air.
8. A map showing the sampling locations, which meets the requirements of s. NR 716.15 (4).
9. Collection date, specific contaminant levels per location, and whether the sample results attain or exceed state standards. A data table shall be used when multiple sample results are included.

10. A copy of the results from the laboratory attached to the notification.

Note: Notification of sampling results is intended for those samples taken from a property including results from both routine and long-term monitoring and those of a more immediate health or welfare concern to a property owner, or occupant as appropriate. Examples of sampling to determine the presence of an immediate public health or welfare concern are from potable wells, indoor air, surface soil, and soil vapor beneath an occupied structure. "All sampling results" means the results that show detections of contaminants as well as those that do not show detections.

Note: Assistance in evaluating the impact and meaning of the sample results may be requested of the department project manager or drinking water staff, or from staff with the Division of Public Health, with the Department of Health Services.

Note: The notification to occupants is not intended for situations where there are multiple units or a frequent change in occupancy.

Note: The form on which to provide sample results, "Sample Results Notification," Form 4400-249, can be found at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

(3) The department may approve of a different notification schedule on a case-by-case basis.

Note: In cases where routine monitoring is conducted, and where results are not expected to be of immediate health or welfare concern, the department may consider other schedules, such as quarterly or with the semi-annual status reports to be sufficient.

(4) The responsible party shall take the actions necessary to ensure any new occupants are also informed of the pertinent information required under s. NR 716.14 (2) (c).

History: CR 12-023; cr. Register October No. 694, eff. 11-1-13.

NR 716.15 Site investigation report. (1) REPORT REQUIREMENT. (a) *Timeline.* Unless otherwise approved by the department, responsible parties shall submit a site investigation report to the department within 60 days after completion of the field investigation and receipt of laboratory data.

(b) *Number of copies.* One paper copy and one electronic copy of the report shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11 (3g).

Note: Electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>.

Note: The department strongly recommends the use of 2-sided copies for the paper copy of the report, and the use of accordion folders for larger reports instead of 3-ring binders, to help address file space issues.

(2) **REPORT CONTENTS.** The site investigation report shall include all of the following information required under this subsection, and under subs. (3) to (6):

(a) *Cover letter.* A letter referencing the department's identification number for the site or facility and stating the purpose of the submittal and the desired department action or response.

(b) *Executive summary.* A brief narrative describing the site investigation results, conclusions and recommendations for future actions, and the certification required under s. NR 712.09.

(c) *General information.* 1. Project title and purpose.

2. Name, address, e-mail address, and telephone number of the present property owner, lessee, operator, and any individual or company responsible for the contamination.

3. Name, address, e-mail address, and telephone number of any consultants or contractors involved with the response action at the site or facility.

4. Site or facility name, address, and location by quarter-section, township, range, and county, along with the Wisconsin Transverse Mercator coordinates for the site. The location of the property and the contamination shall be given in sufficient detail to allow department personnel to inspect the property and the contaminated area.

Note: The requirements for locating monitoring wells are contained in s. NR 141.065. Specifically regarding areal location, this section requires that the wells be shown on a plan map with a grid system that is located according to latitude and longitude, or according to a state plane coordinate system. The plan map must show the exact location of the installed well on a horizontal grid system which is accurate to within one foot.

5. Location maps which meet the requirements of sub. (4).

6. In addition to any other site layout maps, one site layout map which depicts the site's property boundaries, named and

unnamed roads or access points, surface water features, underground utilities, buildings, public and private wells, land uses on adjacent properties, and known and potential hazardous substance sources.

7. The geographic positions of all properties within and partially within the contaminated site boundaries, which have been directly located or interpolated from other features on a base map of 1:24000 scale or finer, or which were obtained using differentially corrected global positioning system data or another method of similar or superior accuracy that have been approved by the department. The geographic position data shall be obtained and submitted to the department in accordance with the requirements in sub. (5) (d).

(d) *Background information.* Descriptions of the following:

1. Activities or events at or near the site or facility which had the potential to affect public health, safety, or welfare or the environment, including time, duration, type, and amounts of hazardous substance discharges.

2. Any previous discharges or response actions and the relevant dates.

3. Response action activities to date, with references to any previous reports concerning response action activities on the site or facility.

4. Any other information relevant to the response action.

(e) *Methods of investigation.* Descriptions of investigative techniques used to characterize the site or facility, including subsurface boring and probe methods; monitoring well construction, installation, and development procedures; well and aquifer testing methods; modeling techniques; sample collection, handling, and analysis techniques; and leak detection methods. Where procedures were performed in accordance with methods described in a work plan for the same investigation that was previously submitted to the department or in exact accordance with published departmental guidance, the site investigation report may omit detailed descriptions by referring to the work plan or the department guidance in which the methods were described. Where procedures differed from methods described in the work plan, the site investigation report shall include a description of the procedures used.

(3) **RESULTS.** The site investigation report shall include a detailed narrative description of the results of the site investigation, references to all appropriate visual aids under sub. (4), and shall include all of the following:

(a) The information collected during the scoping stage of the investigation conducted pursuant to s. NR 716.07.

(b) A description of the sequence of activities that took place during the site investigation.

(c) All field measurements, observations, and sampling data generated during the site investigation, including data from non-laboratory sample analyses. Laboratory data shall include laboratory name, location from which each sample was obtained, date each sample was obtained, date each sample was extracted and analyzed, analytical method used by the laboratory, parameters tested for, the method detection limit, the analytical result for each sample, and whether other compounds not specifically tested for were observed in significant quantities. Relevant and significant sample results and field measurements shall be compiled in tabular form and at corresponding sampling locations noted on a site layout map.

(d) Where laboratory results are significantly inconsistent with field observations or non-laboratory method results, a clear evaluation of the reason for the inconsistency and an indication of whether resampling or additional quality control procedures are needed.

(e) For sites or facilities with 3 or more water table observation wells, a discussion of the depth to the water table, groundwater flow directions, rates, and any variations.

(f) A discussion of the stratigraphy of the site. Identify soil and rock types at the site and the contaminant source location. Include a description of moisture contents, high and low water table elevations, and the location of any smear zone.

(g) A discussion of the contaminants and impacts on each environmental medium.

(h) Interpretations of the data generated at the site or facility sufficient to characterize the geologic and hydrogeologic characteristics of the site or facility, the areal and vertical degree and extent of hazardous substances in all environmental media, and the impacts of the contamination to all potential receptors.

(i) The hydraulic conductivity of materials where contaminated groundwater is found.

(4) VISUAL AIDS. The site investigation report shall include all maps, figures, tables, graphs, photographs, and completed forms that are necessary to clarify and support results and interpretations. Visual aids shall present information in legible formats, shall be referenced in the report text, and shall meet all of the following requirements:

(a) *General Requirements.* Maps, plan sheets, drawings, cross sections and fence diagrams shall:

1. Be of appropriate scale to show all required details with sufficient clarity.

2. Have a figure number, title, north arrow, and legend of all symbols used, contain graphic horizontal and vertical scales, specify drafting or origination dates, and indicate the source if not an original design.

Note: The source means the company or name of the original preparer of the visual aid.

3. Use national geodetic survey data as the basis for all elevations.

4. Use a distinguishing symbol, such as a dashed line or question mark, to depict inferred or questionable data.

(b) *Water table and potentiometric surface maps.* For water table maps and potentiometric surface maps, depict water level elevations measured on the same day, indicate the date of measurement on the map, and indicate apparent flow direction.

1. For sites or facilities with 3 or more water table observation wells, include a map depicting the elevation of the water table and the apparent direction of groundwater flow, with additional water table maps as necessary to depict significant variations in water table elevation or groundwater flow direction.

2. For potentiometric surface maps, additionally depict measurements taken from piezometers with similar screen lengths that intersect the same geologic zone and depth, and indicate any vertical gradients as well as the location and type of any confining layers. For sites with 3 or more piezometers, include a potentiometric surface map, with the apparent direction of groundwater flow, with additional potentiometric maps as necessary to depict significant variation in levels or flow direction.

(c) *Isoconcentration maps.* For isoconcentration maps, depict the hazardous substances, concentrations, the environmental medium, the date measured and the unit of measurement. Submit isoconcentration maps of hazardous substance concentrations in each environmental medium, as appropriate to the scope and complexity of the site and where sufficient data are available to estimate meaningful isoconcentrations. For groundwater, use the appropriate groundwater elevation map as the base map.

(d) *Cross sections.* For sites or facilities with 2 or more soil borings, include one or more geologic cross sections.

1. Cross sections shall include a reduced inset diagram of the site layout map indicating the location of the cross section transect, and shall indicate the dates of measurements, stratigraphy, screened intervals of monitoring wells, and water table surface.

2. Include the locations of any confining units; the contaminant source location, vertical and horizontal extent of contamination in both soil and groundwater, and highest and lowest water table and piezometric elevations and screen lengths, as applicable.

(e) *Tables.* Tables shall meet all of the following requirements:

1. Include a table number, title and an explanation of any footnotes marked in the body of the table.

2. Include units of measurement when displaying measured data. When an environmental standard exists for the contaminant, the unit of measurement shall be the same as that used by the department to express the environmental standard.

3. Indicate measurement or sample collection date when displaying measured data or data derived from sampling.

4. Indicate which results equal or exceed environmental standards when displaying analytical results of tests on environmental media for which standards exist.

5. Indicate depth and soil type for soil sample summary tables.

6. For groundwater elevation tables, indicate each well's top and bottom screen elevation.

(f) *Photographs.* Photographs shall be in color, of sufficient size to clearly represent the purpose of the photograph, and shall be labeled by the date, orientation and topic.

(g) *Well and borehole documentation.* All forms shall be completed in accordance with the directions for the applicable form. All of the following department forms, shall be used, where applicable to the site or facility:

1. 4400-89, groundwater monitoring well information.

2. 4400-113A, monitoring well construction.

3. 4400-113B, monitoring well development.

4. 4400-122, soil boring log information.

5. 3300-5B, well/drillhole/borehole abandonment.

Note: Copies of these well and borehole documentation forms may be obtained from the following internet sites:

http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_89.pdf,

http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_113_1_2.pdf,

http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_122.pdf,

<http://dnr.wi.gov/topic/DrinkingWater/documents/forms/3300005.pdf>

(h) *Well construction permits.* Any department of transportation well construction permit for a well, constructed in a right-of-way, shall be submitted with the well construction form.

(5) DEED AND LOCATIONAL INFORMATION. All of the following information shall be included in the site investigation report for each property within or partially within the contaminated site boundaries:

(a) A copy of the most recent deed, which includes the legal description.

(b) A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed refers to a certified survey map or a recorded plat map.

(c) The parcel identification numbers for each property.

(d) Geographic position. All geographic position data shall be obtained and submitted to the department in the site investigation report in accordance with the following requirements:

1. 'Format.' For properties that are not more than 200 feet wide or long, a single point geographic position shall be obtained at least 40 feet within the boundaries of the property, or as close to the center of the property as possible if the property is less than 80 feet wide or long. For properties that are more than 200 feet wide or long, coordinates describing the approximate location of the property's boundaries, forming a polygon, shall be obtained.

2. 'Coordinate system.' Geographic position data shall be originally collected in Wisconsin Transverse Mercator '91 or projected onto Wisconsin Transverse Mercator '91.

Note: Information about the Wisconsin Transverse Mercator '91 projection is available on the internet at <http://dnr.wi.gov/maps/gis/wtm8391.html>.

3. 'Acceptable methods.' Acceptable methods for obtaining geographic position data include direct location or interpolation from other features on a base map of 1:24000 scale or finer, differentially corrected global positioning system data, or other methods capable of similar or superior accuracy that have been approved by the department.

4. 'Required information.' The following information is required for all properties: the name of the county where the property is located, the collection method used, and the scale or resolution of original source of geographic position for on-screen digitizing.

(6) CONCLUSIONS AND RECOMMENDATIONS. The site investigation report shall include a summary of the results from the site investigation, and recommendations for further response actions necessary to protect public health, safety, and welfare and the environment, and to meet the requirements of chs. NR 700 to 726.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (1), r. (2), renun. (3) to be (2), Register, April, 1995, No. 472, eff. 5-1-95; emerg. am. (1), cr. (2) (g) 9., eff. 5-18-00; r. and recr. (1), cr. (2) (g) 9., Register, January, 2001, No. 541, eff. 2-1-01; CR 00-111: renun. (2) (j) to be (2) (L) and cr. (2) (d) 7., (j), and (k), Register October 2001 No. 550, eff. 11-1-01; CR 12-023: r. and recr. Register October No. 694, eff. 11-1-13.

NR 716.17 Additional requirements. (1) When warranted by the complexity of the site or facility or the severity of the actual or potential environmental or public health impacts which

may be caused by the contamination, the department may impose additional site investigation requirements upon responsible parties beyond those specifically described in this chapter. The department shall communicate any additional investigation requirements to the responsible parties in writing and shall explain why the additional requirements are needed.

(2) The department may require that treatability studies be conducted as part of the site investigation, where appropriate for the purpose of demonstrating that an interim action or remedial option will meet the remedy selection criteria in ch. NR 708 or 722.

(3) When a site investigation conducted under this chapter indicates that an immediate, interim or remedial action is necessary, the responsible parties shall identify, evaluate and select an immediate or interim action in accordance with ch. NR 708 or a remedial action in accordance with ch. NR 722.

(4) When a site investigation conducted under this chapter indicates that, based on the criteria in s. NR 726.05, no further action is necessary to protect public health, safety, or welfare or the environment, the responsible parties may request that the department close the case in accordance with ch. NR 726.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (2) and (3), Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (4) Register October No. 694, eff. 11-1-13.

Chapter NR 718

MANAGEMENT OF CONTAMINATED SOIL OR SOLID WASTES EXCAVATED DURING RESPONSE ACTIONS

NR 718.01	Purpose.
NR 718.02	Applicability.
NR 718.03	Definitions.
NR 718.05	Storage of excavated contaminated soil.
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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1998, No. 516.

NR 718.01 Purpose. This chapter establishes minimum standards for the storage, transportation, treatment and disposal of contaminated soil and certain other solid wastes excavated during response actions conducted in accordance with the requirements of chs. NR 700 to 754. Where responsible parties have chosen to comply with the requirements of this chapter, the responsible parties are exempt from the storage, transportation, treatment and disposal requirements in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this chapter. This chapter is adopted pursuant to ss. 287.03, 289.05, 289.06, 289.43 (8), 289.67, and 227.11 (2), Stats., and ch. 292, Stats.

Note: This chapter exempts responsible parties who conduct specific types of response actions from obtaining site-specific approvals from the state's solid waste program, when the response actions are conducted in accordance with this chapter. The exemptions that responsible parties may be eligible for under this chapter are from any one of the following solid waste program requirements:

1. Licensing of on-site and off-site contaminated soil storage piles.
2. Licensing of on-site and off-site contaminated soil treatment.
3. Licensing of transportation in vehicles containing contaminated soil when the vehicles are owned by the responsible parties.
4. Approval for disposal of contaminated soil and other solid wastes on the same property from which it was excavated.
5. Approval for disposal of specified types of contaminated soil on property other than that from which it was excavated.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. Register, February, 1996, No. 482, eff. 3-1-96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; correction made under s. 13.92 (4) (b) 7., Stats., Register, February 2010 No. 650; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 718.02 Applicability. (1) This chapter applies to the storage, transportation, treatment and disposal of all the following:

(a) Contaminated soil which:

1. Is excavated as part of a response action conducted pursuant to chs. NR 700 to 754, at sites or facilities subject to regulation under s. 289.67, Stats., or ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.; and

2. Is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended.

Note: Guidance document RR-705 entitled: "Guidance for Hazardous Waste Remediation" provides detailed information on the requirements that apply and the options that are available when dealing with cleanup and redevelopment issues at sites that are or may be contaminated with hazardous waste. A copy of the document can be found at: <http://dnr.wi.gov/files/PDF/pubs/tr/RR705.pdf>.

(b) Solid waste which:

1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to 754, at sites or facilities subject to regulation under s. 289.67, Stats., or ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.;

2. Is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended; and

3. Is replaced at the same site or facility from which it was excavated.

(2) This chapter does not apply to landspreading facilities regulated under ch. NR 518 (solid waste), NR 204 (wastewater), or ATCP 40 (fertilizer waste).

Note: Responsible parties may also be subject to local requirements governing contaminated materials management.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1) (a) 1., (b) 1., Register, February, 1996, No. 482, eff. 3-1-96; corrections in (1) (a) 1. and (b) 1. made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; corrections in (1) (a) 2. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023; am. (1) (a) 1., 2., (b) 1., 2. Register October 2013 No. 694, eff. 11-1-13.

NR 718.03 Definitions. In this chapter:

(1) "Berm" means a ridge of clean, compacted cohesive soil or impervious material constructed to withstand and control the movement of liquids.

(2) "Bioremediation" means degradation of contaminants by microbes.

(3) "Boundaries of a landspreading facility" means the outer edges of the area on which contaminated soil has been spread at a landspreading facility.

(4) "Commercial treatment unit or facility" means a unit or facility that is operated for a profit by entities that are paid for providing the service. The term does not apply to a unit or facility operated by several responsible parties who pay a share of jointly incurred expenses, including consultant fees.

Note: The use of leased vehicles or other equipment does not make a treatment unit commercial.

(5) "Contaminated soil" means soil which contains one or more hazardous substances or environmental pollution and which is not a hazardous waste as defined in s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended.

(6) "Floodplain" has the meaning specified in s. NR 116.03 (16).

Note: Section NR 116.03 (16) defines "floodplain" to mean "that land which has been or may be covered by floodwaters during the regional flood. The floodplain includes the floodway, floodfringe, shallow depth flooding, flood storage and coastal floodplain areas."

(7) "Landspreading facility" has the meaning specified in s. NR 500.03 (121).

Note: Section NR 500.03 (121) defines "landspreading facility" to mean "a land disposal facility where solid waste is discharged, deposited, placed or injected in thin layers onto the land surface of the facility, or is incorporated into the top several feet of the surface soil, for agricultural, silvicultural or waste disposal purposes".

(8) "Leachate" has the meaning specified in s. NR 500.03 (123).

Note: Section NR 500.03 (123) defines "leachate" to mean "water or other liquid that has percolated through or contacted solid waste or gases generated by solid waste."

(9) "Light petroleum products" means gasoline, diesel fuel, no. 1 or no. 2 fuel oil, kerosene, aviation gasoline, jet fuel, or a mixture of 2 or more of these materials.

(10) "Monitoring" means a systematic method of collecting and reporting chemical and other data from contaminated media.

(11) "Single-application landspreading" means landspreading where contaminated soil from only one remedial action site is

all the contaminated soil that is ever applied onto an area of a property.

(12) "Storage" means placement of solid waste on a temporary basis in a manner that does not constitute disposal of solid waste.

(13) "Volatilization" means removal of contaminants from soil or other media by evaporation.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; renun. (3) to (9) to be (4), (5), (6), (8), (10), (12) and (13), cr. (3), (7), (9) and (11), Register, December, 1998, No. 516, eff. 1-1-99; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023; am. (5), (8) Register October 2013 No. 694, eff. 11-1-13.

NR 718.05 Storage of excavated contaminated soil.

(1) EXEMPTION FROM SOLID WASTE PROGRAM REQUIREMENTS. Sites or facilities where less than 2,500 cubic yards of excavated contaminated soil are stored by responsible parties for a period not to exceed 6 months, in accordance with all of the requirements of this section, are exempt from the solid waste program requirements for the storage of contaminated soil in ch. 289, Stats., and chs. NR 500 to 538.

Note: This section does not apply to sites or facilities where more than 2,500 cubic yards of excavated contaminated soil are stored or where storage of contaminated soil exceeds 6 months. This section also does not apply to the storage by responsible parties of excavated contaminated soil at sites or facilities that are licensed solid waste storage facilities.

(2) GENERAL STORAGE REQUIREMENTS. Except as provided in sub. (3) or (4), the requirements in this subsection apply to the storage by responsible parties of excavated contaminated soil at sites or facilities that are not licensed solid waste storage facilities.

(a) *Location standards.* Responsible parties may store contaminated soil at a site or facility in accordance with the requirements of this section, except if the storage area will be located in one of the areas specified in subs. 1. through 4., or if an exemption is issued by the department pursuant to par. (b).

1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.
3. Within 300 feet of any navigable river, stream, lake, pond or flowage.
4. Within 100 feet of any water supply well for on-site storage or within 300 feet of any water supply well for off-site storage.

(b) *Exemptions from location standards.* Responsible parties may store contaminated soil in a location listed in par. (a) if the department has granted a written exemption from that location standard, after considering all of the following:

1. Waste characteristics and quantities.
2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
3. The unavailability of other environmentally suitable alternatives.
4. Compliance with other state and federal regulations.
5. The threat to public health, safety, or welfare or the environment.

(c) *Impervious base.* Responsible parties shall place contaminated soil on base material impervious to the contaminant and to water, such as concrete, asphalt, plastic sheeting or an impervious construction fabric.

(d) *Cover and anchoring.* Responsible parties shall ensure that all contaminated soil in a storage area is sloped and graded to eliminate depressions in the surface and is covered. The cover shall be in place at all times when the soil is not being transferred. The cover shall be constructed and maintained in accordance with all of the following requirements:

1. The cover shall be constructed of an impervious material, such as plastic sheeting, impervious construction fabric, or another flexible impervious material. The cover shall be formulated to resist degradation by ultraviolet light.

2. The cover material shall be anchored in place, by means such as weights, ropes, cables, cords, chains or stakes to prevent the contaminated soil from being exposed.

(e) *Surface water control.* Responsible parties shall construct a storage area to prevent surface water contact with the soil, including the construction of berms if necessary. Any water which has been in contact with contaminated soil shall be contained and may be replaced in the storage pile, or shall be collected and treated as leachate as required by chs. NR 500 to 538.

(f) *Signs.* Responsible parties shall post signs as required by s. NR 714.07 (4).

(g) *Inspections.* Unless otherwise directed by the department, responsible parties shall ensure that contaminated soil storage piles are inspected at least once every 30 days, and shall immediately repair or replace any base, cover, anchoring and berm materials that do not meet the requirements of this subsection. Responsible parties shall also ensure that a written log is maintained which includes the inspection dates, name of the inspector, the condition of the storage pile at the time of the inspection and any repairs that were made.

(h) *Notification that soil is being transported to another property.* Responsible parties shall notify the department in writing if excavated contaminated soil is transported for storage to a property other than that from which it was excavated. Notification shall be made within 3 days after the first day that contaminated soil is transported to another property and shall include all of the following:

1. The name, address and telephone number of the person who owns the site or facility from which the soil originated.
2. The volume of soil being transported.
3. The hazardous substances and environmental pollution present in the soil.
4. The containment measures utilized to attain compliance with pars. (c), (d) and (e).
5. The address and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property from which the soil was excavated.
6. The name, address and telephone number of the person who owns the property where the soil is stored.
7. The address and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property where the soil is stored.

(i) *Notification of storage for 90 days or more.* Responsible parties shall notify the department in writing if contaminated soil is stored for 90 days or more either on-site or off-site, within 3 business days after the ninetieth day. Notification shall include all of the following:

1. The name, address and telephone number of responsible parties.
2. The volume of soil being stored.
3. The hazardous substances or environmental pollution present in the soil.
4. The containment measures utilized to attain compliance with pars. (c), (d) and (e).
5. The address and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property where the soil is stored.
6. A brief proposal for treatment and final placement of the soil.

(3) REQUIREMENTS FOR TEMPORARY STOCKPILES. Sites or facilities where responsible parties temporarily store up to 2,500 cubic yards of excavated contaminated soil for 15 days or less, for the purpose of loading the soil into transfer vehicles or treatment units, are exempt from regulation under ch. 289, Stats., and chs.

NR 500 to 538 and are not subject to the general storage requirements in sub. (2) if the soil is stored in accordance with all of the following requirements:

(a) The entire soil pile shall be located within 500 feet of the excavation from which the contaminated soil was removed, or within 1,000 feet of the excavation from which the contaminated soil was removed if the soil is stored on the same property from which it was excavated.

(b) The same contaminated soil shall not be stored for more than 15 days.

(c) All contaminated soil shall be placed on base material impervious to contaminants in the soil and to water, such as concrete, asphalt, plastic sheeting or impervious construction fabrics.

(d) Surface water contact with the contaminated soil shall be prevented, including the construction of berms if necessary, to control surface water movement.

(e) The contaminated soil shall be covered when it is not being moved, with a cover material sufficient to prevent infiltration of precipitation and to inhibit volatilization of soil contaminants.

(4) REQUIREMENTS FOR CONTAINERIZED STORAGE. Sites or facilities where responsible parties store up to 2,500 cubic yards of excavated contaminated soil for 6 months or less in containers or in buildings are exempt from regulation under ch. 289, Stats., and chs. NR 500 to 538, and are not subject to the general storage requirements in sub. (2), if the contaminated soil is stored in accordance with all of the following requirements:

(a) Containers and buildings shall be designed, constructed and maintained to prevent leakage, infiltration of precipitation and volatilization of soil contaminants to the ambient atmosphere.

(b) Containers shall be labeled and buildings shall have a sign posted in accordance with the requirements of s. NR 714.07 (4).

(c) Contaminated soil may not be stored in containers or buildings for more than 6 months, without the prior written approval of the department.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (1), (2) (e), (3) (intro.) and (4) (intro.) made under s. 13.92 (4) (b) 7, Stats., Register February 2010 No. 650; CR 12-023: am. (2) (f), (h) 5-, 7-, (i) 5-, (4) (b) Register October 2013 No. 694, eff. 11-1-13.

NR 718.07 Transportation of excavated contaminated soil. (1) Except where sub. (2) is applicable, a solid waste collection and transportation service operating license is required under s. NR 502.06 whenever excavated contaminated soils are transported.

(2) Responsible parties may transport excavated contaminated soil in vehicles that they own without a solid waste collection and transportation service operating license regardless of the number and size of loads, if the excavated contaminated soil is hauled to a site or facility in compliance with the requirements of this chapter or to a licensed solid waste storage, treatment or disposal facility. Responsible parties shall cover contaminated soil, as necessary, to prevent the loss of any material during transport.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 718.09 Treatment of excavated contaminated soil. (1) GENERAL. If excavated contaminated soil is treated at a non-commercial treatment unit or facility and the treatment unit or facility is operated by the responsible parties in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. If contaminated soil is incorporated into hot-mix asphalt in accordance with sub. (5), the asphalt plant is exempt from solid waste program requirements for treatment of contaminated soil found in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. If excavated soil contaminated solely with light petroleum products or light petroleum products in com-

bination with agricultural chemicals regulated by the department of agriculture trade and consumer protection under s. 94.73, Stats., is treated by the responsible parties at a single-application landspreading facility in compliance with sub. (8), that landspreading facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. Commercial treatment units or facilities, hot-mix asphalt plants where contaminated soil is treated by means other than incorporation into the asphalt mix, and thermal treatment units or facilities are required to be licensed under ch. 289, Stats., and chs. NR 500 to 538, and are not exempt under this section.

Note: Treatment of contaminated soil that has not been excavated is not regulated as solid waste treatment under ch. 289, Stats., and chs. NR 500 to 538. Design, operation and maintenance requirements for the treatment of unexcavated contaminated soil are established in ch. NR 724.

(2) LOCATION STANDARDS. (a) Unless approved under chs. NR 400 to 499, chs. NR 500 to 538 where applicable, or par. (b), responsible parties may not treat excavated contaminated soil in any of the following locations:

1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.
3. Within 300 feet of any navigable river, stream, lake, pond or flowage.
4. Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.

(b) Responsible parties may treat contaminated soil in a location listed in par. (a) if the department has granted a written exemption from that location standard, after considering all of the following:

1. Waste characteristics and quantities.
2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
3. The unavailability of other environmentally suitable alternatives.
4. Compliance with other state and federal regulations.
5. The threat to public health, safety, or welfare or the environment.

(3) NON-COMMERCIAL TREATMENT OF SOIL FROM MORE THAN ONE SITE. Non-commercial treatment units or facilities operated by responsible parties, where less than 2,500 cubic yards of excavated contaminated soil from 5 or fewer contamination sites are treated, are exempt from solid waste program requirements for the treatment of contaminated soil in ch. 289, Stats., and chs. NR 500 to 538, if the treatment is conducted in compliance with the requirements of this section. Excavated contaminated soil from more than 5 properties may not be treated at the same site or facility unless the treatment site or facility is a licensed solid waste treatment facility. Responsible parties may not mix excavated contaminated soil from one property with soil from another property unless the same party owns all of the mixed soil or an approval has been granted under ch. NR 502. Contaminated soil which is stored prior to treatment shall be stored in compliance with the provisions of s. NR 718.05.

(4) NOTIFICATION. (a) Responsible parties shall notify the department in writing within 30 days after any of the following:

1. Start up of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).
2. Shutdown of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).
3. Substantial change in operations of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).
4. Completion of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).

(b) Notification shall include all of the following:

1. The name, address and telephone number of all responsible parties.

2. All locations of sites from which contaminated soil was excavated by address and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude.

3. The volume of soil being treated.

4. The hazardous substances or environmental pollution in the soil.

5. The address and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the treatment site.

6. The name, address and telephone numbers of all consultants and contractors involved in response actions at the sites or facilities.

7. A brief description of the treatment system.

8. The reasons for any unscheduled shutdowns or changes in operation.

9. A brief proposal for the disposal of the contaminated soils after treatment.

(5) TREATMENT OF EXCAVATED CONTAMINATED SOIL AT HOT-MIX ASPHALT OR STRUCTURAL CONCRETE PLANTS. (a) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a hot-mix asphalt plant which incorporates contaminated soil into the asphalt mix unless the hot-mix asphalt plant has a current operating air permit under chs. NR 400 to 499 and is in compliance with chs. NR 400 to 499. Where the operator of a hot-mix asphalt plant who is in compliance with chs. NR 400 to 499 and has a current operating air permit under chs. NR 400 to 499 becomes a responsible party as a result of a hazardous substance discharge, that responsible party may remediate the resultant contaminated soil in accordance with this chapter by placing the soil directly into hot-mix asphalt. When a hazardous substance discharge occurs that a hot-mix plant operator is responsible for, the department shall be notified immediately of the discharge to the environment and of the response action taken by the asphalt plant operator.

(b) If excavated contaminated soil is incorporated into asphalt at a hot-mix asphalt plant operated in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section.

(c) Storage of excavated contaminated soil at hot-mix asphalt plants which incorporate contaminated soil into the asphalt mix shall be in compliance with all of the following:

1. Storage shall comply with the requirements of s. NR 718.05 (2) (a), (b), (e), (f) and (g).

2. Storage shall be in an area constructed of an asphalt base and asphalt berms, or other materials approved by the department.

3. Up to 5,000 cubic yards of soil may be stored at one time.

4. Storage may take place for up to 9 months per year.

5. Plant operators shall take steps to control windblown dust, and to control the infiltration of precipitation, at contaminated soil storage areas.

(d) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a hot-mix asphalt plant for treatment other than incorporation into the asphalt mix unless the hot-mix asphalt plant has a current operating air permit under chs. NR 400 to 499, is in compliance with chs. NR 400 to 499 and has an approval for solid waste processing under ch. 289, Stats., and chs. NR 500 to 538. Hot-mix asphalt plants which do not incorporate contaminated soil into the asphalt mix and struc-

tural concrete plants which do not incorporate contaminated soil into concrete shall store excavated contaminated soil in compliance with ch. NR 502.

(e) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a structural concrete batch plant that does not have all required operating permits and approvals for incorporation of contaminated soils into the concrete mix.

Note: Placement of asphalt pavement which contains contaminated soil incorporated into asphalt at a hot-mix asphalt plant operated in compliance with the requirements of this chapter is not regulated as solid waste disposal.

(6) THERMAL TREATMENT OF EXCAVATED CONTAMINATED SOIL.

(a) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a thermal treatment unit or facility unless that thermal treatment unit or facility has all required operating permits or licenses, including a current operating air permit under chs. NR 400 to 499, is in compliance with chs. NR 400 to 499, and has a current license or other approval under s. NR 502.08. Operators of soil treatment units shall take steps satisfactory to the department to minimize noise and dust, such as wetting treated soils and the work area to control dust.

(b) Storage of excavated contaminated soil at thermal treatment units or facilities is exempt from the storage requirements in ch. 289, Stats., and chs. NR 500 to 538 if it is in compliance with the following:

1. Storage shall comply with the requirements of s. NR 718.05 (2) (a) to (c) and (e) to (g).

2. Up to 5,000 cubic yards of soil may be stored at one time.

3. Storage may take place for up to 9 months per year.

4. Operators of soil treatment units shall take steps satisfactory to the department to control the infiltration of precipitation at contaminated soil storage areas.

(7) BIOREMEDIATION AND TREATMENT BY VOLATILIZATION OF EXCAVATED CONTAMINATED SOIL. Except as provided in sub. (8), all of the following requirements apply to the treatment of excavated contaminated soil by bioremediation, volatilization or both:

(a) Responsible parties who treat excavated contaminated soil by bioremediation or volatilization, or both, shall maintain the excavated contaminated soil in compliance with the requirements of s. NR 718.05 (2) (c), (e), (f) and (g), unless other methods are approved by the department.

(b) All excavated contaminated soil shall be covered, as necessary, to prevent volatilization of soil contaminants in excess of limits in chs. NR 400 to 499. If a cover is required by chs. NR 400 to 499, the cover material and anchoring system shall meet the requirements of s. NR 718.05 (2) (d), unless other methods are approved by the department.

(c) All treatment of excavated contaminated soil by bioremediation or volatilization shall be designed, operated and maintained in accordance with the requirements of ch. NR 724.

(8) SINGLE-APPLICATION LANDSPREADING OF EXCAVATED CONTAMINATED SOIL. (a) *General.* Responsible parties, or their agents or contractors, may conduct single-application landspreading of soil contaminated solely with light petroleum products or light petroleum products in combination with agricultural chemicals regulated by the department of agriculture, trade and consumer protection under s. 94.73, Stats., provided that the requirements of pars. (b), (c), (d) and (e) are met. Landspreading of contaminated soil which contains chemicals regulated by the department of agriculture, trade and consumer protection under s. 94.73, Stats., shall also be conducted in accordance with a plan that has received prior written approval from the department of agriculture, trade and consumer protection.

(b) *Waste characterization.* 1. Waste shall be characterized prior to submitting the operation plan under par. (d). Analytical results from a site investigation conducted under ch. NR 716 may be used to characterize the waste or to supplement the waste char-

acterization. Samples shall be collected and analyzed in accordance with the following requirements:

a. For the first 600 cubic yards of contaminated soil to be land-spread at each landspreading facility, one soil sample shall be collected for each 100 cubic yards of contaminated soil to be land-spread. For volumes of contaminated soil that exceed 600 cubic yards, a minimum of one additional sample per 300 cubic yards shall be collected for analysis. At a minimum, 2 samples shall be collected from the soil to be land-spread.

b. Samples shall be analyzed for all contaminants whose presence is suspected considering the site investigation scoping items listed under s. NR 716.07.

c. At a minimum, the testing listed in Table 1 shall be performed on the contaminated soil based on the contaminant type.

Table 1

Minimum Testing Requirements For Landspreading Soil Contaminated With Light Petroleum Products

Petroleum Contaminant Type	Laboratory Analysis
Gasoline; grades 80, 100, 100LL & aviation gasoline	PVOC & Pb
Diesel; jet fuel; kerosene; & nos. 1 & 2 fuel oil	PVOC & PAH

d. Soil samples shall be collected and analyzed in accordance with the provisions in s. NR 716.13 (11) and (12).

2. Soil to be land-spread shall meet the following requirements:

a. Landspreading of soil containing polynuclear aromatic hydrocarbons (PAHs) shall be approved in writing by the department in accordance with the procedures in par. (d) 4.

b. The metal contaminant concentrations in the excavated contaminated soil to be land-spread may not exceed the residual concentration levels established in accordance with ch. NR 720.

c. The excavated contaminated soil to be land-spread may not be a hazardous waste as defined in s. NR 660.10 (52).

(c) *Facility approvals.* 1. The department may approve a facility for single-application landspreading under this section if the applicant submits a complete application and the facility meets the location standards under subd. 3. All applications for facility approvals shall be submitted on forms supplied by the department. The applicant shall send a copy of the application to the clerks of the county and the city, village or town where the facility is located at the same time that it is submitted to the department. Before an application for approval of a single-application landspreading facility is considered complete, the following information shall be submitted:

a. The facility location, including legal description and copies of any county soil survey maps, plat maps, USGS topographic maps or other maps used to demonstrate that the criteria in this paragraph are met. The area proposed for landspreading shall be delineated on appropriate maps and the total area proposed for landspreading shall be determined in square feet or acres.

b. The names, addresses and telephone numbers of the person who will operate the landspreading facility and the site owner.

c. A description of the current land use of the facility and surrounding properties.

d. The slope, depth to seasonal high water table and bedrock, and soil characteristics including soil type, and the mean permeability of the uppermost 5 feet of soil. Information summarized from county soil surveys published by the United States department of agriculture maps and similar sources may be used to obtain this information where appropriate. Information obtained from soil borings or test pits may be used to determine site-specific characteristics. The use of county soil surveys is not

appropriate to determine separation from groundwater or bedrock for sites where a 10-foot separation distance is required.

e. Copies of any local approvals required in order to land-spread or an affirmation that no local approvals are required.

f. Documentation that the site meets the location standards in subd. 3.

Note: Copies of application forms for facility approvals may be obtained from any regional office of the department or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, PO Box 7921, Madison, Wisconsin, 53707-7921.

2. a. If a facility approval application is not complete, the department shall notify the applicant within 15 business days of receipt that it is not complete and identify the information necessary to complete the application.

b. The department shall approve or disapprove of an application within 30 business days of receipt of a complete application.

c. Approval of a facility shall be effective for 2 years after the date of approval, unless circumstances affecting the facility change so that the facility no longer meets the location standards in subd. 3. An approval is no longer effective at any time that circumstances change in a manner that would cause the facility to not meet any of the standards in subd. 3. The department may extend a facility approval up to an additional 2 years from the date of the original approval if the applicant submits a request for an extension and that request certifies that circumstances have not changed in a manner that would cause the facility to not meet any of the standards in subd. 3.

3. No person may establish, construct, operate, maintain or permit use of property as a single-application landspreading facility in the following areas:

a. Within a floodplain.

b. Within 100 feet of a wetland.

c. Within 100 feet of a critical habitat area.

d. Within 300 feet of any navigable water body.

e. Within 1,000 feet of a public water supply well or its delineated wellhead protection area, unless a written waiver by the department is obtained. The department shall use the provisions for alternative requirements under s. NR 811.03 in acting on requests for waivers.

f. Within 250 feet of a private water supply well, unless a written waiver by the department is obtained. The department shall use the provisions for obtaining a variance under s. NR 812.43 in acting on requests for waivers.

g. Within 500 feet of any residence, unless written consent is obtained from the resident.

h. Within 500 feet of buildings housing domestic livestock, unless written consent is obtained from the owner of the livestock.

i. Within 25 feet of any boundary of the property on which the landspreading facility is located if there are no residences within 500 feet of that boundary, unless written consent from the adjoining property owner is obtained.

j. Within 200 feet of any boundary of the property if there is a residence within 500 feet of that boundary, unless written consent is obtained from the resident.

k. On land where the ground surface is located less than 5 feet above the seasonal high groundwater table or bedrock if the mean permeability in the uppermost 5 feet of soil is equal to or less than 6 inches per hour or on land where the ground surface is located less than 10 feet above the seasonal high groundwater table or bedrock if the mean permeability in the uppermost 5 feet of soil is greater than 6 inches per hour. Mean permeability shall be the weighted average determined by summing the products of the permeability of a each layer of soil in the uppermost 5 feet of soil times the thickness of that layer, in feet, and dividing by 5 feet. Where the permeability of a layer of soil is stated as a range, the midpoint of the range shall be used to calculate the mean permeability.

L. On any land where the surface slope exceeds 6%.

(d) *Operation plan.* 1. Except as provided in subd. 4., single-application landspreading of excavated contaminated soil may be conducted at a facility that has been approved under par. (c) without additional department approval if the responsible party, or an agent or contractor, submits an operation plan to the department at least 10 days, but not more than 70 days, prior to the start of the operation, and complies with the operation standards in subd. 3., unless the department issues a written objection. The operation plan for a single-application landspreading facility shall contain the following information:

a. Results of the waste characterization required under par. (b) 1.

b. A certification that the responsible party, their agent or contractor will comply with the operational requirements of subd. 2. and a description of how the requirements will be complied with.

c. A list of the persons notified under this paragraph and clerks notified under par. (c) 1., or the addresses to which the notices were delivered.

2. The responsible party, or an agent or contractor, shall give written notice that landspreading of contaminated soil will occur. This notification shall include the location of the landspreading facility, the name, address and telephone number of a contact person for the landspreading facility, a description of the type of contamination in the soil and the anticipated dates and times that the landspreading will occur. This notification shall occur at least 10 days, but not more than 70 days, prior to commencing operation, and shall be mailed or delivered to the following persons:

a. The clerks of the county and the city, village or town where the facility is located.

b. All owners, tenants and occupants of residences within 1,000 feet of the landspreading facility.

3. Any person operating a single-application landspreading facility shall comply with the following operation standards:

a. Except as proved in subd. 3. b., only one single-application landspreading facility may be operated at any one time on all contiguous property owned by the same entity. A landspreading facility shall be considered in operation from the time that contaminated soil is first placed on the facility until such time that the requirements in par. (e) have been met.

b. Notwithstanding subd. 3. a., where contiguous property owned by the same entity is larger than 40 acres, the number of single-application landspreading facilities allowed to be operating on that property shall be determined by dividing the total number of acres of the property by 40 and rounding up to the nearest whole number.

c. Contaminated soil shall be evenly spread over the landspreading area and incorporated into the native soil by plowing, disking or similar operations within 72 hours of landspreading. Each batch of contaminated soils shall be incorporated within 72 hours from when that batch was first spread. Except for incorporation, all spreading, loading, unloading and storage of petroleum contaminated soils shall cease no later than one hour prior to sunset.

d. The excavated contaminated soil may not be landspread when frozen, landspread on frozen ground or landspread under any other conditions that would make incorporation into the native soils impractical.

e. The spreading thickness of contaminated soil may not exceed 4 inches.

f. Contaminated soil to be landspread may not contain free product.

g. Debris including pieces of plastic, bricks, metal, and wood shall be removed from the contaminated soil prior to landspreading and shall be properly disposed of in accordance with chs. NR 500 to 538.

h. The maximum total organic compound contaminant landspreading rate may not exceed 3000 pounds per acre.

i. The total volatile organic compound contaminants and benzene landspread at the landspreading facility may not exceed the limit in s. NR 419.07 (4) (e).

j. The maximum one time and cumulative application rates of cadmium and other heavy metal shall be in accordance with s. NR 518.07 (1) (d).

k. Contaminated soil to be landspread shall be stored in accordance with s. NR 718.05.

L. The landspreading facility shall be seeded as soon as practicable, but not later than within 7 days after completion of all application of the contaminated soil at the facility if the soil was applied prior to October 15 of any year. If application was completed after October 15, the facility shall be seeded as soon as practicable the following year, but not later than June 30. The department may grant a written waiver of these seeding requirements upon demonstration by the applicant that they are unable to comply with them due to adverse weather conditions.

m. The landspreading facility may not be seeded with a crop intended for human consumption prior to submittal of a treatment verification report which indicates that the contaminants have been reduced to comply with the residual contaminant levels determined in accordance with the provisions of ch. NR 720.

n. Erosion control shall be conducted as necessary.

o. Signs shall be posted at any access points to the facility in accordance with s. NR 714.07 (4). The boundaries of the landspreading facility shall be marked and maintained until facility closure.

4. If polynuclear aromatic hydrocarbons (PAHs) are detected in the waste characterization required under in par. (b) 1., responsible parties, or their agents or contractors, may landspread excavated contaminated soil only if they obtain a written approval of their operation plan from the department. The department shall notify the applicant, within 15 business days after receipt of the operation plan, if the plan is incomplete. The department shall approve of the operation plan if the plan satisfies the requirements of this paragraph and the levels of PAHs in the contaminated soils meet the criteria for residual contaminant levels specific to a site or facility under ch. NR 720. The department shall approve or disapprove of an application for an operation plan approval within 30 business days after receipt of a complete plan.

(e) *Treatment Verification.* 1. 'Sampling.' The responsible party, their agent or contractor or the operator of a single-application landspreading facility shall submit to the department the results of a soil sampling program at the landspreading facility, to verify that all contaminants detected through the waste characterization under par. (b) 1. have been reduced to meet the residual contaminant levels specified in ch. NR 720. Samples shall be obtained from one location per every 100 yards of soil landspread. These sampling locations shall be evenly distributed over the landspreading facility. If less than 100 yards of soil is landspread, samples shall be collected from 2 sampling locations. At each sampling location 2 samples shall be obtained, one from the treatment zone and one obtained from 2 to 3 feet below the ground surface.

2. 'Sample analysis.' The samples shall be analyzed as follows:

a. If 20 or less samples are required under subd. 1., all samples shall be analyzed for all contaminants identified through the waste characterization under par. (b) 1. that exceeded the residual contaminant levels in ch. NR 720.

b. If more than 20 samples are required under subd. 1., the responsible party or agent may use field screening to reduce the number of samples to be analyzed. If the samples are screened in the field to determine relative VOC concentration, only 50% of the samples required to be taken or 20 samples, whichever is

greater, need to be analyzed. The samples that are sent for analysis shall be those that showed the greatest contamination during the field screening, except that at least 25% of the samples sent for analysis shall be those samples obtained from 2 to 3 feet below the ground surface. Samples shall be analyzed for all contaminants identified through the waste characterization under par. (b) that exceeded the residual contaminant levels in ch. NR 720.

3. 'Sampling frequency.' Sampling shall be done within 18 months after landspreading commenced on the facility. If sampling results show that any contaminants still exceed the residual contaminant levels in ch. NR 720, additional sampling shall be done at least annually at all sample locations at which the levels were exceeded. The samples shall be analyzed for the contaminants which exceeded the residual contaminant levels in ch. NR 720 in the previous round of sampling. The department may waive the requirement to sample within the first year upon the request of the responsible party, their agent or contractor, or the operator of the landspreading facility, if it is apparent that the site does not yet meet residual contaminant levels as determined in accordance with the provisions of ch. NR 720 and the sampling will serve no useful purpose.

4. 'Incomplete treatment.' If complete treatment of the contaminants which have been landspread has not been demonstrated to the department within 3 years after the contaminated soil was landspread, the responsible party, their agent or contractor shall submit a plan signed by a professional engineer to the department detailing the actions that they will take to enhance the treatment of the contaminants which still exceed the residual contaminant levels in ch. NR 720. This plan shall be submitted within 60 days after the end of the 3-year period and shall assure that cleanup is completed within 2 years. The department shall approve this plan, extending the landspreading treatment period for up to 2 years, if the plan demonstrates to the department that applicable soil cleanup standards will be met within that period of time. The department may require at any time groundwater monitoring to determine whether or not the landspread contaminants are impacting groundwater. At any time that the facility does not appear to be remediating or if it still does not meet cleanup standards after 5 years of treatment, the department may require that additional measures be taken to remediate the site or require the recording of a deed notice at the register of deeds office in the county where the facility is located that gives notice of the existence of the solid waste landspreading facility in compliance with s. NR 518.10.

5. 'Treatment verification report.' Responsible parties shall submit a treatment verification report to the department within 60 days after successful treatment of the contaminated soil. The report shall contain the results of sampling conducted under this paragraph.

(9) OTHER TYPES OF TREATMENT. Responsible parties shall obtain approval from the department before implementing any type of treatment for excavated contaminated soil other than the types of treatment described in subs. (5) to (8). An application for approval shall include the information required in ch. NR 724 and any other information required by the department.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1) and (6), r. and recr. (5), Register, March, 1995, No. 471, eff. 4-1-95; am. (1) and (7) (intro.), r. and recr. (8), Register, December, 1998, No. 516, eff. 1-1-99; correction in (8) (b) 2. c. made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; corrections in (1), (2) (a) (intro.), (3), (5) (b), (d) and (6) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650; correction in (8) (d) 3. g. made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; CR 12-023; am. (4) (b) 2., 5., (8) (b) 1. c. Table 1, d., 2. b., c., (c) 2. a., (d) 3. g., i., m., o., 4., (e) (title), 1., 2. a., b., 3. to 5. Register October 2013 No. 694, eff. 11-1-13.

NR 718.12 Management of contaminated soil.

(1) GENERAL. (a) If responsible parties manage contaminated soil at a site or facility in accordance with the provisions of this section, that site or facility is exempt from the solid waste program requirements in ch. 289, Stats., and chs. NR 500 to 538.

Note: Contaminated soil that cannot be managed under s. NR 718.12 may be approved for disposal in a licensed solid waste disposal facility under ch. 289, Stats., and chs. NR 500 to 538.

(b) The response action shall be conducted in accordance with all of the applicable requirements in chs. NR 700 to 754.

(c) Responsible parties may not place or replace excavated contaminated soil in the following areas unless the department has granted a written exemption to these location standards, after considering all of the factors listed in par. (d):

1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.
3. Within 300 feet of any navigable river, stream, lake, pond, or flowage.
4. Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.
5. Within 3 feet of the high groundwater level.
6. At a depth greater than the depth of the original excavation from which the contaminated soil was removed.
7. Where the contaminated soil poses a threat to public health, safety, or welfare or the environment.

(d) Responsible parties may manage contaminated soil in a location listed in par. (c) if the department has granted a written exemption from that location standard, after considering all of the following:

1. Waste characteristics and quantities.
2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
3. The unavailability of other environmentally suitable alternatives.
4. Compliance with other state and federal regulations.
5. The threat to public health, safety, or welfare or the environment.

(e) Unless otherwise approved by the department, responsible parties shall sample and analyze all contaminated soil in accordance with all the following requirements:

1. For each site or facility, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 yards with a minimum of 2 samples being collected. For volumes of contaminated soil that exceed 600 cubic yards, one sample for each additional 300 cubic yards shall be collected for analysis.

2. Samples shall be analyzed for all contaminants that were detected during a site investigation. In addition, available information shall be evaluated to determine what contaminants may have been discharged at the site or facility and samples shall be analyzed for those contaminants that are expected to be present based on past land use.

3. All soil samples shall be collected from areas most likely to contain residual soil contamination.

4. Responsible parties shall report all analytical results to the department in writing within 10 business days after receiving the sampling results.

Note: For those situations where an immediate action is being taken in accordance with s. NR 708.05 or where contamination is discovered as part of utility or other construction related work, the contaminated soil can generally be managed in accordance with the criteria set forth in s. NR 718.12 (1). The department should be contacted upon discovery of contaminated soil during construction activities for direction on how to proceed.

(2) ADDITIONAL REQUIREMENTS FOR CONTAMINATED SOIL MANAGED AS PART OF AN INTERIM ACTION OR REMEDIAL ACTION. (a) Responsible parties shall provide the department with written notice at least 7 days prior to initiating soil excavation activities.

(b) Prior to managing contaminated soil under s. NR 718.12, responsible parties shall submit a soil management plan to the department for review and approval. Unless otherwise approved,

at a minimum soil management plans shall contain all the following information:

1. The name, address, e-mail address, and telephone number of the responsible party.
2. The volume of contaminated soil to be managed.
3. The address and location, by quarter-quarter section, township, range, and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the site or facility where the contaminated soil originated.
4. The name, address, and phone number of any consultants or contractors who are involved with the project.
5. A proposed schedule for implementation of the soil management plan.
6. The result of all analyses performed on the contaminated soil.
7. A description of how the contaminated soil will be managed.
8. Sufficient information to justify that the placement or replacement of contaminated soils will meet the requirements of s. NR 726.13 (1) (b) 1. to 5.

(c) If management of the contaminated soil is proposed to take place at a location other than where it was excavated, the responsible party shall provide the following additional information:

1. The name, address, and telephone number of the owner or owners of the property.
2. The address and location, by quarter-quarter section, township, range, and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the site or facility where the contaminated soil is to be placed.
3. The geology and hydrogeology of the site or facility, including information from any previous remedial investigations. This also includes information from well logs or well construction records for nearby wells.

Note: If another report is being prepared to address the necessary response action, such as a remedial action plan, the soil management plan can be included as part of that report.

(d) If implementation of the soil management plan will result in the need for a continuing obligation on the property as defined by s. NR 725.05 (2), the responsible party shall provide written notification to anyone meeting the criteria in s. NR 725.05 (1) at least 30 days prior to submitting the soil management plan to the department for review. Unless otherwise approved by the department, notification letters shall meet the requirements contained in s. NR 725.07.

(e) For sites or facilities where the department approves a soil management plan or other remedial action that includes a continuing obligation which meets any of the criteria in s. NR 725.05 (2), the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. Unless otherwise approved by the department, all applicable database documentation requirements set forth in s. NR 726.11 shall be met. The fees required by ch. NR 749 shall be submitted to the department.

Note: Under s. 292.12 (3) (b), Stats., the department has authority to charge a fee for placement on a department database.

Note: If the continuing obligation related to contaminated soil is being imposed as part of another department action for the same site (i.e. closure) separate fees for placement on the database will generally not be required.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 718.15 Management of other solid wastes. If solid waste which contains waste other than contaminated soil is replaced at the site or facility from which it was excavated, as part of a response action conducted in compliance with all of the applicable requirements in chs. NR 700 to 754, and the department has granted prior written approval for the action, the replacement of that solid waste on the site or facility from which it was excavated is exempt from the requirements of ch. 289, Stats., and chs. NR 500 to 538.

Note: Section NR 506.085 prohibits the following activities at solid waste disposal facilities which are no longer in operation unless specifically approved by the department in writing: 1) use of the waste disposal area for agricultural purposes, 2) establishment or construction of any buildings over the waste disposal area, and 3) excavation of the final cover or any waste materials. The department has developed detailed guidance to address the issue associated with building on historic fill sites and licensed landfills. This information can be found at: <http://dnr.wi.gov/topic/Landfills/development.html>.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 718.17 Exemption for emergency immediate actions. For a period of 72 hours after an emergency immediate response is initiated in accordance with the requirements of ch. NR 708, the storage and transportation of contaminated soil that was excavated as part of the emergency immediate action are exempt from the requirements of ss. NR 718.05 and 718.07, and are exempt from meeting the solid waste storage and transportation requirements in ch. 289, Stats., and chs. NR 500 to 538, provided that the department is immediately notified of the emergency immediate action being conducted in accordance with the requirements of ch. NR 708.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650.

Chapter NR 720

SOIL CLEANUP STANDARDS

<p>NR 720.01 Purpose.</p> <p>NR 720.02 Applicability.</p> <p>NR 720.03 Definitions.</p> <p>NR 720.05 General.</p> <p>NR 720.07 General requirements when establishing soil cleanup standards applicable to a site or facility.</p> <p>NR 720.08 Procedures for establishing soil performance standards.</p>	<p>NR 720.10 Procedures for determining residual contaminant levels based on protection of groundwater.</p> <p>NR 720.12 Procedures for determining residual contaminant levels based on protection of human health from direct contact with contaminated soil.</p> <p>NR 720.13 Other pathways of concern.</p>
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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 720.01 Purpose. The purpose of this chapter is to establish soil cleanup standards, for the remediation of soil contamination, which result in restoration of the environment to the extent practicable, minimize harmful effects to the air, lands and waters of the state and are protective of public health, safety, and welfare and the environment as required by ch. 292, Stats., and which are consistent with ch. 160, Stats., and ch. NR 140. This chapter is adopted pursuant to ss. 227.11 (2) and 289.06 (1) and (2), Stats., and ch. 292, Stats.

History: Cr. Register, March, 1995, No. 471, eff. 4-1-95; am., Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 720.02 Applicability. (1) This chapter applies to all remedial actions taken by responsible parties to address soil contamination after an investigation has been conducted at a site, facility or portion of a site or facility that is subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to soil contamination at all of the following:

(a) Solid waste facilities, where remedial action is required by the department pursuant to ch. NR 508.

Note: Chapter NR 720 does not apply to landspreading regulated under ch. NR 518 or solid waste facilities where ongoing operations are occurring, unless remedial action is required pursuant to ch. NR 508.

(b) Hazardous waste facilities, where the owner or operator is required to close the facility pursuant to s. 291.29, Stats., or subchs. G and H of ch. NR 664, or to institute corrective action pursuant to s. 291.37, Stats., or s. NR 664.0100. However, if U.S. EPA requires that states employ soil cleanup standards for hazardous waste facilities that are more stringent than the standards in this chapter, the department is obligated under the state's hazardous waste management act, ch. 291, Stats., and its hazardous waste program RCRA authorization to apply the more stringent soil cleanup standards.

Note: Section NR 600.07 no longer exists.

(c) Wastewater lagoons, storage structures and treatment structures that are abandoned pursuant to s. NR 110.09, 213.07 or 214.08.

Note: Chapter NR 720 applies to abandonment of lagoons, storage structures and treatment structures for sewage treatment facilities projects; abandonment of lagoons, storage structures and treatment structures that receive wastewaters, associated sludges, by-product solids and any resulting leachates from industrial, commercial or agricultural sources, except as provided in s. NR 213.02 (2); and abandonment of land treatment systems for industrial liquid wastes, by-product solids and sludges, except as provided in s. NR 214.02 (3). Chapter NR 720 does not apply to activities regulated under s. 281.48, Stats., or permitted activities regulated under 40 CFR 503 or ch. NR 204, 206 or 214, including permitted land spreading of sludge or land disposal of wastewaters from municipal and domestic wastewater treatment works and permitted land treatment of industrial liquid wastes, by-product solids and sludges.

(d) Sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.

(e) Sites with PCB contamination.

Note: U.S. EPA has independent authority to regulate soil contamination from PCB's under the toxic substances control act. The department and EPA have entered into an MOA that specifies how responsibility for these types of sites will be determined. The MOA can be found at: <http://dnr.wi.gov/files/pdf/pubs/tr/r786.pdf>.

(2) This chapter applies to interim actions taken by responsible parties or other persons under s. 292.15, Stats., when at the

completion of both the site investigation and interim action taken to address contaminated soil, the responsible parties or persons taking action under s. 292.15, Stats., request that the site or facility be closed out in accordance with ch. NR 726, without taking a subsequent remedial action to address the contaminated soil.

(3) This chapter applies to remedial actions taken by the department where a department-funded response action is being taken under the authority of ch. 292, Stats.

(4) Concentrations of legally applied pesticides are exempt from the requirements of this chapter when all of the following conditions are met:

- (a) The application of the pesticide was done in compliance with:
 1. The pesticide label currently registered with the U.S. EPA;
 2. Sections 94.67 to 94.71, Stats.; and
 3. Rules adopted under ss. 94.67 to 94.71, Stats.

(b) For pesticides that are intended to be applied to the soil, pesticide concentrations exceeding soil cleanup standards are only found in the surface soil layer, where the pesticide is expected to perform its intended purpose, and only at concentrations that would be expected from pesticide application, in compliance with the pesticide label requirements.

Note: The depth of the surface layer of soil will vary depending on the type of pesticide applied and the appropriate intended use of that pesticide.

(5) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including solid waste statutes, ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility. When necessary, the department will, to the best of its ability, facilitate coordination between the regulatory programs involved.

(6) The department may take any action within the context of regulatory programs established in statutes or rules outside this chapter, if those actions are necessary to protect public health, welfare, or safety or prevent a damaging effect on the environment for present and future uses, whether or not a soil cleanup standard has been adopted under this chapter.

(7) Nothing in this chapter authorizes an impact on soil quality that would cause a violation of a groundwater quality standard contained in ch. NR 140, an impact on soil quality or groundwater quality that would cause a violation of a surface water quality standard contained in chs. NR 102 to 106 or an impact on soil quality that would cause a violation of an air quality standard contained in chs. NR 400 to 499.

History: Cr. Register, March, 1995, No. 471, eff. 4-1-95; cr. (1) (d), am. (2); Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. (1) (intro.), cr. (1m), eff. 5-18-00; am. (1) (intro.), cr. (1m), Register, January, 2001, No. 541, eff. 2-1-01; corrections in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007

No. 621; CR 12–023: am. (1) (intro.), (a), (b), cr. (1) (e), r. (1m), am. (3), Register October 2013 No. 694, eff. 11–1–13.

NR 720.03 Definitions. In this chapter:

(1) “Aquifer” means a saturated subsurface geological formation of rock or soil.

(1m) “Ceiling limit concentration” means a preset non–risk based concentration of an inorganic or semi–volatile chemical.

Note: This definition is consistent with the approach used in the U.S. EPA’s Regional Screening Table which sets a ceiling limit concentration of 100,000 mg/kg or 10% by weight for a relatively non–toxic chemical in a soil sample. This definition is not the same as in other natural resources administrative rules. For example, the term ceiling limit in ch. NR 204 refers to the concentration of certain metals in domestic sludge that if exceeded would result in the sludge not being eligible for land application.

(2) “Contaminant of concern” means a hazardous substance that is present at a site or facility in such concentrations that the contaminant poses an actual or potential threat to human health, safety, or welfare or the environment based upon:

(a) The toxicological characteristics of the hazardous substance that influence its ability to adversely affect human health or the environment relative to the concentration of the hazardous substance at the site or facility;

(b) The chemical and physical characteristics of the hazardous substance which govern its tendency to persist in the environment and the chemical, physical and biological characteristics at the site or facility which govern the tendency for the hazardous substance to persist at the site or facility;

(c) The chemical and physical characteristics of the hazardous substance which govern its tendency to move into and through environmental media;

(d) The naturally occurring background concentrations of the hazardous substance;

(e) The thoroughness of the testing for the hazardous substance at the site or facility;

(f) The frequency that the hazardous substance has been detected at the site or facility; and

(g) Degradation by–products of the hazardous substance.

(3) “Cumulative excess cancer risk” means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances or multiple exposure pathways.

(3m) “Dermal absorption” means systemic exposure via skin absorption. However, because dermal toxicity factors are not available, oral–to–dermal extrapolation is done by adjusting for gastrointestinal absorption in order to derive toxicity values in terms of a dermally–absorbed dose.

Note: Dermal toxicity values that are extrapolated from oral toxicity values may not take into account allergic contact responses or skin cancer.

(4) “Direct contact” means human exposure to substances in soil through one or more of the following pathways: inhalation of particulate matter, dermal absorption, incidental ingestion, or inhalation of vapors from the soil.

(5) “Hazard index” means the sum of 2 or more hazard quotients for multiple hazardous substances or multiple exposure pathways.

(6) “Hazard quotient” means the ratio of the exposure of a single hazardous substance over a specified time period to a reference dose, or reference concentration where appropriate, for that hazardous substance derived for a similar exposure period.

Note: Hazard quotients and hazard indices are measures of the potential for non–carcinogenic effects.

(7) “Incidental ingestion of soil” means ingestion of soil by humans as a result of normal hand–to–mouth behaviors.

(8) “Inhalation of particulate matter” means inhalation by humans of contaminants adsorbed to respirable soil particles less than 10 microns in diameter.

(9m) “Inhalation of vapors” means inhalation by humans of soil contaminants that volatilized into outdoor air.

(11) “Pathway” means the route a substance takes in traveling to a receptor or potential receptor or the specific portal of entry, such as

lungs, skin or digestive tract, the substance takes to potentially express its toxic effect, or both.

Note: An example of the food chain pathway is when a substance is taken up from soil to plant tissue and the plant tissue is then ingested by a person.

(12m) “Performance standard” means a remedial action or, in some cases existing site conditions that prevent exposure to contaminants or will result in a decrease in contaminant concentrations, or both.

(13) “Restricted access areas” means land immediately adjacent to highways or railroad right–of–ways, where the presence of structural controls, such as fencing, has eliminated pedestrian ingress by the public.

(14) “Risk” means the probability that a hazardous substance, when released to the environment, will cause carcinogenic effects in exposed humans or other biological receptors.

(15) “Soil cleanup standard” means either a residual contaminant level determined in accordance with ss. NR 720.10 or 720.12, or a soil performance standard determined in accordance with s. NR 720.08.

(16) “Soil saturation concentration” or “C_{sat}” means the contaminant concentration in soil at which the absorptive limits of the soil particles, the solubility limits of the soil particles, the solubility limits of the soil pore–water, and saturation of soil pore–air have been reached. At concentrations greater than C_{sat}, the soil contaminant may be present in free phase for contaminants that are liquid at ambient soil temperatures and pure solid phases for compounds that are solid at ambient soil temperatures.

History: Cr. Register, March, 1995, No. 471, eff. 4–1–95; corrections in (12) (c) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12–023: cr. (1m), (3m), am. (4), (8), r. (9), cr. (9m), r. (10), (12), cr. (12m), am. (14), cr. (15), (16) Register October 2013 No. 694, eff. 11–1–13.

NR 720.05 General. (1) **REMEDIAL ACTION.** Responsible parties shall select and implement a remedial action to address soil contamination when, after any of the following investigations has been completed, information collected during the investigation indicates that a remedial action to address soil contamination is necessary to achieve compliance with the requirements of this chapter:

(a) Site investigation report developed in accordance with ch. NR 716 at sites or facilities subject to regulation under s. 292.11 or 292.31, Stats.

(b) Solid waste site investigation report prepared in accordance with the requirements of ch. NR 508.

(c) Investigation done under a hazardous waste closure plan or a RCRA facility investigation report, developed in accordance with the requirements of subchs. G and H of ch. NR 664 or s. NR 664.0100.

(d) Investigation done under a wastewater facility, structure or system abandonment plan developed in accordance with the requirements of s. NR 110.09 (2) (r), 213.07 or 214.08.

Note: Remedial actions at some types of sites or facilities, such as the abandonment of wastewater lagoons, may only have to comply with ch. NR 720 and not other requirements in the NR 700 series, such as the minimum site investigation requirements in ch. NR 716. In this case, the department or responsible parties may choose to use the other chapters of the NR 700 rule series as guidance for complying with ch. NR 720.

(2) **RESIDUAL CONTAMINANT LEVELS OR PERFORMANCE STANDARDS.** Remedial actions conducted by responsible parties to address soil contamination shall be designed and implemented to restore the contaminated soil to levels that, at a minimum, meet the residual contaminant levels or performance standards for the site or facility determined in accordance with this chapter.

(3) **NO FURTHER ACTION.** If all soil contaminant concentrations meet applicable residual contaminant levels or performance standards after a remedial action is completed, the department may not require further remedial action for soils, unless the department determines that the residual soil contamination:

(a) Presents a threat to public health, safety, or welfare or the environment at the site or facility;

(b) Will cause a violation of a groundwater quality standard contained in ch. NR 140;

(c) Will cause a violation of a surface water quality standard contained in chs. NR 102 to 106; or

(d) Will cause a violation of an air quality standard contained in chs. NR 400 to 499.

(4) SUBMITTALS. (a) Unless otherwise directed by the department, submittals under this chapter shall be included in the site investigation report or the draft remedial action options report required under s. NR 700.11 (1).

(b) Submittals to the department under this chapter shall include all of the following:

1. Complete background information and supporting documentation for the procedure to be used.
2. Documentation that the application of the procedure is valid for the site or facility under consideration.
3. Necessary data and documentation needed to fully evaluate the submittal.
4. Legible copies of source documents or pertinent portions of source documents.

Note: In order to facilitate department review of submittals, legible copies of entire source documents or the pertinent portions of source documents sufficient to evaluate the method or procedure used should be included with the submittal.

(5) LAND USE CLASSIFICATION. (a) Responsible parties shall identify the current land use and zoning for the site or facility by the time the remedial action is selected, unless otherwise directed by the department.

(b) Responsible parties shall classify the land use of a site or facility as industrial if all of the following criteria are met:

1. The site or facility is currently zoned for, or otherwise officially designated for, industrial use.

Note: Typically, a site or facility is officially designated for industrial use by the issuance of a conditional use or special exception permit that allows an industrial use of that site or facility in a non-industrial zoning district or by the designation of an area as industrial in a county development plan or a municipal master plan, among other means.

2. More stringent non-industrial residual contaminant levels for soil are not necessary to protect public health on or off the site or facility.

Note: Situations where a non-industrial classification would apply include site or facilities which could otherwise be classified as industrial, but where proximity to a non-industrial land use, such as residential housing located across the street, makes a non-industrial classification more appropriate.

(c) An industrial land use classification may be applied to restricted access areas unless more stringent residual contaminant levels are necessary to protect public health on or off the site.

Note: Under ch. NR 726, a continuing obligation will be imposed as part of the case closure letter if residual contaminant levels are based on industrial exposure or if a soil performance standard is used.

History: Cr. Register, March, 1995, No. 471, eff. 4-1-95; corrections in (1) (c) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023: cr. (1) (title), am. (1) (b), (c), cr. (2) (title), am. (2), cr. (3) (title), am. (3) (intro.), cr. (4), (5) Register October 2013 No. 694, eff. 11-1-13.

NR 720.07 General requirements when establishing soil cleanup standards applicable to a site or facility.

(1) GENERAL. (a) Responsible parties shall use information from the sources listed in s. NR 720.05 (1) to determine the residual contaminant levels or performance standards for each exposure or migration pathway of concern for each soil contaminant of concern at a site or facility in accordance with this chapter.

(b) In addition to meeting the requirements of par. (c), responsible parties shall establish the soil cleanup standard for each soil contaminant of concern at the site or facility as one of the following:

1. The residual contaminant level of each contaminant in soil which is the lowest concentration from among the following as applicable: the ceiling limit concentration, the soil saturation concentration if the contaminant is a volatile, a land use specific direct contact level, a groundwater quality protective level, a concentration calculated for a pathway of concern set forth in s. NR 720.13 all of which are determined in accordance with the requirements of this chapter.

Note: For a single contaminant, a numeric land use specific residual contaminant level is determined based on aggregate exposure through incidental ingestion of soil,

inhalation of soil vapors and particulates, and dermal contact with soil. When more than one contaminant is present, the residual contaminant level is determined based on cumulative exposure and may have to be adjusted downward so that the cumulative risk does not exceed an excess cancer risk of 1-in-100,000 or a hazard index of 1 for non-carcinogens.

2. A performance standard determined in accordance with s. NR 720.08.

(c) In addition to meeting the requirements of par. (b), a soil cleanup standard developed under this chapter shall comply with all the following requirements:

1. Residual soil contamination at the site or facility may not adversely affect surface water.
2. Residual soil contamination at the site or facility may not adversely affect a sensitive environment.
3. Residual soil contamination at the site or facility may not concentrate through plant uptake and adversely affect the food chain.
4. Residual soil contamination at the site or facility may not result in vapor concentrations reaching a substance's lower explosive limit.

(2) COMPLIANCE WITH SOIL CLEANUP STANDARDS. (a) Contaminant concentrations in soil samples shall be determined using a department-approved and appropriate analytical method and reported on a dry weight basis. An appropriate analytical method shall have limits of detection or limits of quantitation, or both, at or below soil cleanup standards where possible. Responsible parties shall report the limit of detection and the limit of quantitation with sample results. The department may require that supporting documentation for the reported limit of detection and limit of quantitation be submitted

(b) Unless an alternative approach for determining standards exceedances is approved by the department, if a soil contaminant concentration in a sample exceeds the soil cleanup standard at or above the limit of quantitation for that soil contaminant, the soil cleanup standard shall be considered to have been exceeded.

Note: When evaluating the direct contact pathways, it may be possible to average measured soil sample concentrations to determine whether the calculated residual contaminant level has been exceeded or not. If averaging of soil concentrations is being considered, the department recommends seeking department approval of the proposed sampling plan and analysis methodology as soon as possible, but prior to submitting a case closure request in order to avoid delays and other potential problems.

Note: Averaging soil concentrations is not appropriate as the sole method for addressing sites with areas of significant soil contamination.

(c) If a soil cleanup standard for a soil contaminant is between the limit of detection and the limit of quantitation, the soil cleanup standard shall be considered to be exceeded if the soil contaminant concentration is reported at or above the limit of quantitation.

(d) The following applies when a soil cleanup standard for a soil contaminant is below the limit of detection:

1. If a soil contaminant is not detected in a sample, the soil cleanup standard shall not be considered to have been exceeded.
2. If a soil contaminant is reported above the limit of detection but below the limit of quantitation, the responsible party may accept the results and the soil cleanup standard shall be considered to have been exceeded, or the responsible party may choose to have the soil sample reanalyzed by the use of an appropriate analytical method. If the soil contaminant is confirmed to be present between the limit of detection and the limit of quantitation, the soil cleanup standard shall be considered to have been exceeded. If the soil contaminant is not detected upon reanalysis of the soil sample, the soil cleanup standard shall not be considered to have been exceeded.

(3) BACKGROUND. If the background concentration for a substance in soil at a site or facility is higher than the residual contaminant level for that substance determined using the procedures in this section, the background concentration in soil may be used as the residual contaminant level for that substance. The background concentration for a substance in soil shall be determined using a department-approved and appropriate method.

Note: Naturally occurring background concentrations of arsenic in soil, for example, may be higher than the calculated residual contaminant level for arsenic. In such

instances, the naturally occurring background concentration could be used as the soil cleanup level.

History: Cr. Register, March, 1995, No. 471, eff. 4-1-95; CR 12-023: am. (title), (1) (a) to (c), cr. (1) (c) 4., am. (2) (b), (d) 2., cr. (3) Register October 2013 No. 694, eff. 11-1-13.

NR 720.08 Procedures for establishing soil performance standards. (1) GENERAL. If a responsible party selects this option, performance standards shall be established and maintained so that the residual contaminants in the soil do not pose a threat to public health, safety, or welfare or the environment.

Note: Guidance document RR-528 indicates that it may not be necessary to determine numeric residual contaminant levels for contaminants as long as all contaminant pathways for all contaminants of concern are addressed by the remedial action, the extent of contamination is fully defined, the remedy remains in place, is maintained as appropriate and remains effective. For example, if a cover is placed that addresses all pathways for the contaminated soil, then it isn't necessary to determine the numeric residual contaminant levels for as long as the cover adequately addresses the pathway and remains protective. It may be necessary to determine residual contaminant levels in the future if the remedy is changed or replaced.

(2) PROTECTION OF GROUNDWATER. Acceptable performance standard options to address the soil to groundwater pathway may include any of, or any combination of, the following:

(a) Placement of a permanent engineering control such as a cap or cover to limit infiltration and thereby minimizing the leaching of soil contaminants to groundwater that is constructed and maintained until the threat to groundwater no longer exists.

(b) Use of natural attenuation to contain and remediate the contaminants present.

(c) Operation of a system in compliance with ch. NR 724 until the lowest concentration that is practicable is achieved.

Note: As explained in more detail in guidance document RR-528, if there is no threat to groundwater from soil contamination, a soil remedy is not necessary. The lack of groundwater contamination may not always be sufficient to establish there is no threat to the groundwater pathway. An analysis to determine whether sufficient time has passed for the soil contamination to have reached the locations where groundwater is being monitored may be necessary. The factors that may need to be considered include: the age of the contaminant release, type of contaminants, geologic setting, depth to groundwater, and the proximity of the monitoring wells to the source of contamination.

(3) PROTECTION FROM DIRECT CONTACT. Acceptable performance standard options to address the direct contact pathway may include either of, or a combination of, the following:

(a) Placement of a permanent engineering control such as a cap or cover that is constructed and maintained until the direct contact threat no longer exists.

(b) Operation of a system in compliance with ch. NR 724 until the lowest concentration that is practicable is achieved.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 720.10 Procedures for determining residual contaminant levels based on protection of groundwater. (1) GENERAL. If a responsible party selects this option, residual contaminant levels for soil based on protection of groundwater shall be developed using the enforcement standards established in ch. NR 140 or using procedures consistent with the methodology in ss. 160.13 and 160.15, Stats., and the criteria in s. NR 722.09 (2) (b) 2. when there is no enforcement standard as the target concentrations in groundwater. If the department of health has not developed a recommended enforcement standard and a federal maximum contaminant level exists, that value may be used for calculating a soil residual contaminant level.

Note: In developing a residual contaminant level, any relevant information may be considered, including public welfare concerns for groundwater, such as taste and odor, and drinking water health advisory levels.

(2) METHODS. Responsible parties shall use one or more of the methods listed in this section based on scientifically valid procedures that are subject to department review and approval and site-specific geological, physical and chemical conditions to establish residual contaminant levels:

(a) A contaminant transport and fate model.

(b) Leaching tests appropriate for the site or facility in both application and extent.

(c) Any other appropriate method approved by the department for that specific site or facility, or other appropriate method suggested in department guidance.

Note: Guidance document RR-890 provides detailed instructions on one method the department considers scientifically valid for purposes of calculating site specific residual contaminant levels that are protective of groundwater quality. A table of residual contaminant levels that are calculated using the standard default exposure assumptions can be found at: <http://dnr.wi.gov/topic/Brownfields/professionals.html#tabx2>.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 720.12 Procedures for determining residual contaminant levels based on protection of human health from direct contact with contaminated soil. (1) GENERAL. If a responsible party selects this option, residual contaminant levels for soil based on protection of human health from direct contact shall be developed using the following criteria:

(a) For individual compounds using an excess cancer risk of 1×10^{-6} and a hazard quotient for non-carcinogens of one; and

(b) The cumulative excess cancer risk will not exceed 1×10^{-5} and the hazard index for non-carcinogens will not exceed one for the site or facility.

(c) Risks for carcinogens and hazard quotients for non-carcinogens are presumed to be additive within each category, unless there is specific information that demonstrates that an alternative approach is more appropriate.

(d) If toxicological values for both carcinogenic and non-carcinogenic end points exist for a substance, both shall be evaluated and the method that generates the lowest residual contaminant level shall be used for the site or facility.

(e) If toxicological values for both carcinogenic and non-carcinogenic end points exist for a substance, both shall be evaluated and the method that generates the lowest residual contaminant level shall be used for the site or facility.

(2) METHODS AND PROCEDURES. Responsible parties shall determine a residual contaminant level to protect public health from direct contact with soil contamination using scientifically valid procedures and toxicological values approved by the department and the default exposure assumptions identified in sub. (3) or alternative assumptions specifically approved by the department in writing.

Note: The department will generally consider toxicological values in the following order: U.S. EPA's Integrated Risk Information System (IRIS); U.S. EPA's Provisional Peer Reviewed Toxicity Values (PPRTV); Agency for Toxic Substances and Disease Registry (ATSDR); California EPA (Cal EPA); U.S. EPA's Health Effects Assessment Summary Tables (HEAST); other pertinent toxicological information.

(3) DEFAULT EXPOSURE ASSUMPTIONS. (a) Non-carcinogens. When the contaminant is not a carcinogen, the following default exposure assumptions shall be used:

1. When the land use of a site or facility is classified as non-industrial, in accordance with s. NR 720.05 (5), all of the following shall apply:

a. Incidental ingestion of soil shall be assumed to occur at the rate of 200 mg of soil per day for a 15 kg child for 350 days each year.

b. Dermal absorption of soil shall be determined assuming a child's daily exposed skin surface area of 2,800 cm² with a skin-soil adherence factor of 0.2 mg/cm² and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at a 24-hour daily exposure rate determined by the volatile's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of 1.43×10^9 m³/kg.

d. An averaging period for exposure shall equal the default exposure duration of 6 years.

2. When the land use of a site or facility is classified as industrial, in accordance with s. NR 720.05 (5), all of the following shall apply:

a. Incidental ingestion of soil shall be assumed to occur at the rate of 100 mg of soil per day for a 70 kg adult worker for 250 days each year.

b. Dermal absorption of soil shall be determined assuming an adult outdoor worker's daily exposed skin surface of 3,300 cm²

with a skin–soil adherence factor of 0.2 mg/cm² and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at an 8–hour daily exposure rate determined by the volatile contaminant’s soil–to–air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of 1.43 x10⁹ m³/kg.

d. An averaging period of exposure shall equal the default exposure duration of 25 years.

(b) *Carcinogens*. When the contaminant is a carcinogen, the following default exposure assumptions shall be used:

1. When the land use of a site or facility is classified as non–industrial, in accordance with s. NR 720.05 (5), all of the following shall apply:

a. Incidental ingestion of soil shall be assumed to occur at the rate of 200 mg of soil per day for 350 days each year for 6 years for a 15 kg child and the rate of 100 mg per day for 350 days each year for 24 years for a 70 kg adult.

b. Dermal absorption of soil shall be determined assuming a child’s daily exposed skin surface area of 2,800 cm² with a skin–soil adherence factor of 0.2 mg/cm², and an adult’s daily exposed skin–surface area of 5,700 cm² with a skin–soil adherence factor of 0.07 mg/cm² and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at a 24–hour daily exposure rate determined by the volatile contaminant’s soil–to–air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of 1.43 x10⁹ m³/kg. For mutagenic contaminants, age segmented exposure durations shall be assumed when age adjusted cancer slope factors are available.

d. An averaging period of 30 years of exposure consisting of 6 child years and 24 adult years shall be assumed during a 70 year lifetime.

2. When the land use of a site or facility is classified as industrial, in accordance with s. NR 720.05 (5), all of the following shall apply:

a. Incidental ingestion of soil shall be assumed to occur at the rate of 100 mg of soil per day for 250 days each year for a 70 kg adult worker.

b. Dermal absorption of soil shall be determined assuming an adult outdoor worker’s daily exposed skin surface of 3,300 cm² with a skin–soil adherence factor of 0.2 mg/cm² and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at an 8–hour daily exposure rate determined by the volatile contaminant’s soil–to–air volatil-

ization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of 1.43 x10⁹ m³/kg.

d. An averaging period of 25 years of exposure shall be assumed during a 70 year lifetime.

Note: EPA’s regional screening level user’s guide provides a table containing contaminant specific dermal absorption factors and soil to air volatilization factors. The document can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/usersguide.htm.

Note: Department approval of alternative exposure assumptions for a site or facility may be based on consultation with the department of health services. If EPA makes changes to the default exposure assumptions, the department would generally use the revised values.

Note: Guidance document RR–890 provides detailed instructions on one method the department considers scientifically valid for purposes of calculating site specific residual contaminant levels that are protective of the direct contact pathway. A table of residual contaminant levels that are calculated using the standard default exposure assumptions can be found at: <http://dnr.wi.gov/topic/Brownfields/professionals.html#tabx2>.

(4) **SOIL PARAMETER VALUES**. Unless otherwise approved, when determining site specific residual contaminant levels, all the following soil parameter values shall be used:

(a) For direct contact:

1. A dry soil bulk density of 1.5 gm/cm³.
2. An air filled soil porosity of 0.28.
3. A total soil porosity of 0.43.
4. A water filled porosity of 0.15.
5. A soil particle density of 2.65 gm/cm³.
6. A soil organic carbon content of 0.006.

(b) For soil to groundwater:

1. A dry soil bulk density of 1.5 gm/cm³.
2. An air filled soil porosity of 0.13.
3. A total soil porosity of 0.43.
4. A water filled porosity of 0.30.
5. A soil particle density of 2.65 gm/cm³.
6. A soil organic carbon content of 0.002.

Note: These soil parameter values are the defaults used in Pub–RR–890, “Soil Residual Contaminant Level Determination Using the US EPA Regional Screening Level Web Calculator.” This guidance may be found at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

History: CR 12–023; cr. Register October 2013 No. 694, eff. 11–1–13.

NR 720.13 Other pathways of concern. Responsible parties shall consider human food chain, surface water quality, and terrestrial eco–system pathways of exposure, when those pathways of exposure are of concern at a site or facility.

Note: In some cases, the potential for contaminant migration or exposure to contamination through other pathways may be of concern at a site or facility. These situations could include contaminated soil in close proximity to a surface water where the potential for runoff from the site or facility to cause an impact on surface water quality exists or contaminated soil where potential for bioaccumulation and uptake through the food chain resulting in adverse impacts to human health or terrestrial ecosystems exists. This section requires responsible parties to establish appropriate residual contaminant levels protective of these pathways when necessary.

History: CR 12–023; cr. Register October 2013 No. 694, eff. 11–1–13.

Chapter NR 722

STANDARDS FOR SELECTING REMEDIAL ACTIONS

<p>NR 722.01 Purpose. NR 722.02 Applicability. NR 722.03 Definitions. NR 722.05 General. NR 722.07 Identification and evaluation of remedial action options. NR 722.09 Selection of a remedial action.</p>	<p>NR 722.11 Risk assessments. NR 722.13 Remedial action options report. NR 722.15 Department response. NR 722.17 Department database requirements for remedial actions approved with a continuing obligation.</p>
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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., [Register, February, 1997, No. 494.](#)

NR 722.01 Purpose. The purpose of this chapter is to establish minimum standards for identifying and evaluating remedial action options and selecting remedial actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03 (1) (a), 287.05, and 289.06 (1) and (2), Stats., and ch. 292, Stats.

History: Cr. [Register, April, 1995, No. 472, eff. 5-1-95; am. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.](#)

NR 722.02 Applicability. (1) This chapter applies to all remedial actions taken by the department under the authority of ch. 292, Stats. This chapter does not apply to immediate actions or interim actions, unless specifically noted in ch. NR 708. In this chapter, where the term “responsible parties” appears, it shall be read to include the department, where a department-funded remedial action is being taken.

(2) Unless otherwise specified elsewhere in chs. NR 700 to NR 754, this chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department, except for those sites or facilities being addressed under the dry cleaner response program.

Note: Sites being addressed under the dry cleaner response program are exempt because the comparison of remedies is accomplished through the remedial action bidding process, which requires 3 to 6 alternative bids to be compared before a remedy is selected.

(2m) This chapter applies to all remedial actions taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term “responsible party” appears, it shall be read to include the “voluntary party” where an action is being undertaken to comply with s. 292.15, Stats.

(3) In addition to being applicable to sites or facilities that are subject to regulation under ch. 292, Stats., ch. NR 722 applies to the evaluation of proposed remedial action options for solid waste facilities where remedial action is required by the department pursuant to ch. NR 508.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(4) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including

the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. [Register, April, 1995, No. 472, eff. 5-1-95; cr. \(2m\), Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. \(1\) to \(3\), cr. \(3m\), eff. 5-18-00; am. \(1\) to \(3\), cr. \(3m\), Register, January, 2001, No. 541, eff. 2-1-01; correction in \(3\) made under s. 13.93 \(2m\) \(b\) 7., Stats., Register, January, 2001, No. 541; CR 12-023: am. \(1\), \(2\), \(2m\), \(3\), r. \(3m\), am. \(4\) Register October 2013 No. 694, eff. 11-1-13.](#)

NR 722.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

History: Cr. [Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: renum. \(intro.\) to 722.03, r. \(1\), \(2\) Register October 2013 No. 694, eff. 11-1-13.](#)

NR 722.05 General. (1) Responsible parties shall select an appropriate remedial action or combination of remedial actions for implementation under this chapter, unless the department makes the selection under sub. (2).

(2) The department shall select the remedial action for the following types of sites or facilities:

(a) State-lead national priority list sites.

(b) Sites or facilities being addressed under a contract with the department under s. 292.31, Stats.

(c) Department-funded response actions. For those sites or facilities where the department is responsible for selecting the appropriate remedy, significant consideration shall be given to options that provide for long-term sustainability.

(d) Sites or facilities being addressed under an administrative order issued under s. 292.11 (7) (c), Stats.

(3) The department shall document the remedial action selected for those sites or facilities listed in sub. (2) following the requirements of s. NR 722.07, at a minimum, and conduct the applicable public participation and notification activities as required in ch. NR 714.

(4) To select a remedy or combination of remedies, responsible parties shall identify, evaluate and document an appropriate range of remedial action options to address each contaminated medium in accordance with the requirements of this chapter, when one of the following happens:

(a) A site investigation report is completed in accordance with ch. NR 716.

(b) An evaluation of remedial action options is required in accordance with ch. NR 508.

(5) The identification, evaluation and documentation of an appropriate set of remedial action options, to address each medium and migration or exposure pathway shall be based on the complexity of the site or facility and the legal requirements applicable to the response action and the site or facility.

Note: Each remedial action option identified may be used to address more than one contaminated medium or migration or exposure pathway if that remedial action option would be protective of public health, safety and welfare and the environment for each media and migration or exposure pathway that it is proposed to address.

(6) The evaluation and documentation of an appropriate set of remedial action options shall be conducted by a qualified person or persons pursuant to s. NR 712.07 and shall be signed and sealed

by the qualified person or persons in accordance with s. NR 712.09.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (2) (b), (c), (4) Register October 2013 No. 694, eff. 11-1-13.

NR 722.07 Identification and evaluation of remedial action options. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall identify and evaluate an appropriate range of remedial action options in accordance with the requirements of this section.

(2) IDENTIFICATION OF LIKELY REMEDIAL ACTION OPTIONS. An initial screening of remedial technologies shall be conducted to identify remedial action options for further evaluation which are reasonably likely to be feasible for a site or facility, based on the hazardous substances present, media contaminated and site characteristics, and to comply with the requirements of s. NR 722.09.

(3) EVALUATION OF REMEDIAL ACTION OPTIONS. (a) Except as provided in par. (b), responsible parties shall use all of the criteria in sub. (4) to further evaluate appropriate remedial action options that have been identified for further evaluation under sub. (2), for each contaminated medium or migration or exposure pathway. This evaluation process shall be used to determine which remedial action option constitutes the most appropriate technology or combination of technologies to restore the environment, to the extent practicable, within a reasonable period of time and to minimize the harmful effects of the contamination to the air, land, or waters of the state, to address the exposure pathways of concern, and effectively and efficiently address the source of the contamination.

Note: The purpose of the technical and economic feasibility evaluation is to evaluate a range of remedial action options suitable for a particular site or facility to determine the practicability of implementing those options. If a particular option is not suitable for a particular site or facility, such as in situ air sparging in dense clay soils, it should not be evaluated. Emphasis should be placed on remedial action options suitable for a particular site or facility. Any remedy selected should attempt to limit secondary impacts including air and water discharges, destruction of ecosystems, and excessive use of energy.

Note: For cases involving a discharge and migration of organic contaminants that do not readily degrade in soil or groundwater, an active remedial action that will reduce the contaminant mass and concentration will typically be necessary. Natural attenuation, covers, and barriers do not actively reduce contaminant mass and concentrations. Chlorinated compounds are the most common contaminants that fall under this provision. Some organic contaminants, such as PCBs and PAHs may not readily migrate, depending on site characteristics.

(am) Responsible parties shall document their evaluation of a remedial option or combination of options which would use recycling or treatment technologies that destroy or detoxify contaminants, rather than transfer the contaminants to other media.

(b) A detailed evaluation based on the criteria in sub. (4) is not required in those cases where a remedial action option identified during the initial screening results in the reuse, recycling, destruction, detoxification, treatment, or any combination thereof of the hazardous substances present at the site and this proposed option meets all of the following requirements:

1m. Is proven to be effective in remediating the types of hazardous substances present at the site, based on experience gained at other sites with similar site characteristics and conditions;

2m. Can be implemented in a manner that will not pose a significant risk of harm to human health, safety, or welfare or the environment; and

3. Is likely to result in the reduction or control, or both, of the hazardous substances present at the site to a degree and in a manner that is in compliance with the requirements of s. NR 722.09 (2) to (4).

Note: Section NR 722.07 (3) (b) is intended to provide a streamlined evaluation process for certain remedial actions that are presumed to meet the evaluation and selection criteria in ss. NR 722.07 and 722.09.

(4) EVALUATION CRITERIA. Except as provided in s. NR 722.07 (3) (b), the remedial action options identified by the initial screening shall be evaluated based on the following requirements and in compliance with the requirements of s. NR 722.09.

(a) *Technical feasibility.* The technical feasibility of each appropriate remedial action option that effectively and efficiently addresses the sources of contamination shall be evaluated using the following criteria:

1. 'Long-term effectiveness.' The long-term effectiveness of appropriate remedial action options, taking into account all of the following:

a. The degree to which the toxicity, mobility and volume of the contamination is expected to be reduced.

b. The degree to which a remedial action option, if implemented, will protect public health, safety, and welfare and the environment over time.

2. 'Short-term effectiveness.' The short-term effectiveness of appropriate remedial action options, taking into account any adverse impacts on public health, safety, or welfare or the environment that may be posed during the construction and implementation period until case closure under ch. NR 726.

3. 'Implementability.' The implementability of appropriate remedial action options, taking into account all of the following:

a. The technical feasibility of constructing and implementing the remedial action option at the site or facility given the type of contaminants and hydrogeologic conditions present.

b. The availability of materials, equipment, technologies, and services needed to conduct the remedial action option taking into account the location and environmental impact of the selected materials and equipment.

c. The potential difficulties and constraints associated with on-site construction or off-site disposal and treatment.

Note: For example, evaluate the use of heavy equipment and cost of fuel to transport wastewater and leachate from a site compared to on-site treatment.

d. The difficulties associated with monitoring the effectiveness of the remedial action option.

e. The administrative feasibility of the remedial action option, including activities and time needed to obtain any necessary licenses, permits or approvals.

f. The presence of any federal or state, threatened or endangered species.

g. The technical feasibility of recycling, treatment, engineering controls or disposal.

h. The technical feasibility of naturally occurring biodegradation at the site or facility, if responsible parties evaluate this option.

i. The redevelopment potential of the site once the remedy has been implemented.

j. Reduction of greenhouse gases consistent with federal or state climate action policies.

4. 'Restoration time frame.' The expected time frame needed to achieve the necessary restoration, taking into account all of the following qualitative criteria:

a. Proximity of contamination to receptors.

b. Presence of sensitive receptors.

c. Presence of threatened or endangered species or habitats, as defined by state and federal law.

d. Current and potential use of the aquifer, including proximity to private and public water supplies and surface water bodies.

e. Magnitude, mobility and toxicity of the contamination.

f. Geologic and hydrogeologic conditions.

g. Effectiveness, reliability, and enforceability of continuing obligations.

h. Naturally occurring biodegradation processes at the site or facility which are expected to reduce the total mass of contamination in an effective and timely manner and which have been demonstrated to be occurring at the site or facility, to the satisfaction of the department in the site investigation report.

i. The degradation potential of the compounds.

Note: The biogeochemical environment and the contaminant of concern are critical factors in determining degradation potential. Not all compounds readily degrade in soil or groundwater, while others, such as certain petroleum compounds have a greater degradation potential.

Note: The purpose of s. NR 722.07 (4) (a) 4. is to provide criteria to determine how quickly environmental laws and standards must be achieved, due to the site-specific hazards that the contamination poses. It is not intended to authorize risk assessments, nor is it the intent of this provision to establish a generic time period that would be applied at all sites or facilities.

(b) *Economic feasibility.* The economic feasibility of each appropriate remedial action option that effectively and efficiently addresses the source of the contamination shall be evaluated, using the following criteria:

- 1m. Capital costs, including both direct and indirect costs;
- 2m. Initial costs, including design and testing costs;
3. Annual operation and maintenance costs;
4. Total present worth of the costs for all national priority list sites or facilities; sites or facilities where the department has entered into a contract pursuant to s. 292.31 (1) (b), Stats.; and sites or facilities where state environmental fund monies are being expended; and
5. Costs associated with potential future liability.

(5) **ADDITIONAL REQUIREMENTS.** (a) *Engineering controls.* If engineering controls are considered, responsible parties shall, at a minimum, evaluate an on-site engineering control to address all hazardous substances, contaminated media and migration or exposure pathways.

Note: Engineering controls include on-site or off-site containment methods, such as covers, soil covers, engineered structures, liners, gas collection systems, armoring of sediments, erosion controls, vapor mitigation systems, and groundwater slurry walls. Restricting access to a site or facility, such as constructing a fence, is not an engineering control.

(b) *Continuing Obligations.* Responsible parties shall consider the appropriateness of using continuing obligations to ensure that adequate protection of public health, safety, and welfare and the environment is maintained over time.

(c) *Additional requirements.* Responsible parties shall comply with additional site-specific remedial action evaluation or documentation requirements that may be specified by the department due to the complexity of the site or facility, the persistence of certain compounds, or the severity of the potential or actual public health or environmental impacts.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (3) (a), cr. (3) (am), am. (b) (intro.), r. (3) (b) 1., 2., renum. (3) (b) 2. a. to c. to (3) (b) 1m, 2., 3. and am. (3) (b) 3., am. (4) (a) (intro.), 3. a., b., cr. (4) (a) 3. i., j., am. (4) (a) 4. d., g., cr. (4) (a) 4. i., am. (4) (b) (intro.), r. (4) (b) 1., renum. (4) (b) 1. a. to e. to (4) (b) 1m, 2m., 3., 4., 5. and am. (4) (b) 4., r. (4) (b) 2., am. (5) (b), (c) Register October 2013 No. 694, eff. 11-1-13.

NR 722.09 Selection of a remedial action. (1) GENERAL. An option from the range of technically feasible options shall be selected based on the results of the evaluation conducted pursuant to s. NR 722.07, in compliance with this section. If an option's cost, including all the costs listed in s. NR 722.07 (4) (b), is excessive with respect to what is being technically achieved by the option relative to other available options, responsible parties may choose not to select it.

(2) **ENVIRONMENTAL LAWS AND STANDARDS.** Responsible parties shall select a remedial action or combination of remedial actions that achieve restoration of the environment to the extent practicable, minimize the harmful effects from the contamination on the air, lands and waters of the state and comply with all applicable state and federal public health and environmental laws and environmental standards. Environmental laws and standards include:

(a) *Soils.* Contaminated soil shall be restored in compliance with the requirements of ch. NR 720.

Note: Chapter NR 720 provides for residual contaminant levels or performance standards. If residual contaminant levels are used instead of performance standards they must be determined in accordance with the requirements set forth in ch. NR 720. A performance standard maintains a condition that is protective of human health, safety and welfare and the environment. Use of a performance standard will involve land use restrictions, maintenance agreements, long-term monitoring or a combination of these.

(b) *Groundwater.* Contaminated groundwater shall be restored in accordance with all of the following requirements:

1. For substances that are listed in ch. NR 140, the groundwater restoration goal is the preventive action limit. The preventive action limits shall be achieved to the extent technically and economically feasible, pursuant to ss. NR 140.24 and 140.26, unless a PAL exemption is granted pursuant to s. NR 140.28.

2. For substances which do not have an established standard in ch. NR 140, the department may take or require the responsible parties to conduct any necessary actions, such as developing site-specific environmental standards in cooperation with the department of health services, to protect public health, safety, or welfare or to prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or non-consumptive uses.

(c) *Surface water and wetlands.* 1. Discharges to surface waters or wetlands may not result in a surface water quality standard contained in chs. NR 102 to 106 being exceeded and may not exceed effluent limitations established by the department based on "best available control technology currently available" or, where appropriate, "best available control technology economically achievable," in accordance with ch. NR 220.

2. For substances that do not have established criteria in ss. NR 102.14 and 105.05 to 105.09, discharges to surface waters or wetlands may not exceed site-specific water quality criteria established by the department pursuant to the general standards of ss. NR 102.04 (1) (d) and 103.03 (2) (d).

Note: The water quality standards contained in chs. NR 102 to 106 are comprised of water quality criteria for the prevention of adverse tastes and odors in fish and drinking water (s. NR 102.14), acute and chronic toxicity to aquatic life (ss. NR 105.05 and 105.06, respectively), adverse effects to wild and domestic animals (s. NR 105.07), human threshold and cancer effects (ss. NR 105.08 and 105.09, respectively) and designated uses of the surface waters based on their classification and water quality standards and criteria for wetlands. Chapter NR 220 provides that for those point sources identified in s. NR 220.21 (1), the department shall establish effluent limitations that are achievable by the application of the "best practicable control technology currently available" or, where appropriate, the "best available control technology economically achievable", as required in s. NR 220.21 (2).

3. At sites or facilities in, or in close proximity to, surface water bodies or wetlands, active remedial actions shall be taken to prevent or minimize, to the extent practicable, potential and actual hazardous substance discharges and environmental pollution that may attain or exceed surface water or wetland criteria established in accordance with chs. NR 102 to 106.

(d) *Discharges to the air.* All emissions to the air shall comply with applicable requirements in ch. 285, Stats., chs. NR 400 to 499, and any other applicable federal or state environmental laws. In addition, for those sites or facilities where a discharge of volatile hazardous substances has occurred, the vapor intrusion pathway shall be evaluated to determine the likelihood of those substances entering the breathing space of a structure. Air contaminated from vapor intrusion shall be restored in accordance with the following requirements:

1. At sites or facilities where vapors have migrated from the source of contamination, active remedial actions shall be taken to limit or prevent, to the extent practicable, potential and actual hazardous substance discharges and environmental pollution that may attain or exceed vapor action levels.

2. The department may take or require the responsible parties to conduct any necessary actions, such as developing site-specific environmental standards in cooperation with the department of health services, to protect public health, safety, or welfare or to prevent a significant damaging effect on indoor air quality for present or future use.

(e) *Hazardous and solid waste.* 1. Any waste, debris or waste stream generated by the remedial action shall be managed in compliance with all applicable state and federal laws and regulations. Contaminated debris, at a minimum, shall be addressed to minimize the harmful effects to protect health, safety, and welfare and the environment.

2. Management of materials contaminated with polychlorinated biphenyls (PCBs) shall comply with the requirements of ch. NR 157 and TSCA, if applicable.

(2m) SUSTAINABLE REMEDIAL ACTION. Once the remedial action has been selected, the responsible party shall evaluate all of the following criteria, as appropriate for the selected remedial action:

- (a) Total energy use and the potential to use renewable energy.
- (b) The generation of air pollutants, including particulate matter and greenhouse gas emissions.
- (c) Water use and the impacts to water resources.
- (d) The future land use and enhancement of ecosystems, including minimizing unnecessary soil and habitat disturbance and destruction.
- (e) Reducing, reusing, and recycling materials and wastes, including investigative or sampling wastes.
- (f) Optimizing sustainable management practices during long-term care and stewardship.

Note: Tradeoffs will exist when evaluating these criteria and responsible parties need to balance both the benefits and risks to human health and the environment when selecting and implementing the best overall approach. Additional information can be obtained from U.S. EPA at: <http://www.clu-in.org/greenremediation/>.

(3) ADDITIONAL STANDARDS OF PERFORMANCE. Each remedial action or combinations of actions shall protect public health, safety and welfare and the environment from all contaminated media, routes of exposure and contamination at the site or facility. Responsible parties shall presume that a remedial action option or combination of options is protective if it meets the criteria in sub. (2), unless the responsible party or the department determines that compliance with applicable public health and environmental laws, including environmental standards, is not protective of public health, safety, or welfare or the environment due to multiple pathways of exposure or synergistic effects of contamination. At sites or facilities where there may be synergistic effects of contamination, multiple pathways of exposure or both that pose an unacceptable threat to public health, safety or welfare or the environment, responsible parties shall attain more stringent, facility or site-specific numeric standards to ensure that public health, safety and welfare and the environment are protected. In such a situation, the department may require that the responsible parties develop a site-specific numeric or performance standard, or both, that is protective of public health, safety and welfare and the environment for the specific media, migration or exposure pathways and contamination.

(4) LANDFILL DISPOSAL OF UNTREATED CONTAMINATED UNCONSOLIDATED MATERIAL. Responsible parties may only select landfill disposal for untreated contaminated unconsolidated material if such disposal is in compliance with chs. NR 500 to 538, the landfill's approved plan of operation and both of the following requirements:

- (a) *Use of untreated contaminated unconsolidated material.* 1. Except as provided in subd. 2., untreated contaminated unconsolidated material may only be accepted by the landfill operator for use as daily cover in accordance with s. NR 514.04 (6), if the volume of untreated contaminated unconsolidated material that is proposed to be used as daily cover does not exceed the landfill's net daily cover needs nor 12.5% of the annual volume of waste received by the landfill, or for use in the construction of soil structures within the fill area when approved for that specific use by the department, unless otherwise specifically provided in the landfill's individual license and approved plan of operation.

2. Untreated contaminated unconsolidated material that is not usable as daily cover or for soil structures and for which there is no technically and economically feasible treatment alternative may be disposed of in a landfill only with prior written approval from the department, unless otherwise specifically provided in the landfill's individual license and approved plan of operation.

(b) *Volume limitations.* 1. Except as provided in subd. 2. or 3., the volume of untreated contaminated unconsolidated material from a single site or facility that is proposed for landfill disposal may not exceed 250 cubic yards as measured *in situ*.

2. Except as provided in subd. 3., volumes of untreated contaminated unconsolidated material that exceed 250 cubic yards may be disposed of in a licensed landfill with a department-approved composite liner, or a liner that is equivalent to a composite liner in terms of environmental protection as determined by the department.

3. Volumes of untreated contaminated unconsolidated material that exceed 2000 cubic yards may be disposed of in a landfill only if prior written approval is obtained from the department after the department has reviewed a remedial action options report.

Note: Material contaminated with polychlorinated biphenyls (PCBs) must be managed in accordance with the requirements of chs. NR 700 to 754. EPA has independent authority to regulate material contaminated with PCBs under TSCA. The department and EPA have entered into a memorandum of understanding that specifies how responsibility for government oversight at sites with PCB contamination will be determined. The memorandum of agreement can be found at: <http://dnr.wi.gov/files/pdf/pubs/tr/r786.pdf>.

(5) CONTINUING OBLIGATIONS. All legal and administrative mechanisms that establish property-specific responsibilities shall be selected consistent with the provisions of ch. 292, Stats., ch. NR 726, and this chapter, and are protective of public health, safety, and welfare and the environment.

History: Cr Register, April, 1995, No. 472, eff. 5-1-95; CR 01-129: am. (2) (a), Register July 2002 No. 559, eff. 8-1-02; correction in (4) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register February 2010 No. 650; CR 12-023: am. (2) (b) 1., 2., renum. (2) (d) to (2) (d) (intro.) and am., cr. (2) (d) 1., 2., am. (2) (e) 2., cr. (2m), am. (4) (a) 1, (b) 3., r. and recr. (5) Register October 2013 No. 694, eff. 11-1-13.

NR 722.11 Risk assessments. (1) The responsible party may request, and the department may consider granting, approval to prepare and submit a risk assessment for the purpose of developing environmental standards only if the responsible parties demonstrate to the satisfaction of the department that:

(a) Compliance with the applicable environmental standards listed in s. NR 722.09 (2) will not be protective of public health, safety and welfare and the environment; or

(b) Attaining compliance with the applicable residual contaminant levels in ch. NR 720 is not practicable.

(2) If the department authorizes the use of a risk assessment to develop environmental standards, the responsible parties shall utilize standard exposure assumptions approved by the department. The department may approve, modify or disapprove of the risk assessment prepared by the responsible parties and shall provide a written explanation of the department's action to the responsible parties.

(3) When the department enters into a contract pursuant to s. 292.31, Stats., the department shall determine whether or not a risk assessment should be prepared and by whom.

History: Cr Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (3) Register October 2013 No. 694, eff. 11-1-13.

NR 722.13 Remedial action options report. (1) **GENERAL.** Based on the evaluation and selection of remedial action options required in ss. NR 722.07 and 722.09, responsible parties shall document the evaluation and selection in a remedial action options report in compliance with the requirements of this section. Responsible parties shall submit the remedial action options report to the department within 60 days after submitting the site investigation report, unless otherwise specified by the department.

(2) **CONTENTS OF REPORT.** The remedial action options report shall include the following:

(a) *Cover letter.* 1. The department's identification number for the site or facility.

2. The purpose of the submittal and the desired department action or response.

3. Month, day and year of the submittal.

(b) *Executive summary.* A brief narrative summarizing the contents of the report.

(c) *Background information.* 1. Project title, name of the site or facility, its location, the mailing address and telephone number of the responsible parties, and the name, address and telephone number of the person who prepared the report.

2. The regulatory status of the site or facility.

3. A summary of the nature and extent of contamination at the site or facility, based on the data gathered during the site investigation.

4. A summary of the geologic and hydrogeologic characteristics at the site or facility, based on data gathered during the site investigation.

Note: If a site investigation report required under ch. NR 716 and a remedial action options report required under this chapter are prepared as a single submittal, the site investigation information does not need to be restated in the remedial action options portion of the combined submittal.

(d) *Remedial action options.* A brief description of each remedial action option that has been evaluated under s. NR 722.07, including all of the following information:

1. A physical and operational description of each remedial action option.

2. The degree to which each evaluated remedial action option is expected to comply with the environmental laws and standards under s. NR 722.09 (2).

3. The physical location at the site or facility where the environmental standards applicable to the site or facility and the remedial action option are to be complied with.

4. Any local, state or federal licenses, permits or approvals that are required for each remedial action option.

5. A comparison of the expected performance of each remedial action option in relation to the technical and economic feasibility criteria in s. NR 722.07 (4).

6. A statement on whether or not treatment was considered and why a treatment option or combination of treatment options were rejected, if rejected.

(e) *Selected remedial action.* Responsible parties shall document the selected remedial action in compliance with this section, except where the department is selecting the remedial action option under s. NR 722.05 (2). The remedial action options report shall identify the selected remedial action and shall include:

1. A brief summary of the rationale for choosing the remedial action, based on the evaluation required under s. NR 722.07.

2. A proposed schedule for implementing the selected remedial action option.

3. An estimate of the approximate total cost of implementing the selected remedial action option, including the costs listed in s. NR 722.07 (4) (b).

4. An estimate of the time frame needed for the selected remedial action option to comply with the applicable federal or state environmental laws and standards, whichever are more stringent.

5. A description of how the performance of the selected remedial action option will be measured.

6. A description of how treatment residuals generated in connection with the selected remedial action option will be managed on-site and, if applicable, off-site.

7. A description of how the criteria in s. NR 722.09 (2m) regarding sustainable remedial action were addressed.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (1), Register, January, 2001, No. 541, eff. 2-1-01; CR 12-023: am. (1), (2) (e) 1., 3., cr. (2) (e) 7. Register October 2013 No. 694, eff. 11-1-13.

NR 722.15 Department response. (1) GENERAL. The department may respond to the submission of a remedial action

options report required by this chapter using one of the following methods:

(a) The department may, in writing, direct responsible parties to submit all of the reports required under this chapter and to proceed to implement the selected remedial action without department approval, review or acknowledgement.

(b) The department may, in writing, direct responsible parties that review and approval of a remedial action options report is necessary prior to proceeding to implement the selected remedial action pursuant to ch. NR 724. The department shall provide written acknowledgement of receipt of each report submitted pursuant to this chapter within 30 days. Department acknowledgement shall include an estimated date for completion of department review.

(2) DEPARTMENT REVIEW. In cases where the department is reviewing a remedial action options report under this chapter prior to the implementation of the selected remedial action, the department:

(a) May exercise discretion on a case-by-case basis and request additional information, require revisions, approve, conditionally approve or disapprove of the report.

(b) Shall provide a written explanation of the reasons for any disapproval to the responsible parties.

(c) May establish a schedule for the responsible parties to provide additional information and revisions to the department.

(d) May approve the remedial action options report only after ensuring that implementation of the selected remedial action will adequately protect human health, safety, and the environment. In making this determination, the department shall consider the following factors as appropriate:

1. The physical and chemical characteristics of each contaminant including its toxicity, persistence, and potential for migration.

2. The hydrogeologic characteristics of the site or facility and the surrounding area.

3. The proximity, quality, and current and future uses of nearby surface water and groundwater.

4. The potential effects of residual contamination on nearby surface water and groundwater.

5. All other relevant assessments prepared and submitted in compliance with the requirements of s. NR 722.11.

6. All other relevant information contained in the remedial options report.

(e) May, as a condition of approving the remedial action, do any of the following:

1. Require operation and maintenance of an engineering control on the site.

2. Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.

3. Require that the department be notified prior to a change in land use, if the proposed land use change would be such that any of the exposure assumptions on which a continuing obligation are based would no longer be protective of human health, safety, or welfare or the environment.

4. Require vapor control technologies be used for any new construction on the site, or require interim actions to limit or prevent vapor intrusion be installed, operated and maintained.

5. Require site-specific actions or continuing obligations to adequately protect human health, safety, or welfare or the environment.

6. Require the submittal of the information necessary for listing the site on the department database.

Note: In accordance with ch. NR 749, the appropriate review must accompany any request for the department to review a specific document.

(3) NOTICE TO PROCEED. Unless otherwise directed, at sites or facilities where the department approves or conditionally approves of a remedial action report, the responsible parties shall initiate the design and construction of the selected remedial action within 90 days after department approval or conditional approval.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023; am. (2) (d) 1. to 5., cr. (2) (e), renum. (3) (intro.) to (3) and am., r. (3) (a), (b) Register October 2013 No. 694, eff. 11-1-13.

NR 722.17 Department database requirements for remedial actions approved with a continuing obligation.

(1) For sites or facilities where the department has approved a remedial action that includes a continuing obligation which meets any of the criteria in ss. NR 722.15 (2) (e) and 725.05 (2), the

department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database.

(2) The site or facility remedial action plan approval letter shall be associated with the site or facility record in the department database, for those sites required to be included on the department database.

(3) The fees required by ch. NR 749 shall be submitted to the department.

Note: Under s. 292.12 (3) (b), Stats., the department has authority to charge a fee for placement on a department database.

(4) Documentation requirements shall meet s. NR 726.11, to the extent practicable.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 724

REMEDIAL AND INTERIM ACTION DESIGN, IMPLEMENTATION, OPERATION, MAINTENANCE AND MONITORING REQUIREMENTS

NR 724.01	Purpose.
NR 724.02	Applicability.
NR 724.03	Definitions.
NR 724.05	General submittal requirements.
NR 724.07	Department response.
NR 724.09	Design report.

NR 724.11	Design plans and specifications.
NR 724.13	Operation and maintenance.
NR 724.15	Documentation of construction and completion.
NR 724.17	Long-term monitoring.
NR 724.19	Application of new environmental standards.

Note: Chapter NR 724 as it existed on April 30, 1995 was repealed and a new chapter NR 724 was created effective May 1, 1995.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 724.01 Purpose. The purpose of this chapter is to specify the requirements for the design, implementation, operation, maintenance and monitoring of remedial actions and certain types of interim actions. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06 (1) and (2), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 724.02 Applicability. (1) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department:

(a) On-site treatment systems, including groundwater extraction and other remedial treatment systems.

(b) On-site engineering controls or barriers, including engineered landfill covers or groundwater barrier systems.

(bm) Vapor mitigation systems.

Note: Remedial actions to actively remediate vapor contaminant sources fall under pars. (a) or (b).

(c) Any other type of interim action when the department determines, on a case-by-case basis, that a design report required under s. NR 724.09 is necessary prior to implementation.

Note: This chapter does not apply to emergency or non-emergency immediate actions or to those types of interim actions that are not listed in s. NR 724.02 (1).

(2) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(3) This chapter applies to all remedial actions and to those types of interim actions that are specified in sub. (1) taken by the

department under the authority of ch. 292, Stats. In this chapter, where the term “responsible parties” appears, it is to be read to include the department in situations where a department-funded response action is being taken.

(4) This chapter applies to all remedial action and to those types of interim actions that are specified in sub. (1) taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term “responsible parties” appears, it shall read to include the “voluntary parties” where an action is being taken to comply with s. 292.15.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; cr. (4), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023; am. (1) (intro.), (a), cr. (1) (bm), am. (2) to (4) Register October 2013 No. 694, eff. 11-1-13.

NR 724.03 Definitions. The definitions in s. NR 700.03 apply to this chapter. In this chapter, where the term “responsible parties” appears, it shall be read to include “voluntary parties” where an action is being taken to comply with s. 292.15, Stats.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am., Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 724.05 General submittal requirements.

(2) GENERAL REQUIREMENTS. Unless otherwise directed by the department, responsible parties shall submit the plans and reports required by this chapter in compliance with all of the following requirements:

(a) The plans, reports and specifications required by ss. NR 724.09, 724.11, 724.13 (2) and 724.17 (2) shall be submitted simultaneously and may be combined in a single report.

(b) One paper copy and one electronic copy of each plan or report shall be submitted to the department, in accordance with s. NR 700.11 (3g).

Note: Electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at <http://dnr.wi.gov/files/PDF/pubs/tr/RR690.pdf>.

(c) The department may require by the issuance of an administrative order or consent order that these plans and reports be prepared in accordance with a site-specific schedule.

(d) At sites or facilities where multiple remedial or interim actions are taken, all of the following requirements apply:

1. All submittals required by this chapter shall include a brief discussion of the interrelationship between the actions.

2. The design report required by s. NR 724.09 and the design plans and specifications required by s. NR 724.11 that are prepared for subsequent remedial or interim actions may include the design details for the subsequent action without repeating design work that was included in previous submittals to the department for other remedial or interim actions.

(e) Each submittal under this chapter shall include all of the following:

1. A brief cover letter that includes:

a. The month, day and year of the submittal.

b. The department-issued identification number for the site or facility.

- c. The purpose of the submittal and the desired department action or response.
 - d. A brief narrative summarizing the contents of the submittal.
 - e. The regulatory status of the site or facility.
2. A report or plan that includes following general information:
- a. Project title and purpose, including the department-issued identification number for the site or facility.
 - b. Name, address, and telephone number of the property owner, lessee, operator or any individual or company responsible for the discharge of hazardous substances or environmental pollution on the site or facility.
 - c. Name, address, and telephone number of any consultants or contractors involved with the response action at the site or facility.
 - d. Site name, address, and location by quarter-quarter section, township, range and county, geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property.
 - e. A location map that meets the requirements of s. NR 716.15 (4) (a).
 - f. Month, day and year of the submittal.
 - g. A summary of the nature and extent of contamination at the site or facility.

(3) LEVEL OF DETAIL. (a) Nothing in this chapter shall be construed to require plans or reports that are more detailed or complex than is justified by the known scope of contamination or the complexity of the site or facility.

(b) The department may require additional information in the plans and report beyond what is specifically required under this chapter if necessary because of the complexity of the site or facility, or the degree and extent of the contamination.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (2) (a), Register, October, 1996, No. 490, eff. 11-1-96; CR 12-023: r. (1), am. (2) (title), (intro.), (b), (e) 2. d., e. Register October 2013 No. 694, eff. 11-1-13.

NR 724.07 Department response. **(1)** The department may direct responsible parties in writing that department approval of a plan or report is necessary prior to proceeding to the next step in the design, implementation or operation of a remedial action or interim action under this chapter. In such cases, the department shall provide a written acknowledgement of receipt of any report or plan submitted pursuant to this chapter within 30 days. The department acknowledgement shall include an estimated date for completion of department review.

(2) In cases where department approval is required for the reports or plans submitted under this chapter, the department may request additional information, require revisions, approve, conditionally approve or disapprove of the plans or reports. The department shall provide to the responsible parties, in writing, the reasons for any disapproval and the department may establish a deadline for providing revisions.

Note: Persons who prepare the plans and reports required by this chapter should be aware that other department programs may also require the submittal, review and approval of plans and reports.

Note: In accordance with ch. NR 749, the appropriate review fee must accompany any request for the department to review a specific document.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 724.09 Design report. Unless otherwise directed by the department, responsible parties shall submit to the department a design report for all remedial actions and those interim actions specified in s. NR 724.02 (1), containing all of the following information:

- (1)** The information required in s. NR 724.05 (2) (e).
- (2)** A brief description of the site or facility.
- (3)** A complete and detailed description of the remedial or interim action being designed.

(4) All engineering criteria, concepts, assumptions and calculations used in preparing the design, including adequate justification for their use.

(5) Any treatability study information, pilot test results, aquifer pumping test results or other test results utilized in the design, unless this information was previously submitted to the department.

Note: Treatability studies should be conducted as early in the response process as possible.

(6) A listing of all local, state and federal permits, licenses and approvals required to construct and implement the remedial or interim action.

(7) A brief description of the public health and environmental laws and standards applicable to the contamination and the interim or remedial action being implemented, including the physical location where the environmental standards shall be complied with for each medium of concern.

(8) A preliminary discussion of the types of, frequency of and schedule for monitoring of the remedial or interim action. This discussion shall address any water, soil, soil gas, air, vapor, or other monitoring required for each component of the remedial or interim action.

(9) A preliminary discussion of planned operation and maintenance provisions.

Note: An operation and maintenance plan prepared in accordance with s. NR 724.13 (2) will satisfy the requirements of s. NR 724.09 (8) and (9), if submitted with the design report. In this case, the operation and maintenance plan should provide a complete, rather than a preliminary, discussion of the topics described in s. NR 724.09 (8) and (9).

(10) A proposed schedule for implementation of the remedial or interim action, which identifies timing for initiation and completion of all tasks. The proposed dates for completion of the remedial or interim action and major milestones shall be specified. The schedule shall include deadlines for all reports, plans and submittals required by the department.

(11) Discussion of any other relevant technical factors.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (8) Register October 2013 No. 694, eff. 11-1-13.

NR 724.11 Design plans and specifications. Unless otherwise directed by the department, responsible parties shall submit to the department design plans and specifications for each remedial action and any of the interim actions specified in s. NR 724.02 (1). Plans and specifications shall:

(1) Be consistent with the concepts presented in the design report prepared under s. NR 724.09.

(2) Provide a general correlation between drawings and technical specifications.

(3) Include technical specifications and requirements necessary for all the components of the remedial or interim action.

(4) Include detailed drawings of the proposed design, including general component arrangements, equipment layout, process flow diagram, piping and instrumentation diagrams, cross sections, sampling locations and instrumentation locations.

(5) Show sufficient detail for construction, according to customary industrial and professional standards.

(6) Unless otherwise directed by the department, include legible visual aids, including maps, plan sheets, drawings, isometrics, cross sections and aerial photographs, which:

(a) Are no larger than 24 inches by 36 inches and no smaller than 8¹/₂ inches by 11 inches.

(b) Are of appropriate scale to show all required details in sufficient clarity.

(c) Are numbered, titled, have a legend of all symbols used, contain horizontal and vertical scales where applicable, and specify drafting or origination dates and current drawing revision or issue status.

(d) Use uniform, graphic scales.

- (e) Contain a north arrow, where appropriate.
- (f) Use national geodetic survey data as the basis for all elevations.

(g) Show dimensions for location and placement of features or units and elevations that are based on permanent, retrievable surveying control monuments or stations.

(h) Additionally, for solid or hazardous waste disposal facilities or, when directed by the department, for other land-based features being constructed at the site or facility as part of the response action:

1. Display a survey grid based on monuments established in the field which are referenced to state plane coordinates.

2. Show the survey grid location and reference major plan sheets on all cross sections.

Note: Examples of land-based features include covers, waste or soil piles, soil treatment piles, liners, landfills and features created by earth moving and regrading.

3. Include a reduced plan-view map on all sheets with cross sections indicating the location of the cross section.

(7) Include descriptions, specifications and performance criteria necessary for procurement, construction and start up of all features and units, including key components and all instrumentation. Performance curves or criteria published by equipment suppliers or manufacturers may be utilized if they provide sufficient information.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023; am. (6) (d) Register October 2013 No. 694, eff. 11-1-13.

NR 724.13 Operation and maintenance. (1) GENERAL. (a) Unless otherwise directed by the department, responsible parties shall conduct all necessary operation and maintenance activities in accordance with this section and in compliance with all applicable state or federal public health and environmental laws, whichever are more stringent, until all applicable public health and environmental laws are complied with as required in chs. NR 700 to 754.

(b) Responsible parties shall operate and maintain any cover systems, liners, physical hydraulic containment systems, leachate collection systems, and gas collection, extraction, and management systems at sites or facilities for which they are responsible until no longer required by the department.

(c) Responsible parties and property owners shall operate vapor mitigation systems for which they are responsible until no longer required by the department.

(d) Vapor mitigation systems and remedial actions designed to address vapor migration shall be monitored at a frequency determined by the department, to measure whether the action taken has been effective in meeting the vapor action level.

(2) OPERATION AND MAINTENANCE PLAN. Unless otherwise directed by the department, responsible parties shall submit to the department an operation and maintenance plan when on-site maintenance activities are necessary to implement, monitor or ensure the effectiveness of a remedial or interim action. The plan shall outline all operation, monitoring, and maintenance activities, from design through case closure under ch. NR 726 or through post-closure under ch. NR 727, as appropriate, including all of the following information:

- (a) The information specified under s. NR 724.05 (2) (e).
- (b) A description of normal operation and maintenance, including a schedule showing the frequency of each operation and maintenance task.
- (c) A contingency plan for any anticipated or potential operation and maintenance problems, including a description of techniques or activities to be conducted by the responsible parties to resolve operation and maintenance problems.
- (d) A description of routine monitoring and analysis, including:

1. Long-term monitoring required under s. NR 724.17;

2. Laboratory or field tests, test methods and sampling methods; and

3. A schedule of monitoring frequency and dates.

(e) A description of any site-specific or facility-specific record-keeping and reporting requirements to document operation and maintenance activities, including:

1. Mechanisms for reporting system failures, discharges of hazardous substances, environmental pollution and other emergencies; and

2. Reports to be submitted to the department, including the results of system and environmental monitoring and the results of the monitoring well inspections meeting the requirements of s. NR 716.13 (14).

(f) A location map that includes the locations and extent of features that need to be maintained, as well as the extent of contamination.

(g) Final construction specifications on any engineering control feature.

Note: Engineering controls may include a cover, barrier, or vapor mitigation system.

(h) A list of prohibited activities.

(i) A contact for questions on specific actions and the inspection log.

(j) A statement of where more site-specific information may be found.

Note: More site-specific information may be found in the department's files.

(k) For vapor mitigation systems; a diagram and photographs showing piping, venting, fans and manometer locations, vent height and location, a description of how to verify that the vapor mitigation system is operating properly, identification of prohibited activities to ensure the continued effectiveness of the vapor mitigation system, and direction to notify the department before any action is taken which would disturb operation of the vapor mitigation system.

(L) Air emission reporting and permitting, as applicable.

(m) Monthly manometer checks.

(n) Annual inspection of system parts.

(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>.

(4) OPERATION AND MAINTENANCE PLAN REVISIONS. When warranted by changes in the design, operation or maintenance of the interim or remedial action, or when requested by the department, responsible parties shall revise the appropriate section of the operation and maintenance plan. Plan revisions shall be submitted to the department and shall:

- (a) Include the information required in s. NR 724.05 (2) (e).
- (b) Be numbered with a revision number.
- (c) Document any changes in the time of anticipated case closure.
- (d) Document any changes in the design, operation, maintenance or monitoring of the interim or remedial action.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (3) (a) 1., 2. and 3., renum. (3) (e) to be (3) (f) and cr. (3) (e), Register, October, 1996, No. 490, eff.

11-1-96; correction in (4) made under s. 13.93 (2m) (b) 1., Stats., Register, October, 1999, No. 526; CR 12-023; am. (1) (a), (b), cr. (1) (c), (d), am. (2) (intro.), (a), (e) 2., cr. (2) (f) to (n), renum. (3) (intro.) to (3) and am., r. (3) (a) to (d), r. (e), (f), am. (4) (title), (c) Register October 2013 No. 694, eff. 11-1-13; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register October 2013.

NR 724.15 Documentation of construction and completion. (1) Unless otherwise directed by the department, responsible parties shall submit to the department a construction documentation or as-built report within 60 days after the date that construction of a remedial action or any interim action specified in s. NR 724.02 (1) is completed or determined to be essentially complete by the department.

(2) The report shall document that the completed final remedial or interim action meets or exceeds all design criteria and the plans and specifications developed in accordance with all of the requirements of this chapter.

(3) Unless otherwise directed by the department, the construction documentation report shall include all of the following information:

- (a) The information specified under s. NR 724.05 (2) (e).
- (b) As-built maps, plan sheets, drawings, isometric drawings and cross sections.
- (c) A synopsis of the remedial or interim action and a certification that the design and construction was carried out in accordance with the plans and specifications.
- (d) An explanation of any minor changes to the plans and why these were necessary for the project.
- (e) Results of all pilot and field tests or studies and site monitoring conducted during construction.
- (f) A brief description of the public health and environmental laws applicable to the contamination and the interim or remedial action selected, including the physical location where the environmental laws shall be complied with for all media of concern.
- (g) The information required in ch. NR 516 for documenting the construction at the site or facility of any final covers, liners, leachate collection systems and gas collection, extraction and management systems.
- (h) A revised operations and maintenance plan in accordance with s. NR 724.13 (4), unless the cover letter indicates that there are no revisions to the operations and maintenance plan.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 724.17 Long-term monitoring. (1) **GENERAL.** Responsible parties shall conduct all necessary and appropriate long-term monitoring at a site or facility in accordance with all of the requirements of this section and any other applicable public health and environmental laws.

(2) **LONG-TERM MONITORING PLAN.** Unless otherwise directed by the department, the responsible parties shall submit a long-term monitoring plan to the department that specifies:

- (a) The parameters to be monitored;
- (b) The sampling and analytical methods to be used, consistent with the sampling and analysis requirements in s. NR 716.13;
- (c) The interval at which monitoring is to be performed; and
- (d) The public health and environmental laws, including standards, to be complied with.

(3m) **LONG-TERM MONITORING RESULTS.** Unless otherwise directed by the department, responsible parties shall submit a monitoring results report to the department after any sampling. Responsible parties shall submit the monitoring results report, including results from private and public wells, within 10 business days of receiving the sample results. Monitoring results shall be

submitted in accordance with s. NR 716.14. The report shall include all of the following information:

- (a) The information specified under s. NR 724.05 (2) (e).
 - (b) Sampling results.
 - (c) Monitoring results in tabular and graph form, including the current monitoring results and all previous results, so as to provide a concise summary of the monitoring program.
- Note:** Long term monitoring for groundwater includes groundwater table elevation data. This data is used for the system effectiveness reporting required by s. NR 724.13 as well as for the assessment used to determine what attenuation processes are occurring at the site.
- Note:** Section NR 716.14 requires the submittal of specific monitoring result information in a letter or on a form provided by the department.
- (d) Laboratory analytical reports and sample chain-of-custody forms, unless otherwise directed by the department.
 - (e) Identification of any specific environmental standards that have been attained or exceeded and an indication on a site or facility map of the location where the standards have been attained or exceeded.

(f) A preliminary analysis of the cause and significance of any concentrations that attain or exceed specific environmental standards and any increases in concentrations of substances that previously attained or exceeded specific environmental standards, including the factors specified in s. NR 140.24 (1) (c) 1. to 10. for groundwater.

Note: Section 292.11, Stats., and ch. NR 706 require that the department be notified immediately of any hazardous substance discharge.

(4) **DEPARTMENT REVIEW.** (a) The department shall review and respond to the results [of monitoring] data, if requested to do so by the responsible parties, to evaluate the effectiveness of the remedial action in achieving the environmental and public health laws.

Note: The language in brackets was inadvertently omitted from CR 12-023.

Note: In accordance with ch. NR 749, the appropriate review fee must accompany any request for the department to evaluate environmental data.

(b) The department may review long-term monitoring results at other times at its discretion.

(c) The department may require additional remedial action, pursuant to ch. 292, Stats., based on the evaluation of monitoring results.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; cr. (3) (a) 3. (note), Register, October, 1996, No. 490, eff. 11-1-96; CR 12-023; r. (3), cr. (3m), am. (4) (a), (c) Register October 2013 No. 694, eff. 11-1-13.

NR 724.19 Application of new environmental standards. (1) If, after a remedial action selected in accordance with the requirements of ch. NR 722 is implemented, any applicable environmental standards are modified by the department to be more stringent, or if additional environmental standards are promulgated, the department shall require responsible parties to comply with the new or modified environmental standards if the department determines that, for a specific site or facility, compliance with the more stringent standards is necessary to ensure that the interim action or remedial action will be protective of public health, safety, or welfare or the environment.

(2) If, after a remedial action selected in accordance with ch. NR 722 is implemented, any applicable environmental standards are modified by the department to be less stringent, the department shall approve of case closure if requested by responsible parties once the new, less stringent standards are achieved, if the department determines that the new, less stringent standards will be protective of public health, safety, or welfare or the environment at a specific site or facility that is the subject of a case closure request under ch. NR 726.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023; am. (title), (1), (2) Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 725

NOTIFICATION REQUIREMENTS FOR RESIDUAL CONTAMINATION AND CONTINUING OBLIGATIONS

NR 725.01 Purpose.
NR 725.02 Applicability.
NR 725.03 Definitions.

NR 725.05 Situations where notification is required.
NR 725.07 General notification requirements.

NR 725.01 Purpose. The purpose of this chapter is to specify the minimum notification requirements that shall be met before the agency with administrative authority may determine that a specific site or facility may be closed under ch. NR 726 with a continuing obligation or residual contamination, or to approve a remedial action plan which includes a continuing obligation, and to identify which sites shall be included on a department database. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.02 Applicability. (1) This chapter applies to persons seeking closure for a case that includes a property with residual contamination or where a continuing obligation may be applied on a property that is not owned by that person, regardless of whether there is direct involvement or oversight by the department. This chapter also applies to local governmental units or economic development corporations that are required to take action under ch. NR 708 or persons receiving approval of a remedial action plan under ch. NR 722, when the department determines that notification is necessary.

(2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter also applies to the proposed closure of solid waste facilities where remedial action is required by the department.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.05 Situations where notification is required. (1) PERSONS REQUIRING NOTIFICATION. Written notification shall be provided by the responsible party, or other party required to provide notification by the department, to the following parties if the property meets any of the criteria in sub. (2):

(a) The owner of each property within or partially within the contamination site or facility boundaries, other than properties owned by the responsible party.

Note: Notification of property owners includes notification of the source property owner when the responsible party conducting the investigation and cleanup does not own the source property.

(b) Occupants of those properties listed in par. (a), as appropriate.

Note: Notification of occupants may be done by providing copies of the notification to occupants or to the property owner to distribute, by posting the notification at the property, or by other means, as long as written notification is included.

(c) The clerk of the county, and town, village, or city where a public street or highway right-of-way is located, and to the municipal department or state agency that is responsible for maintaining the public street or highway.

(d) The railroad that maintains the railroad right-of-way.

Note: In cases where an owner of record cannot be located, responsible parties are encouraged to work with the agency project manager regarding notification.

(e) The owner of each property where a monitoring well was constructed, but where the monitoring well was unable to be located for abandonment, or where continued monitoring will be required.

Note: Monitoring wells need to be located before a closure request is prepared, so that all necessary notifications are completed in a timely manner.

Note: In some cases, continued monitoring of a well may be required of another responsible party, in which case responsibility for the abandonment of the well will be a condition for closure for that responsible party.

(2) SITUATIONS REQUIRING NOTIFICATION. Written notification shall be provided in the following situations:

(a) Groundwater contamination which attains or exceeds ch. NR 140 enforcement standards remains after completion of the remedial action.

(b) Soil contamination which attains or exceeds ch. NR 720 residual contaminant levels remains after completion of the remedial action.

(c) A monitoring well will not be abandoned upon completion of the remedial action because of any of the following:

1. The well was unable to be located.

2. A property owner requested the responsible party not to abandon the well, to allow for continued monitoring by the property owner and the agency with administrative authority has approved the request.

3. Continued monitoring of the well is required by the agency with administrative authority.

(d) Where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cap, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover or containment structure were removed.

(e) A building, soil cover, cover or engineered containment structure must be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720.

(f) A building or other structural impediment at a site or facility has prevented either the completion of an investigation to determine the degree and extent of contamination, or the completion of the remedial action.

(g) A property has been classified as industrial under ch. NR 720 and soil contamination on the property has only been remediated to the industrial residual contaminant levels.

(h) Sub-slab vapor risk screening levels have been exceeded following source removal and remedial actions taken to address contamination.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owners when sub-slab vapor risk screening levels are exceeded, and the operation and maintenance of a vapor mitigation system is necessary in order to limit or prevent vapor intrusion.

(i) Compounds of concern will continue to be used at the site after closure.

Note: Notification is provided to the current owner of the source property when that person is not the responsible party conducting the cleanup, because the compound of concern is still in use, complete investigation of the vapor pathway may be impracticable, and cleanup may be limited in effectiveness as well.

(j) Site-specific hydrogeology controls the vapor exposure pathway into a building and a vapor mitigation system designed

for the site must be operated and maintained in order to limit or prevent vapor intrusion.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where a vapor mitigation system is necessary, and a dewatering system is necessary to enable the vapor mitigation system to operate effectively, due to the hydrogeology.

(k) Vapor inhalation exposure assumptions for a non-residential setting will be applied for closure.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where residential vapor action levels are exceeded, including at commercial or industrial use properties.

(L) Contamination in soil or groundwater from volatile compounds remains after completion of the remedial action, in an area that does not have buildings subject to human occupancy at the time of closure.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where vapors may pose a health issue if buildings are to be constructed in the future, or if other land use changes or actions could result in a completed vapor pathway. Chapter NR 726 specifies closure conditions regarding the option of using vapor control technologies to limit or prevent future exposures.

Note: The department may also require notification for site-specific reasons upon review of a closure request, in accordance with s. NR 726.13 or upon review of a remedial action plan in accordance with s. NR 722.15 (2) (e). Responsible parties are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.07 General notification requirements.

(1) NOTIFICATION FORM. The responsible party, or other party required to provide notification by the department, shall provide the notification of contamination and continuing obligations on a form provided by the department, that contains the standard provisions in the form. All notifications shall also include the provisions about the applicable continuing obligations on the affected properties or rights-of-way. The closure-related paragraphs shall be altered to fit the situation, as applicable.

Note: The notification form, "Notification of Continuing Obligations and Residential Contamination," 4400-286, may be found at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

Note: For local governmental units or economic development corporations that are directed to take an action, or for sites receiving a remedial action plan approval, the language regarding closure needs to be changed to reflect the applicable situation.

(2) NOTIFICATION METHOD. Unless otherwise directed by the department, notifications shall be sent via certified mail, return

receipt requested, or priority mail with signature confirmation. If the notifications are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the owner of the property or other applicable party may refuse to sign for the notification.

Note: The department will not conduct a closure review until at least 30 days after the date on which the notification was received, in accordance with s. NR 726.13. Parties receiving the notification may notify the department within the 30 days to request additional time to finalize an agreement on continuing obligations, if needed.

(3) NOTIFICATION OF THE DEPARTMENT OF TRANSPORTATION. Notifications for department of transportation rights-of-way shall be sent either electronically, or via certified mail, return receipt requested, or standard mail with use of a complete mailing address.

Note: Send notifications for DOT rights-of-way electronically to: DOTHazmatUnit@dot.wi.gov, or by mail to: Wis. DOT Bureau of Equity and Environmental Services, 4802 Sheboygan Ave. Room 451, PO Box 7965, Madison, WI 53707-7965. Include "Notification of Contamination" in the subject line of the e-mail. The Department of Transportation (DOT) sends a receipt electronically (e-mail).

(4) FACTSHEETS. (a) *Groundwater*. A department fact sheet that describes the use of natural attenuation as a final remedy, shall be enclosed with all notifications that are sent to parties listed under s. NR 725.05 (1) with ch. NR 140 groundwater standard exceedances, where natural attenuation is to be used as a final remedy.

(b) *Liability and responsibilities of property owners*. A department fact sheet that describes the responsibilities and limits of liability of a property owner under ss. 292.12 and 292.13, Stats., shall be enclosed with all notifications that are sent to owners of properties, sites or facilities meeting one or more of the conditions of s. NR 725.05 (2), except for any property owned by the responsible party.

Note: Copies of department fact sheets may be obtained by accessing the following web site: <http://dnr.wi.gov/topic/Brownfields/Pubs.html> or 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. The referenced fact sheets are RR 671 — "What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater", RR 589 — "When Contamination Crosses a Property Line — Rights and Responsibilities of Property Owners", and RR 892 — "Vapor Intrusion; what to expect if vapor intrusion from soil and groundwater contamination exists on my property."

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 726

CASE CLOSURE

NR 726.01	Purpose.
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Note: Chapter NR 726 as it existed on April 30, 1995 was repealed and a new chapter NR 726 was created effective May 1, 1995. Chapter NR 726 was repealed and recreated, [Register October 2013 No. 694](#), eff. 11-1-13.

NR 726.01 Purpose. The purpose of this chapter is to specify the minimum requirements and conditions that shall be met before the department may determine that a case related to a discharge of hazardous substances or environmental pollution at a specific site or facility may be closed. This chapter is adopted pursuant to ss. [227.11 \(2\)](#), [287.03](#), and [289.06](#), Stats., and ch. [292](#), Stats.

History: CR 12-023; cr. [Register October 2013 No. 694](#), eff. 11-1-13.

NR 726.02 Applicability. (1) This chapter applies to the closure of all cases where a response action, other than an immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under ch. [292](#), Stats., regardless of whether there is direct involvement or oversight by the department, except that this chapter does not apply where the department determines under ch. [NR 708](#) that no further action is necessary.

(2) In addition to being applicable to sites or facilities specified in sub. **(1)**, this chapter applies to the proposed closure of all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to ch. [NR 508](#).

(b) Sites or facilities where remedial action has been taken by a person who is seeking a liability exemption under s. [292.15](#), Stats.

(3) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where there are overlapping restrictions or requirements, the more restrictive requirements shall control. The department shall, after receipt of a request and the appropriate fee under ch. [NR 749](#) from the responsible parties, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. [292](#), Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. [289](#), Stats., or the hazardous waste management act, ch. [291](#), Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: CR 12-023; cr. [Register October 2013 No. 694](#), eff. 11-1-13.

NR 726.03 Definitions. The definitions in s. [NR 700.03](#) apply to this chapter.

Note: "Agency with administrative authority" or "agency" is used in several sections of ch. [NR 726](#) to distinguish between the actions for which the department is responsible, in contrast to those actions where the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to review and approve closure requests, ensure that comment periods prior to closure approvals are followed, and to review information on the department database regarding compliance with conditions of closure.

History: CR 12-023; cr. [Register October 2013 No. 694](#), eff. 11-1-13.

NR 726.05 General requirements for case closure.

(1) COMPLIANCE. The responsible party or other person requesting closure shall ensure compliance with all applicable federal,

state, and local public health and environmental laws, including chs. [NR 140](#), [141](#), and [700 to 754](#), as applicable, prior to requesting case closure.

(2) NOTIFICATION. Where written notification is required under ch. [NR 725](#), the notification requirements shall be satisfied prior to submitting a request for case closure to the agency. When a site-specific condition of closure is required for a site or facility under s. [NR 726.13 \(1\) \(c\)](#), notification shall be in accordance with the requirements of s. [NR 725.07](#).

(3) FEES. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site, the case closure fee and, if entry on the department database is required under s. [NR 726.07](#), the fee or fees listed in ch. [NR 749](#) for adding a site to the department database, shall be submitted to the department with each case closure request.

Note: Under s. [292.12 \(3\) \(b\)](#), Stats., the department has authority to charge a fee for placement on a department database.

(b) [For sites or facilities contaminated with petroleum products discharged from a petroleum storage tank for which the department of safety and professional services has administrative authority under s. [101.144](#), Stats., and] Sites or facilities for which department of agriculture, trade and consumer protection has administrative authority under s. [94.73](#), Stats., that are required by s. [NR 726.07](#) to be entered onto the department database, the fee or fees listed in ch. [NR 749](#) for adding a site to the department database shall be submitted to the department before a case closure request is submitted to the appropriate agency. For these sites or facilities, a case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department's bureau for remediation and redevelopment tracking system, which is available on the department's internet site.

Note: The department's bureau for remediation and redevelopment tracking system can be found on the internet at <http://dnr.wi.gov/topic/Brownfields/rsm.html>.

Note: The language in brackets no longer applies as a result of the repeal of s. [101.144](#), Stats., by [2013 Wis. Act 20](#). This provision is subject to future rulemaking.

(4) RESPONSE ACTION GOALS. For sites or facilities considering closure under this chapter, the closure request shall document that the remaining level of contamination is not likely to:

(a) Pose a threat to public health, safety, or welfare or the environment.

(b) Cause a violation of ch. [NR 140](#) groundwater quality enforcement standards at any applicable point of standards application, except where the department has granted an exemption under s. [NR 140.28](#) for a specific hazardous substance or the criteria under s. [NR 726.05 \(6\)](#) are met.

(c) Cause a violation of surface water quality standards in chs. [NR 102 to 106](#).

(d) Cause a violation of air quality standards contained in chs. [NR 400 to 499](#).

(e) Cause a vapor action level in indoor air to be attained or exceeded.

Note: Vapor action level is defined in s. [NR 700.03 \(66p\)](#) as "the concentration of vapors from volatile compounds is at or above the 1-in-100,000 (1x10⁻⁵) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens."

(5) COMPLETENESS. A case closure request shall be complete and meet the documentation requirements of ss. [NR 726.09](#) and [726.11](#) if applicable.

Note: Incomplete closure requests may be denied. The review fee may be applied to review of the site investigation for grossly incomplete closure requests, on a case-by-case basis. A closure review fee would be required when a complete closure request is then submitted.

(6) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH GROUNDWATER CONTAMINATION. For sites or facilities with groundwater contamination that attains or exceeds ch. NR 140 enforcement standards at the time that case closure is requested, including sites or facilities contaminated with petroleum products discharged from a petroleum storage tank that are eligible for closure under ch. NR 726, the responsible party or other person requesting closure shall submit a case closure request to the agency for the site that documents that all of the following criteria are satisfied, if applicable:

(a) Adequate source control measures have been taken which include all of the following:

1. Whether regulated or registered under ch. ATCP 93 or not, all existing underground storage tanks have been removed, permanently closed or upgraded to prevent new discharges of hazardous substances to the groundwater that would violate ch. NR 140. The same requirement applies to all new and replacement underground storage tanks not regulated under ch. ATCP 93.

Note: The intent of this requirement is to ensure that source control measures are taken which prevent new or continuing releases, regardless of whether or not the tank is regulated under ch. ATCP 93.

2. All new and replacement underground storage tanks regulated under ch. ATCP 93 have been constructed and are being monitored in accordance with ch. ATCP 93.

3. All other existing tanks, pipes, barrels or other containers which may discharge a hazardous substance have been removed, contained or controlled to prevent, to the maximum extent practicable, new discharges of hazardous substances to the groundwater that would violate ch. NR 140.

4. Where applicable, immediate and interim actions have been taken in accordance with ch. NR 708 to protect public health, safety, or welfare or the environment.

5. Free product has been removed in accordance with the criteria in s. NR 708.13.

6. The concentration and mass of a substance and its breakdown products in groundwater have been reduced due to naturally occurring physical, chemical and biological processes as necessary to adequately protect public health and the environment, and prevent groundwater contamination from migrating beyond the boundaries of the property or properties which are required to be entered onto the department database.

(b) Natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time, considering the criteria in s. NR 722.07.

(c) The groundwater plume margin is stable or receding, and after case closure, groundwater contamination attaining or exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property that falls into either one of the following categories:

1. Properties for which a preventive action limit exemption has been granted.

2. Properties that have been identified as having existing groundwater contamination that attains or exceeds ch. NR 140 enforcement standards and that will be included on the department database.

(d) There is no existing or anticipated threat to public health, safety, or welfare or the environment.

(e) Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 141 and 700 to 754, have been complied with.

(7) GENERAL CLOSURE CRITERIA. The following shall be required for case closure at all sites or facilities:

(a) All monitoring wells and boreholes installed during any response action taken for the site or facility shall be abandoned and documented as abandoned in accordance with s. NR 141.25, except

for specific wells that the agency approves of retaining until sampling is no longer required.

(b) For sites or facilities where waste or contaminated media was generated during the response action and was stored or treated on-site, all the waste or contaminated media shall be handled and disposed of in accordance with applicable state and federal laws before a case closure request is submitted or approved.

(c) Groundwater samples used to determine compliance with ch. NR 140 shall be taken from monitoring wells constructed in accordance with ch. NR 141. The agency may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

(8) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH VAPOR CONTAMINATION. A site or facility is not eligible for closure until the following criteria have been met:

(a) The vapor exposure pathway has been investigated in accordance with s. NR 716.11 (5) (g); and

(b) Where vapors were present above the vapor risk screening level:

1. A remedial action has been conducted and reduced the mass and concentration of volatile compounds to the extent practicable; and

Note: Vapor mitigation systems are not considered remedial actions, as they do not reduce the mass or concentrations of the contaminants. Vapor mitigation systems are used to interrupt the vapor migration pathway.

2. The vapor exposure pathway has been interrupted or mitigated.

(9) OTHER. Any other condition for case closure that is necessary to protect public health, safety, or welfare or the environment may be required.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; corrections in (6) (a) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 726.07 Department database requirements.

(1) All sites or facilities meeting any of the criteria in s. NR 725.05 (2) or 726.13 (1) (c), upon approval of the closure request under ch. NR 726, shall be entered onto the department database. All properties within or partially within the contaminated site or facility boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be included.

(2) The site or facility closure approval letter, and the information required under s. NR 726.11 shall be associated with the site or facility record in the department database.

Note: A continuing obligation can be imposed within a general liability clarification letter for a local governmental unit directed to take an action under s. NR 708.17, in a remedial action plan approval under s. NR 722.15, or in a closure approval under ch. NR 726.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.09 Closure documentation requirements.

(1) CASE CLOSURE REQUEST FORM. A request for case closure shall be submitted on a form supplied by the agency and shall be accompanied by documentation that the criteria in s. NR 726.05 (1) to (8) are satisfied. One paper copy and one electronic copy of the complete closure request shall be submitted to the department, unless otherwise directed by the department. All information submitted shall be legible. Providing illegible information may result in a submittal being considered incomplete until corrected.

Note: Copies of the WDNR case closure request form (form 4400-202) and the associated impacted property notification information form (4400-246) for sites or facilities over which the department has administrative authority may be accessed at: <http://dnr.wi.gov/files/PDF/forms/4400/4400-202.pdf>,

or 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.

Note: Electronic copies should be submitted in the Adobe portable document format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at <http://dnr.wi.gov/files/PDF/pubs/r/RR690.pdf>.

(2) GENERAL REQUIREMENTS. In order to demonstrate that applicable federal, state and local public health and environmental laws have been complied with, and to provide information on the location and nature of any residual contamination at the site or

facility, the person who is requesting case closure shall submit all of the following information, that is applicable, as attachments to the case closure request, in the format that is specified in this subsection, and in the order that is specified in the form.

(a) Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24 (1) (b), or both.

(b) A description of the interim and remedial actions taken at the site or facility. For sites or facilities where residual soil contamination exceeds ch. NR 720 soil standards at the time that case closure is requested, include a demonstration that the remedial action taken, and any interim action that was taken that constituted the final response action for soil contamination, satisfies the requirements of chs. NR 720 and 722, where applicable.

(c) Maps and cross sections shall be to scale, and use a graphic scale. The north arrow shall be pointing to the top of the map.

(d) For sites or facilities where soil excavation or active soil remediation occurred:

1. A table of soil analytical results with collection dates identified. Soil analytical data tables shall clearly indicate depth of sample, soil type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation occurred, the soil analytical data tables shall indicate whether the soil data point represents soil that was removed or soil that remains in place.

2. A map that shows the locations of all soil samples collected.

Note: Where a soil performance standard cover is the only action taken, that is not considered active soil remediation. This requirement applies to all sites where soil excavation or active soil remediation occurred, not just those to be included on the department database under s. NR 726.07.

(e) Where the agency has required groundwater quality sampling to be conducted, results from a minimum of 8 successive quarterly rounds of sampling to demonstrate compliance with either the applicable requirements of ch. NR 140 or the requirements of s. NR 726.05 (6), unless otherwise directed or approved by the agency.

Note: Under ch. NR 722, alternate sampling schedules may be proposed, based on site geology, contaminants of concern, remedial action applied and redevelopment plans. The department expects that more monitoring may be necessary at complex sites, or where statistical analysis will be used for data evaluation. Conversely, less post-remediation monitoring may be appropriate for certain sites with significant source removal, readily degradable compounds or other well-established site conditions.

(f) For sites or facilities with sediment contamination, or soil vapor contamination, sampling data demonstrating that the remedial action selected in accordance with ch. NR 722 has restored the environment to the extent practicable and minimized the harmful effects of the hazardous substances on the air, lands, and waters of the state.

(g) Submit to the department documentation that all other closure conditions have been satisfied, within 120 days after the department provides a conditional closure response.

Note: This requirement is meant to cover well abandonment and any other minor condition identified in a conditional closure letter. It does not apply to the continuing obligations specified in the final closure letter. Ch. NR 141 requires the documentation of well abandonment on a form supplied by the department. The well abandonment form, 3300-005, can be accessed at <http://dnr.wi.gov/topic/DrinkingWater/documents/forms/3300005.pdf>.

(h) Where attempts to locate monitoring wells for abandonment are unsuccessful, submit documentation of the efforts made, to the department.

(i) Any other information that the department specifically requests.

(3) NOTIFICATIONS. Responsible parties or other persons requesting closure shall submit a copy of all the notifications required under ch. NR 725 or under s. NR 726.13 (1) (c) with written proof of the date on which the letters were received.

Note: These notifications will be in the case file, but will no longer be included as part of the PDF on the department database. A list of addresses of all affected properties and a cover letter detailing the continuing obligations per property will be included as part of the PDF on the department database.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.11 Department database documentation requirements. (1) GENERAL REQUIREMENTS. Responsible parties or other persons requesting closure for any site or facility meeting the criteria in s. NR 725.05 (2) or as required under s. NR 726.13 (1) (c), shall submit the applicable information in the case closure request. The information shall be in the order specified in the closure request form.

(a) For sites or facilities meeting the criteria of s. NR 726.07 (1), the information required in subs. (2) to (7) shall be submitted, as applicable.

(b) Information shall be submitted in accordance with s. NR 700.11 (3g), unless otherwise directed by the department. Providing illegible information may result in a submittal being considered incomplete until corrected unless otherwise directed by the department.

Note: Under s. NR 700.11 (3g), "one paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed by the department. The electronic copy shall be submitted on optical disk media and may not be submitted as electronic mail attachments unless specifically approved in advance by the department. Electronic copy files shall have a minimum resolution of 300 dots per inch, and may not be locked or password protected. The department may request that the electronic copy of sampling results be submitted in a format that can be managed in software. An electronic copy of certain types of voluminous attachments or appendices may be substituted for the paper copy, if specifically approved in advance by the department. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible."

(2) MAINTENANCE PLANS. Responsible parties or other persons requesting closure shall submit a copy of a maintenance plan for any condition listed in s. NR 725.05 (2) (d) to (L) or 726.13 (1) (c), as applicable, or as otherwise required by the department. The maintenance plan shall include the following information:

(a) A location map which shows the location and extent of the structure or feature to be maintained, in relation to other structures or features on the site. The map shall also include the extent and type of residual contamination, and include property boundaries.

(b) A brief description of the type, depth and location of residual contamination.

(c) A description of the maintenance actions required for maximizing effectiveness of the engineered control, feature, or other action for which maintenance is required.

(d) An inspection log, to be maintained on site, or at a location specified in the maintenance plan or approval letter.

(e) A contact name, address, and phone number of the individual or facility who will be conducting the maintenance.

Note: The closure approval letter will specify whether the inspection log is to be submitted to the department and the frequency of submittal, or simply maintained on site or at the location identified in the maintenance plan. The inspection log is reviewed by the department during audits conducted of sites with continuing obligations.

(3) PHOTOGRAPHS. For sites or facilities with a cover or other performance standard, a structural impediment or a vapor mitigation system, include one or more photographs documenting the condition and extent of the feature at the time of the closure request. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.

(4) DEED AND PARCEL INFORMATION. Responsible parties or other persons requesting closure shall submit all of the following items, for each property within or partially within the contaminated site boundaries other than public street or highway rights-of-way or railroad rights-of-way:

(a) A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public street or highway rights-of-way or railroad rights-of-way. Information on residual groundwater or soil contamination that has migrated onto a right-of-way will be found in the documents that are submitted as part of the case closure request for the source property. It is only in the situa-

tion where the source of the contamination is in the right-of-way, that a right-of-way will be listed on the department database as a separate property. In those situations, the maps that are required to be submitted, as an attachment to the case closure request for the site, will show where contaminated groundwater or soil samples were collected and will provide points of reference for locating residual contamination in the right-of-way.

(b) A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

(c) A statement signed by the responsible party or other person requesting closure affirming that he or she believes that legal descriptions for all of the properties within or partially within the contaminated site's or facility's boundaries where inclusion on a department database is required under s. NR 726.07, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency as part of a department database attachment to the case closure request.

(d) A list of addresses of all properties affected by residual contamination or a continuing obligation.

Note: There is a section in the closure request form on which this information is to be entered.

(e) The parcel identification number for each property.

(f) Geographic position data for each property in compliance with the requirements of s. NR 716.15 (5) (d), unless the agency has directed that the responsible party or other person requesting closure does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department database that is available on the internet at <http://dnr.wi.gov/topic/Brownfields/rrsm.html>.

(5) MAPS AND CROSS SECTIONS. All the following information shall be included in a department database attachment to the case closure request:

(a) A site location map that outlines all properties within the contaminated site boundaries on a United States Geological Survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. If there is only one parcel, this map may be combined with the map required in par. (b).

(b) A detailed site map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells, and potable wells. This map shall also show the location of all contaminated public street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of contamination exceeding applicable standards.

(c) For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested:

1. A map that shows the location where all soil samples were collected and identifies, with a single contour, the horizontal extent of each area of contiguous residual soil contamination that exceeds residual contaminant levels, as determined under ch. NR 720, within the contaminated site boundaries.

2. A geologic cross section showing the vertical extent of residual soil contamination that exceeds residual contaminant levels as determined under ch. NR 720, if one was required as a part of the site investigation report. If there is groundwater contamination on the site that attains or exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, one geologic cross section may be submitted to show the vertical extent of both soil and groundwater contamination.

(d) For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested:

1. A geologic cross section, if one was required under ch. NR 716, that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any.

2. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map was required under ch. NR 716. An isoconcentration map shall show the areal extent of groundwater contamination attaining or exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. If an isoconcentration map was not required under ch. NR 716, submit a map showing the horizontal extent of contamination exceeding applicable standards based on the most recent data; or where standards have not been promulgated, the horizontal extent of contamination remaining after the remedial action.

3. A groundwater flow map, representative of groundwater movement at the site. If groundwater flow direction varies by more than 20 degrees over the history of water level measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.

(e) For sites or facilities where samples were collected other than soil or groundwater, include a map showing the sampling locations and results, with type of sample and collection date identified.

(6) DATA SUMMARY TABLES. For information submitted for sites or facilities where inclusion on a department database is required under s. NR 726.07, shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department. All the following information shall be included in a department database attachment to the case closure request:

(a) *Soil.* For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested include a table of the analytical results showing results for the most recent samples, for all contaminants found in pre-remedial sampling, with sample collection dates identified.

(b) *Groundwater.* For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested, include:

1. A separate table of only the 8 most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified.

2. A table including, at a minimum, the previous 8 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table.

3. A completed groundwater monitoring well information form.

Note: The Groundwater Monitoring Well Information Form is required in s. NR 716.15. It can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_89.pdf.

(c) *Other.* For sites or facilities where samples other than soil or groundwater were collected, include a table specifying the sample type, sample number or location, sample results, and collection date.

(7) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities where a monitoring well has not been abandoned in accordance with the requirements of ch. NR 141 at the time of case

closure, the following information shall be included in a department database attachment to the case closure request.

(a) A site location map with the surveyed locations identified on the map for those groundwater monitoring wells that have not yet been abandoned;

(b) The well construction report for each monitoring well that needs to be abandoned; and

(c) The deed with legal description for each property on which a monitoring well is located.

Note: This would include wells that have not been located for abandonment, wells that the property owner has requested to keep and not abandon at this time, and those wells required by the agency under s. NR 726.05 (7) (a) for continued monitoring after closure. Proper abandonment is required once the wells are no longer used. The well construction report, form 4400-113A can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_113_1_2.pdf.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 726.13 Authority and approvals for case closure. (1) CLOSURE APPROVAL. (a) The agency may grant case closure under this section, if all the following conditions are met:

1. The fees required by ch. NR 749 have been paid to the department.

2. It has been documented, in the case closure request that is submitted to the agency in compliance with the requirements of s. NR 726.09, that all applicable public health and environmental laws, including chs. NR 700 to 754, have been complied with, or where ch. NR 140 enforcement standards are the only standards that are attained or exceeded, that the criteria in s. NR 726.05 (6) are satisfied.

3. A complete case closure request is submitted to the agency in accordance with ch. NR 726.

(b) The agency may not close a case under this chapter if, at any time in the future, the remaining level of contamination is likely to do any of the following:

1. Pose a threat to public health, safety, or welfare or the environment.

2. Cause a violation of a ch. NR 140 groundwater quality enforcement standard at any applicable point of standards application, except where the department has granted an exemption under s. NR 140.28 for a specific hazardous substance or the criteria under s. NR 726.05 (6) are met.

3. Cause a violation of surface water quality standards in chs. NR 102 to 106.

4. Cause a violation of air quality standards contained in chs. NR 400 to 499.

5. Cause a vapor action level in indoor air to be attained or exceeded.

Note: Vapor action level is defined in s. NR 700.03 (66p) as “the concentration of vapors from volatile compounds is at or above the 1-in-100,000 (1×10^{-5}) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens.”

(c) The agency may require any other condition for case closure that is necessary to protect public health, safety, or welfare or the environment. The agency may require a site-specific condition of closure, and notification of any parties affected by that condition, including situations where contamination remains in media other than soil, groundwater, or vapors, or exposure or migration pathways are not otherwise addressed, that make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment.

(d) The agency may not conduct a final closure review until all the following criteria are met:

1. Documentation has been received that all required notifications under ch. NR 725 have been provided.

2. At least 30 days has elapsed since the date of receipt of the notification required under s. NR 725.05 or 726.13 (1) (c), unless all of the affected property owners waive their right to comment within 30 days on the proposed case closure and copies of the waivers are submitted to the agency.

(e) The agency may extend the 30 day period upon request by any party receiving a notification.

Note: In this chapter, the “agency” refers to the “agency with administrative authority,” which is either DNR or DATCP. “Agency” is specified in subsection (1) for actions involving granting closure approval, with or without conditions, and for ensuring comment time periods between notification and closure approval. Subsections (2) and (3) describe DNR responsibilities.

(2) DEPARTMENT REVIEW RESPONSES. (a) Within 60 days after receipt of a complete request for case closure under s. NR 726.09, the department shall either determine whether the case qualifies for closure in accordance with par. (b) or acknowledge in writing the request for case closure has been received, and provide an estimated date by which the department intends to determine whether the case can be closed.

(b) Following receipt of a request for case closure under this section, the department shall review the information provided under s. NR 726.09 to determine whether the applicable public health and environmental laws, including chs. NR 700 to 754 where applicable, have been complied with and whether any further threat to public health, safety, or welfare or the environment exists at the site or facility. Based on this review, the department shall approve the case closure, or conclude that additional response actions, such as additional remedial action or long-term monitoring, are needed at the site or facility, or conclude that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with.

(c) If the department approves the request for case closure, the department shall mail written notice of the closure approval to 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).

(d) If the department determines that the applicable 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.

(e) If the department determines that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with, the department shall mail written notice to 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 notice shall indicate what additional information the department needs in order to determine whether the case can be closed.

(f) The department shall also mail written notice of the department’s response to a request for case closure to the owners of any property required to receive notification under s. NR 725.05 or 726.13 (1) (c), in addition to those parties identified under par. (c), and (d) of this subsection.

(g) Closure letters shall be associated with the site or facility record in the department database.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13; correction in (1) (b) 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

NR 726.15 Closure letters and continuing obligations. (1) For sites or facilities meeting the criteria of s. NR 725.05 (2) or 726.13 (1) (c), the closure letter shall include the following:

(a) A statement that the site will be included in the department database, and that if the property owner intends to construct or reconstruct a well, prior department approval is required, in accordance with s. NR 812.09 (4) (w).

(b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the closure letter that apply to the property. The closure letter may

also require the property owner to notify affected occupants of the need for specific continuing obligations.

(c) For conditions of closure that restrict site conditions, occupancy or property use from what is conditioned or identified in the final closure letter, a requirement that the property owner at the time that the condition changes shall notify the agency of the change in site condition, occupancy or land use, so that the agency can determine if further actions are necessary to maintain protection of public health, safety, or welfare or the environment.

(d) For conditions of closure that require maintenance, a requirement that the property owner operate and maintain the applicable system, cover or containment system in accordance with the operation and maintenance plan developed under ch. NR 724. The closure letter shall also include conditions regarding inspections, documentation, availability, and submittal of an inspection log, at a frequency determined by the agency.

(2) For specific continuing obligations, the closure letters shall contain the following:

(a) *Residual groundwater contamination.* If there is residual groundwater contamination at the time of case closure, the final closure letter shall include a description of the extent of groundwater contamination.

(b) *Residual soil contamination.* If there is residual soil contamination at the time of case closure, the final closure letter shall include a description of the extent of soil contamination, and shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled, and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) *Monitoring well abandonment.* 1. Where there is a monitoring well that has not been abandoned as required under ch. NR 141 at the time of case closure, the closure letter shall include a description of which wells still need to be abandoned, the surveyed location, and state that the property owner at the time the well is located shall properly abandon the well in accordance with the requirements of ch. NR 141.

2. Where either a request for retaining a monitoring well for continued monitoring has been approved, or continued monitoring is required by an agency with administrative authority, the closure letter shall also require the property owner to verify the integrity of the well at least annually until use of the well is discontinued and the well is properly abandoned. The closure letter shall require that an inspection log be maintained on-site, unless otherwise directed by the agency, and require that the responsible party or property owner make the inspection log available for review by agency staff upon request.

3. Where responsibility for continued monitoring of a well is being transferred to another responsible party, the closure letter shall also require that the responsible party or property owner not abandon the specified well at that time.

Note: Typically, when responsibility for a monitoring well is shifted to another responsible party, that party also becomes responsible for well abandonment in the future.

(d) *Building, cover or containment structure for protection of groundwater.* For sites or facilities where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cover, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover, or containment structure were removed, the closure letter shall include a description of the residual contamination and the location of the building, cover or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cover, or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency

prior to replacing the building, cover, or containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect the groundwater, as determined under ch. NR 720.

(e) *Building, soil cover, cover or containment structure for prevention of direct contact with soils.* For sites or facilities where a building, or an engineering control, such as a soil cover, cover, or engineered containment structure is required to be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720, the closure letter shall include conditions which require the property owner to ensure that the building, soil cover, or cover such as concrete or asphalt pavement, or a composite cover, or engineered containment structure will be repaired and maintained until it is no longer needed. The closure letter shall include a description of the residual contamination and the location of the building, soil cover, cover, or engineered containment structure, and shall restrict the use of the land where the building, soil cover, cover, or engineered containment structure is located to ensure that the building, soil cover, or cover, will function as intended, to prevent direct contact, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, soil cover, cover, or engineered containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect human health from direct contact, as determined under ch. NR 720.

(f) *Structural impediment.* For sites or facilities where a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, or the completion of a remedial action, the closure letter shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency and then conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible.

(g) *Industrial residual contaminant levels.* For sites or facilities where industrial residual contaminant levels under ch. NR 720 have been applied for closure, the closure letter shall include a condition that restricts the use of that property to an industrial land use until non-industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation.

(h) *Vapor mitigation system for sites where sub-slab levels attain or exceed the vapor risk screening level.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where sub-slab levels attain or exceed the vapor risk screening level. The closure letter shall include conditions which require the property owner to maintain the system until it is no longer needed. The closure letter may include conditions which require maintenance of certain structural features of existing buildings. The closure letter shall include conditions which require the immediate repair and replacement of system components that fail.

(i) *Vapor mitigation system where compounds of concern are in use.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where the site is using the compounds of concern in their daily operations, in accordance with par. (h). The agency may require restrictions on the use or occupancy of the property to ensure that closure will be protective. The closure letter shall require notification of the agency and evaluation of the vapor intrusion pathway prior to changing use to a residential setting. The closure letter shall include a description of the type and location of the residual contamination.

Note: This would include sites or facilities where closure was based on worker exposure conditions, which then change to a different use, with different exposure assumptions.

(j) *Vapor mitigation system for sites where vapor intrusion is of concern due to hydrogeologic conditions.* The agency may require installation and operation of a vapor mitigation system and any other systems necessary for the proper operation of the vapor mitigation system, for sites or facilities which present a vapor risk, based on site-specific hydrogeologic circumstances. The closure letter shall identify the specific hydrogeologic conditions and a description of any other system necessary for the proper operation of the vapor mitigation system.

Note: This may include sites where contaminated groundwater enters the structure, or sites where the moisture content of soils below the slab is high or sub-slab samples are difficult to obtain, but where other conditions indicate the potential for vapor intrusion.

(k) *Site-specific exposure conditions.* The agency may restrict the use or occupancy of the property for sites or facilities based on specific exposure assumptions for vapor intrusion, to ensure that closure will be protective. The closure letter shall include the specific exposure assumptions on which the closure decision was based.

Note: This may include non-residential settings; sites or facilities where certain commercial or industrial exposures were applied at the time of closure, which later change to a residential setting, such as single or multiple family residences, or educational, child, or senior care facilities, where a residential exposure would apply.

(L) *Potential for future exposure to vapors.* For sites or facilities where residual soil or groundwater contamination from volatile compounds exists, but where no building is present, the agency may require protective measures to eliminate or control vapor intrusion into a future building. The closure letter may include conditions requiring that the agency be notified prior to any building construc-

tion, and a requirement that appropriate vapor control technologies be used in the construction of any building, unless an assessment is conducted which shows that the residual contaminant levels are protective of the new use.

Note: The potential for vapor migration into a future building is dependant on the type of building and the planned use of the building. Building control technologies may include but are not limited to passive barriers, passive venting, sub-slab depressurization, sub-membrane depressurization, sub-slab pressurization, building pressurization, and indoor air treatment.

(m) *Site-specific conditions.* For sites or facilities where closure is requested, and where the agency determines that there are site-specific circumstances that warrant site-specific closure conditions, the closure letter shall specify the exposure assumptions, use or occupancy restrictions, and necessary maintenance and notification of the agency if conditions change such that the exposure assumptions used no longer apply to the site, facility or property. Site-specific circumstances may include but are not limited to situations where contamination remains in media other than soil, groundwater, or vapors; or exposure and migration pathways not otherwise addressed make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment. If there is contamination remaining in media other than soil, groundwater, or vapor, the final closure letter shall also state that any sediments or other solids excavated in the future from an area that had residual contamination at the time of closure shall be sampled, analyzed, handled, and disposed of in compliance with applicable state and federal laws.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 727

CONTINUING OBLIGATIONS REQUIREMENTS AND REOPENING CLOSED CASES

NR 727.01	Purpose.		continuing obligations.
NR 727.02	Applicability.	NR 727.09	Updating the department database or continuing obligations.
NR 727.03	Definitions.	NR 727.11	Fees.
NR 727.05	Continuing obligation responsibilities.	NR 727.13	Reopening closed cases.
NR 727.07	Notification of the agency with administrative authority regarding		

NR 727.01 Purpose. The purpose of this chapter is to specify the minimum responsibilities of responsible parties and owners and occupants of properties with residual contamination, where continuing obligations have been imposed in a closure approval letter or in a remedial action plan approval, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.02 Applicability. This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

Note: "Agency with administrative authority" or "agency" is used in several sections of ch. NR 727 to distinguish between the actions for which the department is responsible, in contrast to those actions where the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to review and approve closure requests, and to review information on the department database regarding compliance with conditions of closure.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.05 Continuing obligation responsibilities.

(1) A party or person who owns or occupies a property where a continuing obligation has been imposed under either s. NR 708.17 or 722.15 or ch. NR 726 shall:

(a) Comply with the requirements imposed by the agency, without regard to when the person obtained or occupied the property. This may include any continuing obligation necessary to ensure that conditions at the property, site or facility remain protective of public health, safety, and welfare and the environment.

Note: Ch. 292, Stats., allows for legally enforceable agreements (private contracts) between parties to address the continuing obligations imposed by an agency. Since the agency is not a party to these agreements, the property owner remains responsible for compliance with a continuing obligation if an issue arises.

(b) Perform the following actions in compliance with the conditions specified by the agency, as applicable:

1. Operate and maintain the response required.

2. Maintain an inspection log, and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed.

3. Submit the inspection log electronically, on a form provided by the department, to the agency at the frequency required.

4. Conduct long-term monitoring.

(c) Allow reasonable access to the agency for inspection of any required continuing obligations.

(d) Manage any residual contamination in accordance with applicable state and federal laws.

(2) For cases where a continuing obligation is required under either s. NR 708.17 or 722.15, or ch. NR 726, the property owner shall notify anyone purchasing the property of the responsibility to comply with the continuing obligation.

(3) For cases where occupants are responsible for maintenance of a continuing obligation under either s. NR 708.17 or 722.15 or ch. NR 726, the property owner shall include the continuing obligation in the lease agreement.

(4) In order to maintain the off-site exemption under s. 292.13, Stats., the property owner, or occupant if applicable, shall avoid all of the following:

(a) Interference with response actions taken.

(b) Actions that may make the contamination worse or that would cause or worsen the discharge of a hazardous substance to the environment.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.07 Notification of the agency with administrative authority regarding continuing obligations. For situations where a continuing obligation has been imposed under either s. NR 708.17, 722.15, or 726.13, the property owner shall notify the agency within 45 days prior to taking any of the following actions, to determine whether further action may be necessary to protect human health, safety, or welfare or the environment:

(1) Removal of a building, cover, including a soil cover, barrier, or engineered containment structure or a portion thereof.

(2) Removal of a structural impediment, including any structural impediment that prevented completion of the investigation or remediation.

(3) Change from industrial to non-industrial land use, including where soil standards applied at closure were based on industrial land use exposure assumptions.

(4) Change in use of a vapor mitigation system, including a passive or active vapor mitigation system.

(5) Change in use from non-residential setting to residential setting, including where vapor risk screening levels were based on non-residential setting exposure assumptions at closure.

Note: This may include sites or facilities where exposures applicable to non-residential settings, (i.e., commercial or industrial uses, or continued use of the compound of concern), changes to a residential setting (i.e. single or multiple family dwellings, or educational, child care and senior care facilities).

(6) Construction of a building over residual soil or groundwater contamination by volatile compounds, including where a building did not exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway.

(7) Site-specific conditions, including any other situation where the agency required notification, on a case-by-case basis, including changes in use or occupancy of a property.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.09 Updating the department database or continuing obligations. In order to evaluate any of the following situations, the agency may require that the person requesting a change submit information, as necessary:

(1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The agency may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either s. NR 708.17, 722.15, or 726.13, in cases where compliance with the restriction, condition, or continuing obligation has not been maintained.

Note: The department conducts audits of cases where continuing obligations have been imposed. In some cases, these audits identify a lack of compliance with the continuing obligation imposed, and measures are required to return the site to compliance.

(2) UPDATING A GROUNDWATER USE RESTRICTION. For cases that have been closed conditioned upon the recording of a groundwater use restriction, the responsible party or property owner may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, apply for unconditional case closure and may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for a preventive action limit exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140.28 are met. Once an exemption is granted under s. NR 140.28, the responsible party may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.

Note: Prior to November, 2001, cases with groundwater enforcement standard exceedances were closed with a deed restriction, called a groundwater use restriction. The groundwater use restriction required department review and approval of a water supply well constructed or reconstructed on an affected property. Since November, 2001, these sites have been closed by adding them to a department database. Chapter NR 812 contains the requirement for department review and approval of any well constructed or reconstructed on a property listed on the GIS Registry (department database). Responsible parties or property owners of sites or facilities or properties subsequently meeting groundwater enforcement standards may request to have the deed restriction updated and the site or property removed from the department database, or that the information on the database be modified.

(3) UPDATING A DEED RESTRICTION. For cases that have been closed with a deed restriction that has since been satisfied, the responsible party or property owner may, at any time after the conditions necessitating a deed restriction have been either eliminated or satisfied and the restriction is no longer needed, request that the agency issue a written determination that can be referenced in an affidavit, confirming this situation. An affidavit can be then recorded at the county register of deeds office to give notice that some or all of the conditions, as applicable, in the previously recorded deed restriction are no longer required.

Note: Prior to June 3, 2006, cases meeting certain conditions were closed with a deed restriction in accordance with ch. NR 726. Since that time, the use of deed restrictions for closure have been replaced with conditions in a closure letter under ch. NR 726 or in a remedial action approval under ch. NR 722.

(4) REMOVAL FROM THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, 722.15, or 726.13, the responsible party, property owner or other party may apply to the agency for removal of the site or facility or property, as applicable, from the department database. A site may not be removed from the database until all applicable standards have been met and all requirements imposed have been satisfied or nullified. A request may be submitted to the agency at any time after any of the following have been achieved:

(a) Groundwater contaminant concentrations are below ch. NR 140 enforcement standards.

(b) Soil contaminant concentrations are below ch. NR 720 soil standards.

(c) Other requirements or continuing obligations imposed have been satisfied or nullified.

(5) MODIFICATION OF THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.17, 722.15, or 726.13, the responsible party, property owner or other party may request that the department modify information

on the department database at any time after any of the following have been achieved:

(a) Groundwater contaminant concentrations are below ch. NR 140 enforcement standards.

(b) Soil contaminant concentrations are below ch. NR 720 soil standards.

(c) Other requirements or continuing obligations imposed have been satisfied or nullified.

Note: Cases may be included on the department database for more than one reason. If one or more of the conditions have been satisfied or nullified, but one or more remain, the information on the database can be changed to reflect current conditions.

Note: Fees are required under ch. NR 749 for the removal or modification of information on the department database.

(6) DEED NOTICES. (a) Deed notices that are required for modification or removal of a site or facility or property from the department database, or for another agency decision, shall be drafted in compliance with all of the following requirements:

1. The document shall be drafted as an affidavit in the format required by s. 59.43 (2m), Stats.

2. The property's legal description shall be typed onto the form or a copy of the legal description shall be attached and incorporated by reference.

3. The document shall be signed by the property owner or owners, and their signatures shall be notarized.

(b) If a deed notice is required under this section, responsible parties shall record the deed notice within 90 days after the agency specifies that a deed notice is required.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 727.11 Fees. (1) REQUEST FOR REVIEW. A request for a review, a determination, or processing a change to the department database under this chapter may not be considered by the agency until proof of payment of the required fees has been received by the department's remediation and redevelopment program, in accordance with ch. NR 749.

(2) REVIEW FEE. For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for review of a request to update a deed restriction, or to modify or remove a site or facility or property from the department database shall be submitted to the department with each request.

(3) DEPARTMENT DATABASE PROCESSING FEE. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed in ch. NR 749 for processing the change to the department database shall be submitted to the department with each request.

(b) For sites or facilities where the department of agriculture, trade and consumer protection has administrative authority to oversee the remediation of the site or facility, the fee for processing the change to the department database shall be submitted to the department of natural resources with each request.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13; correction in (3) (a) made under s. 13.92 (4) (b) 6., Stats., October 2013 No. 694.

NR 727.13 Reopening closed cases. (1) The department may require additional response actions, including monitoring, for any case which has previously been closed by the department if information regarding site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety, or welfare or the environment.

(2) The department may require additional response actions if a property owner fails to comply with a condition of closure, a deed restriction, or with the certificate of completion issued pursuant to s. 292.15, Stats., or fails to maintain or comply with a continuing obligation.

(3) If additional response action is required for a previously closed case, the department:

(a) Shall indicate in writing to the responsible parties that additional response action is needed at the site or facility and provide the responsible parties with information regarding the nature of the problem and category of response action that is needed.

(b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. [NR 700](#) to [754](#) where applicable, within a time period established by the department.

(4) The party who conducted the cleanup, or a person who owns the source property, or a person who owns an affected property, may request reopening of a closed case, or may conduct additional remedial actions.

History: [CR 12-023](#); cr. [Register October 2013 No. 694](#), eff. 11-1-13.

Chapter NR 728

ENFORCEMENT AND COMPLIANCE AUTHORITIES

NR 728.01 Purpose.
 NR 728.02 Applicability.
 NR 728.03 Definitions.
 NR 728.05 Referrals for rule violations.
 NR 728.06 Fees related to enforcement actions.

NR 728.065 Interest on recovered monies.
 NR 728.07 Environmental agreements.
 NR 728.09 Special orders.
 NR 728.10 Entry of a property on the department database.
 NR 728.11 Recording a notice of contamination.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., [Register, August, 1997, No. 500](#).

NR 728.01 Purpose. The purpose of this chapter is to describe the tools that are available to the department to ensure compliance with chs. [NR 700 to 754](#) and to implement response actions at sites or facilities with environmental pollution, and sites or facilities where there has been a discharge of a hazardous substance. This chapter is adopted pursuant to ss. [227.11 \(2\)](#) and [289.06 \(1\)](#), Stats., and ch. [292](#), Stats.

History: Cr. [Register, April, 1994, No. 460, eff. 5-1-94](#); am., [Register, February, 1996, No. 482, eff. 3-1-96](#); correction made under s. 13.93 (2m) (b) 7., Stats., [Register, March, 2001, No. 543](#); [CR 12-023](#); am. [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.02 Applicability. This chapter applies to actions taken by the department under the authorities of chs. [289](#) and [292](#), Stats.

History: Cr. [Register, April, 1994, No. 460, eff. 5-1-94](#); am., [Register, February, 1996, No. 482, eff. 3-1-96](#); [CR 12-023](#); am. [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.03 Definitions. In this chapter:

(1) "Environmental agreement" means an agreement entered into by one or more persons and the department pursuant to ch. [292](#), Stats., which requires the performance of a response action at a site or facility which causes or threatens to cause environmental pollution.

(2) "Consent order" means an administrative order issued by the department which the order recipient stipulates to and waives the right to a contested case hearing on the order.

(3) "Contested case" has the meaning specified in s. [227.01 \(3\)](#), Stats.

Note: Section [227.01 \(3\)](#), Stats., defines "contested case" to mean "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order." A contested case hearing is only conducted by the department in situations where state statutes allow an aggrieved party to request a hearing before an administrative law judge.

History: Cr. [Register, April, 1994, No. 460, eff. 5-1-94](#); am. (1), [Register, February, 1996, No. 482, eff. 3-1-96](#); [CR 12-023](#); am. (1), cr. (3) [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.05 Referrals for rule violations. Any person who violates the requirements of chs. [NR 700 to 754](#) or ch. [292](#), Stats., may be referred to the office of the attorney general by the department. Any person who is referred to the office of the attorney general by the department shall be given written notice of the referral. Section [299.95](#), Stats., requires that the attorney general enforce chs. [289 to 292](#), Stats., and all rules promulgated to implement chs. [289 to 292](#), Stats.

Note: Section [299.97](#), Stats., provides for forfeitures of not less than \$10 nor more than \$5,000 for each violation of chs. [289 to 292](#), Stats., any rule promulgated under chs. [289 to 292](#), Stats., or any plan approval, license or special order issued under chs. [289 to 292](#), Stats. Each day of continued violation is a separate offense.

History: Cr. [Register, April, 1994, No. 460, eff. 5-1-94](#); am. [Register, February, 1996, No. 482, eff. 3-1-96](#); [CR 12-023](#); am. [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.06 Fees related to enforcement actions. The department may assess and collect fees from a person who is subject to an order or other enforcement action to cover the costs

incurred by the department to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct.

Note: Section [292.94](#) allows the department to assess and collect fees to cover the costs incurred by the department. Chapter [NR 749](#) specifies the fees that apply to these actions.

History: [CR 12-023](#); cr. [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.065 Interest on recovered monies. (1) The department shall assess and collect interest on the unpaid balance of monies recovered by the department, when payments are made over time.

(2) The interest rate shall be established at the time of the settlement, and may not be changed during the repayment period. The interest rate shall be based on the amount of the unpaid balance of the monies owed, at the rate specified in s. [71.82 \(1\) \(a\)](#), Stats., compounded monthly.

(3) Interest is to be paid to the department on a monthly basis. **Note:** Sections [292.11](#) and [292.31](#), Stats., require the department to assess interest on the unpaid balance of monies required to be reimbursed to the department, when these monies are to be paid over time.

History: [CR 12-023](#); cr. [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.07 Environmental agreements. (1) AGREEMENTS. The department may enter into an environmental agreement with any person for response actions pursuant to ch. [292](#), Stats., or into intergovernmental agreements with local governments or municipalities pursuant to s. [66.0301](#), Stats.

(2) CONTENT. All environmental agreements entered into pursuant to ch. [292](#), Stats., shall contain at a minimum, all of the following provisions:

(a) A description of the site or facility, and its location.

(b) A listing of the parties to the agreement.

(bm) A description of the roles and responsibilities of the persons who are parties to the agreement.

(c) A schedule for completing the response action covered by the agreement.

(d) Provision for stipulated penalties if the response action is not completed in accordance with the agreement schedule.

(e) The method for resolving any disputes which may arise during the implementation of the response actions.

(f) The method for modifying the agreement.

(g) Fees associated with the department's cost of review and approval as set forth in ch. [NR 749](#).

History: Cr. [Register, April, 1994, No. 460, eff. 5-1-94](#); am. (1), (2) (intro.), [Register, February, 1996, No. 482, eff. 3-1-96](#); [CR 12-023](#); am. (title), (1), (2) (intro.), (b), cr. (bm), am. (2) (c), (d), (f), cr. (2) (g) [Register October 2013 No. 694 eff. 11-1-13](#).

NR 728.09 Special orders. (1) EMERGENCY ORDERS. The department may issue emergency orders without prior hearing, pursuant to s. [292.11 \(7\) \(c\)](#), Stats., to the person or persons responsible for a hazardous substance discharge, for the purpose of protecting public health, safety, or welfare. Such an emergency order shall become effective upon receipt. However, the recipient of the order shall have 10 days after service of the order to file a petition for judicial review pursuant to ss. [227.52](#) and [227.53](#), Stats. The emergency order shall remain in effect after the filing

of a petition for judicial review unless the reviewing court issues a stay.

(1m) ORDERS FOR PREVENTION OF A DISCHARGE. (a) The department may require that preventive measures be taken by any person possessing or having control over a hazardous substance if the department finds that existing control measures are inadequate to prevent discharges.

(b) The department shall specify necessary preventive measures by order. The order shall be effective 10 days after issuance, unless the person named requests a hearing, in which case no order may become effective until the conclusion of the hearing.

(2) UNILATERAL ADMINISTRATIVE ORDERS. The department may issue unilateral administrative orders pursuant to s. 292.11 (7) (c), Stats. Such an administrative order shall become effective 30 days after service of the order, unless the order recipient petitions for a contested case hearing within that 30-day period. All such petitions shall be filed in accordance with the requirements of s. NR 2.05.

(3) CONSENT ORDERS. The department may, in its discretion, issue a consent order pursuant to s. 292.11 (7) (c), Stats., if the order recipient is willing to stipulate to the order's issuance.

Note: Section 292.94, Stats., allows the department to assess and collect fees to cover the costs incurred by the department. Chapter NR 749 specifies the fees that apply to these situations.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: cr. (1m) Register October 2013 No. 694 eff. 11-1-13.

NR 728.10 Entry of a property on the department database. **(1) GENERAL.** Where the department has information to demonstrate that the source of contamination is on the property and the property owner or other responsible party has failed to take adequate response action, the department may list the properties where contamination from a hazardous substance discharge has been identified on the department database. The department shall notify the property owner in writing of the department's intention to list the property on the department database in order to provide notice to the public of the contamination. If the property owner does not respond within 30 calendar days from the date on the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or provides information which clearly demonstrates that no further investigation or remediation of environmental contamination is necessary, the department may proceed to list all properties where contamination from a hazardous substance discharge has been identified on the database.

(2) SUBSEQUENT MODIFICATIONS. (a) If the property owner or other responsible party subsequently decides to investigate and remediate the remaining contamination the department shall modify or remove the property from the database in accordance with the provisions in ch. NR 727.

(b) If a deed affidavit was previously recorded for the property and subsequent action was taken that results in the need to modify or supplement the information contained within that affidavit the department shall record a second affidavit at the office of the register of deeds for the county in which the property is located to supersede the current affidavit. If any of the requirements in ch. NR 726 for listing a property on the database are met following completion of the additional investigation and remediation, the department will proceed with listing the appropriate property or properties concurrently with filing the subsequent affidavit.

Note: Chapter NR 749 specifies the fees that must accompany all requests to add, modify or remove a site or property from the department database.

History: CR 12-023: cr. Register October 2013 No. 694 eff. 11-1-13.

NR 728.11 Recording a notice of contamination. **(1) GENERAL.** Except for contamination caused by a discharge from a fuel oil tank used solely for residential purposes, the department may in addition to using the provisions in s. NR 728.10 and, after following the procedures in sub. (2), record an affidavit at the office of the register of deeds for the county in which the property is located which specifies the legal description of the property, indicates that contamination from a hazardous substance discharge has been identified on the property which has not been adequately defined or remediated and gives notice to the public, and any prospective purchaser, of the existing contamination and the environmental liability associated with the property.

(2) PROCEDURE. Where the department has information to demonstrate that the source of contamination is on the property and the property owner or other responsible party has failed to take adequate response action, the department may record an affidavit at the office of the register of deeds for the county in which the property is located once the following steps have been taken:

(a) The department shall send the property owner a letter, by certified mail, stating the department's intention to record an affidavit at the county register of deeds office giving notice of the contamination, unless the property owner responds by the deadline in the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or provides information which clearly demonstrates that there is no environmental contamination on the property.

(b) If the department receives no response, or an unacceptable response, to the letter sent in par. (a), the department shall send a second letter to the property owner and to any mortgagee of record, by certified mail, indicating the department's decision to record an affidavit at the county register of deeds office unless the property owner responds by the deadline in the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or appeals the department's determination. The deadline in this letter may not be less than 30 days from the date the property owner receives this letter. A copy of the affidavit to be recorded shall be attached to this letter.

(c) If an acceptable response is not received within the time period set forth in the letter sent in par. (b), the department may, as soon as practicable but in no case less than 15 days after the deadline in the letter sent in par. (b), record the affidavit at the office of the register of deeds for the county in which the property is located.

(3) SUBSEQUENT FILINGS. If the contamination identified in the affidavit is subsequently remediated or otherwise addressed to the satisfaction of the department, the department shall record a second affidavit at the office of the register of deeds for the county in which the property is located to supersede an affidavit filed under sub. (2), after giving written notice to the property owner. A second affidavit shall specify the legal description of the property and indicate whether or not there is any residual contamination exceeding existing state standards on the property that is inaccessible or otherwise impracticable to remediate.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; r. (4), Register, August, 1997, No. 500, eff. 9-1-97; CR 12-023: am. (1) Register October 2013 No. 694 eff. 11-1-13.

Chapter NR 730

SUPERFUND COST SHARING

NR 730.01 Purpose.
NR 730.02 Applicability.
NR 730.03 Definitions.

NR 730.05 Superfund state cost share.
NR 730.07 Municipal cost share.

NR 730.01 Purpose. The purpose of this chapter is to establish criteria for the department's expenditure of moneys for Superfund state cost share purposes from the appropriations that are referenced in s. 292.31 (7) (b), Stats., and for determining a municipality's responsibility to pay a share of the state's Superfund cost share in cases where a municipality will benefit from the proposed remedial action. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1) and 292.31, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 730.02 Applicability. This chapter applies to all cases where the department is considering signing a Superfund state contract with U.S. EPA, under the authority of s. 292.31 (7), Stats., in order to authorize the payment of a state cost share for a Superfund-financed remedial action. It also applies to those cases where a municipality will benefit from the proposed remedial action and is not a responsible party under section 107 (a) of CERCLA.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 730.03 Definitions. The definitions found in s. NR 700.03 apply to this chapter.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 730.05 Superfund state cost share. (1) COOPERATIVE AGREEMENTS AND SUPERFUND STATE CONTRACTS. The department may enter into cooperative agreements or Superfund state contracts with the U.S. EPA for the purpose of taking a response action under CERCLA. The department may use money from the appropriations referenced in s. 292.31 (7), Stats., to pay the required Superfund state cost share of any Superfund-financed remedial action taken at a national priorities list site in accordance with the criteria in sub. (2).

(2) CRITERIA FOR COST SHARING. (a) General. The department shall consider the criteria in pars. (b) to (h), to determine whether or not to enter into a Superfund state contract with U.S. EPA.

(b) Department evaluation of the proposed remedial action. The department shall review the remedial investigation, feasibility study, the proposed plan and any other reports prepared by U.S. EPA to evaluate the proposed remedial action. The department may not commit the required Superfund state cost share for a remedial action unless the department is in substantial agreement with EPA's assessment of the expected ability of the proposed remedial action to protect public health, safety and welfare and the environment, and to comply with the applicable state environmental and public health laws and standards, whichever are more stringent.

(c) Money available to the department. The department shall consider the money available from the appropriations in s. 292.31 (7) (b), Stats., taking into account all of the following:

1. At the beginning of each fiscal year, the department shall reserve adequate funds for planned investigations, environmental repair and hazardous substance spill program response actions, abandoned container response actions, LUST program state matching funds and emergency actions.

2. The department shall consider the timing of expenditures in relation to the end of the state fiscal year and the availability of new appropriations. When nearing the end of a state fiscal year, the department may use funds earlier reserved for environmental repair or hazardous substance spill program response actions, abandoned container response actions and emergency immediate actions, to commit to a Superfund state cost share for remedial actions to be taken at a national priorities list site.

(d) Money available from other sources. The department shall consider the money available from other sources to pay the capital cost and annual operation and maintenance costs for remedial actions taken at a national priorities list site. Sources may include any one of the following:

1. Potentially responsible parties or interested persons, including local governments, who are willing and able to pay any part of the remedial action costs.

2. Funding from the Wisconsin well compensation program under s. 281.75, Stats.

3. For mining facilities, the investment and local impact fund under s. 289.68 (2) to (4), Stats.

4. Closure bonds or other proof of financial responsibility that were previously submitted to the department.

(e) Timing of response actions. The department shall consider whether or not the threat to public health, safety or welfare or the environment at the site or facility shall become greater if remedial action is delayed.

(f) Preclusion of other projects. The department shall consider whether the department's ability to take response action at other sites or facilities shall be precluded by committing state funds for the Superfund state cost share for the proposed remedial action to be taken at a national priorities list site.

(g) Department staff resources. The department shall consider the availability of department staff to serve as project managers and to review submittals.

(h) Other criteria. The department may consider any other criteria it deems appropriate.

(3) NOTIFICATION. After consideration of the criteria in sub. (2), the department shall notify EPA as to whether or not the department shall commit the required Superfund state cost share for the proposed remedial action to be taken under CERCLA.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (1), (2) (a), (c) (intro.), (d) 2. and 3. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 730.07 Municipal cost share. (1) GENERAL. (a) The department may require a municipality that is not a potentially responsible party under CERCLA to pay up to 50% of the amount expended by the department, for a Superfund-financed response action taken in cooperation with the U.S. EPA, under CERCLA. A payment schedule for the municipal cost-share amount shall be negotiated between the municipality and the department, and shall include credit to the municipality for provision of operation and maintenance activities, as well [as] credit for payment of any capital costs. A municipality shall not be required to pay more than \$3 per capita in any one year.

(b) A response action need not be taken within the boundaries of a municipality for that municipality to be required to pay a share of the state's Superfund cost share. More than one municipality may be required to pay a share of the state's cost share at a CERCLA site, with the total amount charged to all municipalities at a given site not to exceed 50% of the amount of the state's cost-share. If more than one municipality will benefit, the analysis performed pursuant to sub. (2) shall be done for each municipality.

(2) METHOD. The department shall use the following methods specified in pars. (a) to (d), including Tables 1 and 2, to determine the portion of the state's Superfund cost share a municipality shall be required to pay.

(a) The department shall use Table 1 to determine the appropriate percentage for the full property value per capita in the municipality, as specified in subd. 1., and the appropriate percentage for the average per capita income of residents in the municipality, as specified in subd. 2.

1. The full property value per capita in the municipality. The full property value per capita for each municipality shall be determined using the most recent data published by the Wisconsin department of revenue. The full property value per capita for a municipality shall be compared with the full property value per capita for all municipalities in Wisconsin to determine the municipality's relative ability to pay with respect to per capita property value.

2. The average per capita personal income of residents in the municipality. The most recent Wisconsin department of revenue statistics that are available shall be used to determine the per capita personal income for all municipalities in Wisconsin. The average per capita personal income for a municipality shall be compared with the average per capita personal income for all municipalities in Wisconsin to determine the municipality's relative per capita personal income.

(b) The full property value per capita in the municipality and the per capita personal income of the residents in the municipality, compared to all Wisconsin municipalities, shall be calculated separately and the resulting percentages shall be summed together to get a total percentage for Table 1.

Table 1

Municipality's Property Value per Capita Divided by Average Property Value per Capita for All Wisconsin Municipalities	Relative Ability to Pay
>100%	25%
75% – 99.9%	18%
50% – 74.99%	12%
25% – 49.99%	6%
0% – 24.99%	1%
Municipality's per Capita Income Divided by Average per Capita Income for All Wisconsin Municipalities	Relative Ability to Pay
>100%	25%
75% – 99.99%	18%
50% – 74.99%	12%
25% – 49.99%	6%
0 – 24.99%	1%

(c) The department shall use Table 2 to determine the benefit received by the municipality. The benefit of a remedial action to a municipality shall be defined in terms of the cost savings to the municipality resulting from implementation of the remedial action. To calculate the benefit, cost savings for the 10 years following construction of the remedial action shall be used in situations where the remedial action will require operation and maintenance after construction is completed. In calculating the benefit, only those projects that would be performed by the municipality (i.e. installation of a new water supply, road maintenance or flood protection) shall be counted.

Table 2

Benefit to the municipality, measured as a percentage of most recent annual budget	Percentage for purposes of determining amount municipality is required to pay
>50%	50%
25.1 – 49.9%	25%
10.1 – 24.9%	10%
<10%	1%

(d) After the individual percentages have been determined using the methods in pars. (b) and (c), the percentages shall be summed and divided by 2 to get a final percentage. The final percentage shall represent the percentage of the state's Superfund cost share the municipality shall have to pay.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

Chapter NR 732

COST REIMBURSEMENT FOR MUNICIPAL LANDFILL MONITORING

NR 732.01 Purpose.
NR 732.02 Applicability.
NR 732.03 Definitions.

NR 732.05 Eligibility.
NR 732.07 Applications for reimbursement.
NR 732.09 Reimbursement.

NR 732.01 Purpose. The purpose of this chapter is to provide eligibility criteria and procedures for submitting, processing and approving requests for state reimbursement of monitoring costs incurred by a municipality, that is an owner or a past or present operator of a closed solid or hazardous waste disposal site or facility which was either a nonapproved municipal landfill or a waste site, as defined in s. 292.01 (21), Stats. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1), 289.31 (7) and 292.31 (4), Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 732.02 Applicability. This chapter applies to monitoring required of a municipality through the issuance of a special order by the department under the authority of s. 289.31 (7) (d), Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 732.03 Definitions. In this chapter:

(1) "Closed" means no longer accepting solid or hazardous waste.

(2) "Eligible monitoring cost" means expenditures incurred by a municipality for monitoring required by an order under s. 289.31 (7) (f), Stats., including expenditures for geophysical surveys, mapping, private and public well sampling, placement of monitoring wells, access fees and actual costs of collection.

(3) "Environmental fund" means the fund established in s. 25.46, Stats.

(4) "Monitoring" has the meaning specified in s. 289.31 (7) (b), Stats.

Note: Section 289.31 (7) (b), Stats., defines "monitoring" to mean "activities necessary to determine whether contaminants are present in groundwater, surface water, soil or air in concentrations that require investigation or remedial action. 'Monitoring' does not include investigations to determine the extent of contamination, to collect information necessary to select or design remedial action, or to evaluate the performance of remedial action."

(5) "Nonapproved municipal landfill" means either a licensed solid or hazardous waste disposal facility which was never an "approved facility" as that term is defined in s. 289.01 (3), Stats.; or an area used by a municipality for the disposal of municipal or industrial waste, or both, which never received a license or written approval for operation from the department.

(6) "Waste site" has the meaning specified in s. 292.01 (21), Stats.

Note: Section 292.01 (21), Stats., defines "waste site" to mean "any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred."

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (2) to (6) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 732.05 Eligibility. (1) A municipality that is an owner or a past or present operator of a closed, nonapproved municipal landfill or waste site may seek reimbursement for any eligible costs of monitoring incurred pursuant to an order issued by the department under s. 289.31 (7) (d), Stats., if all of the following conditions are satisfied:

(a) The municipality is in compliance with the order issued by the department under s. 289.31 (7) (d), Stats.

(b) The municipality has provided an affidavit to the department that the municipality has filed a claim for the costs of moni-

toring with all of the municipality's past and present liability insurance carriers, for which insurance coverage may still be in effect, and that to date coverage has been denied in whole or in part.

(c) If the municipality's liability insurance carriers pay the municipality for any of the monitoring costs for the same closed, nonapproved municipal landfill or waste site for which the municipality received any payment under this chapter, the municipality agrees that it shall reimburse the department for the payments made under this chapter from the insurance proceeds.

(d) The costs incurred are reasonable and necessary for the monitoring that has been ordered.

(2) Any monitoring that is conducted at a nonapproved municipal landfill that closes after the issuance of a department order requiring monitoring shall not be eligible for reimbursement under this chapter.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (1) (intro.) and (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

NR 732.07 Applications for reimbursement.

(1) Municipalities shall submit reimbursement applications on forms that are available from the department.

Note: Copies of these forms may be obtained from the Department of Natural Resources, Bureau of Solid and Hazardous Waste Management, Emergency and Remedial Response Section, P.O. Box 7921, Madison, WI 53707.

(2) All applications for reimbursement of monitoring costs incurred in the previous calendar year or before shall be submitted to the department on or before June 1st of each year, in order to be eligible for payment in that same calendar year. Properly completed applications submitted before June 1st shall be reimbursed no later than September 1 of that year. Applications that are received by the department after June 1st of any year shall be paid from the environmental fund appropriation under s. 20.370 (2) (dv), Stats., on or before September 1 of the following year.

Note: Applications should be submitted to the solid waste staff person assigned to the site for review of eligibility and compliance with the order. The application will be forwarded to the department's environmental repair unit in Madison, for review.

Note: A municipality may elect to carry over eligible costs from one year to the next to maximize their reimbursement should the order be issued so that only a portion of the monitoring cannot be completed prior to June 1st.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 732.09 Reimbursement. (1) The department shall pay the total eligible monitoring costs incurred by the municipality pursuant to an order issued under s. 289.31 (7) (d), Stats., which exceed \$3 multiplied by the municipal population, prior to making other payments from the environmental fund appropriation under s. 20.370 (2) (dv), Stats.

(2) The department shall reimburse a municipality that has submitted a properly completed application for reimbursement, in compliance with the requirements of ss. NR 732.05 and 732.07, up to a maximum of \$100,000 total for each closed, nonapproved municipal landfill or waste site. The department shall reimburse the municipality from the environmental fund appropriation that is referenced in s. 289.31 (7) (f), Stats. Any monitoring costs incurred by the municipality which exceed this maximum shall be the responsibility of the municipality.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

Chapter NR 734

SELECTING AND CONTRACTING ENVIRONMENTAL CONSULTING SERVICES

NR 734.01	Purpose.
NR 734.02	Applicability.
NR 734.03	Definitions.
NR 734.05	Consultant qualification list.
NR 734.07	Selection process.
NR 734.09	Committee nomination procedure.
NR 734.11	Request for qualifications.

NR 734.13	Public notice for proposals.
NR 734.15	Request for proposal.
NR 734.17	Proposal review.
NR 734.19	Interview.
NR 734.21	Award of contract.
NR 734.23	Performance reporting.

NR 734.01 Purpose. The purpose of this chapter is to establish procedures that apply to the procurement of professional services of consultants by the department for projects related to hazardous substance discharge and environmental repair response actions. This chapter is adopted pursuant to ss. 227.11 (2) and 289.06 (1) and (2), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 734.02 Applicability. This chapter applies to the department's selection of, and contract negotiations with, consultants which the department proposes to hire to conduct response actions under the authority of ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 734.03 Definitions. In this chapter:

(1) "Consultant data record form" means a form upon which consultants provide specific data requested by the department to facilitate evaluation of their performance capabilities, experience, personnel and staff and information on past projects.

(2) "Consultant proposal" means those documents submitted by a consultant, indicating interest in providing professional services to the department for a proposed project. The documents may include a tentative project work schedule, the method and shall identify the staff that would be employed to meet the requirements of the proposed project and other information, as requested by the department.

(3) "Project" means any response action which the department proposes to conduct or conducts.

(4) "Minority business" means a business certified by the department of administration pursuant to s. 16.287 (2), Stats.

(5) "Selection committee" means a group composed of department employees appointed by the department secretary, or his or her designee, for the purpose of selecting consultants to provide professional services to the department for a project.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register June 2013 No. 690; CR 12-023: am. (2), (4) Register October 2013 No. 694, eff. 11-1-13.

NR 734.05 Consultant qualification list. (1) The department shall maintain a list of consultants interested in providing professional services to the department. Consultants who wish to be on the list may submit a consultant data record form to the department at any time, listing their qualifications.

(2) Updated consultant data record forms or verification that the information currently on file is still accurate shall be submitted to the department by January 15th of even numbered years in order to remain eligible for providing professional services to the department.

(4) The consultant data record forms shall include a request for information on the firm's status as a minority business.

Note: Consultant data record forms may be obtained by contacting the DNR's Bureau for Remediation and Redevelopment, Fiscal and Information Technology

Section, Public Information Request, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (2), r. (3) Register October 2013 No. 694, eff. 11-1-13.

NR 734.07 Selection process. (1) A list of consultants that, based on an accurate and completed consultant data record form, possess the necessary capabilities for each proposed project shall be provided to the selection committee members.

(2) The selection committee shall review the requirements of each project and the qualifications of consultants and select a consultant considered to be appropriate for each project.

(3) When selecting a consultant, the selection committee may utilize any of the procedures specified in ss. NR 734.09, 734.11 and 734.13, for projects with projected costs less than \$2,500,000.

(4) For projects with projected costs greater than \$2,500,000, the selection committee shall utilize the procedures in s. NR 734.13.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 734.09 Committee nomination procedure.

(1) Any member of the selection committee may nominate a consultant for consideration. The nominated consultant shall either be from the list of consultants supplied under s. NR 734.07 (1) or the consultant shall, at the request of the committee, complete a consultant data record form within 20 days after nomination. If the nominated consultant fails to provide a completed consultant data record form within that time frame the consultant's name shall be removed from consideration for the project.

(2) Upon review of the consultant data record forms of nominated consultants for appropriate capabilities, the committee shall select one or more consultants considered appropriate for the proposed project.

(3) Upon selection, the selection committee shall request a proposal from one or more consultants.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 734.11 Request for qualifications. (1) The selection committee may request consultants who have submitted a consultant data record form to submit an additional statement of qualifications specific to a project.

(2) Criteria for evaluating the project-specific qualifications shall be established by the selection committee or a designee of the chairperson prior to the review of the statement of qualifications.

(3) Proposals may be requested from one or more consultants who meet the project-specific qualification criteria.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 734.13 Public notice for proposals. (1) For projects having an estimated cost which exceeds \$2,500,000, an invitation for any consultant to submit a project-specific statement of qualifications for consideration by the selection committee shall be published by the department as a class 2 notice under ch. 985, Stats., in the official state newspaper. The notice shall contain, at a minimum, all of the following information:

- (a) Project title and location.
- (b) Name of the department.
- (c) Date and place where project information and scope of work may be obtained.
- (d) Description of services required.
- (e) Location where proposals will be received and the date and time receipt of proposals will close.
- (f) Name and phone number of the department contact.

(2) In addition to the class 2 notice required in sub. (1), the department may also solicit project-specific statements of qualifications by any appropriate method, including any of the following:

- (a) Placing the notice in trade publications or newspapers within the locale of the project.
- (b) Mailing the notice directly to potential consultants, if such measure is deemed necessary by the department to assure an adequate number of consultants for consideration by the selection committee.

(3) Criteria for evaluating project-specific qualifications shall be established by the selection committee or the designee of the chairperson prior to review of the statements of qualification.

(4) Proposals may be requested from one or more consultants who meet the project-specific qualification criteria.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (title), cr. (1) (f) Register October 2013 No. 694, eff. 11-1-13.

NR 734.15 Request for proposal. (1) Upon selection of one or more qualified consultants, the selection committee shall transmit to the consultants the department's project scope of work and a request for a proposal for completing the project.

(2) The selection committee may request proposals from any number of qualified consultants.

(3) The department's proposed project scope of work shall include all of the following:

- (a) Consultant reporting requirements.
- (b) Consultant data generation requirements.
- (c) The requirements for a site safety plan.
- (d) A copy of the department's standard contract.
- (e) Any other project-specific requirements.

(4) The request for proposal shall specify a date by which the consultant's proposal shall be submitted to the department. If the consultant cannot provide the completed proposal by the time specified, the department may either grant a time extension or deem the consultant non-responsive and remove the consultant from further consideration for the project.

(5) The consultant's proposal shall include all of the following:

- (a) A detailed description of the work to be completed.
- (b) A list of key personnel expected to work on the project and their qualifications pursuant to ch. NR 712.
- (c) A cost breakdown for the work to be performed, by task and assigned personnel.
- (d) A list of subcontractors expected to work on the project and their qualifications pursuant to ch. NR 712.

(e) A quality assurance and quality control plan.

(f) A site safety plan.

(g) A proposed schedule for completing each phase of work.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: cr. (5) (g) Register October 2013 No. 694, eff. 11-1-13.

NR 734.17 Proposal review. In selecting a consultant for a project, the department shall consider the adequacy of the proposal submitted under s. NR 734.15, in addition to the information in subs. (1) to (5).

(1) Past performance on similar projects.

(2) Experience and expertise necessary for the specific project.

(3) Availability of qualified environmental staff, as required by ch. NR 712.

(4) The consultant's geographic proximity to the site or facility.

(5) Status as a minority-owned firm.

Note: The department shall attempt to ensure that at least 5% of the total amount expended under this section in each fiscal year is paid to minority businesses, as required in s. 23.41 (6), Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 734.19 Interview. (1) If the selection committee considers it necessary, the committee may interview one or more consultants for the purpose of discussing the department's requested scope of services and the consultant's proposed method to implement the department's scope of work.

(2) Upon completion of the consultant's presentations, the selection committee shall select a consultant in accordance with the requirements of s. NR 734.15. An alternate consultant may also be designated by the committee.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 734.21 Award of contract. (1) The department may negotiate the costs and scope of work for any project with a consultant.

(2) Upon completion of contract negotiations, a contract shall be sent to the consultant for signature.

(3) The contract shall be signed by the consultant and the department's secretary.

(4) Projects with a cost greater than \$60,000 shall be signed by the governor, in addition to the signatures required pursuant to sub. (3).

(5) No work on a project may commence until after the required signatures have been obtained.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (4) Register October 2013 No. 694, eff. 11-1-13.

NR 734.23 Performance reporting. The department may evaluate the performance of consultants, create a written record of that evaluation, provide summaries of the evaluation to the consultant, provide the consultant an opportunity to discuss the evaluation with the department and allow the consultant to submit a written response for inclusion in the record.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

Chapter NR 736

PUBLIC NOTICE, BIDDING AND AWARD OF ENVIRONMENTAL CONSTRUCTION CONTRACTS

NR 736.01	Purpose.
NR 736.02	Applicability.
NR 736.03	Definitions.
NR 736.05	Public notice.
NR 736.07	Issuance of addenda.

NR 736.09	Submittal and receipt of bids.
NR 736.11	Withdrawal of bids.
NR 736.13	Bid opening.
NR 736.15	Rejection of bids.
NR 736.17	Award of contracts.

NR 736.01 Purpose. The purpose of this chapter is to establish procedures for the department to implement the award of contracts for environmental construction contracts pursuant to s. 23.41, Stats. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1) and (2), 292.11, 292.31, and 292.41, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.**

NR 736.02 Applicability. This chapter applies to the department's bidding and award of environmental construction contracts with estimated construction costs that exceed \$60,000, which the department proposes to enter into for response actions taken under the authority of s. 292.11, 292.31, or 292.41, Stats.

Note: Small environmental construction projects, with an estimated construction cost of \$60,000 or less, will be processed by the department using expedited procedures not set forth in this chapter.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.**

NR 736.03 Definitions. In this chapter:

(2) "Bid" means a completed standard bid form on which the bidder has set forth the price or prices for which the bidder shall be willing to enter into a contract to perform and complete the work bid, in full compliance with the contract documents.

(3) "Bidder" means a person that submits a bid.

(4) "Bidder's authorized representative" means an individual who has been provided, in writing, the authority to act in the bidder's behalf.

(5) "Bidding period" means the time from the date of first posting of the public notice to the time of bid opening.

(6) "Bid guarantee" means a properly executed form of bid bond, a bank certified check, or a cashier's check, in an amount equal to 10% of the highest combination base bid or bids and alternate bids submitted.

(7m) "Public notice" means a posting of a project and the procedures to be used to submit a bid for the project on a publicly accessible website.

(8) "Supporting document" means those documents submitted with a bid, including the bid guarantee, a power of attorney if a bid bond is submitted as bid guarantee, required affidavit forms and other information specifically requested by the department.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (7) made under s. 13.92 (4) (b) 6., 7., Stats., Register June 2013 No. 690; **CR 12-023: r. (1), am. (5), (6), r. (7), cr. (7m) Register October 2013 No. 694, eff. 11-1-13.**

NR 736.05 Public notice. (1) All drawings and specifications for the project shall be available for distribution to prospective bidders on or before the date upon which the public notice for proposals shall be posted. The public notice for proposals shall specify the following information:

- Location of the work.
- Identification of the department as the owner.

(c) Scope of the work, which describes the primary function of the project.

(d) That a 10% bid guarantee shall be required.

(e) Date and time receipt of bids shall close and public opening shall occur.

(f) Location where bids shall be received.

(g) Date, time and location where drawings and specifications shall be available.

(2) The department shall post a public notice a minimum of 30 days prior to bid opening, unless the department indicates in writing that the bidding period will be for a lesser period of time.

(3) In addition to the public notice, the department may solicit and advertise for proposals by either or both of the following methods:

(a) An advertisement for proposals in trade publications, or newspapers within the locale of the project, which would have the potential of reaching prospective bidders.

(b) An advertisement for proposal mailed directly to potential bidders, if such measure is deemed necessary to encourage adequate competition in bidding.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; **CR 12-023: r. and recr. (title), am. (1) (intro.), (2), (3) (intro.) Register October 2013 No. 694, eff. 11-1-13.**

NR 736.07 Issuance of addenda. (1) The department may issue addenda during the bidding period to correct, alter or to provide clarification of the drawings and specifications or other contract requirements for the project being bid or to extend the bidding period. No oral correction, alteration or clarification of bid documents shall be considered valid.

(2) Each addendum issued shall be identified by project number and title, date of addenda and assigned an addendum number which will indicate consecutive issue.

(4) No addenda shall be issued during the last 7 days prior to the published bid opening date, unless such addenda include an extension of the bid opening date for a minimum of 7 additional days.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; **CR 12-023: r. (3) Register October 2013 No. 694, eff. 11-1-13.**

NR 736.09 Submittal and receipt of bids. (1) All bids shall be submitted in sealed envelopes, unless otherwise directed by the department. The department may allow alternate methods of submitting and accepting bids.

(2) For sealed bids, the bidder shall place all of the following information on the face of the envelope containing the bidder's proposal:

- A statement that the envelope contains a sealed bid.
- Project name.
- Project number.
- Location of project.
- Bid date.
- Name and address of bidder.

(3) The bidder is responsible for the sealed bid being delivered to the place designated in the public notice for proposals, on or before the date and time specified.

(4) All sealed bids received by the department shall be stamped upon the face of the envelope indicating the date and time the envelope was received.

(5) Sealed bids received by the department, after the date and time designated in the public notice, shall have the date and time of receipt stamped upon the face of the envelope and be returned to the bidder unopened.

(6) The bidder shall indicate his or her status as a minority business where provided on the bid form.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (1), (2) (intro.), (3), (5) Register October 2013 No. 694, eff. 11-1-13.

NR 736.11 Withdrawal of bids. At any time before the date and time of bid opening, a bidder or the bidder's representative may withdraw the bid without prejudice to the right of the bidder to submit a new bid. Withdrawal of a bid may be accomplished by one of the following methods:

(1) A written request submitted and signed by the bidder's letterhead stationery.

(2) Personal appearance of the bidder or the bidder's authorized representative. Either individual shall be required to sign a receipt for the withdrawn bid.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 736.13 Bid opening. (1) A representative of the department shall preside at the bid opening as the bidding officer. At the date and time for bid opening, the bidding officer shall announce to those in attendance that bidding is officially closed and public opening and reading of bids will commence.

(2) All of the following rules shall be observed when reading the bids:

(a) Following identification of each bid to be read, it shall be publicly stated whether a bid guarantee has or has not accompanied the bid. If a bid guarantee has not accompanied the bid, the remainder of the bid contents may not be read.

(b) Where both written word and numerical dollar amounts are requested on the bid form, the written word amount is the amount that controls and that shall be publicly read.

(3) The bidding officer shall identify the project title for which the bid shall be read.

(4) All of the following bid information shall be publicly read aloud by the bidding officer and recorded in the official bid tabulation form as bids are read:

(a) The name of bidder whose bid is being read.

(b) The written word price quotation for the base bid and any alternate bids.

(c) If offered, the written word price quotation of a combined bid and identification of the base bids, which constitute the work proposed under the combined bid submitted.

(5) Upon completing the public reading of bids, the bidding officer shall announce that the bid opening for the specific project is officially closed and the results of the bid opening shall be available at a later date after bidding information has been checked and validated.

Note: Any informalities, omissions, errors or mistakes will be evaluated by the department during the validation of bids.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 736.15 Rejection of bids. (1) The department shall reject any bid which evidences any of the following conditions:

(a) The base bid amount and alternate bid amounts as requested in the specifications have not been entered on the bid form.

(b) The bid form has not been signed by the bidder.

(c) The bid guarantee has not accompanied the bid form.

(d) Receipt of an addendum applicable to the award of contract has not been acknowledged on the bid form.

(e) The bid form has been altered or changed in such a way that it incorporates unsolicited material, either directly or by reference, which would alter any essential provision of the contract documents or require consideration of the unsolicited material in determining the award of contract.

(f) The bid is submitted by a bidder whom, through investigation, is found not to be qualified or responsible under s. NR 736.17 (2).

(2) The department may reject any bid if the included documents have any of the following informalities, unless such informalities are waived by the department and corrected by the bidder within 3 business days from date and time of bidder notification:

(a) No bid bond was submitted.

(b) No power of attorney submitted with bid bond.

(c) Date of power of attorney precedes date of bid bond.

(d) Bonding company is not licensed to do business in Wisconsin.

(e) Failure to submit an affidavit, affirming that bidder is not guilty of collusion or fraud with regard to bid submittal.

(f) Failure to submit any other document which is specifically requested in the specifications to be submitted with the bid form, acceptance of which would not constitute a correction or alteration of the bid.

(3) The department may reject all low bids constituting the total lowest construction cost when such amount exceeds the authorized funds available.

(4) The department may reject any or all bids if, in the opinion of the department, the best interest of the state will be served.

(5) Rejection of either a combined bid or the separate bids which correspond to the combined bid, as submitted by the bidder, shall not invalidate the other.

(6) The reason or reasons for rejection of a bid, if due to any of the conditions stated in this section shall be sent to the bidder in writing within 30 days after the date of bid opening.

(7) If a bidder gives prompt written notice that a contract will not be executed due to a mistake, error or omission in the bid, which does not constitute gross negligence, the bid guarantee may be returned by the department.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; CR 12-023: am. (2) (a) Register October 2013 No. 694, eff. 11-1-13.

NR 736.17 Award of contracts. (1) The department shall award contracts to the lowest qualified responsible bidder which results in the lowest total construction cost for the project if such amount does not exceed the available funds authorized for the project.

(2) The lowest qualified responsible bidder shall be determined utilizing all of the following criteria:

(a) The lowest bidder is one whose bid contains the lowest total dollar amount when compared with other bids submitted for the same work.

(b) A qualified bidder is one who meets all of the following conditions:

1. Has completed one or more projects of at least 50% of the size or value of the work being bid and of the type of work completed similar to that being bid. If other experience requirements, other than size or value of past work is deemed necessary by the department, such requirements shall be described in the bid specifications.

2. Has access to all necessary equipment and has the organizational capacity and technical competence necessary to perform the work properly and expeditiously.

3. A joint venture consisting of 2 or more contracting firms organized for the purpose of entering into an environmental construction contract as a single entity shall be considered a qualified

bidder, if the assignment of and provisions for continuity of the various responsibilities within the joint venture are agreed upon prior to award of a contract and further providing that one of the individual firms constituting the joint venture is a qualified bidder as specified in this paragraph.

(c) If the project is of such magnitude as to limit competition as a result of the conditions established for qualification, the department may waive any conditions for qualification.

(d) A responsible bidder is one who meets all of the following criteria:

1. Maintains a permanent place of business.
2. Provides a sworn statement upon request, which shows the bidder has adequate financial resources to complete the work being bid, as well as all other work the bidder is under contract to complete.
3. Is bondable for the term of the proposed contract.
4. Has a record of satisfactorily completing past projects. Criteria considered in determining satisfactory completion of projects by contractors and subcontractors shall include:
 - a. Contracts completed in accordance with drawings and specifications.
 - b. Diligently pursued execution of the work and completed contracts according to the established time schedule and department authorized extensions.
 - c. Fulfilled guarantee requirements of the contract documents.
 - d. Established and diligently maintained a satisfactory affirmative action program in accordance with the contract provisions.
5. Is not presently on an ineligible list maintained by the department of administration for noncompliance with equal

employment opportunities and affirmative action requirements as provided in s. 16.765 (9), Stats., is not presently on an ineligible list for wage rate violations, or on a federal debarred list if the project is federally funded.

(3) The department shall make the final determination as to which bidder is the lowest qualified responsible bidder.

(4) If the total of the proposals submitted by the lowest qualified responsible bidder or bidders exceeds the estimated project cost, the department may negotiate deductive changes, not to exceed 5% of the total bid by any of the lowest qualified responsible bidders, for each contract, to bring the bids within funding limits.

(5) The department may consider any unsolicited material accompanying the bid of the lowest qualified responsible bidder only after contracts have been awarded on the basis of the information contained in the bid form. Such consideration may be given to unsolicited material only if it is in the best interest of the state to do so, and does not warrant rejection due to any of the conditions stated in s. NR 736.15 (1) (e).

(6) Award of a contract shall not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department.

(7) Any contractor or subcontractor who enters into a contract on a state environmental construction project shall assume an obligation to take whatever affirmative action is necessary to ensure equal employment opportunity in all aspects of employment, irrespective of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), Stats., sexual orientation or national origin.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

Chapter NR 738

TEMPORARY EMERGENCY WATER SUPPLIES

NR 738.01	Purpose.
NR 738.02	Applicability.
NR 738.03	Definitions.
NR 738.06	Eligible and ineligible services.
NR 738.10	Request for temporary emergency water supply.

NR 738.11	Determination of eligibility.
NR 738.12	Department approval and payment.
NR 738.13	Denial of requests or termination of funding.
NR 738.14	Variations.

NR 738.01 Purpose. The purpose of this chapter is to provide criteria for using state moneys from the environmental fund for temporary emergency water supplies, when water supply systems have been adversely affected by environmental pollution from a site or facility subject to s. 292.31, Stats., or by a hazardous substance discharge subject to s. 292.11, Stats. This chapter is adopted pursuant to s. 227.11 (2), Stats., and ch. 292, Stats.

Note: Section 281.75, Stats., as implemented under ch. NR 123, provides for reimbursement from the well compensation fund for eligible costs associated with temporary and permanent water supply replacements. Also note, specific authority for this chapter is in s. 292.31 (3) (b) 7., Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; corrections made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 738.02 Applicability. This chapter applies to actions taken by the department under ch. 292, Stats., to provide temporary emergency water supplies to an affected party with a “contaminated well” or “contaminated private water supply” impacted by environmental pollution from a site or facility subject to s. 292.31, Stats., or impacted by a discharge of a hazardous substance subject to s. 292.11, Stats. This chapter also applies to certain situations where the department provides potable water in accordance with the provisions set out in s. 281.77, Stats.

Note: Section 281.77, Stats., as implemented under ch. NR 123, provides for reimbursement from the well compensation fund for eligible costs associated with replacement of a private water supply impacted by contamination caused by an approved facility, as defined in s. 289.01 (3), Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; corrections made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 738.03 Definitions. The following definitions apply to this chapter:

(1) “Advisory” means a written opinion, issued by the department, containing a specific descriptive reference to the well or water supply and recommending that the well or water supply not be used because of potential human health risks.

(2) “Affected party” means a landowner, lessee or other person utilizing a contaminated well or water supply. Affected party does not include:

- The state or any facility owned or operated by the state;
- A city, village, town, county or special purpose district;
- A federal agency, department or instrumentality;
- An interstate agency.

(3) “Connection to an existing water supply” means to join to an existing water supply that tests free from coliform bacteria, and is not a contaminated water supply.

(4) “Contaminated well” or “contaminated private water supply” means a well which is located in an area of special eligibility for compensation as declared by the department under s. NR 738.06 (1m) and meets the criteria under s. NR 738.06 (1m) (a) and (b), or which meets all of the following criteria:

(a) The well serves potable water for humans or humans and livestock.

(b) The well is not a “public water supply” as defined in ch. NR 809.

(c) The well has been determined or is suspected by the department to have been adversely affected by a site or facility subject to s. 292.31, Stats., or by a hazardous substance discharge subject to s. 292.11, Stats.

(d) The well produces water that meets one or more of the following criteria:

1. Contains one or more substances of public health concern, other than bacteria or nitrate, in excess of a primary maximum contaminant level contained in ch. NR 809.

2. Contains one or more substances of public health concern, other than nitrates, in excess of an enforcement standard established in ch. NR 140.

3. Is subject to a drinking water advisory from the department for substances other than bacteria or nitrates.

(5) “Environmental fund” has the meaning specified in s. 25.46, Stats.

(5g) “Livestock” has the meaning specified in s. 95.80 (1) (b), Stats., and includes poultry.

Note: Section 95.80 (1) (b), Stats., defines livestock to mean “cattle, horses, swine, sheep, goats, farm-raised deer and other species of animals susceptible of use in the production of meat and meat products.”

(5r) “Livestock water supply” has the meaning specified in s. 281.75 (1) (e), Stats.

Note: Section 281.75 (1) (e), Stats., defines livestock water supply to mean “a well which is used as a source of potable water only for livestock and which is:

- Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24 (Stats.); or
- Constructed by boring or drilling.”

(6) “Plumbing” means that portion of the water distribution piping extending from the well to the various distribution points of use.

(6m) “Private water supply” has the meaning specified in s. 292.31 (3) (b) 7., Stats.

Note: Section 292.31 (3) (b) 7., Stats., defines private water supply to mean a “well which is used as a source of water for humans, livestock, as defined in s. 95.80 (1) (b) (Stats.), or poultry.”

(7) “Substances of public health concern” means those substances found in Table 1 of ch. NR 140 or any substance for which a health advisory is issued.

(8) “Temporary emergency water supply” means a supply of potable water obtained in bottles, by tank truck or by other similar means, or a temporary connection to an existing water supply, supplied at a capacity sufficient to satisfy water use functions impaired by the contaminated water supply.

(9) “Well” has the meaning specified in s. NR 812.07 (119).

Note: Section NR 812.07 (119), defines well to mean “any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface constructed for the purpose of obtaining groundwater.”

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; r. (4) (a) to (c), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023; renum. (4) to (4) (intro.) and am., cr. (4) (a) to (d), (5g), (5r), (6m), am. (9) Register October 2013 No. 694, eff. 11-1-13; correction in (9) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 738.06 Eligible and ineligible services. (1) ELIGIBLE SERVICES. The department may use environmental fund moneys to pay for any of the following eligible services:

(a) Obtaining a temporary emergency water supply for a maximum period of 6 months after the date of issuance of an advisory or until such time as the contaminated water supply has been permanently replaced by an uncontaminated supply or is determined by the department to have returned to an uncontaminated condition, whichever occurs first. The department may grant a variance to authorize the extension of the temporary emergency water supply pursuant to s. NR 738.14.

(b) Equipment used for treating the contaminated private water supply on a temporary emergency basis only if a skin contact or inhalation advisory has been issued by the department of health services.

(c) Bulk water supplied only if a skin contact or inhalation advisory has been issued by the department of health services.

(d) Other costs as deemed necessary by the department.

(1m) SPECIAL ELIGIBILITY FOR COMPENSATION. The department may approve a temporary emergency water supply funded by moneys from the environmental fund if the affected party is in a location that has been declared by the department to be an area of special eligibility for compensation for well contamination, based on contamination reported after December 31, 2005, if the following criteria are satisfied:

(a) Results of tests performed under s. NR 738.11 (3) establish that wells in the area are contaminated by fecal bacteria, and

(b) Evidence demonstrates that the bacterial contamination is caused by livestock.

Note: Special eligibility for compensation is outlined in s. 281.75 (2) (e) and (11) (ae), Stats.

(2) INELIGIBLE SERVICES. The department may not use environmental fund moneys to pay for any of the following ineligible services:

(a) Any costs incurred prior to the date of issuance of a written health advisory by the state.

(b) Any consulting, engineering or cost estimating fees.

(c) Any state, county or local permit fees.

(d) Any costs incurred for the permanent replacement or treatment of the contaminated water supply except as approved by the department pursuant to s. NR 738.14.

(e) Mileage, phone, postage and other miscellaneous costs incurred by the affected party.

(f) Any costs associated with the ownership and physical maintenance of any physical equipment constructed or provided as part of the temporary emergency water supply.

(g) Any other costs incurred which are not approved by the department.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; CR 12-023: am. (1) (a) to (c), cr. (1m), am. (2) (d) Register October 2013 No. 694, eff. 11-1-13, reprinted to correct transcription error in (1) (c), Register November 2013 No. 695.

NR 738.10 Request for temporary emergency water supply. Any affected party may make a request to the department for provision of a temporary emergency water supply. The written request shall be submitted to the department's section chief for the fiscal and information technology section, bureau for remediation and redevelopment, and shall contain the following information:

(1) The affected party's name, address and telephone number, including the area code.

(2) A copy of the test analyses required in s. NR 738.11 (3).

(3) A copy of the advisory which was issued or approved by the department as required in s. NR 738.11 (4).

(4) A statement requesting that the department provide a temporary emergency water supply under this chapter.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; CR 12-023: 738.10 renum. from 738.05, am. (intro.), (2), (3) Register October 2013 No. 694, eff. 11-1-13.

NR 738.11 Determination of eligibility. Except as otherwise provided in this chapter, an affected party may receive a temporary emergency water supply funded with moneys from the environmental fund if all of the following criteria are met:

(1) The source of potable water is from a contaminated well or contaminated water supply.

(2) The contamination is known or is suspected by the department to be from environmental pollution or a hazardous substance discharge subject to s. 292.11 or 292.31, Stats.

(3) Sampling is conducted in accordance with all of the following requirements:

(a) Test analyses of at least one sample shall be taken. The department may require more than one sample be taken and analyzed.

(b) The samples shall be analyzed by the state laboratory of hygiene or by a laboratory certified under s. 299.11, Stats., using a methodology specified in ch. NR 809 or from a reference method authorized by ch. NR 219.

(c) Test results shall be sufficiently recent to reflect present water quality as determined by the department.

(4) An advisory is issued or approved by the department. If the department has issued an advisory, the sampling requirements of sub. (3) may be waived.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; corrections in (2) and (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023: 738.11 renum. from 738.04 Register October 2013 No. 694, eff. 11-1-13.

NR 738.12 Department approval and payment.

(1) GENERAL. The department shall evaluate requests for a temporary emergency water supply in accordance with the criteria in ss. NR 738.10 and 738.11.

(2) OWNERSHIP. Provision of a temporary emergency water supply shall be contingent upon the affected party entering into a written agreement with the department that the affected party shall own and be responsible for the proper maintenance of any physical equipment constructed or provided as part of the temporary emergency water supply.

(3) APPROVAL. When the department determines that the eligibility criteria in subs. (1) and (2) have been met, the department shall approve the use of environmental fund moneys and shall do all of the following:

(a) Provide the affected party with a written approval for the provision of a temporary emergency water supply within 14 days of receiving the written request.

(b) Make the necessary arrangements for provision of temporary emergency water supplies to the affected party.

(c) Select the most appropriate temporary emergency water supply.

(4) PAYMENT. The department shall pay 100% of the eligible costs for providing a temporary emergency water supply using moneys from the environmental fund as long as moneys are available in the fund.

Note: The department does not have statutory authority to use environmental fund moneys to provide temporary or permanent water supplies if the substances of public health concern are from naturally occurring sources of contamination. If the department discovers that the source of the substances is from natural processes after department funding is approved, the department will terminate funding of the temporary emergency water supply. The variance provision in s. NR 738.14 does not allow the department to continue to use environmental fund moneys where

the source of a substance of public health concern is not from a hazardous substance discharge or environmental pollution from a site or facility.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; CR 12-023: 738.12 renum. from 738.07, am. (1), (3) (intro.), cr. (3) (c) Register October 2013 No. 694, eff. 11-1-13.

NR 738.13 Denial of requests or termination of funding. The department shall deny a request or terminate the use of environmental fund moneys if one or more of the following applies to the affected party, contaminated well or contaminated water supply:

(1) The request is not within the scope of this chapter as determined by the department.

(2) The affected party submits a fraudulent request.

(3) The request is for reimbursement of costs incurred before the date of issuance of an advisory.

(4) One or more of the contaminants was introduced into the well by the plumbing connected to the well.

(5) One or more of the substances upon which the request is based was introduced into the well or water supply intentionally by an affected party or a person who would be directly benefited by the provision of the temporary emergency water supply or a person who aids and abets the introduction of the substance, or a person who is a party to a conspiracy with another to commit, advise, hire, counsel or procure another to introduce the substances into the well or water supply.

(6) All of the substances upon which the request is based are naturally occurring substances and are not a result of environmental pollution or a hazardous substance discharge subject to s. 292.11 or 292.31, Stats., as determined by the department.

(7) The water supply is contaminated by bacteria or nitrate or both and is not contaminated by any other substance. This subsection does not apply to a residential well that is in an area of special eligibility for compensation as declared by the department under s. NR 738.06 (1m).

(8) The request is submitted by an affected party who has been determined by the department to be a responsible party pursuant to s. 292.31 (8) or 292.11 (3), Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; corrections in (6) and (8) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023: 738.13 renum. from 738.08, am. (7) Register October 2013 No. 694, eff. 11-1-13.

NR 738.14 Variances. (1) GENERAL. The department may approve variances from provisions of this chapter when it is determined that variances do not conflict with statutory requirements, are essential to effect necessary actions or depart-

ment objectives, and where special circumstances make variances in the best interests of the state.

(2) FINANCIAL HARDSHIP. (a) The department may grant a variance from s. NR 738.06 to allow payment of costs under this chapter toward a permanent replacement water supply if the following conditions are met:

1. The well owner is the affected party.

2. The well owner requests a variance based upon the financial hardship criteria in par. (c) and submits evidence, including family income, to justify the financial hardship claim.

3. The well owner has submitted a claim and has been issued an award or a proceed notice under s. NR 123.23.

4. The department determines that the cost of the permanent replacement water supply would create an unreasonable financial hardship for the well owner.

(b) The variance request may be incorporated as part of a claim under ch. NR 123.

(c) If the department grants a financial hardship variance to allow payment of costs toward a permanent replacement water supply, payment shall be based on the following:

1. If the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, as determined in accordance with s. NR 123.20, the department may pay 100% of the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of \$250.

2. If the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, as determined in accordance with s. NR 123.20, the department may pay 50% of the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of \$250.

3. Notwithstanding sub. (2), if an award or a proceed notice has been issued under s. NR 123.23, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, the department may pay the remaining eligible costs which are not covered by an award under s. NR 123.24, less a deductible amount of 5% of the annual family income.

(d) The department may pay the greater share of the eligible costs computed under par. (c).

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; CR 12-023: 738.14 renum. from 738.09, am. (2) (c) 3., cr. (2) (d) Register October 2013 No. 694, eff. 11-1-13, correction in (2) (c) 3. made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

Chapter NR 746

AGENCY ROLES AND RESPONSIBILITIES FOR PETROLEUM CONTAMINATED SITES

NR 746.01 Purpose.
 NR 746.02 Applicability.
 NR 746.03 Definitions.
 NR 746.04 Site authority.

NR 746.05 Tracking of remediation progress.
 NR 746.06 Classification and transfer of sites.
 NR 746.07 Interagency staff training.
 NR 746.08 Dispute resolution.

Note: Chapter NR 746 was created as an emergency rule eff. 5-18-00. **Chapter 746 was repealed and recreated, Register October 2013 No. 694, eff. 11-1-13.**

Note: This rule, including the Appendix, was originally adopted jointly by the Department of Commerce and the Department of Natural Resources and appeared in the Wisconsin Administrative Code as ch. Comm 46 (subsequently transferred to the Department of Safety and Professional Services by 2011 Wis. Act 32, section 9110 (3) (f) and renumbered ch. SPS 346) and ch. NR 746. Effective July 2, 2013, pursuant to 2013 Wis. Act 20, section 9138 (7) (f), the authority of the Department of Safety and Professional Services over the jointly adopted rule was transferred to the Department of Natural Resources. As a result, ch. SPS 346 was removed from the Administrative Code and the rule is published only as ch. NR 746. **The department of natural resources intends to initiate future rulemaking to repeal this chapter.** See also the note following s. NR 746.01.

NR 746.01 Purpose. The purpose of this chapter is to identify the roles, processes and procedures that guide the departments of safety and professional services and natural resources in the administration of their respective responsibilities under ss. 101.144, 292.11, 292.31, and 292.63, Stats., and ch. 160, Stats., for oversight and supervision of high, medium and low risk sites where petroleum products have discharged from petroleum storage tanks. This chapter codifies a memorandum of understanding that is required by s. 101.144 (3m), Stats. Nothing in this chapter is intended to limit the independent authority of either agency to carry out responsibilities not specifically described in this chapter, including, without limitation, the authority of the department of safety and professional services to apply ch. NR 747.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13; corrections made under s. 13.92 (4) (b) 7, Stats., Register October 2013 No. 694.

Note: As part of 2013 Wis. Act 20, s. 101.144, Stats., was repealed and Department of Safety and Professional Services authority for the PECFA Program was transferred to the Department of Natural Resources, which makes this rule largely unnecessary. The department of natural resources intends to initiate a future rulemaking to repeal this chapter.

NR 746.02 Applicability. This chapter only applies to sites where petroleum products have discharged from petroleum storage tanks.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.03 Definitions. The definitions in ch. NR 700 apply to this chapter. In addition, in this chapter:

Note: The definition in s. NR 700.03 (11) defines "Department" to mean "the department of natural resources."

(1) "Discharge" has the meaning specified in s. 292.01 (3), Stats.

Note: Under s. 292.01 (3), Stats., "discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping."

(2) "Enforcement standard" has the meaning specified in s. 160.01 (2), Stats.

Note: Section 160.01 (2), Stats., defines "enforcement standard" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under ss. 160.07 and 160.09."

(3) "Groundwater" has the meaning specified in s. 160.01 (4), Stats.

Note: Section 160.01 (4), Stats., defines "groundwater" to mean "any water of the state, as defined in s. 281.01 (18), occurring in a saturated subsurface geological formation of rock or soil." Section 281.01 (18), Stats., defines "waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction."

(4) "High-risk site" has the meaning specified in s. 101.144 (1) (aq), Stats.

Note: Section 101.144 (1) (aq), Stats., defines "high-risk site" to mean "the site of a discharge of a petroleum product from a petroleum storage tank if at least one of the following applies:

1. Repeated tests show that the discharge has resulted in a concentration of contaminants in a well used to provide water for human consumption that exceeds a preventive action limit, as defined in s. 160.01 (6), Stats.

2. Petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements.

3. An enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), Stats., or within 100 feet of any other well used to provide water for human consumption.

1. An enforcement standard is exceeded in fractured bedrock."

Note: Section NR 141.05 (5) defines "bedrock" to mean "the solid rock underlying any loose surficial material such as soil, alluvium or glacial drift. Bedrock includes but is not limited to limestone, dolomite, sandstone, shale and igneous and metamorphic rock." In the absence of evidence to the contrary, the agencies consider all bedrock in Wisconsin to be fractured.

(5) "Low risk site" means the site of a discharge of a petroleum product from a petroleum storage tank where contaminants are contained only within the soil on the source property and there is no confirmed contamination in the groundwater.

(6) "Medium risk site" means the site of a discharge of a petroleum product from a petroleum storage tank where contaminants have extended beyond the boundary of the source property, or there is confirmed contamination in the groundwater, but the site does not meet the definition of a high-risk site.

(7) "Petroleum product" has the meaning specified in s. 292.63 (1) (f), Stats.

Note: Section 292.63 (1) (f), Stats., defines "petroleum product" to mean "gasoline, gasoline alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel or used motor oil." The term "petroleum product" includes substances that are, or once were, constituents of a petroleum product, including petroleum product additives.

(8) "Petroleum storage tank" has the meaning specified in s. 101.144 (1) (bm), Stats.

Note: Section 101.144 (1) (bm), Stats., defines "petroleum storage tank" to mean "a storage tank that is used to store petroleum products together with any on-site integral piping or dispensing system." The term "petroleum storage tank" does not include a pipeline facility.

(9) "Preventive action limit" has the meaning specified in s. 160.01 (6), Stats.

Note: Section 160.01 (6), Stats., defines "preventive action limit" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15."

(10) "Remedial action" means a response action taken to control, minimize or eliminate the discharge of petroleum products so that they do not present an actual or potential threat to public health, safety, or welfare or the environment. The term "remedial action" includes actions taken to restore the environment to the extent practicable and to meet applicable environmental standards, and includes natural attenuation. Examples include containment, treatment, excavation, disposal, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety, or welfare or the environment.

(11) "Responsible person" has the meaning specified in s. 101.144 (1) (d), Stats.

Note: Section 101.144 (1) (d), Stats., defines "responsible person" to mean "a person who owns or operates a petroleum storage tank, a person who causes a discharge from a petroleum storage tank or a person on whose property a petroleum storage tank is located."

(12) "Site" means any area where a petroleum product has discharged.

Note: Because the term "discharge" has been interpreted by the Wisconsin supreme court to include the migration of hazardous substance contamination after

it is released to the environment, the term "site" includes all areas to which petroleum product contamination has migrated, including areas not on the source property. The term "site" and "source property" are not synonymous. A "site" can be larger or smaller than a "source property." The term "site" is synonymous with the term "occurrence" as that term is used in ch. NR 747. The term "site" is used here in order to establish common terminology that will be used by both the department of safety and professional services and the department of natural resources in the implementation of ch. NR 746.

Note: Section NR 700.03 (58) defines "soil" to mean "unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste."

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register October 2014 No. 694.

NR 746.04 Site authority. (1) ADMINISTRATIVE AUTHORITY. The administrative authority of the department of safety and professional services and the department of natural resources for a site includes enforcement, remediation supervision and direction, and decision-making regarding the granting or denying case closure and deciding whether or not further remedial action is required. The department of natural resources has the authority under s. 292.11 (7) (c), Stats., to issue orders to a person who possesses or controls a hazardous substance that was discharged, or who caused the discharge of a hazardous substance, specifying the remedial action that the responsible person is required to take under s. 292.11 (3), Stats. The department of safety and professional services has the authority under s. 101.144 (2) (a), Stats., to issue orders to a person who owns or operates a petroleum storage tank, a person who causes a discharge from a petroleum tank or a person on whose property a petroleum storage tank is located, to require that person to take remedial action in response to those discharges of petroleum products from petroleum storage tanks over which the department of safety and professional services has jurisdiction. The assignment of administrative authority for high-risk sites and medium and low risk sites, where discharges of petroleum products from petroleum storage tanks have occurred, shall be determined according to the following criteria:

(a) The department of natural resources shall have administrative authority for those sites that meet any of the following criteria:

1. Sites that have not been classified.
2. Sites that are classified as high-risk sites.
3. Sites with soil or groundwater that is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank, where the petroleum contamination is commingled with one or more hazardous substances other than petroleum products from a petroleum storage tank.

(b) The department of safety and professional services shall have administrative authority for those sites that meet both of the following criteria:

1. Sites that have been classified as low risk or medium risk.
2. Sites where petroleum contamination is not commingled with one or more hazardous substances other than petroleum products discharged from a petroleum storage tank.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.05 Tracking of remediation progress. By no later than January 1, 2014, and annually thereafter, responsible persons shall submit an annual report to the agency with administrative authority for the site, as required by s. 292.63 (2) (i) 2., Stats., with a summary of all monitoring data that have been collected, the status of remediation that has been conducted to date and an estimate of the additional costs that must be incurred to achieve case closure.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 746.06 Classification and transfer of sites.

(1) GENERAL. (a) The responsible person shall make a preliminary determination as to the classification of a site as high-risk, or medium or low risk based on the definitions in s. 101.144 (1)

(aq), Stats., and s. NR 746.03 (4), (5), and (6), and the data that have been collected during the site investigation.

(b) Until a classification determination is made by the agency that receives a submittal under sub. (2) or (3), the department has administrative authority for the site.

(2) SUBMITTAL OF SITE INVESTIGATION REPORTS TO THE APPROPRIATE AGENCY. Site investigation reports submitted after September 1, 2013, shall include a statement as to whether a site is believed to be high-risk, or medium or low risk and shall be submitted directly to the agency with administrative authority for the site under s. NR 746.04 (1). If a site falls under the authority of the department of safety and professional services, the responsible person shall provide the department with a copy of the letter that transmits the site investigation report to the department of safety and professional services, which includes the Wisconsin Transverse Mercator coordinates for the site and supporting information, as required under s. NR 716.15 (2) (c) 4. The department shall transfer the site file to the department of safety and professional services within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of the department of safety and professional services.

(3) SUBMITTAL OF CASE CLOSURE REQUESTS TO THE APPROPRIATE AGENCY. If the site investigation report was submitted without a determination of whether the site is believed to be high-risk, or medium or low risk, the closure request shall be submitted directly to the agency that is believed to have administrative authority for the site under s. NR 746.04 (1). If a site falls under the authority of the department of safety and professional services, the responsible person shall provide the department with a copy of the letter that transmits the closure request to the department of safety and professional services. The department shall transfer the site file to the department of safety and professional services within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of the department of safety and professional services.

(4) CHANGES IN CLASSIFICATION. If a site has been classified as high-risk, or medium or low risk, and the agency receiving the site investigation report or case closure request determines that the classification is incorrect and the site, as reclassified, falls under the other agency's administrative authority, the agency making the determination shall transfer the site file and all related data to the other agency within 14 days after making the determination that the site was incorrectly classified. The agency making the determination shall provide written notice to inform the responsible person that the site has been reclassified, which can be done by sending to the responsible person a copy of the reclassification letter that is addressed to the other agency. The written notice shall state the reasons for the reclassification.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.07 Interagency staff training. In order to ensure that employees understand the requirements of this chapter and chs. NR 700 to 754, and to ensure that the agencies will issue approvals when the requirements of chs. NR 700 to 754 are satisfied, interagency staff training shall be held when necessary, as jointly determined by the departments of safety and professional services and natural resources.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.08 Dispute resolution. Any disputes between the department of safety and professional services and the department under this chapter shall be subject to the following dispute resolution process:

(1) Project managers shall discuss their differences, and the basis for them, in an attempt to resolve the dispute.

(2) If the dispute is not resolved by the project managers, the decision shall be referred to the department petroleum team leader and the safety and professional services advanced hydrogeologist.

(3) If the dispute is not resolved by the petroleum team leader and the safety and professional services advanced hydrogeologist, the decision shall be referred to the appropriate department regional team

supervisor and safety and professional services site review section chief.

(4) If the dispute is not resolved by the appropriate department regional team supervisor and safety and professional services site review section chief, the decision shall be referred to the division administrators or deputy administrators.

(5) If the dispute still remains unresolved at the division administrator level, the department secretaries shall make the final decision.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 747

PETROLEUM ENVIRONMENTAL CLEANUP FUND

Subchapter I — Purpose, Authority and Application

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- NR 747.115 Nonregistered tanks and out-of-service tanks.
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- NR 747.30 Eligible cost items for remediation.
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- NR 747.33 Comparative proposals and bid processes for remediation activities and services.
- NR 747.335 Site investigation and remedial action plan development cap.
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- NR 747.338 Review of existing sites.
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Subchapter IV — Credentials, Laboratories, Drilling Firms and Audits

- NR 747.40 Reimbursement and credentials.
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- NR 747.625 Claim submittal required.
- NR 747.63 Exemptions from competitive public bidding.
- NR 747.64 Bidding completion of an investigation.
- NR 747.65 Department to determine scope of work to be bid.
- NR 747.66 Bidder qualifications.
- NR 747.67 Disqualification from bidding.
- NR 747.68 Competitive public bidding process.
- NR 747.69 Responsible party's contract with a bidder.
- NR 747.70 Monitoring the progress of the scope of work in the bid.
- NR 747.71 Special requirements for existing sites.

Note: Chapter ILHR 47 was created as an emergency rule effective January 1, 1993. Chapter ILHR 47 was renumbered Chapter Comm 47 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1998, No. 516. Chapter Comm 47 was renumbered chapter SPS 347 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672. Chapter SPS 347 was renumbered Chapter NR 747 under s. 13.92 (4) (b) 1., Stats., Register October 2013 No. 694.

Subchapter I — Purpose, Authority and Application

NR 747.01 Purpose. (1) PECFA FUND. The purpose of this chapter is to provide information on the Petroleum Environmental Cleanup Fund program, also referred to as the Petroleum Storage Environmental Remedial Action Fund and the Petroleum Storage Remediation Fund; outline the processes and procedures for filing a claim for an eligible remediation and specify the process of determining award amounts.

(2) STATUTORY AUTHORITY. This chapter is adopted pursuant to s. 292.63, Stats.

(3) INTENT OF PECFA. (a) The PECFA fund does not relieve a responsible party from liability. The individual or organization responsible for a contaminated property shall carry out the remediation of that property. PECFA's role is to provide monetary awards to responsible parties who have completed and paid for PECFA-approved remediation activities and services. The availability or unavailability of PECFA funding shall not be the determining factor as to whether a remediation shall be completed.

(b) The responsible party shall be the primary point for the control of costs within the PECFA program. The focus of the program will be to maintain the responsible party as the central control point throughout the claim process.

(4) CONTROL OF COSTS. The framework for the control of costs within the PECFA program shall be based upon the responsible party minimizing costs in all phases of the remediation. The primary structural factors for the control of costs include the following:

(a) The selection of a consulting firm through a comparison of at least 3 proposals. Once selected, the firm may only provide professional consulting services on the remediation;

(b) The requirement to purchase or contract for commodity services through the use of competitive bids;

(c) The consideration of the costs and benefits of remediation alternatives;

(d) The use of environmental factors to determine the eligible range of responses on a site;

(e) The use of site bundling and competitive bidding to reduce costs;

(f) The registration for participation in the PECFA program, only those consultants and consulting firms which meet specific qualifying criteria and standards of conduct; and

(g) The publication of cost guidelines for cost-effective remediations.

(5) MOST COST-EFFECTIVE REMEDIATION ALTERNATIVE. The PECFA fund shall ensure that awards are made for only the most cost-effective remediation alternative. The department may allow a higher cost alternative provided:

(a) The responsible party assures personal payment of the difference in cost between the lowest cost remediation and the higher cost alternative desired; or

(b) The department determines that the objectives of the PECFA program would be furthered by the use of a specific remedial technology.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; am. (2), (3) (a), (4) (c) and (5), renum. (4) (d) and (e) to be (4) (f) and (g), cr. (4) (d) and (e), Register, December, 1998, No. 516, eff. 1-1-99; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.015 Definitions. In this chapter:

(1) "Active treatment" means a remedial activity that is not natural attenuation or monitoring but is conducted in situ. Active

treatment includes use of biological or chemical agents to augment remediation of contamination.

(2) “Agent” means a person or organization designated by an owner, operator or person owning a home oil tank system to act on behalf of the owner or operator or person owning the home oil tank system in conducting the remedial activities.

(3) “Annual aggregate” means the total amount of awards that an owner or operator may obtain during a program year under this chapter.

(4) “Award” means the reimbursement provided to an owner or operator or person owning a home heating oil tank system for eligible costs incurred because of a petroleum product discharge from a petroleum product storage system or home oil tank system.

(5) “Bodily injury” has the meaning under s. 292.63 (1) (ad), Stats., however, this term shall not include those liabilities which, consistent with standard insurance industry practices, such as specified in s. Ins 6.35, are excluded from coverage in liability insurance policies for bodily injury.

(6) “Claimant” means any party who is eligible to submit a claim for an award under this chapter. Under this chapter, the claimant may also be the responsible party.

(7) “Closed remedial action” means that the department has determined, based on information available at the time, that no further action is necessary. A closed remedial action includes the approval of remediation by natural attenuation as a final site remedy. A determination that no further action is required might include one or more deed or use restrictions placed on a property, or other requirements, which are conditions for approval.

(8) “Consultant” means a person who performs or provides professional investigation, interpretation, design or technical project management services including, but not limited to, conducting site investigations, preparing remedial action plans and alternatives, and interpretation of data for passive or active bio-remediation systems. An owner or operator may prepare bid documents and complete other requirements of the bid process without being designated as a consultant.

Note: See s. SPS 305.81 for departmental credential requirements for consultants.

(9) “Consulting firm” means a corporation, partnership, sole proprietor or independent contractor who performs or provides professional engineering or hydrogeology services including but not limited to conducting site investigations, preparing remedial action plans and alternatives, designing and supervising the installation of remedial systems and plans for passive bio-remediation with long-term monitoring.

Note: See s. SPS 305.80 for departmental credential requirements for consulting firms.

(10) “Costs incurred” means costs integral to the remediation of a site which have been paid by a responsible party. Costs are considered incurred when funds are disbursed to the creditor, i.e., invoices have been paid and verification is available.

(11) “Department” means the department of natural resources.

(12) “Discharge” means spilling, leaking, pumping, pouring, emitting, or emptying, but does not include dumping.

(13) “DNR” means the Wisconsin department of natural resources.

(14) “Emergency action” means an immediate response to protect public health or safety.

Note: An emergency action would normally be expected to be directly related to a sudden event or discovery. Simple removal of contaminated soils, recovery of free product, or relief from financial hardship are not considered emergency actions.

(15) “Entity” means any of the following:

(a) A person owning a home oil tank system.

(b) A business required to maintain a worker’s compensation insurance policy under ch. DWD 80.

(c) An owner or operator who is completely independent of any other business or corporation with coverage under the PECFA program.

(16) “Financial hardship claimant” means a claimant that has employed no more than 4 individuals, who are not immediate family members, at any time during the year prior to claim submittal and is able to document this through payroll or tax records.

(17) “Fund” means the petroleum environmental cleanup fund administered by the department.

(18) “Grossly negligent” means the conscious or reckless disregard for the negative consequences of one’s actions or inaction.

(19) “Heating oil” has the same meaning as set forth in ch. ATCP 93.

Note: The definition in chapter ATCP 93 for heating oil reads as follows: “‘Heating fuel’ or ‘heating oil’ means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grade grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these, including used oil or used cooking oils when used in an oil burner to provide space heat or processing heat for consumptive use on the property.”

(20) “Home heating oil tank systems” has the meaning set forth in s. 292.63 (1) (cm), Stats.

Note: Section 292.63 (1) (cm), Stats., defines a home heating oil tank system as an underground home heating oil tank used for consumptive use on the premises together with any on-site integral piping or dispensing system.

(21) “Immediate family members” means parents, stepparents, grandparents, children, stepchildren, grandchildren, brothers (and their spouses), sisters (and their spouses), aunts, uncles, sons-in-law or daughters-in-law of the claimant or the claimant’s spouse.

(22) “Independent” means entirely and completely free from any common control, guidance, ability to influence, significant financial interest or mutual benefit. Significant financial interest means ownership of more than 5% of a firm or business entity by the consulting firm, consultant or the consultant’s family.

(23) “Interim action” means a response action taken to contain, stabilize or recover a discharge of a hazardous substance, in order to minimize any threats to public health or safety, while other response actions are being taken or planned for the site or facility.

(24) “Investigation awards” means awards that are made for investigative activities when no discharge is found, if the owner, operator or person owning a home heating oil tank system has written direction from the department to conduct an investigation under s. 292.63 (4) (es), Stats.

(25) “Loan secured” means the point at which a financial organization and customer have completed all documents associated with a commitment of funds and an agreement to repay the funding. The term applies to original loans and to the creation of additional funding.

(26) “Natural attenuation” means the reduction in the concentration and mass of a substance and its breakdown products in groundwater or soils, or both, due to naturally occurring physical, chemical or biological processes.

(27) “Occurrence” has the meaning set forth in s. 292.63 (1) (cs), Stats.

Note: Section 292.63 (1) (cs), Stats., defines occurrence as a contiguous contaminated area resulting from one or more petroleum product discharges.

Note: In *Mews vs. Wisconsin Department of Commerce*, 2004 WI APP 24, 676 NW 2d 160 Wis APP. (2004), the Court concluded that this definition is “published and unambiguous.” In arriving at this conclusion, the Court agreed with the department that without an intervening, unimpacted area of no detects, all contamination at a site is contiguous and is therefore a single occurrence.

(28) “Operator” has the meaning set forth in s. 292.63 (1) (d), Stats.

Note: Section 292.63 (1) (d), Stats., defines operator as:

(d) 1. A person who operates a petroleum product storage system, regardless of whether the system remains in operation and regardless of whether the person operates or permits the use of the system at the time the environmental pollution occurs; or

2. A subsidiary or parent corporation of the person specified under subd. 1.

(29) “Outstanding unreimbursed loan amount” means funds that have been disbursed by the financial organization for actual costs incurred by the borrower’s service providers and any earned interest charges, less any amounts reimbursed by the PECFA program.

(30) “Owner” is an entity under the PECFA program or a trust and in addition has the meaning set forth in s. 292.63 (1) (e), Stats.

Note: Section 292.63 (1) (e), Stats., defines owner as any of the following:

(e) 1. A person who owns, or has possession or control of, a petroleum product storage system or who receives direct or indirect consideration from the operation of a system regardless of whether the system remains in operation and regardless of whether the person owns or receives consideration at the time the discharge occurs;
2. A subsidiary or parent corporation of the person specified under subd. 1.

(31) “Passive bio-remediation” has the same meaning as “natural attenuation”.

(32) “PECFA” means petroleum environmental cleanup fund award, as established in s. 292.63, Stats.

(33) “Person” has the meaning set forth in ch. ATPC 93.

Note: Chapter ATPC 93 defines person as an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of the state, or any interstate body. “Person” also includes a consortium, a joint venture, a commercial entity, and the United States government.

(34) “Petroleum product” has the meaning set forth in s. 292.63 (1) (f), Stats.

Note: Section 292.63 (1) (f), Stats., defines a petroleum product as gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.

(35) “Petroleum product storage system” has the meaning set forth in s. 292.63 (1) (fg), Stats.

Note: Section 292.63 (1) (fg), Stats., defines a petroleum product storage system as a storage tank that is located in Wisconsin and is used to store petroleum products together with any on-site integral piping or dispensing system. The term does not include pipeline facilities; tanks of 110 gallons or less capacity; residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale; farm tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, except as provided in sub. (4) (ei); tanks used for storing heating oil for consumptive use on the premises where stored, except for heating oil tanks owned by school districts and heating oil tanks owned by technical college districts and except as provided in sub. (4) (ei); or tanks owned by Wisconsin or the federal government.

(36) “Pollution impairment” means bodily injury or property damage arising from the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of a petroleum product.

(37) “Prime rate” means the most recent rate published in the *Wall Street Journal* under Money Rates — Prime Rate.

Note: The prime rate is the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks.

(38) “Program year” has the meaning set forth in s. 292.63 (1) (g), Stats.

Note: Section 292.63 (1) (g), Stats., defines program year as the period beginning on August 1 and ending on the following July 31.

(39) “Progress payment” means an award made prior to the full completion of a remediation and may include payments after completion of an emergency action, site investigation, remediation, maintenance or operation, or other points as defined in this chapter.

(40) “Property damage” has the meaning set forth in s. 292.63 (1) (gm), Stats.

Note: Section 292.63 (1) (gm), Stats., defines property damage as not including those liabilities which are exclusions in liability insurance policies for property damage, other than liability for remedial action associated with petroleum product discharges from petroleum product storage systems. The statute also excludes loss of fair market value.

(41) “Remedial action plan” means a document that reports a remedial action alternative and provides the basis for its recommendation along with projected costs and other required detail.

(42) “Responsible party” means either the owner, operator, person owning a home oil tank system or claimant who is financially responsible for all costs of remediation of a discharge of petroleum product.

(43) “Site bundling” means providing investigation or remedial action services, or both, for multiple occurrences while utiliz-

ing one consulting firm or common commodity services and providers, or both.

(44) “Service provider” has the meaning set forth in s. 292.63 (1) (gs), Stats.

Note: Section 292.63 (1) (gs) defines service provider as a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for which a claim for reimbursement has been or will be filed under this section (ch. NR 747), or a subcontractor of such a person.

(45) “Site investigation” means the investigation of a petroleum product discharge to provide the information necessary to define the nature, degree and extent of a contamination and to allow a remedial action alternative to be selected.

(46) “Subsidiary or parent corporation” has the meaning set forth in s. 292.63 (1) (h), Stats.

Note: Section 292.63 (1) (h) defines subsidiary or parent company as a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long-term contractual arrangement with a person to avoid direct responsibility for conditions at a petroleum product storage system site.

(47) “Tank” has the meaning set forth in ch. ATPC 93.

(48) “Third-party claim” means a claim against a claimant for personal injury or property damage associated with a discharge from an underground petroleum product storage tank system under this chapter.

(49) “Underground petroleum product storage tank system” has the meaning set forth in s. 292.63 (1) (i), Stats.

Note: Section 292.63 (1) (i), Stats., defines underground petroleum product storage tank system as an underground storage tank used for storing petroleum products together with any on-site integral piping or dispensing system with at least 10% of its total volume buried in the ground.

(50) “Upgrade” means the addition or retrofit of a petroleum product storage tank system with cathodic protection, lining or spill and overflow controls.

(51) “Used motor oil” means oil from internal combustion engines, collected and stored in accordance with s. ATPC 93.300.

(52) “Willful neglect” means the intentional failure to comply with the laws or rules of the state concerning the storage of petroleum products and may include, but is not limited to, the failure to:

- Conduct leak detection procedures;
- Take out of service a tank system that by reason of operational characteristics or leak detection is suspected of causing a discharge to the environment;
- Immediately shut down and repair a leaking tank system;
- Conduct a required product inventory;
- Comply with tank system use permit requirements;
- Comply with plan review, installation or inspection requirements under ch. ATPC 93;
- Register or actions to de-register an underground or above-ground tank system in order to avoid regulation under ch. ATPC 93; or
- Maintain corrosion protection on a system’s tank or lines.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: am. (24) and (32) Register February 2006 No. 602, eff. 5-1-06; CR 07-029: r. and recr. (19) Register November 2008 No. 635, eff. 2-1-09; correction in (51) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; correction in (11), (19), (33), (47), (51), (52) (f), (g) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672; corrections in (5), (7), (11), (19), (20), (24), (27), (28), (30), (32), (33) to (35), (38), (40), (44), (46), (47), (49), (51), (52) (f), (g) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.02 Coverage. (1) PETROLEUM PRODUCT STORAGE TANK SYSTEMS. Owners or operators of a petroleum product storage systems are eligible for reimbursement from the fund provided claims are for underground or aboveground petroleum storage systems that are one or more of the following:

- Commercial tank systems larger than 110 gallons capacity.
- Heating oil tank systems where the petroleum product is sold.

(c) Farm or residential tank systems larger than 1,100 gallons capacity and not storing heating oil for consumptive use on the premises.

(d) Tank systems storing gasoline, diesel fuel or other vehicle fuel, other than residential tanks of 1,100 gallons or less capacity.

(e) Farm vehicle fuel systems of 1,100 gallons or less capacity, which meet the requirements in s. 292.63 (4) (ei) 1m. a., Stats., regarding farm size and farm income, and is used to store products not for resale.

(f) Heating oil tank systems owned by public school or technical college districts, supplying heating oil for consumptive use on the premises.

(g) Tank systems located on trust lands of an American Indian tribe or band if the owner or operator's tank system would be otherwise covered under pars. (a) to (f) and the owner or operator complies with this chapter and ch. ATCP 93 and obtains all applicable agency approvals.

(2) HEATING OIL TANK SYSTEMS. A person owning a home heating oil tank system is eligible for reimbursement from the fund provided the claim is for a heating oil tank system that is an underground home heating oil tank system and the person complies with this chapter and ch. ATCP 93.

(3) EXCLUSIONS. The fund does not cover a claim for any of the following:

- (a) A pipeline facility.
- (b) A commercial tank system of 110 gallons or less capacity.
- (c) A residential motor fuel tank system of 1,100 gallons or less capacity.
- (d) Any tank system that is federal or state owned.
- (e) Any tank system of 110 gallons or less capacity which is not used for the storage of home heating oil.
- (f) A nonresidential heating or boiler tank system where the product is used on the premises where it is stored.
- (g) An underground petroleum product storage tank system or home oil tank system that meets the performance standards in 40 CFR 280.20 or ch. ATCP 93, was installed after December 22, 1988, and from which a release was confirmed after December 31, 1995.
- (h) An underground petroleum product storage tank system or home oil tank system that meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or ch. ATCP 93 and a discharge is confirmed after December 31, 1995, and the discharge is confirmed, or remedial activities begun, after the day on which the system first met the upgrading requirements.
- (i) A new aboveground petroleum product storage tank system that meets the performance standards promulgated in rules by the department, installed after April 30, 1991, and from which a discharge is confirmed after December 22, 2001.
- (j) An aboveground petroleum product storage tank system that meets the upgrade requirements promulgated by the department and a discharge is confirmed after December 22, 2001, and the discharge is confirmed, or remedial activities begun, after the day on which the petroleum system first met the upgrading requirements in rules promulgated by the department.
- (k) Any other tank system not included under sub. (1).

(4) ELIGIBLE SYSTEMS AND EXCLUDED SYSTEMS AT THE SAME SITE. (a) *Three possible conditions.* An owner or operator of a petroleum product storage system which is excluded by sub. (3) (g) to (j) from coverage is eligible for reimbursement from the fund for claims relating to other petroleum product storage systems at the same site, where one of the following conditions applies:

1. 'Discharges are not commingled.' A discharge that predated the deadlines in sub. (3) (g) to (j) is documented as not commingled with any discharge excluded by sub. (3) (g) to (j).

2. 'Discharges are commingled.' A discharge that predates the deadlines in sub. (3) (g) to (j) is commingled with a discharge excluded by sub. (3) (g) to (j).

3. 'Replacement within the same tank bed.' A storage system that predates the deadlines in sub. (3) (g) to (j) has been replaced within the same tank bed or has been upgraded, subsequent to the deadlines in sub. (3) (g) to (j), and documentation cannot confirm whether a discharge there occurred before or after the deadlines.

(b) *Reimbursement rates.* 1. Where par. (a) 1. applies, 100 percent of the eligible costs may be reimbursed.

2. Where par. (a) 2. applies, the department will consider the two discharges to be one occurrence, and will apply a methodology of cost separation based on total tank volume, or based on other factors acceptable to the department.

3. Where par. (a) 3. applies, 25 percent of the eligible costs may be reimbursed, after documentation is submitted to the department showing that all applicable tank closure and site assessment requirements in either ch. ATCP 93 or in preceding federal regulations were complied with, including the corresponding deadlines for performing that closure and assessment.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058; cr. (4) Register February 2006 No. 602, eff. 5-1-06; corrections in (1) (e) and (3) (h) made under s. 13.93 (2m) (b) 7., Stats., Register February 2006 No. 602; correction in (1) (g), (2), (3) (g), (h), (4) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (e), (g), (2), (3) (g), (h), (4) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.025 Awards. (1) GENERAL. (a) If the department determines that the claimant meets all of the eligibility requirements of this chapter, the department shall determine a deductible amount and issue an award to reimburse the claimant for eligible costs incurred in a remediation.

(b) The department may not issue an award before all eligible costs have been incurred unless the department determines that the delay in issuing the award would cause a financial hardship to the owner, operator or the person owning a home oil tank system. The department may issue progress payments when sufficient evidence of completion of various activities, as specified in ss. NR 747.12 and 747.355 is received.

(2) AWARDS, DEDUCTIBLES, AND DENIALS. All awards shall be issued in accordance with this chapter and the requirements in s. 292.63 (4) (d), (dg), and (dm) to (g), Stats.

Note: Other sections of this chapter, such as s. NR 747.30 (2) and (3), also address denial of claims, as established through other subsections of s. 292.63, Stats.

(3) THIRD-PARTY CLAIMS. For owners or operators of underground storage tank system discharges eligible for PECFA, third-party damages resulting from petroleum product discharges may be eligible for reimbursement under the PECFA fund. Items which may not be reimbursed include, but are not limited to, costs for which the owner or operator is not legally liable; costs associated with discharges based on or attributed to a criminal act; intentional, willful or deliberate noncompliance with any statute or administrative rule; punitive or exemplary damages; and federal, state or local fines, forfeitures or other penalties.

Note: See s. NR 747.36 (3) for further requirements for third-party claims.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; am. (1) (b) and (5) (a), r. (1) (c), Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058; am. (1) (b), r. and recr. (2), r. (3) to (5), renum. (6) to be (3) Register February 2006 No. 602, eff. 5-1-06; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.03 Emergency awards. The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health or safety. The finding of an emergency may not be based upon financial hardship of the responsible

party or its agent. A determination that no emergency exists may not be appealed to the department.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. (1), renum. (2) to be Comm 47.03, Register, December, 1998, No. 516, eff. 1-1-99.

Subchapter II — Program Eligibility

NR 747.10 Initial claim eligibility. (1) GENERAL. (a) *Responsible parties.* Responsible parties may submit claims to the department pursuant to s. 292.63 (4), Stats., for reimbursement of eligible costs incurred because of a petroleum product discharge from a petroleum product storage system or home oil tank system.

1. If a responsible party is not the sole owner of the site, an Owner Assignment Certification form (ERS-8070) shall be filed with the department to establish one entity to submit the claim and receive the award under this chapter.

2. The responsible party, owner or operator, agent or an assignee, as established in subd. 1., may submit a claim if all of the following are performed:

a. Documentation that the source of a discharge or discharges is from a petroleum product storage system or home oil tank system;

b. Notification to the department, before conducting a site investigation or remedial action activity, of the potential for submitting a claim under this chapter, except in emergency situations as provided under s. 292.63 (3) (g), Stats.;

c. Registration of the petroleum product storage system or the home oil tank system with the department of agriculture, trade and consumer protection under ss. 168.21 to 168.26, Stats.;

d. Report of the discharge in a timely manner to the division of emergency government in the department of military affairs or to the department, according to the requirements under ch. 292, Stats.;

e. Investigation of the degree and extent of environmental damage caused by the discharge from a petroleum product storage system or home oil tank system;

f. Recovery and proper disposal of any recoverable petroleum products in the discharge from a petroleum product storage system or home oil tank system;

g. Disposal of any residual solid or hazardous waste in a manner consistent with local, state and federal laws, rules and regulations;

h. Verification that the owner has maintained the site in compliance with laws and rules of the state concerning the storage of petroleum products; and

i. Restoration of the environment according to applicable standards using the most cost-effective approvable alternative available.

3. Owners or operators, or persons owning home oil tank systems, who were not owners or operators, or who were not persons owning home oil tank systems, when a petroleum product discharge occurred, and who meet all of the conditions of this section, may submit a claim for an award under the scope of this chapter.

(b) *Agents.* 1. ‘Individuals as agents.’ Except as specified in subd. 2., an owner or operator or the person owning a home oil tank system may, with the written approval of the department, enter into a written agreement with another person to act as an agent. An agent, in order to be approved and receive payment under the fund, shall agree to complete the remediation up to the point of operation and maintenance or long-term monitoring. The agent and the owner, operator, or person owning the home oil tank system shall jointly submit a claim for an award after completing all applicable requirements under this chapter and submittal of a Current Agent Assignment Certification form (ERS-8079) to the department. An award made under this paragraph shall be made payable to both the agent and owner, operator or person owning the home oil tank system.

2. ‘Department of transportation as agent.’ With prior written approval of the department and the owner, operator or the person owning the home oil tank system, the department of transportation may act as an agent as specified in subd. 1., when the petroleum product storage system or home oil tank system is located on property that is or may be affected by a transportation project under the jurisdiction of the department of transportation. The scope of the department of transportation shall be limited to the activities under subd. 3. The department of transportation shall submit the claim for an award as specified under this section with the award to be jointly paid to the owner, operator or the person owning the home oil tank system and the department of transportation for eligible costs incurred by the department of transportation in conducting the activities specified under subd. 3.

3. ‘Activities of agents.’ All agents shall be limited to the following activities:

a. Completing the site investigation to determine the degree and extent of the environmental contamination caused by the discharge from a petroleum product storage tank system or a home oil tank system and preparing the analysis and report as specified in s. NR 747.337.

b. Conducting bids for all commodity services necessary at the site to restore the environment and minimize the harmful effects from the petroleum products discharge up to point of operation and maintenance or long-term monitoring.

c. Providing commodity services that have reimbursement maximums which are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in subch. VI.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921 or at <http://dnr.wi.gov/topic/brownfields/pecfa.html>.

(2) **PROVISIONS OF ELIGIBILITY LETTER.** (a) When an owner, operator or person owning a home oil tank system has registered the tank systems on the property associated with the discharge and notified the department as specified under s. NR 747.11, the department shall upon request of the responsible party provide a letter of eligibility determination. This letter may include information on the PECFA program and the department’s initial determination of the eligibility for an award under this chapter.

(b) The initial eligibility determination is made by the department based upon the information made available prior to the determination.

(c) This letter of eligibility may be used in securing loans to cover estimated costs for a proposed remediation.

(d) The initial estimate of eligibility shall not be binding if subsequently the owner, operator, person owning a home heating oil tank system or other source provides the department with additional information which necessitates a subsequent ineligibility determination to be made by the department.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; am. (1) (a) 1., (b) 1., 3. a. and b., r. (1) (b) 3. c., Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: (1) (a) 3. renum. from Comm 47.30 (1) (a) and am., am. (1) (a) (intro.), cr. (1) (b) 3. c. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (b) 3. a., c., (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a) (intro.), 2. b. to d., (b) 3. a., c., (2) (a) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.11 Tank registration. (1) The department has the authority to inventory and determine the location of above-ground and underground petroleum storage tanks systems as specified in s. 168.28 (2), Stats. Tank systems shall be registered with the department of agriculture, trade and consumer protection on forms provided by the department of agriculture, trade and consumer protection. Eligibility determination of awards under the scope of this chapter requires prior tank registration.

(2) All aboveground petroleum product storage tank systems shall be registered with the department. Exceptions are for any of the following:

(a) Pipeline facilities.

- (b) Tank systems of 110 gallons or less capacity.
- (c) Residential tank systems of 1,100 gallons or less capacity.

(3) All underground petroleum product storage tank systems larger than 60 gallons capacity shall be registered with the department.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. Register, December, 1998, No. 516, eff. 1-1-99; corrections in (1) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.115 Nonregistered tanks and out-of-service tanks. (1) All aboveground and underground petroleum storage tanks not previously registered, having no completed Underground Petroleum Product Tank Inventory form (ERS-7437) or Aboveground Petroleum Product Tank Inventory form (ERS-8731) on file with the department, shall be registered prior to submitting a claim for an award under the scope of this chapter.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921 or at <http://dnr.wi.gov/topic/brownfields/pecfa.html>.

(2) For all underground petroleum storage tanks removed, closed or out-of-service prior to the date of tank registration, as specified in s. ss. 168.21 to 168.26, Stats., the present owner, operator or person owning a home oil tank system shall submit documentation to the department as to the existence of the tank, the product stored, the size and type of tank, and other information to substantiate prior ownership and use. This documentation may include, but is not limited to, neutral third-party testimony, county tax records, land titles, and blue prints of initial tank installations.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; am. (1), Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058; r. (3) Register February 2006 No. 602, eff. 5-1-06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.12 Claim process. (1) APPLICATION. A claimant shall submit a claim in a format prescribed by the department, and shall include all of the following that are applicable:

(a) For a claim covering the site investigation and the preparation of a remedial action plan, a copy of the report providing the information detailed in s. NR 716.15 and the letter provided by the department indicating that the remedial action plan submittal requirements have been complied with and that submittal of the claim is authorized.

(b) A copy of the Underground Petroleum Product Tank Inventory form (ERS-7437) for each underground tank system at the site and a copy of the Aboveground Petroleum Product Tank Inventory form (ERS-8731) for each aboveground tank system at the site.

(c) The bid specifications and a copy of the bids for commodity services as required in s. NR 747.33.

(d) Documentation verifying actual costs incurred because of the petroleum product discharge, which shall include receipts, invoices including contractor's and subcontractor's invoices, interest costs, loan fees, accounts, and processed payments.

(e) Proof of payment for all invoices including copies of both sides of canceled checks or money orders or alternate proofs of payment approved by the department.

(f) Properly detailed and itemized receipts for remedial activities and services performed.

(g) Owner's, operator's, home oil tank owner's or the responsible party's social security number or federal tax identification number.

(h) Other records or statements that the department determines to be necessary to complete the application.

(i) Signature of the owner, operator or person owning home oil tank system on the application.

(j) A certificate or certificates verifying the existence of the insurance coverage required in ch. SPS 305 for all the environmental consultants who performed work included in a claim.

(2) INCOMPLETE CLAIMS. (a) Incomplete claims, lack of verification of payment of costs, lack of signatures, and other factors may delay processing of claims or change the schedule of the review.

(b) Claims received by the department which contain unpaid invoices shall, at the department's discretion, be assigned a review date no earlier than the date proof of payment was provided to the department.

(c) PECFA claims for awards may not be processed without proper and complete documentation including, but not limited to, Underground Petroleum Product Tank Inventory forms (ERS-7437), Aboveground Petroleum Product Tank Inventory forms (ERS-8731), Remedial Action Fund Application form (ERS-8067), department letter indicating compliance with remedial action plan submittal requirements (investigation claim), report providing information detailed in s. NR 716.15 (investigation claim), evidence of the source of the petroleum product discharge and the degree and extent of the soil or water contamination resulting from the discharge, proof of payment of costs incurred in remediation, approval of closed remedial action, responsible party's social security number or federal tax identification number, and other forms available from the department necessary for claim processing.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921 or at <http://dnr.wi.gov/topic/brownfields/pecfa.html>.

(3) REQUEST FOR ADDITIONAL INFORMATION. (a) Once the department has begun the review of a claim, the department may request that additional information be submitted 15 business days from the date of the request. Otherwise, the claim may be deemed incomplete and progress payments may be denied. These claims, when complete, may be rescheduled for review after more recently received complete claims.

(b) The department may request additional information from owners, operators or persons owning home oil tank systems, agents, consultants, contractors or subcontractors as necessary.

(c) Failure to respond to a request, within the 15 business day response period for additional information, may result in a delay in payment, disallowance of interest costs accrued, action against a consultant, or scheduling a meeting with the responsible party and the department or other individuals.

1. The department may disallow interest costs accrued during the period when no response has been received, by issuing a letter stating the intent, on a specified date, to disallow payments on interest costs accrued during this period as specified in par. (c).

2. Appeal of disallowed interest costs, shall be conducted as specified in s. NR 747.53.

(4) COSTS INCURRED IN REMEDIATION. Only eligible costs, as specified in s. NR 747.30, that have been paid, shall be submitted for an award.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. (1), am. (2) (c), Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058; am. (1) (intro.), (2) (c) and (4), cr. (1) (j), Register February 2006 No. 602, eff. 5-1-06; correction in (1) (c), (j), (3) (c) 2., (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (c), (3) (c) 2., (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.13 Exclusive remedy and liability. The PECFA fund awards for remediation activities and is not intended to result in owners or operators or persons owning home oil tank systems making any profit or receiving duplicate payment in a remediation. As specified in s. 292.63 (7) (am), Stats., an award made under this chapter is the exclusive method of recovery for costs reimbursed under the fund.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.14 Right to recover actions. The department reserves the right to take action against an owner, operator or person owning a home oil tank system, or their agents or designees

to recover any award or portion of an award resulting from a fraudulent claim.

(1) RIGHT OF ACTION. A right of action under this section shall accrue to the state against an owner, operator or other person if the owner, operator or other person submits a fraudulent claim or does not meet the requirements under this chapter or if an award is issued under this section to the owner, operator or other person for ineligible costs under this section.

(2) ACTION TO RECOVER AWARDS. The department shall request the attorney general to take action as is appropriate to recover awards to which the state is entitled or when the department discovers a fraudulent claim after an award is issued.

Note: Section 292.63 (5) (c), Stats., states that recovered funds shall be credited to the petroleum environmental cleanup fund.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94.

NR 747.15 Assignment of awards. By written notification to the department, a claimant may make an assignment of an award to an institution which lends money to the claimant for the purpose of conducting remediation activities reimbursed under this chapter, as specified in s. 292.63 (4m), Stats. This assignment of an award creates and perfects a lien in favor of the assignee in the proceeds of the award.

Note: Section 292.63 (4m), Stats., states the lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this subsection has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

Subchapter III — Reimbursement Procedures

NR 747.30 Eligible cost items for remediation.

(1) ELIGIBLE COSTS. (a) Costs related to the categories in pars. (b) to (g) may be reimbursed under the scope of this chapter.

(b) Costs associated with emergency action, site investigation and remedial plan development, remediation, long-term monitoring or operation and maintenance:

1. Investigation of potential sources of contamination by precision testing to determine tightness of tanks and lines if the method used is approved by the department and the tester is certified by the department of agriculture, trade and consumer protection as specified in ch. ATPC 93 and the testing is not designed to meet the regular leak detection responsibilities of the owner or operator;

2. Costs of eligible work performed after confirmation of a petroleum product discharge;

3. Preparation of remedial action alternatives and plans;

4. Laboratory services for testing specific to this chapter, including full VOC testing; and

5. Investigation and assessment of the degree and extent of contamination caused by a petroleum product discharge from a petroleum product storage tank system or home oil tank system.

(c) Costs associated with excavation and disposal of contaminated soils:

1. Removal of contaminated soils;

2. Actual costs incurred which are associated with equipment mobilization;

3. Removal of petroleum products from surface waters, groundwater or soil; and

4. Treatment and disposal of contaminated soils including department approved procedures for bio-remediation.

Note: All soils shall be reported in tons when included in a claim.

(d) Costs associated with monitoring and other remedial action activities:

1. Monitoring of natural bio-remediation progress;

2. Actual charges for maintenance of equipment used for petroleum product recovery or remedial action activities;

3. Other costs identified by the department as necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of ch. 292, Stats.;

4. State or municipal permits for installation of remedial equipment;

5. Actual costs for the purchase or rental of temporary building structures of a size adequate to house remedial equipment; and

6. Restoration or replacement of a private or public potable water supply.

(e) Costs associated with personnel, travel and related expenses:

1. Contractor or subcontractor costs for remedial action activities;

2. Labor and fringe benefit costs associated with inspection and supervision other than specified in subd. 4.;

3. Actual costs incurred for travel and lodging which are not in excess of state travel rates; and

4. Actual verified labor, fringe benefit and equipment costs when claimants use their own personnel or equipment to conduct a remediation.

Note: A listing of state travel and meal rates may be obtained by writing to the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921.

(f) Costs associated with the preparation of a claim package under the scope of this chapter and other related costs:

1. Fees up to \$500 for a certified public accountant, contractor, or other independent preparer for compiling a claim under this chapter; and

2. For an owner or operator only, compensation to third parties for bodily injury and property damage caused by a petroleum product discharge from an underground petroleum product storage tank system.

(g) Costs associated with the support or protection of existing utilities or structures located within the remediation area during a remediation.

Note: Reimbursement for the re-installation of utilities or structures, without prior department approval, may not be made.

(2) EXCLUSIONS FROM ELIGIBLE COSTS. The department has identified various costs determined to be ineligible for reimbursement. Section 292.63, Stats., lists specific cost items which may not be reimbursable under the PECFA program. In order to control costs and provide awards for the most cost-effective remediations of petroleum-contaminated sites within the scope of this chapter, the following costs may not be reimbursed:

(a) Costs determined to be unrelated to remedial action activities under the scope of this chapter:

1. Any costs not supported by cancelled checks or other absolute proof of payment at time of submittal;

2. Any overtime labor charge, excluding an emergency action, billed at other than a straight time rate;

3. Costs for contamination cleanups from non-residential heating oil or boiler tank systems and discharges from mobile fueling tanks or fuel storage tanks on vehicles;

4. Costs associated with used oil remediations, if the oil is not from internal combustion engines;

5. Costs associated with environmental audits, environmental reconnaissance or real estate transactions, construction projects, new construction or long-term loan transactions;

6. Costs associated with investigation activities to locate petroleum product storage systems or home oil tank systems to determine eligibility for an award under the scope of this chapter;

7. Costs incurred after the department determines that no further remedial action is required, except for abandonment of monitoring wells and finalization of site closure;

8. Other costs that the department determines to be associated with, but not integral to, the remediation of a petroleum product

discharge from a petroleum product storage system or home oil tank system.

(b) Costs related to improper or incompetent remedial activities and services:

1. Costs associated with incompetent or non-effective cleanup actions which were not based upon sound professional and scientific judgment;

2. Costs of redoing remedial action activities or remedial action work which was incomplete or incompetent;

3. Costs associated with rework on remedial systems to accommodate construction, upgrades, retrofits, or redevelopment projects;

4. Any costs associated with actions that exceed the necessary activities to bring a site to the required level of remediation;

5. Costs associated with the repair or replacement of damaged buildings, sewer lines, water lines, electrical lines, phone lines, fiber optic lines or other utilities on the property;

6. Costs associated with the re-installation of damaged remedial equipment or the re-installation or modification of the remedial equipment for purposes other than effective remediation;

7. Additional interest costs accrued due to improper or incomplete filing of claims or non-response to department requests for additional information, exceptions being delays caused by the department claim process;

8. Any late service charges;

9. Any costs related to invoices or bills for which payment verification is unobtainable.

(c) Costs for testing or sampling unrelated to the investigation for the extent of contamination under the scope of this chapter:

1. Costs for sampling and testing for heavy metals, except lead testing when the discharge is verified to be from leaded gasoline, or lead and cadmium when the source is used motor oil;

2. Costs associated with the analysis for inappropriate constituents not normally part of or associated with an eligible petroleum product even if required by the department; and

(d) 1. Costs for remedial action activities funded under [42 USC 6991](#), unless the owner or operator or the person owning the home oil tank system repays the funds provided under [42 USC 6991](#);

2. Expenditures required by the department in order to meet the groundwater protection standards, ch. [160](#), Stats., ch. [ATCP 93](#) or other administrative rules but not related to a petroleum product discharge under this chapter;

3. Costs associated with loss of business;

4. Costs associated with loss of interest or dividends, or interest costs from a loan other than one for the remediation; and

(e) Costs associated with site closure:

1. Costs associated with the closure of a tank system;

2. Costs associated with tank closure assessments;

3. Costs associated with the abandonment of wells not related to the remedial action.

(f) Costs associated with legal issues:

1. Costs, other than costs for compensating third parties for bodily injury and property damage, which the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the approved remedial action plan;

2. Costs associated with third-party actions by adjoining property owners for the installation of monitoring wells or other cleanup-related items unless a court judgment has been obtained;

3. Costs associated with third-party damages from a discharge originating from an aboveground storage tank;

4. Attorney fees associated with third-party actions;

5. Any costs associated with an appeal of a determination specific to the scope of this chapter; and

6. Other attorney fees including, but not limited to, legal advice, appeals, or other representation on behalf of the responsible party or agent.

(g) Supervisory and management costs that the department determines to be unreasonable or unnecessary in carrying out the remedial action activities under this chapter:

1. Supervisory or management costs when a municipality or company uses their own personnel or personnel from a wholly- or partially-owned subsidiary for remedial activities;

2. Costs for supervisory or management activities conducted by owners or operators;

3. Costs incurred by a responsible party associated with bid requirements or project administration such as consultant selection, monitoring or supervising subcontractors or consultants;

4. Costs for right of entry or trespass fees; and

5. Separate vehicle and mileage costs.

(h) Any costs, excluding for an emergency action, incurred before a confirmed discharge is reported to the department.

(i) Interest costs associated with costs that are ineligible under this section or s. [NR 747.30 \(3\)](#).

Note: See s. [NR 747.305](#) for further ineligible costs associated with loans.

(j) Interest costs excluded under s. [NR 747.60 \(2\) \(a\)](#), [747.625](#), or [747.69 \(1\) \(b\)](#).

(k) Costs determined by the department to be excessive, as defined by the usual and customary cost schedule periodically established by the department under s. [NR 747.325](#).

(L) Costs for any work performed where a contract is not in place as required in s. [NR 747.33 \(2\) \(a\) 1.](#)

(m) Costs incurred for services exempted under s. [NR 747.33 \(6\) \(b\) 1.](#), if the costs are incurred prior to the department approval required under s. [NR 747.33 \(6\) \(b\) 2.](#), and the approval requirement is not subsequently waived by the department.

(n) Costs which exceed the \$20,000 limit in s. [NR 747.337 \(2\) \(a\)](#) for a site investigation and remedial action plan, and which are incurred prior to either providing the notices that are required in s. [NR 747.337 \(2\) \(c\)](#), or obtaining the approval which is required in s. [NR 747.337 \(2\) \(b\)](#).

(o) Costs for any work performed after submittal of the notice of completion of an investigation under s. [NR 747.62 \(4\)](#) and prior to the department's issuance of a response to the responsible party and the consulting firm under s. [NR 747.62 \(5\)](#).

(p) Costs for any work performed more than 5 business days after the department issues a decision under s. [NR 747.62 \(5\)](#) that an occurrence is subject to the public bidding process in s. [NR 747.68](#), if the work is conducted outside of that process.

(q) Costs for any work that is performed after submittal of a written deferral notice under s. [NR 747.63 \(5\) \(c\)](#) and prior to a departmental authorization to proceed with additional activities.

(r) Costs for any unauthorized work performed more than 5 business days after the department issues a directive or notice under s. [NR 747.64 \(1\)](#) about using the public bidding process in s. [NR 747.68](#).

(s) Costs for any unauthorized services that are performed by any party other than a firm which submitted a bid under s. [NR 747.68 \(2\)](#) and with which a contract is executed under s. [NR 747.69](#), if they are conducted after the qualified low bid is determined under s. [NR 747.68 \(3\)](#).

Note: For the purposes of pars. (o) to (s), costs for preparing or submitting a claim are eligible for reimbursement, regardless of when those costs are incurred.

(t) Costs that exceed the maximum reimbursement established under s. [NR 747.68 \(7\) \(d\)](#).

(u) Costs for unauthorized work performed more than 5 business days after the department issues a disqualification notice under s. [NR 747.70 \(4\) \(d\)](#).

(v) Costs for any work performed between the due date of any submittal required under this subchapter and the date a past-due submittal is actually submitted.

(w) Costs for performance bonds.

(x) Costs incurred that exceed caps established by the department unless written department approval is received prior to performance of the corresponding work.

(3) PENALIZED INELIGIBLES. (a) 1. The costs in par. (b) are considered to be grossly ineligible for reimbursement.

2. An award for a claim which includes any costs in par. (b) and which was prepared and submitted by an owner or operator or person owning a home oil tank system shall be reduced to exclude those costs, and shall then be further reduced by 50 percent of the total amount of those costs.

3. A consultant who prepares a submitted claim that includes any costs in par. (b) shall pay to the department an amount equal to 50 percent of the total amount of those costs, and the award for the claim shall be reduced to exclude those costs.

(b) 1. Costs incurred on or before August 1, 1987, for a remediation.

2. Costs for cleanup resulting from spills from petroleum transportation equipment.

3. Costs for investigations or remedial action activities conducted outside the state of Wisconsin.

4. Costs associated with emptying, cleaning, or disposing of storage tank systems, and other costs associated with closing or removing any petroleum product storage tank system or home oil tank system after November 1, 1991 — unless the claimant has a contract for those services that was signed before November 1, 1991; or has a loan agreement, note, or commitment letter for a loan for the purposes of conducting those services, that was executed before November 1, 1991.

5. Laboratory rush charges, unless related to an approved emergency action.

6. Air travel.

7. Costs associated with tank-system upgrades or retrofits, and any corresponding compliance with other state or federal rules or laws, and future business plans.

8. Costs for repairing, retrofitting, or replacing a petroleum product storage system or home oil tank system, such as for tank bedding materials or fill for setting tanks, lines, or canopies.

9. Costs associated with capital improvements, reinstallation of electrical power, dispensers, pumps, or other items for retrofits, upgrades, or new construction, unless written department approval is received prior to performance of the corresponding work.

10. Costs associated with concrete, blacktop replacement, on-site landscaping, or other improvements; except for depreciation costs for third-party actions, or for asphalt or concrete patching associated with well abandonment, or where written department approval is received prior to performance of the corresponding work.

11. Costs associated with razing of buildings, removal of roads, removal of footings and foundations, or other destruction of structures, or other redevelopment costs, unless written department approval is received prior to performance of the corresponding work.

12. The opportunity cost of money, or interest income or dividend income lost because of a decision to use internal funding for a remediation.

13. Subcontractor markups for work performed after January 31, 1993. This subdivision does not apply to work that is included in a public bidding contract executed under s. NR 747.69 (1).

14. Costs associated with general program support and office operation which are expected to be included in the hourly staff rates, such as telephone charges, photocopying, faxes, paper, printing, postage, hand tools, personal protective equipment, computer equipment, computer-aided-design, and software charges.

Note: For the purposes of this section, photo ionization detectors, flame ionization detectors, electronic equipment, and sampling kits are not considered hand tools.

15. Costs reimbursed by insurance companies unless performing in an agent role.

16. Costs associated with fees required by any other state agency, such as fees authorized by s. 292.55, Stats., and fees listed in ch. NR 749, except department closure review fees incurred prior to October 29, 1999.

(4) CLAIMS INCLUDING INELIGIBLE COSTS. Claims submitted which include ineligible costs shall be considered incomplete and may be returned to the claimant for recalculation, revision and resubmittal. The claim shall be rescheduled for review when the ineligible costs have been removed and the claim received by the department. The department may disallow interest costs accrued during the non-response period, as specified in s. NR 747.12 (3) (a).

(5) AREAS OF CONTAMINATION CONTAINING ELIGIBLE AND INELIGIBLE PRODUCTS. When an area of contamination is identified which contains both eligible and ineligible products under the fund, the following shall apply:

(a) Costs associated with the eligible products may be claimed. Any costs that are required only because of the presence of an ineligible product may not be claimed.

(b) The owner or operator and the department shall be notified immediately. The consultant, in conjunction with the owner or operator, shall propose a methodology to the department for dividing the costs of remediation between the eligible and ineligible products. Department approval of a methodology shall be obtained by the owner or operator prior to the submittal of any claims.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. (4), Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: renum. (1) (a) to be Comm 47.10 (1) (a) 3. and am., renum. (1) (intro.), (2) (a) 2., 5. to 7., 9., 10., 14., 15., (d) 3. to 5., 7., (e) 4., (3) and (4) to be (2) (a) 1. to 8., (d) 1. to 4., (e) 3., (4) and (5) and am. (1) (a), (2) (a) 7., and (5) (intro.) and (a), am. (1) (b) 2., 4., (2) (b) 7. and 8., r. (1) (b) 5., (2) (a) 1., 3., 4., 8., 11. to 13., (c) 3., (d) (intro.), 1., 2., 6., 8., and (e) 3., r. and recr. (2) (h) to (k), cr. (2) (L) to (x) and (3), Register February 2006 No. 602, eff. 5-1-06; correction in (1) (b) 1., (2) (d) 2., (i) to (u), (3) (b) 13., (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (b) 1., (c) 4., (2) (intro.), (a) 7., (b) 7., (c) 2., (d) 2., (h) to (u), (3) (b) 16., (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.305 Costs associated with loans. (1) **INTEREST EXPENSE.** (a) *Allowability of interest costs.* The fund will reimburse interest expense if a loan is specifically secured for a remediation and the proceeds are applied only to the cleanup at the site. To be eligible, interest costs cannot be combined with retrofits or construction loans and shall be site specific. Reasonable money management shall be practiced to avoid unnecessary accrual of interest charges. Interest expenses shall be managed in the most cost-effective manner possible and invoices shall be paid in a timely manner to avoid interest costs or late charges. If a line of credit is used to provide funding for a remediation, clear documentation shall be provided on the disbursements and interest expenses.

(b) *Ineligible interest expenses.* The PECFA fund shall not reimburse for the following items:

1. The opportunity cost of money or interest income or dividend income lost because of a decision to use internal funding for a remediation;
2. Interest costs which are not clearly documented;
3. Interest costs or late charges on invoices or bills.
4. Additional interest costs accrued for the use of PECFA loan proceeds to earn money or for investment purposes.
5. Interest costs which are specified in s. 292.63 (4) (c) 8., Stats.

Note: Section 292.63 (4) (c) 8., Stats., reads as follows: "Interest costs incurred by an applicant that exceed interest at the following rate:

a. If the applicant has gross revenues of not more than \$25,000,000 in the most recent tax year before the applicant submits a claim, 1% under the prime rate.

b. If the applicant has gross revenues of more than \$25,000,000 in the most recent tax year before the applicant submits a claim, 4%."

6. Interest costs which are ineligible under s. 292.63 (4) (cc), Stats.

Note: Section 292.63 (4) (cc), Stats., reads as follows: "*Ineligibility for interest reimbursement.* 1. a. Except as provided in subd. 1m. or 2., if an applicant's final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60th day after receiving that notification are not eligible costs.

c. Except as provided in subd. 2., if an applicant does not complete the investigation of the petroleum product discharge by the first day of the 61st month after the month in which the applicant notified the department under sub. (3) (a) 3. or October 1, 2003, whichever is later, interest costs incurred by the applicant after the later of those days are not eligible costs.

1m. If an applicant received written notification that no further remedial action is necessary with respect to a discharge before September 1, 2001, and the applicant's final claim is submitted more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120th day after September 1, 2001, are not eligible costs.

2. Subdivision 1. does not apply to any of the following:

a. An applicant that is a local unit of government, if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment.

b. An applicant that is engaged in the expansion or redevelopment of brownfields, as defined in s. 238.13 (1) (a), if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment."

Note: Other sections of this code may also specify interest costs that are ineligible for reimbursement, such as ss. NR 747.12 (3) (c) and 747.30 (2) (i) and (j).

(c) *Maximum interest and related costs.* 1. The following maximum rates are established for loans secured after January 31, 1993, and before October 15, 1997, for the purposes of a remediation:

a. Interest rate shall be reimbursable at no more than 2% above the prime rate.

b. Loan origination fees from the same lender shall be reimbursable only once, and at no more than 2 points of the loan principal. Where a later, larger loan is obtained to pay off a preceding loan, the origination fee for the portion of the later loan that equals the preceding principal will not be reimbursed. A duplicative loan origination fee from a subsequent lender will not be reimbursed, unless the preceding loan was terminated by a different lender.

2. The following maximum rates are established for loans secured on or after October 15, 1997, for the purposes of a remediation:

a. Interest rate shall be reimbursable at no more than 1% above the prime rate.

b. Loan origination fees from the same lender shall be reimbursable only once, and at no more than 2 points of the loan principal. Where a later, larger loan is obtained to pay off a preceding loan, the origination fee for the portion of the later loan that equals the preceding principal will not be reimbursed. A duplicative loan origination fee from a subsequent lender will not be reimbursed, unless the preceding loan was terminated by a different lender.

(d) *Annual services fees.* Annual loan service fees charged on or before April 20, 1998, shall be reimbursable at no more than 1% of the unreimbursed amount and remaining available loan balance. Annual loan service fees charged after April 20, 1998, shall be reimbursable at no more than 1% of the outstanding unreimbursed loan amount.

(e) *Documentation.* A copy of the loan agreement documenting the interest rate, loan origination fees, and other costs, shall be submitted when requested by the department.

(f) *Lending agreements.* In lieu of the maximum rates specified in par. (d), the department may negotiate agreements with lending institutions to obtain lower rates. The department may solicit proposals from lending institutions to supply loans for PECFA remediations.

(g) *Other items.* In addition to the maximum rates established in par. (c), the following shall apply:

1. Annual loan service fees shall be charged no more frequently than once annually, and at a rate of no more than 1% on the outstanding balance.

2. Original and re-estimated loan amounts, to the extent feasible, shall reflect a sound estimate of the cost to perform the remediation. Excessive estimates which result in excessive or unnecessary interest costs may not be reimbursed by the PECFA fund.

(2) **MINIMUM LOAN AMOUNTS.** A lending institution may unilaterally establish a minimum loan amount of \$100,000 or less. Minimum loan amounts of more than \$100,000 and loan origination fees on minimum loans of more than \$100,000 shall require prior written approval of the department.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. (1) (c) to (f), cr. (1) (g). Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058; am. (1) (b) 3. and 4., (c) 1. b., 2. b. and (g) 1., cr. (1) (b) 5. and 6., Register February 2006 No. 602, eff. 5-1-06; correction in (1) (b) 5. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.31 Incentives for cost-effective remediation. (1) **GENERAL.** The department may make incentives available to responsible parties who use the most cost-effective remediation methods and alternatives or participate in the voluntary bundling of sites for remediation purposes.

(2) **INCENTIVES.** For claimants who participate in the voluntary bundling of sites or for remediations that have approval as closed remedial actions and eligible costs not exceeding \$60,000, excluding interest, the claim may receive priority review in the award process.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; am. Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058; am. (2) Register February 2006 No. 602, eff. 5-1-06.

NR 747.325 Usual and customary costs.

(1) **APPLICATION.** This section applies to all work covered under this chapter, for all occurrences previously or newly reported to the department, that is performed after May 1, 2006, except it does not apply to any of the following:

(a) Work for which a reimbursement cap has been determined through the competitive public bidding process established under s. 292.63 (3) (cp), Stats.

(b) Work performed as part of an emergency action, within the initial 72 hours after the onset of the need for the action.

(c) Work performed for home oil tank systems.

(2) **COST SCHEDULE.** Any cost for items that are commonly associated with claims under this chapter, which exceeds the amounts listed in the department's schedule of usual and customary costs, as published and in effect while the work was performed, may not be reimbursed, except as provided in sub. (3).

Note: The department of commerce promulgated rule order CR 07-032, relating to the schedule of usual and customary costs for the petroleum environmental cleanup fund awards, which was filed with the revisor of statutes bureau for publication in the October 2007 Wisconsin Administrative Register. The department directed that the schedule not be published in the Wisconsin Administrative Code as it is a "form" under s. 227.23, Stats., available as described in the next note, consistent with the requirements of s. 227.23 (3), Stats.

Note: The department's schedule of usual and customary costs is reviewed for updating in January and July of each year to reflect changes in actual costs. The current schedule, and all preceding versions, are posted at <http://dnr.wi.gov/topic/brownfields/pecfa.html>, under petroleum programs and PECFA.

Note: The schedule of usual and customary costs limits the per-unit reimbursement for various, commonly associated tasks. For caps on reimbursement for items that are not commonly associated with claims, or for caps on the scope of work for a particular task or occurrence, other sections of this chapter may apply, such as s. NR 747.337 (2), which addresses the maximum allowable cost for a site investigation and the development of a remedial action plan, and subch. VI, which addresses competitive public bidding.

(3) **EXCEEDING THE SCHEDULE.** The maximum reimbursement amounts established under sub. (2) may be exceeded only in accordance with all of the following:

(a) Higher costs must be incurred in order to comply with s. 292.63 (3) (c) 3., Stats., and with enforcement standards established under ch. 160, Stats.

(b) The higher costs, as needed under par. (a), are specifically approved in writing by the department prior to performance of the corresponding work.

Note: Under s. 292.63 (3) (c) 3., Stats., a responsible party is required to “conduct all remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11, Stats.”

(4) CLASSIFICATION OF OCCURRENCES. (a) No later than 30 days after May 1, 2006, the responsible party or agent for each occurrence reported to the department by May 1, 2006, shall complete and submit to the department an occurrence–classification form prescribed by the department, except as provided in par. (c).

(b) If an occurrence–classification form required under par. (a) is not submitted in accordance with par. (a), the department may not reimburse costs for any work performed between May 1, 2006, and the date the department receives the form.

(c) An occurrence–classification form is not required where the only remaining work consists of submitting a claim or completing the conditions in a conditional closure letter from the department.

(5) REQUEST FOR ADDITIONAL INFORMATION. (a) If the department requests additional information after receipt of the occurrence–classification form required in sub. (4), the responsible party or agent shall provide the requested information no later than 45 days after the date of the department’s request.

(b) If information requested under par. (a) is not submitted in accordance with par. (a), the department may only reimburse costs for the subject occurrence that are listed on the schedule established under sub. (2).

(6) RESPONSE TO THE OCCURRENCE–CLASSIFICATION FORM OR TO ADDITIONAL INFORMATION. After receipt of the occurrence–classification form required under sub. (4) or the additional information requested under sub. (5), the department may take one or more of the following actions:

(a) Limit reimbursement to the costs listed in the schedule established under sub. (2).

(b) Specify a reimbursement cap for costs that are not listed in the schedule established under sub. (2).

(c) Specify a scope of work and a corresponding reimbursement cap.

(d) Specify a period during which the public bidding process established under s. 292.63 (3) (cp), Stats., will be deferred.

(7) CLAIMS FOR PRIOR COSTS. For an occurrence that is the subject of a department directive under sub. (6) (b), (c) or (d), claims for reimbursement for costs incurred before the effective date of the directive shall be paid in accordance with s. NR 747.025.

Note: As required in s. NR 747.12 (1) (intro.), all claims for reimbursement for the costs included in the schedule established under sub. (2), or the costs included under sub. (7), must be submitted in a format prescribed by the department.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; CR 07-032: Register October 2007 No. 622; correction in (7) made under s. 13.92 (4) (b) 7., Stats.; Register December 2011 No. 672; corrections in (1) (intro.), (a), (3) (a), (4) (a), (c), (6) (d), (7) made under s. 13.92 (4) (b) 6., 7., Stats.; Register October 2013 No. 694.

NR 747.33 Comparative proposals and bid processes for remediation activities and services.

(1) Except for home oil tank owners and department approved emergency actions, the purchase of consulting and commodity services, not already covered by a detailed written contract, as of February 1, 1993, shall conform to the procedures in this section. In order to qualify as an existing contract, the document shall be with a specific service provider and shall specify contract items, such as but not limited to, the project details, time limitations, projected completion dates, payment terms and other standard contract language.

(2) GENERAL. (a) *Consulting firm selection.* 1. An owner or operator shall select a PECFA consulting firm, as so registered under s. SPS 305.80, to conduct all site investigation and remedial action activities, and shall execute a written contract with that firm.

2. The services of the selected consulting firm shall be limited to providing the consulting services or scientific evaluations nec-

essary to conduct an environmental response. The consulting firm and any company or consultant not independent of the consulting firm or project consultants are prohibited from providing any of the commodity services required in the remediation.

(b) *Purchase of commodity services.* 1. All commodity services which include, but are not limited to, soil borings, monitoring–well construction, laboratory analysis, excavation and trucking shall be obtained through a competitive bid process. A minimum of 3 bids are required to be obtained and the lowest cost service provider shall be selected. An employee of a commodity service provider may not participate in the preparation of bid documents or other requirements of the bid process, except for providing technical material, if the employee’s firm is a bidder.

2. Consulting firms may elect to bid laboratory services on a calendar–year basis in order to obtain volume discounts and reduce the number of bids that shall be completed for each remediation. In completing the competitive bid process, the consulting firm shall obtain a minimum of 3 written bids from qualified firms that respond to the specifications and estimated volume of work provided by the consulting firm. Only PECFA–eligible laboratory work shall be included in the analysis to determine the lowest cost service provider. The lowest bid shall be accepted. All discounts, rebates and savings shall be reflected in the PECFA claim.

3. The analysis of laboratory tests for passive or active bio–remediation and the performance of pump or pilot tests may be accomplished by either consultants or commodity providers. If these services are obtained by a consulting firm, as part of their consulting service, then the bidding of this service shall not be required.

4. An owner or operator may appeal to the department to obtain approval to select other than the lowest cost commodity service provider. The department may approve an appeal if it determines that the use of another service provider will further the goals of the program.

(c) *Remediation alternative.* 1. The owner or operator shall select the lowest cost remediation alternative that will result in a closed remedial action. The responsible party may select a higher cost alternative if he or she certifies to the department in writing that the additional costs will not be claimed for PECFA reimbursement.

2. A higher cost remediation alternative may be allowed by the department if it determines that the alternative would further the goals of the program.

(3) REMEDIATION. For sites for which a remedial alternative was received by the department before April 21, 1998, the following shall apply:

(a) The estimated cost for the selected remediation alternative contained in the remedial action plan shall provide a separate dollar amount for consulting services and for commodity items. The estimated costs for these items shall be submitted to the department as part of the comparison of remedial alternatives or, if the submittal of the alternatives is not required as specified in s. NR 747.335 (3) (c), prior to the start of the remedial activities.

(b) A dollar amount approved by the department shall establish the maximum reimbursable amount for consulting services during the remediation.

(c) The cost detail for the selected remediation alternative shall establish the total estimated cost for the remediation up to receiving approval as a closed remedial action. The estimate may be used to establish a maximum reimbursable amount. If the estimated consulting or commodity costs are established as maximum reimbursable amounts, and one or both will be exceeded, the consultant shall immediately notify in writing the claimant and the department of the anticipated actual cost.

(d) If it is determined that the consulting or commodity services may not be completed within the original estimate, the owner or operator and the consultant shall provide a written account, to the department, of the additional work to be performed

in order to prove the need for additional funding. Failure to obtain written approval of the additional costs by providing justification acceptable to the department shall constitute grounds for disallowing the additional expenses. Cost guidelines, as published by the department, may be used as one factor in determining if an approval for additional work is warranted.

(4) COMMODITY ITEMS REQUIRING COMPETITIVE BIDDING. The following items shall be competitively bid. All bids shall be in units standard to the industry.

- (a) Excavation of petroleum-contaminated soils;
- (b) Trucking of petroleum-contaminated soils or backfill material;
- (c) Thermal treatment of petroleum-contaminated soils;
- (d) Laboratory services including mobile labs;
- (e) Backfill material;
- (f) Drilling and installing monitoring wells;
- (g) Soil borings;
- (h) Surveying if the service requires a registered land surveyor; and
- (i) Other non-consulting services.

(5) COMMODITY BUNDLES. The owner or operator may combine individual commodity items into one bid. These bundles of commodities shall be bid by at least 3 service providers and the lowest cost service provider shall be selected.

(6) EXEMPTIONS. (a) Commodity items with a purchase price of \$1,000 or less shall be exempt from the competitive bid requirement. The exclusion from commodity bidding may not be used if a service is to be used multiple times and the cumulative cost exceeds \$1,000.

(b) 1. The department may exempt specific services from the competitive commodity bid process if the department determines that the conduct of the bid proposal process is unlikely to further the remediation process or the goals of the program.

2. Written department approval shall be received prior to incurring costs for services that are exempted under subd. 1., except where a subsequent department waiver of the approval requirement would further the goals or objectives of the program.

Note: As established in s. NR 747.30 (2) (m) and (i), the department will not reimburse costs, including interest cost, for services exempted under subd. 1., if the costs are incurred prior to the department approval required under subd. 2., and the approval requirement is not subsequently waived.

(c) The competitive commodity bidding required under subs. (2) (b) and (4) is not required where reimbursement amounts are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in subch. VI.

(d) The prohibition in sub. (2) (a) 2. against consultants or their associates providing commodity services does not apply where reimbursement amounts are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in subch. VI.

(7) DOCUMENTATION. The owner or operator shall maintain the documents and data used in the competitive bid and selection process. These records shall be maintained and provided to the department if requested as part of the claim review or audit processes.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. (intro.) to (2), r. (3) and (4), renum. (5) to (8) to be (3) to (6) and am. (5) (a), Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: renum. (intro.) and (1) to (6) to be (1) to (7) and am. (2) (a) and (6) (b), cr. (6) (c) and (d) Register February 2006 No. 602, eff. 5-1-06; correction in (2) (a) 1., (3) (a), (6) (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (2), (3) (a), (6) (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.335 Site investigation and remedial action plan development cap. (1) GENERAL. Site investigations which were not started as of January 15, 1993, and for which a remedial alternative was received by the department before April 21, 1998, shall conform to this section.

(2) MAXIMUM ALLOWABLE COST. The maximum allowable cost for a site investigation and the development of a remedial action plan shall be no more than \$40,000, excluding interest, feasibility testing, and interim action costs, unless approved under par. (a).

(a) If the investigation will exceed \$40,000, the responsible party or its agent, shall contact the department in writing and provide an estimate of additional work and funding required and obtain the department's approval. If the additional approval is not obtained, costs above the \$40,000 level will not be reimbursed.

(b) The consultant is responsible for monitoring the costs incurred in the investigation and remedial plan development and identifying that the \$40,000 maximum may be exceeded. The consultant shall notify the owner, in writing, at the earliest point at which the consultant may know, or may have been reasonably expected to know, that the maximum allowable cost may be exceeded and that the approval of the department shall be obtained before any costs above \$40,000 will be reimbursed by the department. The notification to the owner shall be made before the owner has incurred liabilities above the \$40,000 maximum.

(3) CONSIDERATION OF ALTERNATIVES. (a) The remedial action plan developed for the site shall include a consideration of at least 3 alternatives, one of which shall be passive bio-remediation with long-term monitoring. The consideration of alternatives shall include a basic comparison of costs and the recommended alternative shall have a detailed cost estimate. If passive bio-remediation with long-term monitoring is feasible but not the recommended alternative, a clear rationale shall be provided as to why this alternative is not acceptable. Costs of long-term monitoring, or operation and maintenance shall be included in the comparison of costs in considering the alternatives.

(b) If the consideration of the passive bio-remediation or monitoring alternative shall be excluded because of site characteristics, the alternative shall be replaced by consideration of another alternative. If an alternative is substituted for the passive bio-remediation or monitoring alternative, the reason for this change shall be documented in the analysis.

(c) 1. The comparison of alternatives shall be a concise document written so that the responsible party and the department may easily compare alternatives. Only alternatives which are reasonably expected to be approved may be included in the comparison. The comparison of alternatives shall be submitted to the department if the proposed alternative is greater than \$60,000. The comparison submitted to the department shall not include the full remedial action plan, unless requested by the department.

2. If the comparison document is determined by the department to be excessive or non-approvable alternatives are included, the department may require that the comparison be revised and resubmitted.

(4) START OF INVESTIGATION. An investigation shall be considered started if, after confirmation of a contamination is obtained, additional soil borings, soil sampling or monitoring-well construction have begun. In addition, the work on the site shall have an element of continuity. If work on a site stops for a period of 2 years or more, the site shall then fall under s. NR 747.335 (2) and (3) or 747.337 depending on whether a remedial alternative was received by the department as of April 20, 1998.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; r. and recr. (1), am. (3) (c) 1. and (4), Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: am. (3) (c) 1. Register February 2006 No. 602, eff. 5-1-06; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.337 Site investigation and remedial action. (1) GENERAL. Sites for which site investigations were not started as of January 15, 1993, and for which a remedial alternative has not been received by the department as of April 20, 1998, shall conform to this section. The scope of the site investigation shall

include determining the presence of the environmental factors specified in sub. (3) (a).

(2) MAXIMUM ALLOWABLE COST. (a) The maximum allowable cost for a site investigation and the development of a remedial action plan shall be no more than \$20,000, excluding interest and interim action costs, unless approved under par. (b).

(b) If the investigation will exceed \$20,000, either the claimant, their agent or the consultant shall contact the department in writing and provide an estimate of additional work and funding required, and obtain the department's approval.

(c) The consultant is responsible for monitoring the costs incurred in the investigation and remedial action plan development and notifying the department prior to exceeding the \$20,000 maximum. The consultant shall also notify the claimant, in writing, at the earliest point at which the consultant may know, or may have been reasonably expected to know, that the maximum allowable cost may be exceeded. The written approval of the department shall be obtained before incurring any costs above \$20,000. The notification to the owner shall be made before the owner has incurred liabilities above the \$20,000 maximum.

Note: As established in s. NR 747.30 (2) (n) and (i), the department will not reimburse costs, including interest costs, above the \$20,000 limit in this subsection if they are incurred prior to either providing the notices that are required in par. (c), or obtaining the approval which is required in par. (b).

(d) If interim actions are performed during the course of an investigation or prior to the approval of a remedial action plan, costs above \$5000, excluding interest, shall not be reimbursed. The department shall be informed prior to the implementation of any interim action.

(3) ENVIRONMENTAL FACTORS. (a) *Environmental factors.* Consultants shall determine the presence of any of the following environmental factors:

1. Documented expansion of plume margin.
2. Verified contaminant concentrations in a private or public potable well that exceeds the preventive action limit established under ch. 160, Stats.
3. Contamination within bedrock or within 1 meter of bedrock.
4. Petroleum product that is not in the dissolved phase is present with a thickness of .01 feet or more, and verified by more than one sampling event.
5. Documented contamination discharges to a surface water or wetland.

(b) *Presence of environmental factors.* Consultants for sites that exhibit one or more environmental factors shall complete an analysis of remedial alternatives and prepare a remedial action plan. The analysis shall identify the lowest cost remedial strategy that will address the environmental factor and the remediation of the site. Included within the action plan shall be a cost detail providing separate dollar amounts for consulting and commodity activities. The cost detail shall provide the total cost, excluding interest but including all closure costs, for the remediation up to approval as a closed remedial action. The remedial action plan, cost detail, information on any interim actions conducted during the site investigation, and a separate report providing the information detailed in s. NR 716.15, and including an estimate of total contaminant mass, shall be submitted to the department and approval of the cost detail received before conducting any remedial action for which reimbursement will be claimed under the PECFA fund.

(c) *Absence of environmental factor.* If no environmental factors are identified during or after a site investigation, the consultant will develop an analysis of remedial alternatives and prepare a remedial action plan utilizing a non-active treatment approach. The analysis shall identify the lowest cost remedial strategy that will address the remediation of the site. Included within the analysis shall be a cost detail providing separate dollar amounts for consulting and commodity activities. The cost detail shall provide the

total cost, excluding interest but including all closure costs, for the remediation up to approval as a closed remedial action. The remedial action plan, cost detail, and a separate report providing the information detailed in s. NR 716.15, and including an estimate of total contaminant mass, shall be submitted to the department and approval of the cost detail received before conducting any remedial action for which reimbursement will be claimed under the PECFA fund. The alternative proposed may include only the use of the following:

1. Non-active source control, which may include soil excavation.
2. Development and remediation to site specific residual contamination levels.
3. Monitoring to evaluate the potential for remediation by natural attenuation.
4. Remediation by natural attenuation.
5. Monitoring.
6. Institutional controls and site restrictions.
7. Other non-active remedial approaches.

(d) *Additional controls.* Any alternative proposed to the department shall identify whether it assumes or includes the use of any institutional controls, groundwater use restrictions, deed notices or other restrictions or notifications.

(4) COST CAPS FOR OCCURRENCES THAT ARE NOT SUBJECT TO PUBLIC BIDDING. For an occurrence that is not subject to the public bidding process in s. NR 747.68 due to a waiver issued under s. NR 747.63 (1), cost caps shall be established as prescribed in s. 292.63 (3) (cs), Stats.

Note: Section 292.63 (3) (cs), Stats., reads as follows: "1. The department shall review the remedial action plan for a site and shall determine the least costly method of complying with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement for remedial action under this section is limited to the amount necessary to implement that method.

3. In making determinations under subd. 1., the department shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions.

(6) CLAIMANT OPTIONS. (a) After receiving an approval of a remedial action plan from the department, a claimant may elect to either implement the alternative or to select another alternative. If the claimant elects to implement a higher cost remedial strategy, the claimant shall notify the department in writing of the intent to use a higher cost alternative. The notification shall include the statement that the claimant agrees that the department approved alternative establishes the maximum reimbursable amount for consulting and commodity services under the fund and that additional costs for the occurrence, excluding interest, will not be submitted to the fund.

(b) The department may elect to approve reimbursement for a higher cost remedial strategy if it furthers the objectives of the program.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: am. (2) (a) to (c), r. (4) and (5), cr. (4) Register February 2006 No. 602, eff. 5-1-06; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.338 Review of existing sites. (1) GENERAL. The department may review the remedial performance and costs associated with any existing sites. As part of the review, the department may elect to do any or all of the following:

(a) Deny any or all funding, after July 1, 1998, if a claimant failed to carry out site recommendations developed by the department in its "PECFA Efficiency Project."

Note: "PECFA Efficiency Project" refers to a study conducted by the department.

(b) Deny any or all funding if a claimant fails to provide information required by the department as part of a review of existing sites.

(2) **EXISTING SITE CAPS OR ESTIMATES.** The department may require a redetermination of costs for any existing site to establish a total cost, excluding interest but including all closure costs, to achieve the status of a closed remedial action. After reviewing the total cost, the department may do any or a combination of the following: approve and establish a cap on total costs, excluding interest; deny approval of costs; approve system enhancements; bundle the site with another remediation(s); or direct the site through a public bid process to establish a lower site cost. A claimant may elect either to implement the alternative or to select another alternative. If the claimant elects to implement a higher cost remedial strategy, the claimant shall notify the department in writing of the intent to use a higher cost alternative. The notification shall include the statement that the claimant agrees that the department-approved alternative establishes the maximum reimbursable amount for consulting and commodity services under the fund and that additional costs for the occurrence, excluding interest, will not be submitted to the fund.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99; correction in (1) (a) made under s. 13.92 (4) (b) 6., Stats., Register October 2013 No. 694.

NR 747.339 Cost effective remediations. (1) FLEXIBILITY. If a claimant can achieve a closed remedial action, and the total costs incurred are equal to or less than \$60,000, excluding interest, the department will allow the claimant to complete their remedial efforts without the requirements to:

(a) Develop and submit investigation and other interim environmental reports, if the site closure decision falls under the department's authority.

(b) Develop and submit a remedial action plan and be potentially subject to caps, bundling and public bidding.

(c) Adhere to the \$40,000 cap on investigation costs.

(2) **NOTIFICATION AND REQUIREMENTS.** If a claimant and his or her consultant elect to attempt to achieve a closed remedial action within the \$60,000 limit, the department shall be notified in advance of implementation of the remediation process of the intended attempt. If the effort is not successful, the department shall be notified as soon as it is known or should have reasonably been expected to be known that the site will not be completed within the \$60,000 limit. The \$60,000 limit shall not be exceeded without prior notice to and approval from the department. After notification of the failure to accomplish a closed remedial action, the department will provide direction on whether additional action will be funded. If any expenses above the \$60,000 limit are incurred without department approval, they may not be claimed for reimbursement under the PECFA fund.

(3) **DISQUALIFICATION.** If a consulting firm or consultant, in the opinion of the department, exhibits a pattern of attempting and failing to complete remediations under this section, the department will notify the consultant or the firm of the general restriction from attempting the remediations. The department may also disqualify the consultant from performing all work under PECFA.

(4) **SUNSET OF THIS SECTION.** The election under sub. (2) to utilize this section may not be made on or after May 1, 2006.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: am. (1) (intro.) and (2), cr. (4) Register February 2006 No. 602, eff. 5-1-06.

NR 747.34 Reduction of deductible, based on financial hardship. (1) The deductible amount specified in s. 292.63 (4) (dg), Stats., for underground petroleum product storage systems may be reduced by the department to \$2500, where proof of financial hardship is established in accordance with sub. (2).

Note: See the Note under s. NR 747.025 (2) for a reprint of s. 292.63 (4) (dg), Stats.

(2) Financial hardship shall be demonstrated on a form provided by the department, in sufficient detail to enable the department to determine whether the hardship either exists, or will occur if the deductible is not reduced under this section.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921 or at <http://dnr.wi.gov/topic/brownfields/pecfa.html>.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: r. and recr. Register February 2006 No. 602, eff. 5-1-06.

NR 747.355 Award payments for claims received by the department on or after April 21, 1998. (1) GENERAL. Awards shall be made if funds are available at the time of completion of a claim review.

(2) **SEQUENCING PAYMENTS.** (a) Except for those cases specified in sub. (3) (a) and (b), claims shall be paid on a strict first-in-first-out basis with the claim date being established when any required state agency approval and the complete claim package have been received by the department.

(b) **Closure.** Payments shall be made for closed remedial actions.

(c) **Progress payments.** All requests for progress payments shall be accompanied by a completed Remedial Action Fund Application form (ERS-8067). The department may conduct field or financial audits or inspections to verify completion of each phase of remediation prior to payment. Progress payments may be made only at the following times:

1. Completion of an emergency action.

2. After completion of an investigation and receipt of written approval by the department to submit the investigation claim.

3. Approval of a closed remedial action.

4. Approval of natural attenuation as a final remedial response or at the end of each one-year cycle of the monitoring necessary to show that remediation by natural attenuation will occur.

5. At the end of each one-year cycle of monitoring required for off-site contamination.

6. After implementation and 1 year of actual operation, or monitoring, or combination thereof, and every 1 year thereafter.

7. For sites selected by the department for progress payments based upon extreme life safety and environmental risk and where the claimant has demonstrated to the department's satisfaction that he or she does not have the financial means to conduct a remediation without progress payments: the department shall be the sole determiner of whether progress payments are to be allowed, and an appeal of the decision to the department is not allowed.

(d) **Other interim payments.** The department shall also make awards at the following points:

1. When a lender terminates a funding relationship with a claimant and requests reimbursement for the funds expended. A completed Assignment of PECFA Reimbursement form (ERS-8523) shall be submitted to the department prior to payment and the check shall be jointly paid to the claimant and the lender.

2. When a claimant has incurred eligible expenses equal to the occurrence maximum plus the applicable deductible.

3. When the conditions prescribed in s. 292.63 (4) (a) 2. b., Stats., occur.

Note: Section 292.63 (4) (a) 2. b., Stats., reads as follows: "The department shall issue an award if the owner or operator or the person has incurred at least \$50,000 in unreimbursed eligible costs and has not submitted a claim during the preceding 12 months."

4. When there is a change in responsible party, if the previous responsible party files a claim.

5. When there is a change in consulting firms working on the project.

6. When there is a change in lenders for the project.

7. When the department directs filing a claim, in an effort to reduce interest costs to the program.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921, or at <http://dnr.wi.gov/topic/brownfields/pecfa.html>.

(e) *Penalty for not submitting a required claim.* If a claim submittal that is directed under par. (d) 7. is not submitted within 120 days of receiving written notification of that directive, any interest expense beginning on the 121st day and extending until the department receives the claim, is not eligible.

(3) **PRIORITY PROCESSING.** (a) *Emergency actions.* The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health and safety. The finding of an emergency may not be based on financial hardship or indigence of the responsible party or agent. The department shall be the sole determiner of whether an emergency exists, and an appeal of the decision to the department is not allowed.

(b) *Cost-effective remediations, tanks for schools and farms, and home oil tanks.* 1. Claims received under subds. 2. and 3. may be processed and awards may be made thereto, before processing other complete claims, except for emergency claims under par. (a), and except for claims for either home oil tanks or farm tanks, as prescribed in s. 292.63 (4) (a) 5. and 5m., Stats., respectively.

Note: Sections 292.63 (4) (a) 5. and 5m., Stats., read as follows:

"5. The department shall review claims related to home oil tank discharges as soon as the claims are received. The department shall issue an award for an eligible home oil tank discharge as soon as it completes the review of the claim.

5m. The department shall review claims related to discharges from farm tanks described in par. (e) as soon as the claims are received. The department shall issue an award for an eligible discharge from a farm tank described in par. (e) as soon as it completes the review of the claim."

2. Priority processing may be assigned to a claim for a closed remedial action that is achieved at a total cost of \$60,000 or less, excluding interest.

3. Priority processing may be assigned to a claim for a petroleum product storage system which is owned by a school district and which is used for storing heating oil for consumptive use on the premises where stored.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99; CR 04-058: am. (2) (c) (intro.), 2., and 4. to 8., cr. (2) (d) 3. to 7., (e), (3) (b) 2. and 3., renum. (3) (b) to be (3) (b) 1. and am. Register February 2006 No. 602, eff. 5-1-06; corrections in (2) (d) 3., (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.36 Third-party claims. (1) **GENERAL.** A responsible party may file a claim with the department for the reimbursement of an amount paid to third parties for personal injury to another individual or off-site property damage associated with a petroleum product discharge from an underground petroleum product storage tank system within the scope of this chapter. The existence of these claims shall be made known to the department, by the responsible party, no later than 30 calendar days from the date that the responsible party knew or could have reasonably been expected to have known of the occurrence of the injury or personal property loss. Rules established by the office of the commissioner of insurance, as specified in s. Ins 6.35, concerning ineligible costs for third-party claims, shall apply.

(2) **THIRD-PARTY COMPENSATION FOR UNDERGROUND STORAGE TANKS.** Costs incurred from environmental pollution and remediation actions, including compensation to third parties for property damage and individual bodily injury, may be deemed eligible costs as specified in s. NR 747.30 (1).

Note: Liabilities which are excluded from coverage in liability insurance policies for bodily injury and liabilities which are excluded in liability insurance policies for property damage, for the purpose of this chapter, are defined by the state of Wisconsin commissioner of insurance, as specified in s. Ins 6.35, as required in s. 292.63 (1m), Stats.

Note: If a person conducts a remedial action activity for a discharge from a petroleum product storage tank system or home oil tank system, whether or not the person files a claim under this chapter, the claim and remedial action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution, as specified in s. 292.63 (7) (b), Stats.

(3) **INTERVENTION IN THIRD-PARTY CLAIMS.** The owner or operator of an underground petroleum product storage system eligible for an award under the scope of this chapter, shall notify the department in writing of any action by a third party against the owner or operator for compensation. The department may intervene in any third-party actions against an owner or operator of an

underground petroleum product storage tank system for compensation for bodily injury or property damage. The department of justice may assist the department in this intervention.

(4) **THIRD-PARTY COMPENSATION FOR ABOVEGROUND STORAGE TANK SYSTEMS.** Third-party damages are not a reimbursable expense if the damage is the result of a discharge from an above-ground petroleum product storage system.

(5) **REASONABLE JUDGMENT DETERMINATION.** (a) Third-party personal injury. The department may establish a peer review adjudicator panel to review third-party personal injury reimbursement claims resulting from a discharge from an underground petroleum product system under the scope of this chapter. The review panel shall make a monetary determination for reimbursement based upon reasonable health care service costs and other computation methods established by the department.

(b) Peer review adjudicator panel. The panel may make a recommendation to the department for an award from the fund to compensate the third party for personal injury or property damage. The department shall review the recommendation and make a decision regarding an award amount under the program.

(c) Third-party property claims. For third-party claims associated with the removal of property items such as, but not limited to, blacktop and cement, the depreciated value of the property may be reimbursed. The basis of the value of the property shall be included in the claim. Full replacement costs may not be reimbursed by the fund.

(6) **ELIGIBLE COSTS.** (a) A responsible party may include the reimbursement for personal injury or property damage costs on a claim for an award within the scope of this chapter. Reimbursement of a claim shall be based upon a showing that the cost was caused by the petroleum product discharge and that the amount claimed is reasonable.

(b) If third-party claims exceed the maximum allowed under this chapter for the applicable type of underground petroleum product storage tank system, costs shall be reimbursed in the following order:

1. Eligible costs of on-site and off-site remediation and replacement of drinking water wells;
2. Eligible costs for personal injury; and
3. Eligible costs for property damage.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: am. (1) Register February 2006 No. 602, eff. 5-1-06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.37 Recovery of awards. Sale of remedial equipment or supplies shall comply with s. 292.63 (5) (a), Stats.

Note: Section 292.63 (5) (a), Stats., reads as follows: "If a person who received an award under this section sells equipment or supplies that were eligible costs for which the award was issued, the person shall pay the proceeds of the sale to the department. The proceeds shall be paid into the petroleum inspection fund."

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: r. and recr. Register February 2006 No. 602, eff. 5-1-06; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

Subchapter IV — Credentials, Laboratories, Drilling Firms and Audits

NR 747.40 Reimbursement and credentials. Remedial consulting services and activities performed by individuals and firms who do not have the applicable credentials under ss. SPS 305.80 and 305.81 to participate in the PECFA program may not be reimbursed under the scope of this chapter unless the department determines that denying the reimbursement would conflict with achieving the goals of the PECFA program.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: r. and recr. Register February 2006 No. 602, eff. 5-1-06; correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.41 Laboratories and drilling firms. (1) **INSURANCE.** (a) As of March 1, 1994, all laboratories per-

forming work under the PECFA program shall obtain and maintain errors and omissions (professional liability) coverage of no less than \$1,000,000 per claim, \$1,000,000 annual aggregate and a deductible of no more than \$100,000 per claim.

(b) As of March 1, 1994, all drilling firms performing work under the PECFA program shall obtain and maintain general liability coverage, including pollution impairment liability, of no less than \$1,000,000 per claim, \$1,000,000 annual aggregate and a deductible of no more than \$100,000 per claim.

(2) **COVERAGE.** The insurance obtained by laboratory and drilling firms shall cover work performed under PECFA on or after March 1, 1994. For all laboratory and drilling firms included in a claim, a certificate or certificates verifying the existence of the insurance coverage as specified in sub. (1), shall be submitted with the PECFA claim.

(3) **RATING.** The insurance coverage shall be provided by a firm that has an A.M. Best rating of at least "A-".

(4) **ALTERNATE MECHANISMS.** A laboratory or drilling firm may request the department's approval of an alternate mechanism for meeting the requirement of the maximum deductible of \$100,000 per claim. The department shall review the request and determine whether the mechanism meets the requirement of the rule.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: renun. from Comm 47.415 Register February 2006 No. 602, eff. 5-1-06.

NR 747.42 Field and financial audits. (1) GENERAL. The department shall routinely investigate remediation sites to establish that the remediation is appropriate and that costs incurred reflect the remediation services and activities.

(2) **APPLICABILITY.** The department may conduct field and financial audits as deemed necessary in order to further the goals of the PECFA program. Activities which may warrant the conduct of a field or financial audit may include, but not be limited to, the following:

- (a) Complaints;
- (b) High cost sites;
- (c) Cases where retrofits are being undertaken;
- (d) New construction activities;
- (e) Receipt of additional information which may result in modifying the initial determination of eligibility;
- (f) More than one occurrence on a specific site; and
- (g) Sites having commingled plumes.

Note: Defrauding the PECFA program may result in revocation or suspension of credentials issued under ch. SPS 305, and criminal prosecutions under chs. 939 and 943, Stats.

(3) **MAINTENANCE OF AND ACCESS TO RECORDS.** (a) *General.* All consultants and consulting firms registered to participate, all organizations and individuals, including but not limited to service providers and others who perform remedial action services, all owners, operators, and persons owning home oil tank systems who file or attempt to file a claim under the PECFA program shall maintain records relevant to a claim for 6 years after claim submitted and make available upon request of the department, all financial and work records deemed by the department as necessary to support or investigate a claim or attempted claim.

(b) *Penalties.* Penalties for violations of this section shall be established in accordance with s. 292.63 (10), Stats.

Note: Section 292.63 (10), Stats., reads as follows: "PENALTIES. (a) Any owner or operator, person owning a home oil tank system or service provider who fails to maintain a record as required by rules promulgated under sub. (9) (a) may be required to forfeit not more than \$2000. Each day of continued violation constitutes a separate offense.

(b) Any owner or operator, person owning a home oil tank system or service provider who intentionally destroys a document that is relevant to a claim for reimbursement under this section is guilty of a Class G felony."

(c) *Notification of work performed.* The department may, at its request, require consultants and consulting firms registered to participation and all organizations and individuals who perform remedial action services and all owners, operators and persons

owning home oil tank systems to notify the department no less than 10 calendar days in advance of any work being performed at a site or sites.

(d) *Parallel sampling requirement.* At the request of the department, consultants or firms registered to participate or organizations or individuals who perform remedial action services shall, as directed by the department, take soil or groundwater samples and submit these samples to a laboratory specified by the department. The cost of preparing and submitting these samples shall be an eligible cost to the PECFA program independent of any cost cap or cost estimate. The laboratory reports, for requested samples, shall be sent to the department directly from the specified laboratory. The cost of the laboratory analysis shall be paid by the owner and submitted as part of the PECFA claim.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: am. (2) (g) and (3) (a), r. (3) (b), renun. (3) (c) to (e) to be (3) (b) to (d) and am. (3) (b) Register February 2006 No. 602, eff. 5-1-06; correction in (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

Subchapter V — Legal Issues

NR 747.50 Notifying the department of real estate transactions. (1) PROPERTY TRANSFER OR LEASE. The owner or operator or person owning a home oil tank system shall notify the department of any real estate transaction affecting the ownership or operation of a remediation site.

(2) **REAL ESTATE SALES AGREEMENT OR LEASE AFFECTING RESPONSIBILITY FOR THE REMEDIATION.** The sales agreement or a lease for a property being transferred or leased prior to the completion of a remediation shall identify the party or parties responsible for the completion of the remediation, responsible for the payment of costs and eligible to receive PECFA proceeds. The party or parties eligible to receive the PECFA award shall submit a signed copy of the sales agreement or lease, a form W-9, and a release from any previous assignment of award under s. NR 747.15, with the next claim.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; correction made under s. 13.93 (2m) (b) 1., Stats., Register, December, 1998, No. 516; CR 04-058: am. Register February 2006 No. 602, eff. 5-1-06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.52 Dispute resolution procedures. (1) Any person, including, but not limited to, owners, operators, persons owning home oil tank systems and their agents may submit a written complaint to the department regarding a consultant, consulting firm or other service provider.

(2) The department may investigate consultants, consulting firms or other service providers on its own initiative or upon the receipt of a complaint. The department may conduct an investigation and make a determination regarding a complaint as soon as practicable following the receipt of the complaint. The department shall take appropriate action based on its determination. If it is determined that no further action is warranted or authorized, the department shall notify the persons affected.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058: am. Register February 2006 No. 602, eff. 5-1-06.

NR 747.53 Appeals and hearings. (1) APPEALS. (a) General. A responsible party, agent, consultant or consulting firm may request a hearing with the department, as specified in s. 227.42, Stats., on any decision affecting that person's legal rights except as specified in ss. NR 747.03, 747.355 (2) (c) 7. and (3) (a) and par. (b) 2.

(b) *Appeal requirements.* 1. All appeals pursuant to this chapter shall be in writing and shall be received by the department no later than 30 calendar days after the date of the decision being appealed. Appeals received more than 30 days after the date of the decision being appealed shall be dismissed. For purposes of this section, appeals received after 4:30 p.m. shall be considered received on the next business day.

Note: A claimant or an attorney representing the claimant may request an administrative hearing to review this action by delivering, mailing, or faxing a written request for a hearing to:

Delivery address:
Wisconsin DNR
Bureau for Remediation & Redevelopment
101 S. Webster Street, 5th Floor
Madison, WI 53703

Mailing address:
Wisconsin DNR
Bureau for Remediation & Redevelopment
P.O. Box 7921
Madison, WI 53707-7921

2. An appeal shall be signed by the person whose legal rights are affected by the decision being appealed or an attorney representing such person. Any appeal filed by a person other than the person whose legal rights are affected by the decision being appealed or an attorney representing that affected person shall be dismissed.

3. Appeals of items identified as ineligible, as listed in s. NR 747.30 (2) or (3), shall be dismissed.

4. The written appeal shall list every reason the department's decision is incorrect and shall identify every issue to be considered in the hearing. Issues not raised in the written appeal under this subdivision are considered to be waived and shall be dismissed.

(2) HEARINGS. (a) *General.* All hearings shall be conducted in accordance with these rules and ch. 227, Stats.

(b) *Settlement agreement prior to hearing.* If the department and the affected party are able to reach agreement on disposition of an appeal prior to a hearing, the following actions shall occur:

1. The settlement agreement shall be transmitted in writing to the administrative law judge designated by the secretary of the department.

2. The settlement agreement shall be binding upon the parties when signed by both parties and returned to the department.

3. The settlement agreement shall be considered a joint motion by the parties to dismiss the appeal its entirety or to dismiss such portions of the appeal as may be encompassed by the terms of the settlement agreement.

(c) *Prehearing discovery.* There shall be no prehearing discovery except as provided in s. 227.45 (7), Stats.

(d) *Witness fees.* Witness fees and mileage of witnesses subpoenaed on behalf of the department shall be paid at the rate prescribed for witnesses in circuit court.

(e) *Location of hearings.* All hearings shall be held in Madison, Wisconsin at a location determined by the department. Telephone testimony of individual witnesses and telephone hearings may be held at the discretion of the person designated by the secretary as hearing officer.

(f) *Hearing transcripts.* All hearings shall be electronically recorded. Any party may request a copy of the electronic recording. A transcript of the recorded hearing shall be prepared upon request at the expense of the party requesting the transcript. Copies of transcripts prepared under this section shall be provided to the other party or parties upon payment of the actual cost of copying or obtaining a copy of the transcript. The department may require payment in advance. A transcript may be provided at the department's expense to a party who demonstrates impecuniousness or financial need if that party has filed a petition for judicial review. Where the department contracts with a court reporting firm for the preparation of transcripts, the fees charged for transcription and copying shall be equal to the fees charged to the department by the court reporting firm.

History: Cr. Register, February, 1994, No. 458, eff. 3-1-94; CR 04-058; am. Register February 2006 No. 602, eff. 5-1-06; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register February 2006 No. 602; correction in (1) (a), (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a), (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.54 Arbitration. (1) APPLICATION. (a) If a claimant who files an appeal under s. NR 747.53 requests use of arbitration and if the amount at issue is \$100,000 or less, the appeal shall be processed under this section.

(b) 1. A request for arbitration shall be considered as a withdrawal of the appeal filed regarding the subject of that arbitration and precludes the claimant from going forward with an administrative appeal regarding the same issues under s. NR 747.53.

2. Proceeding to an appeal hearing under s. NR 747.53 precludes the claimant from filing an arbitration request regarding the same issues.

(c) A request for arbitration shall be in writing signed by the claimant or their attorney, shall include the names and addresses of all parties, and shall be made after denial of costs submitted for reimbursement, but prior to commencement of a hearing under ch. 227, Stats.

(2) SCOPE. Only the costs in the following categories may be the subject of arbitration under this section:

(a) Investigating a petroleum product discharge.

(b) Planning remedial action.

(c) Conducting remedial action activities.

(3) DEFINITIONS. (a) *Deadlines.* All time deadlines in this section, except in sub. (10) (e) 1., are specified in calendar days.

(b) *Terms.* Except where otherwise specified, the following terms are defined as follows for the purposes of this section:

1. "Administrator" means the administrator of the environmental and regulatory services division of the department, or his or her designee.

2. "Arbitrator" means a person appointed in accordance with s. 292.63 (6s), Stats., and governed by the provisions of this section.

Note: Section 292.63 (6s) Stats., reads as follows: "Upon the request of a person who files an appeal of a decision of the department under this section, if the amount at issue is \$100,000 or less, the appeal shall be heard by one or more individuals designated by the department to serve as arbitrator under rules promulgated for this purpose by the department. In such an arbitration, the arbitrator shall render a decision at the conclusion of the hearing, or within 5 business days after the conclusion of the hearing if the arbitrator determines that additional time is needed to review materials submitted during the hearing, affirming, modifying or rejecting the decision of the department. The arbitrator shall promptly file his or her decision with the department. The decision of the arbitrator is final and shall stand as the decision of the department. An arbitrator's decision may not be cited as precedent in any other proceeding before the department or before any court. A decision under this subsection is subject to review under ss. 227.53 to 227.57 only on the ground that the decision was procured by corruption, fraud or undue means. The record of a proceeding under this subsection shall be transcribed as provided in s. 227.44 (8)."

3. "Claim" means the amount sought by a claimant as remediation costs actually incurred by the claimant at a remediation site.

4. "Ex parte communication" means any communication, written or oral, relating to the merits of an arbitration proceeding, between an arbitrator and any party or their agent, which was not originally filed or stated in the administrative record of the proceeding. Such communication is not ex parte communication if all parties to the proceeding have received prior written notice of the proposed communication and have been given the opportunity to be present and to participate therein.

5. "Party" means the department and any person who has agreed, pursuant to s. 292.63 (6s), Stats., to submit to an arbitrator one or more issues arising from a denial of incurred costs that have been claimed for reimbursement by a claimant.

(4) APPOINTMENT OF ARBITRATOR. (a) The department shall establish and maintain a panel of environmental arbitrators.

(b) Within 10 days of receiving a request for arbitration, the administrator shall identify and submit simultaneously to all parties an identical list of 6 individuals chosen from the panel of arbitrators, whom the administrator believes will not be subject to disqualification because of circumstances likely to affect impartiality. Each party shall have 10 days from the date of receipt of the list to identify any individuals objected to, to rank the remaining individuals in the order of preference, and to return the

list to the administrator. If a party does not return the list within the time specified, all individuals on the list are deemed acceptable to that party. From among the individuals whom the parties have indicated as acceptable, and, in accordance with the designated order of mutual preference, if any, the administrator shall appoint an arbitrator to serve. If the parties fail to mutually agree upon any of the individuals named, or if the appointed arbitrator is unable to serve, or if for any other reason the appointment cannot be made from the submitted lists, the administrator shall make the appointment from among the other members of the panel. In no event shall appointment of the arbitrator by the administrator take longer than 30 days from the filing of the request for arbitration. The administrator's appointment notice to the arbitrator shall include the names and addresses of all of the parties, as provided in the request for arbitration.

(c) The arbitrator shall, within 5 days of receipt of his or her notice of appointment, file a signed acceptance of the case with the department and the claimant. The acceptance shall include a disclosure to the parties of any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any known responsible party to which the claim may relate.

(d) If any appointed arbitrator should resign, die, withdraw, be disqualified, or otherwise be unable to perform the duties of the office, the administrator may fill the vacancy in accordance with the applicable provisions of this subsection, and the arbitration process shall be resumed.

(5) CHALLENGE PROCEDURES. (a) If any party wishes to request disqualification of an arbitrator, that party shall notify the other parties in writing of that request and the basis therefor within 5 days of receipt of the information on which the request is based.

(b) The administrator shall make a determination on any request for disqualification of an arbitrator within 7 days after the department receives the request, and shall notify the parties in writing of the determination. This determination shall be within the sole discretion of the administrator, and that decision shall be final.

(6) EX PARTE COMMUNICATION. (a) No party or agent of a party may make or knowingly cause to be made to the arbitrator an ex parte communication.

(b) The arbitrator may not make or knowingly cause to be made to any party or agent of a party an ex parte communication.

(c) The administrator may remove the arbitrator in any proceeding in which it is demonstrated to the administrator's satisfaction that the arbitrator has engaged in prohibited ex parte communication to the prejudice of any party. If the arbitrator is removed, the procedures in sub. (4) (d) shall apply.

(d) Whenever an ex parte communication in violation of this subsection is received by or made known to the arbitrator, the arbitrator shall immediately notify in writing all parties to the proceeding of the circumstances and substance of the communication and may require the party who made the communication or caused the communication to be made, or the party whose representative made the communication or caused the communication to be made, to show cause why that party's arguments or claim should not be denied, disregarded, or otherwise adversely affected on account of the violation.

(e) The prohibitions of this subsection apply upon appointment of the arbitrator and terminate on the date of the final decision.

(7) JOINT SUBMITTAL. (a) Within 10 days after receipt of the arbitrator's acceptance under sub. (4) (c), the claimant and the department shall jointly submit to the arbitrator a summary of one or more issues arising from the denial by the department of incurred costs claimed for reimbursement concerning the site. The joint submittal shall be signed by the claimant or their attor-

ney, and a representative of the department, and shall include all of the following:

1. A description of the site and a brief summary of the actions taken at the site.

2. A statement of the issues arising from the costs denied by the department in the claim, that are being submitted for resolution by arbitration.

3. A statement that the parties consent to resolution of the issues jointly submitted to the arbitrator.

4. A statement that the parties agree to be bound by the final decision on all issues jointly submitted to the arbitrator, subject to the right to challenge the final decision solely on the grounds and in the manner prescribed in sub. (11) (b) and (c).

5. A statement that the parties agree that the final decision shall be binding only with respect to the costs at issue in the claim submitted for arbitration.

6. A statement that each signatory to the joint submittal is authorized to enter into the arbitration and to bind legally the party represented by him or her to the terms of the joint submittal.

(b) Any party may move to modify the joint submittal for arbitration to include one or more additional issues arising in the referred claim. To be effective, the modification must be signed by the arbitrator and all other parties.

(8) FILING OF PLEADINGS. (a) Discovery shall be in accordance with this subsection.

(b) Within 10 days after receipt of the arbitrator's acceptance under sub. (4) (c), the claimant shall submit to the arbitrator 2 copies of a written statement and shall serve a copy of the written statement upon all other parties. The written statement shall include all of the following:

1. A statement of facts, including a description of the costs incurred by the claimant in connection with the action taken at the site that have been denied by the department, and statements which state with particularity the basis for the claimant's assertion that the costs denied by the department are eligible.

2. A description of the evidence in support of both of the following:

a. The site at which the action was taken is an eligible site pursuant to s. NR 747.02.

b. There was a discharge from a petroleum product storage system of an eligible petroleum product at the site at which the remedial response action was taken.

3. A complete list of the specific costs which were denied by the department which the claimant has requested be the subject of the arbitration proceeding.

4. To the extent such information is available, the names and addresses of all identified owners for the site, and the volume of the tanks and nature of the petroleum products that contributed to the contamination.

5. Any other statement or documentation that the claimant deems necessary to support its claim.

(c) If any issue concerning the adequacy of the claimant's remedial action has been submitted for resolution or may arise during the arbitrator's determination of the dollar amount of response costs recoverable by the claimant, the statement shall be accompanied with an index of any documents that formed the basis for the selection of the remedial action taken at the site, and a copy of all indexed documents.

(d) Within 14 days after receipt of the claimant's written statement, the department shall submit to the arbitrator 2 copies of an answer and shall serve a copy of the answer upon all other parties. The answer shall include all of the following:

1. A brief statement of the department's basis for denying the costs at issue that are the subject of the arbitration.

2. Any objections to the statement of facts in the claimant's written statement, and, if so, a counterstatement of facts.

3. A description of the evidence in support of the department's denial of the costs at issue and any supporting documentation thereof.

4. Any objections to the remedial action taken by the claimant at the site based upon any documents that formed the basis for the selection of the remedial action.

5. Any other documentation that the department deems relevant, including documentation that the department deems necessary to support its denial of costs submitted by the claimant for reimbursement.

(9) JURISDICTION OF ARBITRATOR. (a) In accordance with the procedures established by this section, the arbitrator is authorized to arbitrate one or more issues arising from the denial by the department of incurred costs in a claim for reimbursement.

(b) The arbitrator's authority is to render a decision regarding the denial of incurred costs claimed and is limited to only the issues submitted for resolution by the parties in the joint submittal for arbitration. Any issues arising from the denial of incurred costs claimed that are not submitted for resolution shall be deemed to be waived and shall not be raised in any action seeking enforcement of the decision for the purpose of overturning or otherwise challenging the final decision, except as provided in subs. (11) (b) and (c).

(c) If the issue of the dollar amount of incurred costs that were denied by the department has been submitted for resolution, the arbitrator shall determine, pursuant to par. (d), the dollar amount recoverable by the claimant and shall award the amount of such costs to the claimant.

(d) The arbitrator shall uphold the department's denial of costs in full or in part unless the claimant can establish that all or part of such costs were either of the following:

1. Eligible costs based upon the department's list of eligible costs in s. NR 747.30, or the schedule of usual and customary costs established by the department under s. NR 747.325 for the period in which the costs were incurred.

2. Clearly not excessive and clearly necessary, taking into account the circumstances of the remedial action and relative to the usual and customary cost schedule established by the department under s. NR 747.325 for the time period in which the costs were actually incurred.

(e) If the arbitrator upholds the department's denial only in part, the arbitrator shall award to the claimant only those costs incurred in connection with the portions of the remedial action that were upheld along with any associated interest that was denied, less any remaining deductible and subject to occurrence maximums.

(f) The standard of review to be applied by the arbitrator to the department's reimbursement denial decision shall be whether the decision was arbitrary and capricious, or otherwise not in accordance with law.

(10) ARBITRATION DECISION. (a) Within 5 days after receipt of the statement and answer submitted under sub. (8), the arbitrator shall review the submittals and request any needed additional information from the claimant or the department.

(b) Any information requested under par. (a) shall be submitted to the arbitrator and served upon all other parties, within 5 days after receiving the request.

(c) Within 10 days after receipt of either the submittals under sub. (8) or the information requested under par. (a), whichever is applicable, the arbitrator shall render a proposed decision and shall mail the proposal to the parties, unless the parties have settled the dispute prior to the decision.

(d) Within 10 days after receipt of the proposed decision, a party may submit additional information to the arbitrator, and if done, shall serve a copy of the additional information to all other parties.

(e) 1. Within 5 business days after receipt of any additional information submitted under par. (d), the arbitrator shall render a final decision.

2. The final decision shall be in writing and shall be signed by the arbitrator. It shall be limited in accordance with the arbitrator's jurisdiction as established in sub. (9), and shall, if such issues have been jointly submitted by the parties for resolution, contain the arbitrator's determination of the dollar amount of costs denied by the department, if any, to be awarded to the claimant.

(f) The parties shall accept as legal delivery of the final decision the placing in the United States mail of a true copy of the final decision, sent by certified mail, return receipt requested, addressed to each party's last known address or each party's attorney's last known address, or by personal service.

(g) Notice of the final decision shall be published by the department on its Web site. The notice shall include the name and location of the site concerned, the names of the parties to the proceeding, and a brief summary of the final decision.

(11) EFFECT AND ENFORCEMENT OF FINAL DECISION. (a) The final decision shall be binding and conclusive upon the parties as to the issues that were jointly submitted by the parties for resolution and addressed in the decision.

Note: As established in s. NR 747.54 (1) (b) 1., an arbitrator's decision may not be appealed under s. NR 747.53.

(b) As established in s. 292.63 (6s), Stats., the final decision under this section is subject to review under ss. 227.53 to 227.57, Stats., only on the ground that the decision was procured by corruption, fraud, or undue means.

(c) Except as necessary to show fraud, misconduct, partiality, or excess of jurisdiction or authority, in any enforcement action, a party may not raise, for the purpose of overturning or otherwise challenging the final decision, issues arising in the claim that were not submitted for resolution by arbitration.

(d) Neither the initiation of an arbitration proceeding nor the rendering of a final decision shall preclude or otherwise affect the ability of the State of Wisconsin, including the department, to do any of the following:

1. Seek injunctive relief or enforcement against the claimant for further remedial action at the site concerned pursuant to s. 101.144, Stats., or any other applicable statute, regulation, or legal theory.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

2. Seek any relief for any violation of criminal law from any claimant, consultant, commodity provider, contractor, or subcontractor.

3. Seek any relief, civil or criminal, from any person not a party to the arbitration proceeding under s. 292.63, Stats., or any other applicable statute, regulation, or legal theory.

(12) FEES AND EXPENSES. (a) In any arbitration conducted, all fees and expenses of the arbitrator shall be divided equally among all parties. All other expenses shall be borne by the party incurring them.

(b) The department shall establish the per diem fee for the arbitrator prior to the commencement of any activities by the arbitrator.

(13) MISCELLANEOUS PROVISIONS. (a) Any party who proceeds with arbitration knowing that any provision or requirement of this section has not been complied with, and who fails to object thereto either orally or in writing in a timely manner, shall be deemed to have waived the right to object.

(b) The original of any joint submittal for arbitration, modification to any joint submittal for arbitration, pleading, letter, or other document filed in the proceeding, except for exhibits and other documentary evidence, shall be signed by the filing party or by his or her attorney.

(c) All papers associated with the proceeding that are served by a party to an opposing party shall be served by personal service,

or by United States first class mail, or by United States certified mail, return receipt requested, addressed to the party's attorney; or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party. All papers associated with the proceeding that are served by the arbitrator or by the department shall be served by personal service or by United States certified mail, return receipt requested, addressed to the party's attorney; or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party.

(d) If any provision of this section, or the application of any provision of this section to any person or circumstance is held invalid, the application of that provision to other persons or circumstances and the remainder of this section shall not be affected thereby.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (a), (b) 1., 2., (8) (b) 2. a., (9) (d) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a), (b) 1., 2., (3) (b) 2., 5., (8) (b) 2. a., (9) (d) 1., 2., (11) (b), (d) 3. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

Subchapter VI — Competitive Public Bidding

NR 747.60 Selection of an investigation consulting firm and notification to the department. (1) INITIAL CONTRACT. (a) No later than 14 days after a PECFA-registered consulting firm executes or terminates a written contract with a responsible party for investigating a discharge from a petroleum product storage system, the consulting firm shall submit to the department a notification form prescribed by the department.

Note: See s. NR 747.71 for special requirements for existing sites.

Note: The contracts referenced in this section are required by s. NR 747.33 (2) (a) 1. As established in s. NR 747.30 (2) (L) and (i), the department will not reimburse costs, including interest costs, for any site investigation work performed outside of these contracts.

(b) After receipt of a termination notice under par. (a), the department shall notify the responsible party of the requirements in sub. (2) for a subsequent contract and for ineligibility of interest costs.

(2) SUBSEQUENT CONTRACTS. (a) If a contract under sub. (1) is terminated before completion of the investigation, and the responsible party does not, within 60 days after the date of the notice in sub. (1) (b), perform either of the actions specified in pars. (b) and (c), any interest costs relating to the work under the terminated contract, which accrue between the termination date and the beginning of a new contract, may not be reimbursed by the department.

(b) Execute another written contract with a PECFA-registered consulting firm for completing the investigation.

(c) Obtain written approval from the department for additional time to comply with par. (b).

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06.

NR 747.61 Management during a site investigation. (1) CONSULTING FIRM'S RESPONSIBILITIES FOR THE INVESTIGATION. The consulting firm selected to perform the investigation shall be responsible for planning and completing all investigation activities in the most cost-effective manner possible, drawing professional engineering and geologic conclusions from data collected during the investigation, and submitting any consultant reports required by this subchapter or s. 292.63, Stats.

(2) DEPARTMENT'S RESPONSIBILITIES DURING THE INVESTIGATION. The department shall be responsible for tracking the expenditure of funds for investigation activities as reported by the investigation consulting firm, in accordance with s. NR 747.62.

(3) REIMBURSEMENT AND COST CONTROLS DURING THE INVESTIGATION. For all investigation work that is not publicly bid under this subchapter, the usual and customary cost schedule referenced in s. NR 747.325 and the maximum costs specified in s. NR 747.337 (2) shall apply to reimbursement of all costs.

Note: Under s. NR 747.33 (6) (c), the department will not require commodity bidding during the investigation, where reimbursement amounts are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in this subchapter.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.62 Periodic progress reporting during a site investigation. (1) FREQUENCY OF REPORTS. (a) To inform the department of the consulting firm's progress and the estimated cost of work remaining in the investigation for each occurrence, the consulting firm for a site investigation shall periodically submit reports to the department in a format prescribed by the department, no later than the recurring, earlier of the following dates:

1. The anniversary date of the contract between the firm and the responsible party, except as provided in par. (b).

2. The end of the calendar month that follows the month of completion of each investigative phase specified by the department.

Note: See sub. (3) for information on directives from the department to carry out specific investigation activities.

Note: See sub. (4) for filing a notice of completion of an investigation.

(b) After a report is filed under par. (a) 2., the anniversary shall be based on the date of that report.

(c) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the DNR a copy of the reports received under par. (a).

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

Note: See s. NR 747.71 for special requirements for existing sites.

(2) DEPARTMENT RESPONSE TO INVESTIGATION PROGRESS REPORTS. After receiving a progress report under sub. (1), the department shall record the receipt and send a written response to the responsible party and the consulting firm, providing an assessment of the financial management of the investigation, an assessment of the estimate of the cost to complete the investigation for the occurrence, and a decision, if possible, of whether or not the occurrence is subject to the public bidding process in s. NR 747.68.

(3) DIRECTIVES FROM THE DEPARTMENT TO CARRY OUT SPECIFIC INVESTIGATION ACTIVITIES. At any time during the investigation, the department may direct the responsible party and the consulting firm to carry out specific activities necessary to achieve the most cost-effective collection of investigation data necessary to determine whether the occurrence is subject to competitive public bidding and to define a closure standard, remediation target, or scope of work for the remediation.

(4) NOTICE OF COMPLETION OF INVESTIGATION. (a) By the end of the calendar month that follows the consulting firm's development of all investigation data necessary to define either the remediation target or the scope of the remediation for an occurrence, the firm shall file with the department a notice of completion of an investigation, on a form prescribed by the department.

Note: As established in s. NR 747.30 (2) (o) and (i), the department will not reimburse costs, including interest cost, for any work performed after submittal of the notice of completion under this subsection and prior to the department's issuance of a response under sub. (5).

(b) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the DNR a copy of the notice received under par. (a).

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

(5) DEPARTMENT RESPONSE TO NOTICE OF COMPLETION. After receiving a notice of completion of an investigation of an occurrence, the department shall send a written response to the responsible party and to the consulting firm, containing a decision by the

department on whether the occurrence is subject to public bidding, or whether the responsible party may proceed to remediate the occurrence or take other action directed by the department.

Note: See s. NR 747.623 for determining which occurrences are subject to public bidding.

Note: See ss. NR 747.325 and 747.337 for cost controls for work that is not subject to public bidding.

Note: As established in s. NR 747.30 (2) (p) and (i), the department will not reimburse costs, including interest costs, for any work performed more than 5 business days after the department issues a decision under this section that an occurrence is subject to the public bidding process in s. NR 747.68, if the work is conducted outside of that process.

(6) PROVIDING DEPARTMENT RESPONSES TO THE DNR. For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the department a copy of all written departmental responses issued under this section.

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The “department” in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a) 2., (2), (3), (5), (6) made under s. 13.92 (4) (b) 6., 7., Register October 2013 No. 694.

NR 747.623 Assignment to public bidding. (1) COST ESTIMATE EXCEEDS \$60,000. (a) *Occurrences under the department’s jurisdiction.* Unless exempted under s. NR 747.63, an occurrence covered under s. 101.144 (2) (b), Stats., shall be subject to the public bidding process in s. NR 747.68 if the department estimates that the cost to complete a site investigation and remedial action will exceed \$60,000, including interest.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(b) *Occurrences under department jurisdiction.* Unless exempted under s. NR 747.63, an occurrence that is not covered under s. 101.144 (2) (b), Stats., shall be subject to the public bidding process in s. NR 747.68 if the department estimates that the cost to complete a site investigation and remedial action will exceed \$60,000, including interest.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(2) COST ESTIMATE DOES NOT EXCEED \$60,000, OR INCURRED COSTS EXCEED \$60,000, INCLUDING INTEREST. Occurrences not included in sub. (1) shall be subject to the public bidding process in s. NR 747.68 if so directed by the department.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (a), (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a), (b), (2) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.625 Claim submittal required. (1) ASSIGNMENT TO PUBLIC BIDDING. Whenever the department notifies a responsible party and the consulting firm that an occurrence is subject to the public bidding process in s. NR 747.68, a claim for eligible costs incurred up to then shall be submitted to the department, no later than 120 days after the date of the department’s notice.

(2) COMPLETION OF A SCOPE OF WORK. (a) Whenever a consulting firm completes a scope of work designated by the department, a claim for eligible costs incurred for that scope of work shall be submitted to the department, no later than 120 days after completing that work.

(b) The department may waive the requirement in par. (a) for small scopes of work that do not include a change to a different consulting firm.

(3) INELIGIBLE INTEREST COSTS. (a) Failure to file a claim prior to the deadline prescribed in sub. (1) shall result in ineligibility of any interest expenses incurred between the date of the department’s notice and the date a claim is filed.

(b) Failure to file a claim prior to the deadline prescribed in sub. (2) shall result in ineligibility of any interest expenses

incurred between the date of the completion of the scope of work and the date a claim is filed.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.63 Exemptions from competitive public bidding. (1) GENERAL. Pursuant to s. 292.63 (3) (cp), Stats., the following exemptions may apply to an occurrence:

(a) The department may waive the public bidding process in s. NR 747.68 for the reasons set forth in s. 292.63 (3) (cp) 2., Stats.

Note: Section 292.63 (3) (cp) 2., Stats., provides that the department may waive the competitive public bidding requirement “if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.”

(b) An occurrence is exempt from the public bidding process in s. NR 747.68 where or while the circumstances in subs. (2) to (5) apply, or where the bidding process is otherwise waived by the department.

(2) EMERGENCY ACTIONS. Work performed as part of an emergency action within the initial 72 hours after the onset of the need for the action, is not subject to the public bidding process in s. NR 747.68.

(3) BIDDING IS NOT COST EFFECTIVE. The department may waive the public bidding process in s. NR 747.68 after determining that either bidding would not be cost-effective, or the estimated additional cost to complete a scope of work is reasonable.

(4) ALTERNATIVE ACCEPTABLE BIDDING PROCESS. The department may waive the public bidding process in s. NR 747.68 after determining that a responsible party has used an acceptable alternative competitive bidding process to choose the consulting firm and establish an estimated cost to define a closure standard, remediation target, or scope of work for the remediation.

(5) TEMPORARY DEFERRAL OF PUBLIC BIDDING. (a) The department may defer public bidding for an occurrence that is subject to the public bidding process in s. NR 747.68 after determining that additional investigation activities will produce specific data and information which will contribute to the bidding process in s. NR 747.68 for that occurrence.

(b) The department shall provide a written notice to the responsible party and the consulting firm specifying the conditions to be met during the deferral period.

(c) The consulting firm shall cease work on the occurrence after the conditions that justified the deferral have been met, and shall submit a written notice thereof to the department within the 14 days following. Work may recommence only after authorization to proceed is received from the department.

Note: As established in s. NR 747.30 (2) (q) and (i), the department will not reimburse costs, including interest costs, for any work performed in violation of this paragraph.

Note: Under s. 292.63 (3) (cp) 5., Stats., the agency waiving competitive public bidding for an occurrence must provide notice to the other agency prior to issuing the waiver.

Note: Under s. 292.63 (4) (cm), Stats., the schedule of usual and customary costs referenced in s. NR 747.325 must be used to determine the amount of eligible costs for an occurrence for which a competitive bidding process is not used, except in circumstances under which higher costs must be incurred to comply with s. 292.63 (3) (c) 3., Stats., and with enforcement standards.

Note: Section 292.63 (3) (c) 3., Stats., provides that the owner shall “conduct all remedial activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11.”

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (a), (b), (2), (3), (4), (5) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (intro.), (a), (b), (2) to (4), (5) (a) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.64 Bidding completion of an investigation.

(1) INVESTIGATION ACTIVITIES MAY BE BID. During a site investigation, if either the department determines that an occurrence is

subject to the public bidding process in s. NR 747.68, the department shall proceed under either of the following:

(a) For occurrences that are covered under s. 101.144 (2) (b), Stats., the department shall issue a written directive to the responsible party and the consulting firm to cease all work except as otherwise authorized by the department. The department shall then direct the occurrence through the public bidding process in s. NR 747.68.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(b) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall notify the responsible party and the consulting firm that no further costs will be reimbursed except as established through the public bidding process in s. NR 747.68 or as otherwise authorized by the department.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(2) SCOPE OF WORK FOR BIDDING AN INVESTIGATION. The department may bid a scope of work to include the remainder of an investigation, where the investigation has stopped under sub. (1).

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (intro.), (a), (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.65 Department to determine scope of work to be bid. Prior to public bidding, the department shall determine whether the scope of work to be bid will be the work necessary to achieve closure, work to a defined remediation target, or completion of a defined set of activities.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06.

NR 747.66 Bidder qualifications. (1) GENERAL. Bids may be submitted only by representatives of consulting firms which are registered under s. SPS 305.80 and which meet all eligibility requirements in this section and in the bid specifications.

Note: The consulting firm retained by the responsible party to carry out the investigation is eligible to bid remedial activities if the consulting firm meets all eligibility requirements in this section and in the bid specifications.

(2) PERFORMANCE ASSURANCE. Every bidding firm shall submit a certified commitment to complete the work described in the bid specifications and in the submitted bid, for the price proposed in the bid.

(3) DISQUALIFIED INDIVIDUALS OR FIRMS. No individual or firm that has been disqualified under s. NR 747.67 may submit a bid until the period of disqualification has ended and all corrective actions required by the department to reinstate the individual or firm have been met.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1), (3) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.67 Disqualification from bidding. (1) GROUNDS FOR DISQUALIFICATION. (a) The department may disqualify from public bidding any individual or firm that has done any of the following:

1. Failed to complete a scope of work within a reimbursement cap established through public bidding.
2. Failed to complete the scope of work in a bid in a timely manner.
3. Failed to meet requirements in department rules on a bid project.
4. Received one or more notices from the department under s. NR 747.62 (2) that assess the financial management of an investment as unacceptable.
5. In any prior occurrence that has been publicly bid, failed to do either of the following:
 - a. Pay subcontractors after receiving payment for them.
 - b. Obtain lien waivers on or before the date of the final payment by the responsible party or the PECFA program, from all subcontractors paid under subd. 5. a.

6. Failed to execute a contract with a responsible party as required in s. NR 747.69 (1).

7. Failed to commence work within 45 days after executing a contract, as required in s. NR 747.69 (3).

(b) In making disqualification decisions under this section, the Department shall excuse failures that are shown to be due to factors which are beyond the control of a bidding individual or firm, such as a responsible party's inability to obtain financing.

(2) PERIOD OF DISQUALIFICATION. The period of disqualification shall be 2 rounds of public bidding for the first disqualification, 4 rounds for the second disqualification, and 6 rounds for any subsequent disqualification.

Note: The department may consider disqualification from public bidding as a contributing factor when applying other disciplinary actions to any individual or firm.

(3) WRITTEN NOTICE OF DISQUALIFICATION. The department shall provide written notification to any individual or firm disqualified from submitting bids. The notification shall specify the reasons for the disqualification, the period of the disqualification, the consequence under s. NR 747.69 that post-bidding contracts at other sites may not be executed, and the right to protest or appeal the department's decision.

(4) CORRECTIVE ACTION BY DISQUALIFIED INDIVIDUAL OR FIRM. The department may require an individual or firm that has previously been disqualified to post a fidelity, surety, or performance bond or to take other corrective action specified by the department, to protect owners or operators and the PECFA fund from failure to carry out the work specified in the public bidding process in s. NR 747.68.

(5) PROTESTS AND APPEALS BY DISQUALIFIED INDIVIDUALS OR FIRMS. An individual or firm that receives a notice of disqualification may protest the disqualification. The individual or firm shall file a written protest with the director of the bureau of PECFA no later than 5 business days after issuance of the notice in sub. (3). The filing shall include all of the reasons for the protest. Any reason not listed for the protest shall be deemed waived. The director or the director's designee may resolve the protest by either upholding the department's determination or by removing a disqualification, and shall issue a written decision no later than 5 business days after receiving the protest. A protestor may file a written appeal of the decision of the bureau director or designee, to the administrator of the environmental and regulatory services division, no later than 5 days after issuance of the decision, provided the protestor alleges a violation of s. 292.63, Stats., or of this chapter. The administrator or designee shall resolve the appeal without hearing and issue a written decision no later than 5 business days after receiving the appeal. The decision on the appeal shall be mailed or otherwise furnished to the protestor. In the event of the filing of a timely appeal under this subsection, the department may not proceed further with disqualifying an individual or firm from public bidding until a decision is issued on the appeal.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (a) 4., 6., 7., (3), (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a) 3., 4., 6., 7., (3), (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.68 Competitive public bidding process.

(1) PUBLISHING THE REQUEST FOR BIDS. The department shall post a request for bids on the department's Internet Web site.

(2) SUBMITTING BIDS. Firms submitting public bids in response to the bid specifications shall comply with all of the following:

(a) Bidders shall submit bids in a format prescribed by the department.

(b) Bidders shall submit bids so that the bids are received by the department no later than 4:00 p.m. on the bid-end date listed in the bid specifications.

(3) EVALUATING BIDS. (a) The department may not consider any late bids. The department shall rank all remaining bids solely on the basis of cost, in ascending order from the least costly to the

most costly. The department shall then evaluate only the bid containing the least costly proposal, to determine if all requirements of the bid specifications will be met, if the remedial strategy is appropriate to the geologic setting, and if the bid is likely to establish an amount to sufficiently fund the activities and outcome objective contained in the bid specifications. The department shall continue the evaluation process until the least costly qualified bid is identified.

Note: As established in s. 292.63 (3) (cp) 1., Stats., the purpose of the least costly qualified bid is to assist the department in making a determination of the least costly method of remedial action. See sub. (7) for further information about that determination.

(b) The department shall reserve the right to reject any or all bids.

(4) NOTICE OF DISQUALIFIED BID. The department shall provide written notification to any individual or firm that submitted a disqualified bid. The notification shall specify the reasons for the disqualification, and the right to protest or appeal the department's decision.

(5) NOTICE OF INTENT. The department shall announce its intent to select the least costly qualified bid to assist in determining the least costly method of remedial action or a cap for a defined scope of work. The department shall send the announcement in writing to the responsible party and shall post the announcement on its Internet Web site. The announcement shall identify the bid the department has determined to be the least costly qualified bid. The announcement shall identify all low bids that have been disqualified. The announcement shall be provided at least 11 business days prior to the determination of the least costly method or the determination of a cap.

(6) PROTESTS AND APPEALS. A responsible party or a bidder may protest the department's selection and use of the least costly qualified bid to assist in making the determination in sub. (7). The protestor shall file a written protest with the director of the bureau of PECFA no later than 10 business days after issuance of the notice in sub. (4) or (5), whichever is later. The filing shall include all of the reasons for the protest. Any reason not listed for the protest shall be deemed waived. The director or the director's designee may resolve the protest by upholding the department's determination, by removing a disqualification, or by correcting an error in determining the cost contained in a bid, and shall issue a written decision no later than 5 business days after receiving the protest. A protestor may file a written appeal of the decision of the bureau director or designee, to the administrator of the environmental and regulatory services division, no later than 5 days after issuance of the decision, provided the protestor alleges a violation of s. 292.63, Stats., or of this chapter. The administrator or designee shall resolve the appeal without hearing and issue a written decision no later than 5 business days after receiving the appeal. The decision on the appeal shall be mailed or otherwise furnished to the protestor. In the event of the filing of a timely protest or appeal, the department may not proceed further with making the determination in sub. (7) until a decision is issued on the protest or appeal.

(7) DETERMINING THE LEAST COSTLY METHOD OF REMEDIAL ACTION, OR THE CAP FOR A DEFINED SCOPE OF WORK. (a) The least costly method of remedial action or the cap for a defined scope of work shall be determined according to pars. (b) or (c).

(b) For occurrences under the direction of the department, the department shall consider the least costly qualified bid identified under sub. (3) in determining the least costly method of remedial action or the cap for a defined scope of work. No later than 10 business days after making its decision, the department shall notify the responsible party of the department's determination of the least costly method of remedial action or the cap for a defined scope of work, and shall specify the maximum amount that will be reimbursed.

(c) For occurrences under the direction of the department, the department shall consider the least costly qualified bid identified

under sub. (3) in determining the least costly method of remedial action or the cap for a defined scope of work. No later than 10 business days after making the decision, the department shall notify the responsible party of the department's determination of the least costly method of remedial action or the cap for a defined scope of work, and shall specify the maximum amount that will be reimbursed.

(d) 1. The determination of the least costly method of remediation or the determination of the cap for a defined scope of work shall establish the maximum costs eligible for reimbursement by the PECFA program, except where that maximum is increased under s. NR 747.70 (3).

Note: See s. NR 747.71 (5) for special requirements for existing sites.

2. Any additional costs above the maximum established in subd. 1. or s. NR 747.70 (3) shall be the responsibility of the responsible party.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (7) (d) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (6), (7) (c), (d) 1., 2. made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 684.

NR 747.69 Responsible party's contract with a bidder. **(1) CONTRACT WITH REMEDIATION CONSULTING FIRM.** (a) Except as provided in pars. (c) or (d), no later than 60 days after the department issues the notification under s. NR 747.68 (7) (b) or (c), the responsible party shall execute a written contract with one of the firms that submitted a bid under s. NR 747.68 (2), to perform the work identified in the notification.

(b) Failure to execute the written contract as required in par. (a) shall result in ineligibility of any interest expenses incurred from the date of the notification under s. NR 747.68 (7) (b) or (c), until a contract is executed and work commences on the occurrence.

(c) This subsection does not apply to a bidder who becomes disqualified under s. NR 747.67, or where all subsequent work will not be submitted for reimbursement from the PECFA fund.

(d) The department may grant an extension of the 60-day period specified in par. (a) only after a claimant demonstrates that substantive efforts to obtain financing have been unsuccessful.

Note: As established in s. NR 747.30 (2) (s) and (i), the department will not reimburse costs, including interest costs, for unauthorized services that are performed by any party other than a firm which submitted a bid under s. NR 747.68 (2) and which is contracted with under this section, if they are conducted after the qualified low bid is determined under s. NR 747.68 (3).

Note: See sub. (4) for criteria that apply to an affected site after a bidder who submits the least costly qualified bid becomes disqualified, and no other bidder agrees to perform the work within the corresponding reimbursement cap.

(2) NOTIFICATION OF CONSULTING FIRM SELECTION. No later than 14 days after any contract for remediation under sub. (1) is executed or terminated with the responsible party, the consulting firm shall submit to the department a notification form prescribed by the department.

(3) COMMENCING WORK. The consulting firm that executes a contract under sub. (1) shall commence the work specified therein no later than 45 days after the contract is executed.

(4) REBIDDING OR SELECTION OF NEXT-LOWEST, QUALIFIED BID. Where a bidder who submitted the least costly qualified bid becomes disqualified under s. NR 747.67, and no other bidder agrees to perform the work identified in the notification under s. NR 747.68 (7) (b) or (c), within the reimbursement cap established under s. NR 747.68 (7), the department may either redirect the scope of work through the entire public bidding process in s. NR 747.68, or reinstate that process at the bid evaluation stage in s. NR 747.68 (3).

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (a), (b), (c), (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a) to (c), (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 747.70 Monitoring the progress of the scope of work in the bid. **(1) NOTIFICATION OF PROGRESS.** (a) The consulting firm holding the contract required in s. NR 747.69 (1) (a) shall report to the department, in a format prescribed by the

department, the progress toward completing the scope of work defined in the bid specifications, at each of the following points:

1. Three months after entering into the contract.
2. Twelve months after beginning the work in the successful bid, except as provided in subd. 6.
3. Twelve months after submitting the previous report required under this subsection, except as provided in subd. 6.
4. No later than 10 days after encountering a change in circumstances, as specified in sub. (3).
5. At any other frequency directed by the department.
6. No later than 30 days after completing the work.

(b) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the DNR a copy of the reports received under par. (a).

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(2) FAILURE TO MAKE PROGRESS. If the department determines that the consulting firm is failing to make adequate progress to complete the scope of work defined in the bid specifications for an amount not exceeding the reimbursement cap determined under s. NR 747.68 (7), the department shall so notify the responsible party and may reduce the reimbursement to accurately reflect the work completed.

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(3) CHANGE OF CIRCUMSTANCES. (a) For occurrences under the direction of the department, the department may review and modify the reimbursement cap, and may reinstate the public bidding process in s. NR 747.68, based on a change in circumstances, if any of the following have occurred:

1. Substantial new contamination has been discovered on the site. Substantial contamination must increase remediation costs to either obtain closure or complete a defined scope of work. New contamination is contamination not previously identified, such as contamination in a broader area or deeper depth than previously identified.

2. Abnormal weather, previously unknown geologic conditions, or previously unknown subsurface structures have been encountered that directly affect the activities described in the least costly qualified bid identified under s. NR 747.68 (3).

(b) For occurrences under the direction of the department, the department may review and modify the reimbursement cap, and the department may reinstate the public bidding process in s. NR 747.68, based on a change of circumstances, if any of the events in par. (a) 1. and 2. have occurred.

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(4) DISQUALIFICATION FROM FURTHER WORK ON A PROJECT. (a) *Grounds for disqualification.* The department may disqualify any individual or firm from performing further work on a project, if the individual or firm has done any of the following:

1. Failed to complete a substantive portion of the defined scope of work within the corresponding portion of the reimbursement cap.
2. Failed to complete the scope of work in a bid in a timely manner.
3. Failed to meet requirements in department rules on the project.
4. Failed to do either of the following:
 - a. Pay subcontractors within a contracted timeline, after receiving payment for them.
 - b. Obtain lien waivers on or before the date of the final payment by the responsible party or the PECFA program, from all subcontractors paid under subd. 4. a.
5. Failed to execute a contract with a responsible party as required in s. NR 747.69 (1).

6. Failed to commence work within 45 days after executing a contract, as required in s. NR 747.69 (3).

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(b) In making disqualification decisions under this section, the department shall only excuse failures that are shown to be due to factors which are beyond the control of a bidding individual or firm, such as a responsible party's inability to obtain financing.

(c) *Period of disqualification.* The period of disqualification shall be 6 months for the first disqualification, 12 months for the second disqualification, and 24 months for any successive disqualification.

Note: The department may consider disqualification from further work as a contributing factor when applying other disciplinary actions to any individual or firm.

(d) *Written notice of disqualification.* The department shall provide written notification to any individual or firm disqualified from performing further work on a project. The notification shall specify the reasons for the disqualification, the period of the disqualification, and the right to appeal the department's decision. The notification shall inform the disqualified party that costs for any work on the occurrence during the disqualification, except as otherwise authorized by the department, will not be reimbursed.

(e) *Appeals by disqualified individuals or firms.* 1. An individual or firm that receives a notice of disqualification under this section may appeal as provided in s. NR 747.53.

2. The department shall hold a hearing for an appeal filed under subd. 1. no later than 30 days after receipt of the appeal.

(f) *Rebidding or selection of next-lowest, qualified bid.* Where an individual or firm has been disqualified under this section, the department may either redirect the scope of work through the entire public bidding process in s. NR 747.68, or reinstate that process at the bid evaluation stage in s. NR 747.68 (3).

(g) *Corrective action by disqualified individual or firm.* The department may require an individual or firm that has previously been disqualified to take corrective action specified by the department, to protect owners or operators and the PECFA fund from failure to carry out the work specified in the public bidding process in s. NR 747.68.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (1) (a), (2), (3) (a) (intro.), 2., (b), (4) (a) 5., 6., (e) 1., (f), (g) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (1) (a) (intro.), (b), (2), (3) (a) (intro.), 2., (b), (4) (a) 3., 5., 6., (e) to (g) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

NR 747.71 Special requirements for existing sites.

(1) DEFINITION. For the purposes of this section, a site investigation in progress is any investigation that began but was not completed before May 1, 2006.

(2) NOTIFICATIONS AND INITIAL INVESTIGATION PROGRESS REPORTS FOR INVESTIGATIONS IN PROGRESS. For site investigations in progress on May 1, 2006, the notification form in s. NR 747.60 (1) and the first investigation progress report under s. NR 747.62 for each occurrence shall be submitted no later than 60 days after that date.

(3) SUBSEQUENT REQUIREMENTS. Upon submittal of the notification and report under sub. (2), all of the requirements in s. NR 747.62 shall apply, except the requirement for submitting the initial investigation progress report.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707-7921, or at <http://dnr.wi.gov/topic/brownfields/pecfa.html>.

(4) OCCURRENCES WITH PREVIOUSLY COMPLETED SITE INVESTIGATIONS. An occurrence for which a site investigation was completed prior to May 1, 2006 shall be subject to the public bidding process in s. NR 747.68 when so determined by the department under s. NR 747.325 or 747.623.

(5) OCCURRENCES WITH REIMBURSEMENT CAPS DETERMINED THROUGH PREVIOUS PUBLIC BIDDING. For occurrences with reimbursements caps determined through the public bidding process under s. 292.63 (3) (cp), Stats., prior to May 1, 2006, all of the requirements in s. NR 747.70 shall apply, except as follows:

(a) The consulting firm performing the work in the bid specifications shall submit the initial progress report required in s. NR 747.70 (1) (a) 1. 3 months after May 1, 2006.

(b) The consulting firm performing the work in the bid specifications shall submit the progress report required in s. NR 747.70 (1) (a) 2. 12 months after May 1, 2006.

(c) Reimbursement for the progress reports required in s. NR 747.70 (1) (a) shall be in addition to the reimbursement that was previously established through the public bidding process, but may not exceed the reimbursement which is specified for these reports in the department's schedule of usual and customary costs, as established under s. NR 747.325.

(d) The reimbursement cap used in s. NR 747.70 (2) shall be the reimbursement cap determined through the public bidding that preceded May 1, 2006.

(e) 1. For occurrences under the direction of the department, the department may review and modify the reimbursement cap

prescribed in par. (d), and may reinitiate competitive bidding through the public bidding process in s. NR 747.68, if the modification is necessary to obtain compliance with s. 292.63 (3) (c) 3., Stats., and with enforcement standards.

2. For occurrences under the direction of the department, the department may review and modify the reimbursement cap prescribed in par. (d), and the department may reinitiate competitive bidding through the public bidding process in s. NR 747.68, if the modification is necessary to obtain compliance with s. 292.63 (3) (c) 3., Stats., and with enforcement standards.

Note: Under s. 292.63 (3) (c) 3., Stats., a responsible party must "Conduct all remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11, Stats."

(f) Section NR 747.70 (4) (a) 5. and 6. does not apply.

History: CR 04-058: cr. Register February 2006 No. 602, eff. 5-1-06; correction in (2), (3), (4), (5) (intro.), (a), (b), (c), (d), (e) 1., 2., (f) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; corrections in (2) to (4), (5) (a) to (f) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.

Chapter NR 749

FEES FOR PROVIDING ASSISTANCE; REMEDIATION
AND REDEVELOPMENT PROGRAM

NR 749.01 Purpose.
NR 749.02 Applicability.
NR 749.03 Effective date.

NR 749.04 Fees.
NR 749.05 Alternative fees for negotiated agreements.

Note: Chapter NR 749 was created as an emergency rule effective September 19, 1998.

NR 749.01 Purpose. The purpose of this chapter is to establish fees to offset the department's costs of providing assistance under ch. 292, Stats. The department's authority to impose fees is found in ch. 292, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-15-99; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 749.02 Applicability. This chapter applies to persons seeking department assistance under ch. 292, Stats., except that most oversight fees for those persons seeking department assistance under s. 292.15, Stats., shall be paid in accordance with ch. NR 750. As listed in Table 1, D. of s. NR 749.04, portions of this chapter apply to those persons seeking assistance under s. 292.15, Stats., and who are seeking closure with residual contamination that must be added to the department's database as required in s. 292.12 (2) and (3) or s. 292.57, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-15-99; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 749.03 Effective date. Beginning on February 15, 1999, persons requesting department assistance under ch. 292, Stats., shall pay the applicable fee listed in Table 1 for all submit-

tals received after February 15, 1999.

History: Cr. Register, January, 1999, No. 517, eff. 2-15-99.

NR 749.04 Fees. (1) When a person requests the department to review a document listed in Table 1, the person requesting this assistance shall pay to the department the applicable fees. A person may request that department assistance be provided in either written form or in the form of oral comments. Appropriate fees shall accompany all requests for specific department assistance. Department assistance will not be provided unless the applicable fee accompanies the request for assistance. These fees are not proratable or refundable.

Note: If the NR 700 series rules require that a document be submitted to the department, such as in s. NR 716.09 (1), but the person does not specifically request a department review of the document, then a review fee is not required.

Note: Additional information and guidance for implementing this rule including how to make a payment when a review is requested can be found at: <http://dnr.wi.gov/topic/Brownfields/Fees.html>.

(2) If the department determines that a request for assistance does not contain enough information to render an opinion, or that the request is incomplete or inaccurate in some other manner, the department will notify the applicant of the reasons for this decision.

History: Cr. Register, January, 1999, No. 517, eff. 2-15-99; CR 01-129; am. Table 1, Register July 2002 No. 559, eff. 8-1-02; CR 12-023; am. Table 1, Register October 2013 No. 694, eff. 11-1-13; correction in Table 1 made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

TABLE 1 — FEE SCHEDULE

TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
<i>(a) Agreements.</i>		
1. Tax assignment agreement.	ss. 75.106 (2) (f) and 292.55	\$700
2. Tax cancellation agreement.	ss. 75.105 (2) (d) and 292.55	\$700
3. Negotiated agreements. ^a	s. 292.11 (7) (d) 2.	\$1400
4. Enforcement actions. ^a	s. 292.94 (d)	a
5. Negotiation and cost recovery. ^a	s. 292.35 (13) (a)	a
Note: For Negotiated Agreements, the \$1400 fee is for department time associated with reviewing the document. If the Negotiated Agreement identifies other reports or activities that require department review, there would be a separate review fee for each specified.		
<i>(b) Liability clarification letters.</i>		
1. Off-site exemption letters.	s. 292.13 (3)	\$700
2. Lease letters — single properties.	s. 292.55	\$700
3. Lease letters — multiple properties.	s. 292.55	\$1400
4. General liability clarification letters.	s. 292.55	\$700
5. Lender assessments.	s. 292.21 (1) (c) 1. d.	\$700
<i>(c) Technical assistance.</i>		
1. ch. NR 708 No further action letter. ^b	s. 292.55	\$350
2. ch. NR 716 No further investigation.		\$700
3. ch. NR 716 Site investigation work plan.		\$700
4. ch. NR 716 Site investigation report.		\$1050
5. ch. NR 720 Soil cleanup standards/reports.		\$1050
6. ch. NR 722 Remedial action options report.		\$1050
7. ch. NR 724 Remedial design report.		\$1050
8. ch. NR 724 Operation and maintenance report.		\$425
9. ch. NR 724 Construction documentation report.		\$350

TABLE 1 -- FEE SCHEDULE (Continued)

TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
10. ch. NR 724 Long-term monitoring plans.		\$425
11. ch. NR 726 Case closure action.		\$1050
12. ch. NR 506 Exemption for building on a historic waste site.		\$700
13. Other technical assistance.		\$700
(d) Department database fees.		
1. Sites with groundwater contamination that attains or exceeds ch. NR 140 enforcement standards.	ss. 292.12 and 292.57	\$350
2. Sites with soil contamination that attains or exceeds ch. NR 720 RCLs.		\$300
3. Sites not otherwise addressed above, where the department imposes any other limitation or condition in accordance with s. 292.12 (2), Stats.		\$350
Note: This may include, but is not limited to sites where a vapor mitigation system is required as a condition of closure.		
4. Cases submitted for closure with monitoring wells not properly abandoned, without residual groundwater contamination.		\$350
5. Modification or removal of a site or property from the database.		\$1050
Note: This fee applies each time a request is made for modification or removal of a site from the database.		
Note: In accordance with s. 292.12 (3) and 292.57, Stats., responsible parties or local governments shall pay the appropriate fees to list, modify or remove sites with residual contamination on the department's database. This database includes sites with residual contamination and where the department has approved case closure under ch. NR 726 or a Certificate of Completion under s. 292.15, Stats., sites where the department requires listing on the database as a condition of approving a remedial action, or sites where the department requires a local government to take action under s. 292.11 (9) (e) 4., Stats., and listing the site on the database is necessary due to residual contamination. More than one of these fees may apply to a site.		

(a) Persons subject to or entered into such orders, agreements, or processes shall pay fees for each service requested or required by the department.

(b) Immediate actions associated with emergency spill cleanup activities, including department signoff on the Notification for Hazardous Substance Discharge form, do not require a review fee.

NR 749.05 Alternative fees for negotiated agreements. As part of a negotiated agreement, responsible parties may agree to pay the department an hourly fee for project over-

sight as determined by the provisions set forth in ch. NR 750.
History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 750

FEES FOR PROVIDING OVERSIGHT FOR THE CONTAMINATED LAND RECYCLING PROGRAM

NR 750.01 Purpose.
NR 750.02 Applicability.
NR 750.03 Definitions.
NR 750.05 Application.

NR 750.07 Assessment and payment of fees for department oversight on or after March 1, 1996.
NR 750.09 Completion of response actions.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 750.01 Purpose. The purpose of this chapter is to establish the procedures and criteria that the department shall use to process applications and assess and collect fees to provide oversight to persons undertaking response actions in accordance with s. 292.15, Stats. This chapter is adopted pursuant to ss. 227.11 (2) and 292.15, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 750.02 Applicability. This chapter applies to persons seeking department review and approval of the response actions that will be or have been undertaken to receive the protection of the liability exemption in s. 292.15, Stats.

Note: The Land Recycling Law (1993 Wis. Act 453, effective May 13, 1994), created s. 144.765, Stats., now numbered as s. 292.15, Stats., renumbered under 1995 Wis. Act 227. The objective of this law is to provide persons, who satisfy all of the requirements of the statute, with a liability exemption from specific requirements of the state's Hazardous Substance Discharge Law, s. 292.11, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96.

NR 750.03 Definitions. In this chapter:

(1) "Applicant" means the person seeking department review and approval of the response action that will be taken or has been undertaken to receive the protection of the liability exemption under s. 292.15, Stats.

(2m) "Environmental investigation of the property" means a study of the entire property, including any discharges that have or may have migrated off the property, and approved by the department, consisting of a Phase I and Phase II environmental assessment and a site investigation, based on information documented in these environmental assessments.

(3m) "Release" has the meaning specified in s. 292.15 (1) (d), Stats.

Note: Under s. 292.15 (1) (d), Stats., "release" means "the original discharge."

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: r. (2) to (10), cr. (2m), (3m) Register October 2013 No. 694, eff. 11-1-13.

NR 750.05 Application. (1) APPLICATION SUBMITTAL. An applicant shall submit to the department a completed application form for each property, requesting department oversight in reviewing and approving the proposed response actions. The applicant shall submit with each application a non-refundable fee of \$250.00, to cover the department's cost of reviewing and processing the application. The department may not review the application until the specified fee is submitted to the department. In addition to the application form, the applicant shall include any attachments required by the department, including a copy of the property deed and a map which clearly shows the boundaries of the property.

Note: The application form (Form 4400-178) is available by writing to the Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707-7921. The application form is also available at <http://dnr.wi.gov/files/PDF/forms/4400/4400-178.pdf>.

(2) APPLICATION REVIEW AND ELIGIBILITY NOTIFICATION. (a) *Department review.* The department shall review each completed

application to determine if all of the following criteria are satisfied:

1. The applicant is a "voluntary party" under s. 292.15, Stats.

Note: 1995 Wis. Act 227 removed "purchaser". 1995 Wis. Act 227 created s. 292.15 (1) (f), Stats., which provides the definition for "voluntary party" which means "a person who submits an application to obtain an exemption under this section and pays any fees required under sub. (5)", of that section.

2. The property is eligible to receive a liability exemption under s. 292.15, Stats.

Note: 1995 Wis. Act 227 removed s. 144.765 (2) (a), Stats. 1995 Wis. Act 227 created s. 292.15 (2) (a) 1., Stats., which requires that "an environmental investigation of the property is conducted that is approved by the department."

3. The area of land for which the application was submitted meets the definition of a property in s. NR 700.03 (45e).

(b) *Additional information.* The department may request from the applicant additional information needed to determine whether the criteria in par. (a) are met.

(c) *Notification to applicant.* The department shall mail written notice to the applicant stating whether or not the department believes that the applicant and the property are eligible under s. 292.15, Stats. If the department finds that the applicant and property meet the criteria in par. (a) and the applicant chooses to proceed in the program, the applicant shall, at a minimum, submit to the department the appropriate fee in s. NR 750.07, a Phase I environmental assessment, and a scope of work necessary to conduct an adequate Phase II environmental assessment. If the department finds that the applicant or the property does not meet the criteria in par. (a), the applicant will not receive department oversight under s. 292.15, Stats. The applicant may submit additional information to the department to try to establish that the applicant or the property does meet the criteria in par. (a), and may proceed to conduct a response action, while the department makes that determination, if the response action is conducted in compliance with the requirements of chs. NR 700 to 754 and ss. 292.11 and 292.15, Stats.

(3) NOTICE FROM APPLICANT. If at any time after an application is submitted to the department, the applicant decides not to pursue the liability exemption provided for in s. 292.15, Stats., the applicant shall promptly notify the department of that decision in writing, so as not to incur any additional obligation to pay department oversight fees.

(4) INACTIVE APPLICANTS. Any time after an application is submitted to the department, if an applicant fails to make reasonable progress towards completion of the site investigation and remediation of the property, the department may withdraw the voluntary party from the process to obtain the liability exemption. If the voluntary party fails to provide requested reports or updates on the status of the investigation and remedial action to the department for 1 year or longer, the department may request for a written progress update from the applicant. If the progress update is not received within 60 days or does not show reasonable progress is being made, the department may withdraw the applicant from the process to obtain the liability exemption. The department shall provide a written determination to the applicant confirming withdrawal from the program. The department shall return any unused deposit, unless otherwise directed by the voluntary party. To re-

enter the process, the voluntary party would need to pay the appropriate fees, and make a request to and to enter into an agreement with the department, in accordance with s. 292.11 (7) (d), Stats.

(5) PROPERTY BOUNDARY CHANGES. Any time after an application is submitted, if the boundaries of the property change the applicant shall notify the department in writing. The notification shall occur no later than 60 days prior to the request for a certificate of completion on the property. The voluntary party or parties shall submit a revised application to clearly demonstrate the boundaries and legal descriptions of the properties for which the applicant is seeking the liability exemption.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; corrections in (2) (a) 1. and 2. were made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12-023: am. (1), (2) (a) 1., 2., cr. (2) (a) 3., am. (2) (c), cr. (4), (5) Register October 2013 No. 694, eff. 11-1-13.

NR 750.07 Assessment and payment of fees for department oversight on or after March 1, 1996.

(1) ASSESSMENT OF OVERSIGHT FEES. Beginning on March 1, 1996, applicants shall pay oversight fees to offset department costs incurred on or after July 1, 1995, for activities conducted under s. 292.15, Stats., and this chapter. Oversight fees assessed to applicants shall be based upon the hourly billing rate, established under sub. (2), for hours spent by department staff and other department costs, including, but not limited to, the following activities:

(a) Review of submittals required under this chapter, chs. NR 700 to 754 or under an agreement entered into under s. NR 728.07, or participation in meetings with the applicants or their representatives to discuss an application or proposed project.

(b) Negotiating and entering into contracts under s. 292.15 (2) (a) 3. or 4., Stats.

(c) Negotiating and entering into an agreement under s. 292.15 (4), Stats.

Note: Section 292.15 (4), Stats., was repealed by 2011 Wis. Act 103.

(d) Review of file documents and required submittals to determine whether or not the project may be closed and a certificate of completion may be issued.

(e) Providing assistance in response to any other request by the applicant after the applicant is notified that the department believes that the property is eligible under s. 292.15, Stats.

(f) Placement of the property on the department database, in accordance s. 292.12 (3) or s. 292.57, Stats., unless other fees are specified in ch. NR 749 to add sites to the database.

(2) HOURLY BILLING RATE. The department shall calculate on an annual basis an hourly billing rate at which oversight fees shall be assessed. The hourly billing rate shall be calculated by averaging hourly wages of personnel employed by the department in the contaminated land recycling program, and by multiplying the sum by the annual fringe benefit rate and the annual indirect rate. Indirect costs include costs associated with personnel providing support to employees who provide oversight, daily operating costs, travel, equipment, supplies and training.

(3) DEPOSIT. The applicant shall submit to the department an advance deposit to cover oversight fees. The advance deposit shall be submitted within 30 days after the applicant is notified that the department believes that the property is eligible under s.

292.15, Stats. The advance deposit shall be \$2,000 for properties of one acre or less and \$4,000 for properties larger than one acre.

(4) QUARTERLY PAYMENTS. (a) *General.* If the advance deposit paid by the applicant is not sufficient to offset the department's costs for providing oversight, the department shall bill the applicant on a quarterly basis for additional costs incurred by the department. The applicant shall pay the department within 30 days after receiving the department's quarterly fee statement.

(b) *Information request.* The applicant may request, in writing, within 10 days after the date the fee statement is issued, that the department supply to the applicant a list of department staff and the hours that they spent on oversight activities associated with the project.

(5) RETURN OF ANY UNUSED DEPOSIT. When the applicant has been issued a certificate of completion under s. 292.15, Stats., or after department receipt of a notice under s. NR 750.05 (3), the department shall return to the applicant any amount of the applicant's deposit that exceeds the amount of costs incurred by the department for the applicant's project.

(7) FAILURE TO PAY REQUIRED FEES. If the applicant fails to pay department oversight fees that are required under this section, the department shall cease to provide oversight to the applicant and may not issue a certificate of completion as provided under s. 292.15, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (1) (a), (e), cr. (1) (f), renum. (3) (a) to (3) and am., r. (3) (b), (6), am. (7) Register October 2013 No. 694, eff. 11-1-13.

NR 750.09 Completion of response actions. At the completion of all response actions taken by an applicant who is seeking the liability exemption under s. 292.15, Stats., the applicant shall request case closure in accordance with the requirements in ch. NR 726. The department shall provide the applicant with a written certificate of completion, as provided in s. 292.15, Stats., when all of the following requirements are satisfied:

(1) The property has been closed out by the department in accordance with the requirements in ch. NR 726 and the applicant has provided proof that all conditions of case closure have been satisfied.

(2) The applicant satisfies all the requirements of s. 292.15, Stats., including conducting an environmental investigation of the property, including any discharges that have or may have migrated off the property.

(3) The applicant has paid the department for all oversight fees assessed pursuant to this chapter.

(4) For properties where the voluntary party is seeking an exemption from liability for voluntary party remediation under s. 292.15 (2) (ae), Stats., where groundwater contamination is in concentrations that exceed enforcement standards and the department determines that natural attenuation will restore groundwater quality in accordance with rules promulgated by the department, the insurance requirements in ch. NR 754, have been satisfied.

(5) For properties with residual groundwater contamination that are closed in accordance with the requirements in s. NR 726.07 (2), the fees to add the property to the department database in accordance with ch. NR 749, have been paid.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023: am. (intro.), (2), cr. (4), (5) Register October 2013 No. 694, eff. 11-1-13.

Chapter NR 754

ENVIRONMENTAL INSURANCE REQUIREMENTS

NR 754.01 Purpose.
NR 754.03 Applicability.
NR 754.05 Definitions.

NR 754.07 Insurance requirement.
NR 754.11 Insurance application and fees.
NR 754.13 Certificate of completion.

Note: Chapter NR 754 was created as an emergency rule eff. 3-6-01.

NR 754.01 Purpose. This chapter establishes rules and procedures promulgated under s. 292.15 (2) (ae) 3m. and (e), Stats., that the department shall use to determine if voluntary parties have met the requirements under s. 292.15 (2) (ae), Stats., related to environmental insurance for voluntary parties seeking liability exemptions using natural attenuation.

History: CR 00-176: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 754.03 Applicability. This chapter applies to voluntary parties seeking an exemption from liability for voluntary party remediation under s. 292.15 (2) (ae), Stats., where groundwater contamination is in concentrations that exceed enforcement standards and the department determines that natural attenuation will restore groundwater quality in accordance with rules promulgated by the department.

History: CR 00-176: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 754.05 Definitions. In this chapter:

(1) "Department" has the meaning specified in s. 292.01 (2), Stats.

Note: Section 292.01 (2), defines "department" to mean the department of natural resources.

(2) "Natural attenuation" has the meaning specified in s. 292.15 (1) (am), Stats.

Note: Section 292.15(1)(am), Stats., defines "natural attenuation" to mean the reduction in the mass and concentration in groundwater of a substance, and the products into which the substance breaks down, due to naturally occurring physical, chemical and biological processes, without human intervention.

(3) "Voluntary party" has the meaning specified in s. 292.15 (1) (f), Stats.

Note: Section 292.15 (1) (f), Stats., defines "voluntary party" to mean a person who submits an application to obtain an exemption under s. 292.15, Stats., and pays any fees required under s. 292.15(5), Stats.

History: CR 00-176: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 754.07 Insurance requirement. A voluntary party seeking a liability exemption under s. 292.15 (2) (ae), Stats., shall pay the department the one-time insurance fee, submit an application form and comply with the requirements and procedures described in this chapter for the property to obtain coverage under the state's master insurance contract.

History: CR 00-176: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 754.11 Insurance application and fees. (1) GENERAL. A voluntary party seeking insurance under this chapter shall apply to the department on a form provided by the department and submitted to the following address: VPLE Coordinator – Bureau

for Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707-7921.

Note: The VPLE Environmental Insurance Application Form is available by telephoning the Remediation and Redevelopment Information Line at 1-800-367-6076 or (608) 264-6020 or by writing the Remediation and Redevelopment Program, Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921 or from the web site: <http://www.dnr.state.wi.us/org/aw/tr/>

(2) APPLICATION CONTENTS. An insurance application form, shall include, but is not limited to:

- (a) Name, address and designated contact person.
- (b) Information on site conditions.
- (c) Groundwater monitoring data.
- (d) Alternative remedies that may be necessary if natural attenuation fails.
- (e) Such additional information required as necessary by the state's insurance underwriter in order to provide insurance under s. 292.15 (2) (ae), Stats.

(3) FEE PUBLICATION. The department shall establish and publish the insurance fees on an annual basis.

(4) FEE CALCULATION. The insurance fee shall be based on the following:

- (a) The cost of the insurance premium.
- (b) A contribution towards the state's deductible.
- (c) Other direct expenses which are necessary to administer the program.

(5) FEE PAYMENT. The insurance fee is non-refundable.

History: CR 00-176: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 754.13 Certificate of completion. The department shall issue the voluntary party a certificate of completion pursuant to s. 292.15 (2) (ae), Stats., if the department determines that all the following requirements have been met:

(1) The voluntary party has submitted to the department a request for case closure pursuant to ch. NR 726 or 746, whichever is applicable.

(2) The department has approved the request for case closure for the property.

(3) The voluntary party has submitted to the department a completed insurance application form.

(4) The voluntary party has paid the department the appropriate insurance fee as specified in this chapter.

(5) The voluntary party has reimbursed the department for any department costs incurred under ch. NR 749 or 750.

(6) All of the conditions in s. 292.15 (2) (ae) 1. to 6., Stats., have been met.

History: CR 00-176: cr. Register July 2001, No. 547 eff. 8-1-01.