

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:** Adoption of Order RR-04-11, proposed revisions to chs. NR 700 to 754 regarding the investigation and cleanup of Brownfield's and other contaminated properties.

**FOR:** February 2013 Board meeting

**TO BE PRESENTED BY:** Mark Gordon, Policy and Technical Resources Section Chief

**SUMMARY:**

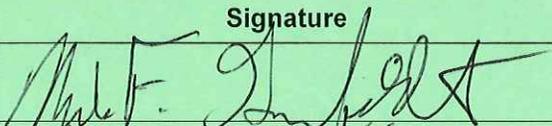
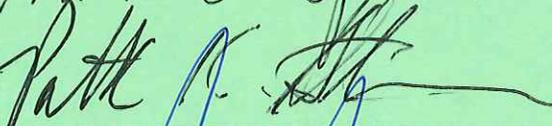
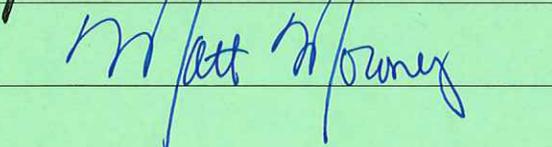
The Remediation and Redevelopment Program proposes to revise a majority of the rules in the NR 700 administrative rule series. These rules provide comprehensive requirements for the investigation and remediation of contaminated property. Although several additions and revisions to these rules have been made since they were originally promulgated over 15 years ago, those changes were focussed on some very specific issues. These proposed changes are intended to address the many statutory, policy and technical changes that have occurred since that time.

The major policy issues being addressed by these rule revisions are: 1) modifying many of the rules to remove the references to deed restrictions which were replaced with passage of Wisconsin Act 418; 2) removal of the simple site process which was originally included to provide responsible parties with the ability to self certify closure as this option has not been used in many years; 3) eliminating ch. NR 710 because the statutory provision to inventory sites was repealed and use of the hazard ranking system is no longer needed to evaluate sites; 4) consolidating the sections in NR 718 on management of contaminated soil, 5) revising NR 720 to account for updated methodology developed by U.S. EPA for calculating site specific soil cleanup standards, 6) revising NR 722 to require an evaluation of sustainability for the selected remedy, 7) simplifying the case closure requirements by splitting NR 726 into 3 separate rules as the current rule is lengthy and complicated, 8) adding provisions to NR 726 and several other rules that provide options for addressing the vapor intrusion pathway, 9) removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites that are either seldom used or are technically unsound, and 10) increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

**RECOMMENDATION:** Request that the Board approve adoption of Order RR-04-11

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- Background memo
- Fiscal Estimate and Economic Impact Analysis
- Natural Resources Board Order RR-04-11
- Comment Summary

Approved by	Signature	Date
Mark F. Giesfeldt, Bureau Director		1/17/13
Patrick K. Stevens, Administrator		1/17/13
Cathy Stepp, Secretary		2/6/13

DATE: January 14, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on adoption of Board Order RR-04-11, proposed revisions to chs. NR 700 to 754, Wis. Adm. Code regarding the investigation and cleanup of Brownfield's and other contaminated property.

### 1. Subject of Proposed Rule:

The major issues addressed by the proposed rules include:

- Modifying many of the rules by removing the references to deed restrictions which were replaced with passage of Wisconsin Act 418 in June 2006,
- Removal of the simple site process which was originally included to provide responsible parties with the ability to self-certify closure as this option has not been used in many years,
- Eliminating ch. NR 710 because the statutory provision to inventory sites was repealed and use of the existing hazard ranking system is no longer needed to evaluate sites,
- Consolidating the sections in ch. NR 718 on management of contaminated soil in order to make the requirements consistent and more readily understandable,
- Revising NR 720 to account for updated methodology developed by U.S. EPA for calculating site specific soil cleanup standards,
- Revising NR 722 to require an evaluation of sustainability for the selected remedy,
- Simplifying the case closure requirements by splitting NR 726 into 3 separate rules as the current rule is lengthy and complicated,
- Adding provisions to NR 726 and several other rules clarifying that the vapor intrusion pathway needs to be assessed and adequately addressed, if necessary,
- Removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites as they are either technically unsound or are seldom used, and
- Increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

In addition to these changes, the Department is also using this opportunity to fix a number of editorial problems, typographical errors and other minor problems that have been identified over the years.

### 2. Background:

The overall process for evaluating and remediating contaminated sites has evolved over the many years since the last major rulemaking occurred. These revisions would make the rules more complete, easier to comply with and consistent with the approach currently being used to address contaminated sites.

### 3. Why is the rule being proposed?

Revisions are being proposed in order to update the existing rule series by incorporating a number of statutory, policy, and technical changes that have occurred since the rule was originally promulgated over 15 years ago.

#### **4. Summary of the rule.**

The NR 700 series rules provide a comprehensive, consistent and uniform set of requirements related to the investigation and cleanup of contaminated property. The rules also provide direction on addressing spill situations, carrying out public participation and notification, undertaking enforcement and cost recovery, selecting environmental consultants for state-funded actions, and awarding environmental construction contracts. The proposed rule changes have been developed and modified over the last 4 years in cooperation with a number of external stakeholders, in particular the Brownfields Study Group and the Technical Focus Group.

#### **5. How does this proposal affect existing policy?**

Experience obtained as part of the on-going implementation of the program has revealed that certain changes are necessary in order for the NR 700 rule series to be consistent with existing policy and practice. A number of new or revised guidance documents have been issued since the last time the rules were revised including: 1) Guidance on Soil Performance Standards, 2) Guidance for Hazardous Waste Remediation, 3) Guidance on Case Closure and the Requirements for Managing Continuing Obligations, and 4) Addressing Vapor Intrusion at Remediation and Redevelopment Sites in Wisconsin. As with rule development, preparation of these documents is done in cooperation with our external stakeholders. Program guidance provides direction to Responsible Parties (RP's) and others on investigating and cleaning up contamination.

#### **6. Has Board dealt with these issues before?**

The last time the Board dealt with changes to the NR 700 series was in 2001 and 2002, when the Department added rule language to establish a GIS Registry to provide web based mapping information on sites that were closed with contamination above the established standards.

#### **7. Who will be impacted by the proposed rule? How?**

Anyone who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance must take the action necessary to restore the environment to the extent practicable. This is not a change from current requirements. This typically affects individuals, large and small business, and local units of government. Others affected include environmental consultants, attorneys as well as those individuals or companies that are interested in redeveloping contaminated property.

The overall impact of these proposed changes should be modest since the vast majority are already being implemented either through new statutory authority or through the development of program guidance. Restructuring of the rules should make it easier for interested parties to locate and comply with appropriate requirements.

#### **8. Summary of the economic impact analysis**

The Department held 2 meetings with members of our external advisory committee to discuss the information that needed to be addressed as part of the analysis. Based on the feedback received, the Economic Impact Analysis focused solely on the proposed increases in fees. The analysis estimated that the total increase in fee revenue would be approximately \$190,000/yr. This would be enough revenue to ensure that the 9 positions currently funded by fees could be maintained. Once completed, the Economic

Impact Analysis was made available for public comment along with the draft rules. No public comments on the Economic Impact Analysis were received.

#### **9. Hearing Summary/Response to Comments**

A brief summary of the location and attendance of the public hearings along with the Department's response to all of the public comments received are included in Attachment 1.

#### **10. Environmental Analysis**

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III action. A Type III action is one that normally: 1) does not have the potential to cause significant environmental effects, 2) does not significantly affect energy usage and 3) does not involve unresolved conflicts in the use of available resources.

#### **11. Small Business Analysis/Final Regulatory Flexibility Analysis**

The major purpose of this rule making effort is to incorporate requirements set forth by statutes and to address policy changes that have been implemented over the years. Another major change is to streamline and consolidate the rule language so that out-of-date provisions are removed and the current regulatory requirements are easier to understand and comply with.

The one area of these rule revisions that have the potential to impact some small businesses is the proposal to increase the fees set out in ch. NR 749. These fees have not been increased since they were originally promulgated in 1998 and the average increase typically ranges from \$200 to \$300 depending on the type of submittal. The fee increases should not affect most small businesses for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who causes the discharge must take action to restore the environment. Second, the NR 700 rule series is largely self-implementing. This means that the Responsible Party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing a cleanup.

No public comments were received on the proposed fee increases. Additional information on the potential fiscal impacts of the proposed rule revisions is summarized in the Fiscal Estimate and Economic Impact Analysis that is included with the Green Sheet package.

**ATTACHMENT 1**  
**DNR Response to Comments**  
**Proposed Revisions to chs. NR 700 to 754, Wis. Adm. Codes**  
**Board Order RR-04-2011**

I. General Summary

The Department of Natural Resources, Bureau for Remediation and Redevelopment held 5 public hearings in May, 2012 to obtain comments on proposed revisions to chs. NR 700 to 754. The hearings were held in Madison, Milwaukee, Green Bay, Rhinelander and Eau Claire. A total of 20 people attended the 5 hearings. Of these 20 people, 9 indicated their position was “as interest may appear”, 3 indicated “in support” and 8 did not mark a position on the slip. Written comments were accepted until May 31, 2012. In addition, comments from the Rules Clearinghouse were received on April 12, 2012. This document summarizes all of the comments received and the Department’s response. Several minor formatting changes are addressed first, then the comments received by the Rules Clearinghouse and then are followed by the comments received during the public comment period.

II. Formatting Changes

The following rule changes were made in response to a change in the closure request and approval process after the draft rules went out for public comment. The rule changes are not “substantive”, in that they were formatting requirements for certain submittals (limits on paper size, and use of one PDF). They are no longer needed, and have been removed from the draft rule. The remaining language was renumbered. The changes made to the draft rule language include:

1. NR 708.17 (4) (a) and (Note):  
**(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). ~~In addition, paper copies may not be larger than 11 by 17 inches.~~ 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 be contained within a single portable document format file (PDF),~~ and 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.
2. NR 716.15 (1) (b) (Note)

**Note:** Ch. NR 716 does not include a size limit on paper copies. However, ch. NR 726 includes a size limit of 11 x 17 inches for paper copies submitted for inclusion on the department database.

3. NR 726.11 (1) (intro.)

**(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 a separate attachment to the case closure request. The information shall be in the order specified in the closure request form.

4. NR 726.11 (1) (b) 2., 4.

(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.

**Note:** Under s. NR 700 (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.”

### III. Recent Statutory Update

The following non-substantive change was made to s. NR 734.03 (4), due to a change in statutory citation and in the agency with administrative authority.

NR 734.03 (4) (4) “Minority business” means a business certified by the department of development ~~administration~~ pursuant to s. ~~560.03616.287~~ (2), Stats.

### IV. Comments from the Rules Clearinghouse

#### ***1. Statutory Authority***

*a. The rule relies, in numerous instances, on the discretion of the department to provide exceptions and accept alternatives to the requirements prescribed by the rule. The department should review the use of this discretion in light of the general purpose of rule-making to provide a comprehensive source of information on the administration of state laws,*

*as well as the department's obligation under s. 227.10 (1), Stats., to promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement of administration of that statute.*

Response: The subject rule language is generally used for limited, unusual circumstances. Most of these rules have been in place for over 15 years, and the language has allowed the Department flexibility to address unusual and unexpected situations. As certain situations became more common, we drafted specific rule language to deal with them. To date, this flexibility has not resulted in any issues being raised regarding rule implementation.

*b. The department should list s. 299.45 (7), Stats., in the statutory authority section of the rule analysis, and add an explanation of the agency's authority under s. 292.68 (11), Stats., with respect to the changes proposed in this rule-making order.*

Response: The Statutory Authority Section has been revised to include s. 292.68 (11), Stats.

## **2. Form, Style and Placement in Administrative Code**

*a. In the introductory clause of the rule, the enumeration of provisions treated should include a more specific list of sections affected and should be updated to reflect the changes recommended below.*

Response: The introductory clause has been revised to include specific sections affected and included in the rule order.

*b. The rule should be reviewed in its entirety for appropriate use of strike-throughs and underscores to indicate amendment of rule provisions and compliance with other instructions relating to the amendment of rule provisions. [See s. 1.06, Manual.]*

Response: The rules and rule order have been reviewed and revised where appropriate.

*c. In SECTION 10, why does the phrase "General Requirements" appear in the rule text? The phrase already exists as the title for ch. NR 700.*

Response: The title was removed from rule order text.

*d. In s. NR 700.01 (2), the citations for statutory authority should appear in numerical order, with ch. 160, Stats., appearing before ch. 292, Stats.*

Response: The rule and rule order have been revised.

*e. Section NR 700.03 (1a) should be created as s. NR 700.03 (1g) and s. NR 700.03 (1m) should be s. NR 700.03 (1r).*

Response: The rule and rule order have been revised.

*f. In SECTION 16, the department refers to "federal authorities." Would it be more appropriate to refer to federal laws? Are the acronyms used by the department defined prior to their use?*

Response: "Authorities" was changed to "laws". The acronyms are defined in s. NR 700.03, Definitions.

*g. Under SECTION 20, the referenced rule text should be limited to s. NR 700.03 (2) (a) or s. NR 700.03 (2) should be fully included in the treatment clause and rule text. Generally, the*

*rule should be reviewed in its entirety to ensure that the referenced rule text matches the treatment clause in each SECTION. In some instances it may be appropriate to reduce the referenced rule text to match the treatment clause; in other instances, it may be appropriate to maintain the current referenced text and modify the treatment clause to match the referenced text.*

Response: Section 20 was limited to s. NR 700.03 (2) (a). The rule order was reviewed, and changes were made where appropriate.

h. *Section NR 700.03 (7m) should be s. NR 700.03 (6m).*

Response: The rule and rule order were revised.

i. *In s. NR 700.03 (11m) Note, the department should provide a more specific reference to the Internet location of the BRRTS than "on the web".*

Response: The note has been rewritten, and parentheses have been added to help clarify that "BRRTS on the Web" (BOTW) is the name of the tracking system, which is available to the public on the internet. The link takes the user to an introductory web page which provides a description of both BOTW and RR Sites Map.

j. *Section NR 700.03 (45g) should be s. NR 700.03 (45e).*

Response: The rule and rule order were revised.

k. *In s. NR 700.03 (49r) Note, the reference to "chapter NR 720" should be written "ch. NR 720".*

Response: The rule and rule order were revised.

l. *The rule should be reviewed in its entirety for use of internal and external cross-references as prescribed under ss. 1.03 and 1.07, Manual.*

Response: Internal and external cross-references were checked for compliance with the manual.

m. *Section NR 700.03 (51) should be rewritten in the style described in s. 1.03 (3) and (4), Manual. The rule should be reviewed in its entirety and should conform to the style described in these sections.*

Response: The definition was rewritten following the style described in s. 1.04 (3) and (4), Manual (section 42). The rules were reviewed and checked for compliance with the manual.

n. *Section NR 700.03 (52m) should be revised. The department should consider the distinction between "means" and "includes" as described in s. 1.01 (7) (c), Manual. Additionally, the phrase "for the purposes of this chapter" is either superfluous (if the term is used only in ch. NR 700) or misleading (if the phrase is intended to apply differently in different chapters, it should be defined separately in each chapter).*

Response: The definition has been revised.

o. *Section NR 700.03 (64m) should be s. NR 700.03 (64g) and s. NR 700.03 (65m) should be s. NR 700.03 (64r). The definition of "TSCA" should include a more specific reference to the U.S. Code than "15 USC".*

Response: The definitions have been renumbered. The TSCA reference has been updated to

“15 USC 2601-2692”.

p. *In s. NR 700.03 (66) Note, the cross-reference to Department of Commerce rules should be updated to reflect the dissolution of that department. The rule should be reviewed in its entirety for the need to update other, similar cross references.*

Response: The rules have been updated to include the new name, Department of Safety and Professional Services.

q. *The terms defined in s. NR 700.03 (66t) and (66w) should be switched so that they are in alphabetical order.*

Response: The terms have been switched.

r. *What standards will the department use to determine whether other requirements than those listed under s. NR 700.11 (1) (a), including report submission frequency, will be required of responsible parties? The rule should be reviewed in its entirety for other instances in which the department is given flexibility to impose different requirements than those listed in the rule without specification as to how or when such flexibility will be exercised. Throughout the rule, the department should avoid the use of vague exceptions, alternatives, and opportunities for department discretion and should instead include more specific details regarding those exceptions, alternatives, and exercises of discretion within the administrative code.*

Response: The department makes these decisions on a case-by-case basis, to account for unusual circumstances.

s. *In SECTION 64, if sub. (2) is repealed, par. (2) (a), and all of the other provisions under sub. (2), will be repealed. It is not appropriate to separately list par. (2) (a).*

Response: The section was revised to clarify that NR 700.11(2) (intro) and a. are repealed.

t. *In SECTION 66, does the department intend to refer to “par. (a) 2. to 4.” instead of “subds. 2. to 4.”?*

Response: Yes – rule and rule order changed.

u. *The changes provided in SECTION 68 and SECTION 70 should be included in a single SECTION. (Note that the proposal as drafted does not repeal all of s. NR 700.11 (3) in SECTION 68 yet it creates a new s. NR 700.11 (3) in SECTION 70.)*

Response: Revision of NR 700.11 (3) was all included in one section, and the new rule language was renumbered (3g) and (3r).

v. *SECTIONS 69 and 70 are out of numerical order.*

Response: The sections have been corrected.

w. *SECTIONS 71 through 73 are out of order and should be redrafted. All actions affecting a particular subsection or other division of the code should be contained in one SECTION where possible. The rule should be reviewed in its entirety for other instances in which a single division of the code is affected in multiple SECTIONS.*

Response: These have been combined into one section. Additional sections in NR 700 and 706 were also consolidated. The rule order has been revised to account for multiple, consecutive changes in a single section.

x. *In the explanatory text following SECTION 73, do not refer to the recreation of the applicable provisions in SECTION 195 as “renumbering”. The rule should be reviewed in its entirety for use of appropriate treatment clauses. [s. 1.04 (1) (b), Manual.]*

Response: The treatment clauses have been changed to reflect the appropriate wording. The rule order has been revised to use appropriate treatment clauses.

y. *The repeal of titles of subchapters should be done in a consistent manner (compare for example, SECTIONS 74, 75, 88, and 103).*

Response: The repeal of subchapter titles has been revised to be done by separate treatment sections throughout.

z. *In multiple instances in the rule, provisions of existing code are renumbered and the previous number is re-used for a new provision. It is best to avoid this practice and to instead insert new provisions between existing provisions. Section 1.03 of the Manual should be reviewed for direction as to how to correctly accomplish these changes, focusing in particular on sub. (5) (a) and (b). See, for example, SECTIONS 78 through 95 and 182 through 198 of the proposal. The entire rule should be reviewed with respect to this comment.*

Response: NR 700, 706, 716, 722, 724 and 738 were revised to correct the renumbering issues.

aa. *When renumbering is appropriate, the substantive provision below the SECTION description should not show the strike-through and underline change of the number (see, for example, SECTIONS 92 and 95). [See the examples following s. 1.04 (2), Manual.]*

*Also, lower divisions below a renumbered division should not show separate renumbering treatment. For example, SECTIONS 210 through 214 should be combined into a single section under which s. NR 716.15 (2) (g) is renumbered and revised to include all of the subsequent listed changes. The entire rule should be reviewed for other similar examples and revised accordingly.*

Response: Sections regarding NR Ch. 716 have been revised, and the rule order has been reviewed and revised to correct the format for renumbering for multiple chapters.

bb. *Each separate treatment should be indicated by a numbered SECTION (see the material following SECTION 92 for the absence of a numbered SECTION). Conversely, no material follows SECTION 498. The rule should be reviewed in its entirety with respect to this comment.*

Response: The rule order has been revised to ensure that all material is covered by a numbered Section.

cc. *SECTION 97 appears to create introductory material rather than amending introductory material that already exists, rendering the treatment clause inaccurate. Additionally, the style of the introductory material does not conform to s. 1.03 (3), Manual.*

Response: the introductory clause has been revised to conform to s. 1.03(3), Manual.

dd. *It is not appropriate to end a list that begins with “including” with a provision such as “and other sources not specifically identified herein.” (See, for example, SECTION 108.) It is*

*also not appropriate to use the phrase "including, but not limited to." (See, for example, SECTION 131.) [s. 1.01 (7) (c), Manual.] The entire rule should be reviewed with respect to this comment and revised accordingly.*

Response: The language for NR 706.11 has been revised to include the lists in Notes, rather than rule language. The phrase "but not limited to" has been removed from chs. NR 700, 708, 714, 716, 725, 726, 727 and 750.

*ec. The rule should be clarified as to whether the Note following s. NR 708.11 (1), as amended, should follow s. NR 708.11 (1) (a) or (b).*

Response: the treatment clause has been clarified; the Note follows (a).

*ff. If the requirements included in s. NR 708.17 (4) (a) Note are intended to be enforceable requirements, they must be included in a substantive rule provision. The rule should be reviewed in its entirety to ensure that any material intended to have the force of law is not placed in a Note.*

Response: The Note (and rule) references s. NR 700.11(3g), which contains the applicable requirements. Notes throughout the rule have been reviewed and revised to ensure they are explanatory in nature.

*gg. When a provision is created, do not underline the text. "Recreating" a provision is not appropriate. (See for example, SECTIONS 290 and 294.) When a provision is truly being completely eliminated and replaced by a new provision, it should be "repealed and recreated". The rule should be reviewed in its entirety for similar changes.*

Response: Underlining of created provisions has been removed. Changes to treatment clauses ("creating" vs. "recreating") were made throughout the rule order.

*hh. If a title is used for one provision in a set of provisions, a title must be used for all in the set. (See, for example, s. NR 720.05.) The rule should be reviewed in its entirety for other instances where additional titles are necessary.*

Response: The rules have been reviewed and revised as appropriate.

*ii. Section NR 720.07 (2) (d) 2. must include an introductory phrase such as "all of the following" or "any of the following". The rule should be reviewed in its entirety for other instances of inappropriate introductory provisions. (See, for example, multiple instances under s. NR 720.11 (3).) [s. 1.03 (3), Manual.]*

Response: The section has been revised, and other rules sections have been revised accordingly, namely NR 716 and 720.

*jj. The meaning of the phrase "rule series" in s. NR 722.02 (2) should be clarified.*

Response: The rule was revised to read "ch. NR 700 to 754".

*kk. SECTION 375 is either numbered wrong or misplaced in the proposal.*

Response: The reference has been corrected to NR 724.02 (1) (c), rather than N R 722.02 (1) (c).

*ll. Titles of paragraphs may not contain substantive requirements. (See s. NR 727.07 (1) (a) through (g).)*

*mm. In s. NR 746.03 (5), it is unnecessary to list the Act that created a particular statute.*

Response: NR 727.07 (1) has been revised to clarify the actions, without titles. NR 746.03(5) has been revised to remove the name of the Act.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

*a. In s. NR 169.05 (29g) Note 1., the department should revise the format of its exponential representation of vapor concentration to use an appropriate superscript.*

Response: The exponent has been corrected.

*b. Under s. NR 169.13 (2) (f) 3., consider requiring the use of existing building components to the extent "practicable" instead of to the extent "possible" if it is your intent to allow the department to decide whether it makes economic sense to reclaim structures or materials.*

Response: This change was made.

*c. When terms defined in a code chapter are used elsewhere in the chapter, do not cross-reference the definition. See, for example, s. NR 169.15 (1), which should read: "The department project manager shall designate each site as a high priority site, a medium priority site, or a low priority site." Similar modification should be made to s. NR 169.15 (2).*

Response: The reference to the definitions was removed.

*d. The rule should be reviewed in its entirety for grammatical errors. For example, a comma should precede "Stats." in s. NR 700.02 (2) Note and an errant letter "r" should be removed from the treatment clause of SECTION 20. A period should end the definition of "property boundary" in s. NR 700.03 (45m).*

Response: These changes were made. The rule order was reviewed and changes made.

*e. In SECTION 24, the Note should be revised for clarity.*

Response: The note in NR 700.03 (6m) was revised.

*f. In s. NR 700.03 (39m), the department should clarify its intent regarding the reference to "residential setting" as it relates to the definition of "facility".*

Response: The definitions under NR 700.03 (39m) and (49g) were revised to replace the word "facility" with "setting", as "facility" means either a solid waste or mining operation in this rule series.

*g. The definition of "property" under s. NR 700.03 (45g) should be clarified. Note the inconsistencies between this definition and the definition of "property boundary".*

Response: The wording chosen reflects a need to (1) avoid having a situation such as a railroad right-of-way render a property non-contiguous and (2) discourage VPLE applicants from dividing a larger site into parcels and seeking a liability exemption for something less than the whole site.

*h. The definition of "sub-slab" under s. NR 700.03 (60m) should be clarified. A building's "lowermost foundation" and a building's "lowermost floor" are generally at different depths, and it is not clear whether a "foundation floor" is a recognized building component.*

Response: The definition was modified to remove the word “floor”.

i. *If it is the department's intent to authorize the use of more than one of the means of identifying potentially responsible parties under s. NR 700.10, remove the word “one” from the (intro.) to that section.*

Response: This change was made.

j. *The changes to s. NR 706.03 (5), as renumbered, should be re-worded.*

Response: The wording of the definition for “petroleum product” has been reworded to clarify the intended uses.

k. *The definition of “economic development corporation” in SECTION 117 should be revised for clarity.*

Response: The definition was left as is, as changing it would add complexity, rather than clarity. Multiple statutes are referenced, creating the complexity.

l. *In s. NR 708.17 (3) (b) 1. and 2., it is not clear what difference is meant by “sites meeting par. (a)” and “sites that have been included on the department database”. If no difference is intended, these provisions should be consistent.*

Response: S. NR 708.17(3) (b) 1. is about the fee for adding a particular group of sites to the department database. S. NR 708.17(3) (b) 2. is about modifying information on the database, at some time after any type of site was added to the database. Par. 1 and 2 were left separate.

m. *In s. NR 708.17 (4) (b) 4., what is meant by “or as otherwise required by the department”?*

Response: In limited circumstances, the department may require an action not covered by the (typical) actions listed. To date, this has included methane monitoring (at a landfill). “On a case-by-case basis” was added.

n. *In SECTION 148, add “Chapter” before “NR 714”.*

Response: This change was made.

o. *It is unclear how a responsible party is expected to use the factors under s. NR 714.07 (1) (a) to (d) to inform its decisions on conducting public participation and notification activities.*

Response: Responsible parties are required to evaluate the criteria. The RPs typically work with the Department when choosing and conducting public participation activities. Typically, the greater the threat or concern, the greater the need for public participation and notification.

p. *The introductory material in s. NR 714.07 (4) (a) does not grammatically correspond with the list that follows.*

Response: Changes were made to the locations and conditions so they correspond with the introductory material.

q. *Is it the department's intent to repeal and recreate s. NR 716.11 (2) under SECTION 176 of the rule? If so, this provision should be modified to reflect that intent.*

Response: The treatment clause was revised to indicate creation of (2g) and (2r).

r. *The new text under s. NR 716.15 (3) and (4) does not follow grammatically with the title of the section (missing subjects). (For grammatically correct examples, see s. NR 716.15 (5) and (6), as renumbered and amended.)*

Response: The rule language has been revised to be consistent with the other sections.

s. *Section NR 718.12 (2) (b) 9. does not follow grammatically with the introductory clause, and should be inserted as a separate paragraph.*

Response: Par. 9 is now 718.12 (2) (c) 1. - 3., and the rest of the newly created section was renumbered.

t. *Section NR 720.02 (8) does not flow grammatically with the title of the section.*

Response: This paragraph was moved to NR 720.02(1) (e).

u. *Under s. NR 722.09 (2m), what is meant by requiring a responsible party to "address the following criteria" and what is meant by "as appropriate"?*

Response: This section was reworded to require the RP to evaluate the criteria, once a remedial action has been selected. The evaluation then would result in a refined remedial action.

v. *Section NR 738.03 (4) (e) does not flow grammatically with the introductory clause, and pars. (a) through (d) should not be included in the same list as par. (e) as they are alternatives.*

Response: This section was reworded to include the language from (e) within the introductory clause, and (a) through (e) are then listed as the alternative.

w. *The use of "DNR" should be replaced by "department" where used in the rule.*

Response: This change was made, specifically throughout NR 746, to be consistent with the other rules.

## V. General Comments

*1. Comment* – As a general matter, we believe the changes proposed in this rule package are consistent with the goal of updating and modernizing Wisconsin's environmental cleanup regulations. Many of the NR 700 series rules have not been changed since they were first adopted in the 1990's. We view many of the proposed revisions to be improvements over the existing code, including policy refinements based upon more than a decade worth of practical experience implementing the cleanup program. We also appreciate the flexible approach to regulation in the NR 720 soil cleanup revisions that give responsible parties multiple options for addressing contaminant pathways and removing public health risks. (Wisconsin Manufacturers and Commerce)

*Response* – The Department appreciates the feedback regarding the general improvements in rule language and the flexibility provided in NR 720.

2. *Comment* – As a general matter, we support the Department’s efforts to update and clarify the code. We know this is a product of a long technical process involving stakeholders, and many issues were addressed in this process. We commend the Department for taking the time to work through the advisory committee procedure, which shows in the quality of the proposed rule. (Wisconsin Public Service Corporation)

*Response* – The Department appreciates the acknowledgement that the time spent working with the external advisory committee resulted in improvements to the overall quality of the proposed rule.

3. *Comment* – Firstly, we commend the WI DNR and others who worked on the proposed changes to the NR 700 rules. This was undoubtedly a significant amount of work, especially during a time when the DNR’s staff and resources are stretched and limited.

We think there are several improvements proposed in the rules that will help better protect Wisconsin’s citizens and environment. However, we focus our comments on a few key areas in which we think the rules are lacking, need revisions, and/or need clarification.

The Midwest Environmental Justice Organizations (MEJO) core mission is to identify and address disparate effects of toxins and other pollution on the most vulnerable in our society (pregnant women, children, elderly, already ill), minorities, and low-income people. We work to engage these groups in understanding how pollution affects them, to reduce/avoid their exposure and sources of pollution, and to build their capacities to engage collectively in public and political decision making about these issues.

We hope that the Wisconsin DNR can be a national leader in making environmental justice a priority in its environmental policies. To this end, the department should incorporate environmental justice approaches of federal agencies and mandated by Presidential Executive Order 12898, which states that: “To the greatest degree practicable and permitted by law...each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States...” (Clinton, 1994). Further, given that some contaminated facilities (or portions of facilities) in Wisconsin fall under federal laws, it is very appropriate that Wisconsin DNR also make environmental justice part of its core mission and incorporate environmental justice into all its policies.

The main two areas in which we see gaps or problems throughout the NR 700 rules are: (1) lack of attention to requirements for characterizing, managing, remediating contaminated sites that will help identify and address effects of toxic substances on the most vulnerable people, minorities and low-income people; and (2) vague public notification and engagement requirements that lack authority and do not prioritize communication with the most vulnerable, minorities, and low-income people. To some

extent the lack of attention to these issues in the proposed NR 700 changes is likely due to the fact that the external advisory group that helped the DNR develop these changes only included one environmental organization with the majority of the others being industry/legal representatives (and 10 government representatives). (Source: Midwest Environmental Justice Organization)

*Response* – The Department has worked closely with EPA and local communities on environmental justice issues over the years. For example, the Department was very much involved when in 2005, then Governor Jim Doyle announced his Urban Reinvestment Initiative, which set as a state priority the cleanup of urban neighborhoods in economically and environmentally distressed areas. One of Governor Doyle’s first targeted areas was the 30th Street Industrial Corridor in Milwaukee, where neighborhood unemployment was at 19 percent and at least 15 percent of the housing units were vacant. Approximately 34 percent of the population in this area were living in poverty, and 97 percent of residents were considered minority.

The DNR, along with the city of Milwaukee and the 30th Street Industrial Corridor Corporation (ICC), applied for and received \$400,000 in EPA Brownfield Assessment Grants. One \$200,000 grant addressed hazardous substance contamination, while the other \$200,000 grant addressed petroleum contamination. Then in 2007, DNR applied for an additional \$400,000 in EPA Brownfield Assessment Grants, with one \$200,000 grant again addressing hazardous substances and the other \$200,000 grant addressing petroleum contamination. The major goal of this effort was to address contamination associated with the long history of industrial use in this area.

Since that time, significant progress has been made at several major contamination sites in this area and work continues to complete the necessary cleanup work and move the properties toward redevelopment. This is just one example of the efforts the Department has made to address environmental justice related issues.

Regarding the comment that the NR 700 external advisory committee only included 1 environmental organization, we would point out that the NR 700 meeting announcements are sent to everyone on both our Technical Focus Group and Brownfields Study Group e-mail distribution lists which include multiple environmental groups. There has been no attempt on our part to limit the participation of any group or individual that was interested in attending the meetings.

Finally, the Department does not agree that the rules should require prioritized communication with certain individuals. It would be extremely difficult to establish definitions for each of the various groups or individuals. Instead, we believe the current provision that requires all interested members of the public to be included is more appropriate and provides for more efficient implementation.

#### VI. NR700 – General Requirements

*1. Comment* – We strongly oppose the change from a 1-in-1,000,000 excess cancer risk to a 1-in-100,000 excess cancer risk. Wisconsin should, in line with other states (e.g. California), require the most protective vapor intrusion health standards possible in order to provide the most protection for vulnerable groups such as children, elderly, pregnant women, and ill.

We strongly recommend that the cumulative excess cancer risk and hazard indices for exposure to chemical mixtures be at least more protective than for individual contaminants, or 1-in-10,000,000 excess cancer risk, in order to account for uncertainties about effects of individual chemicals in the mix, synergistic effects of mixtures, and to provide a protection factor for extremely potent endocrine disruptors and other highly toxic chemicals that might be in the mixture.

Please explain the rationale for the change to a less protective excess cancer risk level. Also, please clarify the following: Do the excess cancer risk and the hazard index levels described here (as proposed changes) refer to individual compounds (one at a time) or mixtures? Are exposures considered additively or synergistically? Most vapor situations involve more than one chemical together (often several that are known or possible carcinogens and/or associated with other significant non-carcinogenic health effects, and unknown compounds). Consequently, the language here and throughout the NR 700 rules should clarify these critical specifics. (Source: Midwest Environmental Justice Organization)

*Response* – The Department does not believe that a 1-in-1,000,000 excess cancer risk level for vapors in indoor air is necessary for several reasons. EPA issued a document titled “Background Indoor Air Concentrations of Volatile Organic Compounds in North American Residences (1990–2005): A Compilation of Statistics for Assessing Vapor Intrusion”<sup>1</sup> in June 2011. The following table compares the range of the 90<sup>th</sup> percentile concentrations found in background air in homes for 3 common VOCs involved in vapor intrusion, with:

- The current indoor air screening values used by DNR to indicate vapor intrusion may present a health risk, and
- The 1-in-1,000,000 ( $10^{-6}$ ) and 1-in-10,000,000 ( $10^{-7}$ ) life-time cancer risk from EPA’s Regional Risk Tables

Compound	Range of 90 <sup>th</sup> Percentile concentration ( $\mu\text{g}/\text{m}^3$ )	WI Indoor Air Vapor Action Level* ( $\mu\text{g}/\text{m}^3$ )	Life-time cancer risk = $10^{-6}$ , from EPA’s RSL tables ( $\mu\text{g}/\text{m}^3$ )	Life-time cancer risk = $10^{-7}$ , from EPA’s RSL tables ( $\mu\text{g}/\text{m}^3$ )
Benzene	5.2 - 15	3.1 (c)	0.31	0.031
Tetrachloroethylene	<RL - 7	42 (n)	9.4	0.94
Trichloroethylene	<RL - 2.1	2.1 (n)	0.43	0.043

RL = reporting limit

<sup>1</sup> <http://www.epa.gov/oswer/vaporintrusion/documents/oswer-vapor-intrusion-background-Report-062411.pdf>

\*Based on either a  $10^{-5}$  life-time cancer risk (c) or an HI=1 (n).

From EPA's Background Indoor Air document:

“Indoor air typically contains chemicals from consumer products, building materials, and outdoor (ambient) air. Any indoor air sample collected for site-specific assessment of subsurface vapor intrusion is likely to detect chemicals from these other sources, and in many cases, the compounds detected in indoor air may be the same as those present in contaminated soil or groundwater that may enter the building through vapor intrusion.”

The range of the 90<sup>th</sup> percentile concentration was compiled by U.S. EPA from 18 residential indoor air quality studies conducted between 1990 and 2006. The 90<sup>th</sup> percentile concentration is the concentration due to background substances at 1 in 10 American homes WITHOUT the contribution of vapor intrusion. These are concentrations we can normally expect due to the typical American lifestyle. Wisconsin has chosen to use the lesser of 1-in-100,000 ( $10^{-5}$ ) life time cancer risk or a hazard index = 1 (for non-carcinogenic properties) as the indoor air screening level for several reasons:

1. These levels are more likely to identify risk due to vapor intrusion rather than background sources in the average home. Even so, some chemicals, such as benzene, can be expected to exceed the  $10^{-5}$  life time cancer risk in the average home with no contribution from vapor intrusion.
2. The very low indoor air concentrations represented by  $10^{-7}$  and  $10^{-6}$  risk levels are below the standard laboratory quantitation levels. Laboratory quantitation levels are usually in the 1.5 to 2  $\mu\text{g}/\text{m}^3$  range. The very low risk ranges cannot easily be quantified and are “lost” in the background levels found in the average home.
3. U.S. EPA recommends a risk range between  $10^{-6}$  and  $10^{-4}$  life time cancer risk. Most states are selecting  $10^{-5}$  life time cancer risk as a reasonable compromise that takes into consideration background levels of vapor while also being protective of the vapor intrusion pathway.
4. U.S. EPA requires mitigation of the vapor pathway when indoor air concentrations exceed  $10^{-4}$  life time cancer risk or a HI=3. Wisconsin recommends mitigation when indoor air levels exceed the  $10^{-5}$  life time cancer risk levels or a HI=1. In addition, Wisconsin recommends that action be taken when sub-slab vapor concentrations exceed screening levels, even if indoor air levels are below screening levels.

As a final note, most vapor situations are limited to a single compound. If a situation arises where multiple contaminants from a hazardous substance discharge are present, the Department has the authority to require Responsible Parties to assess the additive affects.

2. *Comment* – The language from guidance documents providing off ramps for non-volatile contaminants should be codified in the rule to clarify when vapor investigation is not required. (Wisconsin Manufacturers and Commerce)

*Response* – The Department added a definition of “vapors” to NR 700.03(66) to clarify that the compounds of concern must be sufficiently volatile and toxic to pose an inhalation risk to human health via vapor intrusion from a soil or groundwater source.

3. *Comment* – The notes in NR 700.03(30g), (30m), and (33m) should not include the actual definitions because if NR 149 is updated, these notes will conflict with the definitions in NR 149. (Paul Junio, Regional Account Manager, Northern Lake Service)

*Response* – The notes referenced above can be modified relatively quickly without going through the entire rule making process. The definitions are typically included so the reader does not need to look up the definition.

## VII. NR 706 – Hazardous Substance Discharge Notification and Source Confirmation Requirements

1. *Comment* – Section NR 716.15(5)(d) requires that geographic position data be provided in Wisconsin Transverse Mercator '91. This is unique to Wisconsin and is not readily available to obtain, especially in the circumstance of reporting releases per the requirements under NR 706.05(1)(d)4 and the subsequent note.

WPL recommends that the final rules adopted allow flexibility to report geographic position data in latitude/longitude. This data is more easily and readily obtained through a GPS device. More specifically, the phrase “or using latitude and longitude” should be added to NR 706.05(1)(d)4. (Alliant Energy)

*Response* – Once a location is determined in any of a number of ways, including latitude/longitude, a conversion is readily available by using RR Sites Map. Use of WTM coordinates allows the program to consistently locate spill sites on the mapping application with all the other types of sites addressed by the program.

RR Sites Map can be found at <http://dnrmaps.wi.gov/imf/imf.jsp?site=brrts2>. Coordinates can be converted by entering the latitude and longitude into the “find location” selection. An X on the map indicates the position of the site, and the latitude and longitude, and the WTM coordinates are then shown on the bottom of the screen. You can also determine the WTM coordinates by zooming in on the location to a scale of at least 1:5000, and using the XY button or the “Identify” button.

## VIII. NR714 – Public Participation and Notification

1. *Comment* – We suggest that the DNR incorporate requirements in this chapter in line with Federal Executive Order 12898 on Environmental Justice, which requires that: “Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations. Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.” Adding to this we

recommend that outreach and engagement events include people from all racial/ethnic backgrounds near contaminated sites that might be affected by the contamination. (Source: Midwest Environmental Justice Organization)

*Response* – The existing rules do not prohibit the Department’s ability to address any issues with respect to Environmental Justice, including providing outreach to all racial/ethnic backgrounds that may be affected by contaminated property. Over the years the Department has attempted to be as inclusive as possible and has prepared warning signs and fact sheets in both Hmong and Spanish. Given the flexibility in the existing rules, the Department does not feel that additional rule language is necessary in order to implement these efforts.

2. *Comment* – In this light, the NR 714 chapter on public participation and notifications should require that Responsible Parties and/or the DNR prioritize communications and engagement with the most vulnerable people as well as minorities and low-income people near contaminated sites. This would, in turn, be facilitated by first identifying who and where these groups are in other chapters in the NR 716 requirements (see next comment). Further, minorities and/or non-English speakers or people from non-American cultural backgrounds who might be affected by contamination should be identified and appropriate communications developed for them (if identified near site). (Source: Midwest Environmental Justice Organization)

*Response* – The existing rules provide equal standing for all individuals. The Department does not agree that changing the rules to require prioritized communication with certain individuals is necessary to ensure all interested members of the public are identified. As discussed in the previous response, the Department has utilized various methods for informing non-English speaking individuals of potential issues associated with contaminated property.

3. *Comment* – The NR 714 chapter appears to require no meaningful mechanisms for on-going DNR engagement with the public or requirements that the DNR or Responsible Parties respond to citizens’ questions and/or comments related to contaminated sites. The entire NR 714 chapter lacks any authority overall and we suspect it is widely ignored (and we have seen many contaminated site situations in which it is). Communication/notification actions outlined appear to be totally optional and/or voluntary and most are, problematically, based on the Responsible Parties discretion. (Source: Midwest Environmental Justice Organization)

*Response* – NR 714 provides the Department with significant authority to require or conduct whatever public participation is necessary for the particular site including on-going engagement with interested individuals. This allows the Department to tailor the level of public participation based on the needs of the individuals associated with the site in question. The Department strongly disagrees with the assertions that NR 714 is widely ignored and that communication/notification are totally optional, based on our experience with the thousands of cleanups that have taken place since the rule was originally promulgated in 1994.

4. *Comment* – Specifics in various sections are vague and lacking clarity about important requirements and criteria for decision making about when/how/what/with whom to communicate. This is very problematic, as communication and engagement with the public, especially those most vulnerable, is extremely important aspect of protecting public and environmental health. We recommend that this chapter have the same level of specificity as other chapters in the NR 700 rule series. (Source: Midwest Environmental Justice Organization)

*Response* – NR 714 covers the most basic spill situations to the to the most complex contamination cases. As discussed above, the rule provides the Department with the flexibility to deal with each situation on a case-by-case basis. Additional specificity is not necessary to determine how best to communicate with interested parties.

5. *Comment* – Are any public meetings about contaminated sites required by statute? Shouldn't they be in at least some circumstances? (Source: Midwest Environmental Justice Organization)

*Response* – No public meetings for cleanup of contaminated properties are currently required. It would be the responsibility of the Legislature to determine if the state statutes should be modified to add this provision. The Department does have the authority under NR 714.07(3) to require the Responsible Party to conduct public informational meetings or the Department can take the responsibility to hold a public meeting when appropriate.

6. *Comment* – Public notices about remedial actions should also be mailed to people, including all property owners and facilities near the remediation (schools, daycares, churches, retirement homes, etc.), especially in cases in which the remedial action could involve exposure to vulnerable groups to contaminated media from the remediation (e.g. emissions of toxic chemicals in air, piles of contaminated soil). (Source: Midwest Environmental Justice Organization)

*Response* – The Department provides public notices to interested parties, businesses, commercial properties and others that are near the contaminated property. NR 714.05(5) also specifies that interested parties may request that the Department keep them informed of response actions being taken at the site and maintains a list of persons interested in activities associated with the site.

7. *Comment* – All documents submitted or transmitted to the department should be made available to the public online. (Source: Midwest Environmental Justice Organization)

*Response* – The Department currently posts certain documents (in particular case closure information) online. While discussions have taken place on including additional documents on our web page, we currently do not have the resources to make all documents for all sites available online.

8. *Comment* – The language in s. NR 714.05(4) should be changed from “may hold a public meeting” to “shall hold a public meeting”. The public is often unaware of serious problems (such as harmful toxin levels that are invisible to them), and therefore not demonstrate “sufficient public interest.” Project managers have entirely too much discretion in implementing the NR 700 series rules. The public interest is not served when the project managers limit the transparency of the process and departmental action. (Source: Midwest Environmental Justice Organization)

*Response* –The Department’s experience is that requiring a public meeting for every site is not necessary nor a good use of resources. Even the National Contingency Plan, which is the regulations dealing with the Federal Superfund program, does not require a public meeting for every project.

9. *Comment* – We strongly question designating the Responsible Party as being responsible for evaluating the need for public participation and notification activities and for conducting these activities. Clearly, Responsible Parties are not neutral parties and have reasons to be biased towards minimizing risks and/or not sharing important information about the contamination associated with their activities. As private, rather than public entities, Responsible Parties are not accountable to citizens and political processes and representatives (as government agencies are). DNR is relinquishing its duty to serve and protect citizens to “Responsible Parties”, whose only obligations are to its shareholders. (Source: Midwest Environmental Justice Organization)

*Response* – The Department takes exception with most of this comment. First, Responsible Parties are not solely responsible for evaluating the need for public participation. In fact, the rules specifically allow the Department to implement various types of public participation when necessary. Second, the Department does not believe we have relinquished our duty, and in fact takes the issues of outreach and public participation very seriously.

10. *Comment* – Based on extensive published risk perception and citizen engagement research, as well as decades of community experience, we know it is unlikely that the public is going to trust the Responsible Parties information and motives, especially when they are the ones responsible for the contamination. Consequently, the public participation will be very constrained and of limited value in meaningfully communicating risks and engaging people in discussions and decision making about the contaminant issue at hand. (Source: Midwest Environmental Justice Organization)

*Response* – Based on nearly 20 years of experience with NR 714, the Department strongly disagrees that the public participation element will be constrained and of limited value.

11. *Comment* – While many people also have a considerable amount of distrust for government agencies, government staff are more likely to be trusted to share accurate information about contamination and related risks than the companies or other private entities responsible for causing and/or managing the contamination. Given this, we

recommend that section NR 714.07 be re-written to require that the department (when appropriate in collaboration with other government agencies – e. g. health agencies) be responsible for public participation and notification activities (Responsible Parties can also be included in these activities when appropriate). (Source: Midwest Environmental Justice Organization)

*Response* – In the vast majority of situations, Responsible Parties have been able to adequately implement the necessary public participation activities. When Department involvement is necessary, the rule allows for this to occur and therefore the Department does not feel that any modifications to NR 714.07 are necessary.

12. *Comment* – The language in NR 714.07 needs to be clarified. Based on what and whose criteria are the Responsible Parties or others held responsible for public participation/notification expected to evaluate whether public participation and notification are necessary, what level notification/participation should occur, when, and who should be notified/engaged? Which of the following criteria are most important in certain circumstances? Who decides? For example, if there are known threats to public health (recognized by DNR and/or public health agencies), but little or no public concern about these threats because people aren't aware of them, does this mean the Responsible Party can decide that public notification and participation activities are not necessary? We have seen cases in which this is what appears to have happened. We have also seen cases in which there is significant public concern about health threats (e.g. 100s of people at meetings, sending complaints) and yet the Responsible Parties and the agencies downplay the threats and therefore no public notification or participation occurs.

Please clarify the language in section 714.07(1) and provide specific criteria and details about what is required by whom, when, and what/whose guidelines for decisions they will follow. (Source: Midwest Environmental Justice Organization)

*Response* – The Department believes that the language in NR 714.07(1) is clear and is not in need of revision. As stated previously, the scope of the public participation effort is case specific and tailored to the particular situation. The Department is aware of no situations where there has been significant public concern about health threats but the appropriate state agencies have downplayed the situation and ultimately no public participation occurred.

13. *Comment* – Again, on what and whose criteria are determinations about “known or potential threats to public health, safety, or welfare or the environment” based? This is a very broad statement – it includes public health environmental health, safety. Are assessments of whether there are known or potential threats to these entities based on the Responsible Parties criteria? DNR criteria? EPA criteria? Public health agency criteria? Health experts? Please clarify.

Such generalizations and lack of specific criteria give project managers wide discretion in areas such as public health where they have no expertise. We recommend that assessments of health threats be based on EPA health criteria and standards (which

requires someone to make decisions who is aware of and has expertise on these standards). (Source: Midwest Environmental Justice Organization)

*Response-* The language in NR 714.07(1)(a) has been in the rule since this chapter was originally promulgated in 1994. In general, it requires the Responsible Party to evaluate, in conjunction with the other criteria in this section, how to best to involve the public. Each decision is evaluated on a case specific basis and the Department always retains the ability to require the Responsible Party to take on additional actions or to implement the necessary public participation.

*14. Comment –* Again, on what and whose criteria are determinations about “level of public concern about a specific site, facility or discharge” made? Please clarify. Again, complete discretion amounts to the ability to do nothing, to not notify the public, and say that the public interest is being served (which is erroneous). (Source: Midwest Environmental Justice Organization)

*Response –* The language in NR 714.07(1)(b) has been in the rule since this chapter was originally promulgated in 1994. Many of the sites that require cleanup due to a discharge of a hazardous substance are dealt with quickly in order to ensure the contamination is contained to the greatest degree possible. Staff and managers in the Remediation and Redevelopment Program frequently discuss the level of appropriate public involvement in order to ensure the necessary information is disseminated.

*15. Comment –* What does the provision in NR 714.07(1)(c) mean? (Source: Midwest Environmental Justice Organization)

*Response –* Responsible Parties are required to evaluate the need for and the level of public participation and notification. Section NR 714.07(1)(c) states that: “The need to contact the public in order to gather information about the response action, including immediate or interim actions.” This particular provision requires that the Responsible Party consider how the response action being implemented affects or potentially affects the public and then obtain input and feedback on how they feel the remedy is progressing.

*16. Comment –* Again, as discussed above, criteria for determining whether or not public notification is necessary at a site or facility, as set forth in NR 714.07 (2), needs to be clarified. All information should include appropriate translation for non-English speaking groups near the contaminated site. (Source: Midwest Environmental Justice Organization)

*Response –* The Department has been translating signs, fact sheets and other related information into the necessary languages for non-English speaking individuals since shortly after these rules were promulgated. In addition, the current rule language provides the Department with the authority to direct Responsible Parties to undertake the work that is necessary for the particular situation.

*17. Comment* – The provisions in NR 714.07(2)(a) should require that notification include information about potential health risks of contaminants, especially to more vulnerable groups (pregnant women, children, etc.), ways vulnerable people can reduce/avoid exposures, specifics about where the contamination is on the site in relation to at-risk and vulnerable groups. (Source: Midwest Environmental Justice Organization)

*Response* – In situations where exposure to specific contaminants is identified, the Department works with the State Division of Health in order to ensure the people are aware of the potential risks.

*18. Comment* – The provisions in NR 714.07(2)(b) should be expanded to include how the response actions might affect identified most at risk and vulnerable groups near contamination. (Source: Midwest Environmental Justice Organization)

*Response* – The Department does not feel that using a public notification to provide the details of how a response action may affect the most at risk and vulnerable individuals would be an effective way to disseminate this information.

*19. Comment* – Again, based on what and whose criteria are decisions made about if/when public notification is necessary, and which members of the public should be notified? What are the criteria for when the notices should occur? On what and whose criteria are decisions made which members of the public are directly or indirectly affected by the discharge of a hazardous substance and the implementation and operation of any proposal or remedial action? Are any of the notification methods listed in NR 714.07(3)(a) to (j) considered sufficient, or some combination of them, or all of them? Who decides which one(s) is/are most appropriate and when they should happen? Please clarify.

Also, as above, we question and oppose the designation of the Responsible Party as responsible for public notification for the reasons we stated above. We think the department, as a public entity legally and politically accountable to citizens and political representatives, should be completely responsible for these critical risk communication activities. Also, all the language about notification should be changed from “may” to “shall”.

Further, most importantly, all kinds of notifications should prioritize communications with those most at-risk and vulnerable, including non-English translation when appropriate (as specified below).

The language in NR 714.07(3) should be modified to require that the department undertake any of the activities specified by paragraphs (a) to (j).

Options (a) to (d), (f), (g), (h) and (j) under NR 714.07(3) should be modified to add the phrase “including non-English translation (when non-English speakers have been identified in the vicinity of the contaminated site) or separate language should be added to specify this for these items. (Source: Midwest Environmental Justice Organization)

*Response* – NR 714.07(3)(a) to (j) identifies a number of options that can be used to provide notification to the public of a hazardous substance discharge as well as the proposed remedial action. The purpose of the rule in general and this section in particular is to provide flexibility so the most appropriate method(s) are utilized. After 18 years of implementing these provisions, our experience is that Responsible Parties tend to do a good job with the public notification and participation process. Ultimately, the staff and managers in the Remediation and Redevelopment Program are responsible for ensuring the necessary public notification and participation are carried out. However, requiring Responsible Parties to utilize every option in every situation and requiring Department approval of the prepared materials in every situation is not a good use of limited resources.

20. *Comment* – Add paragraph (k) to NR 714.07(3) requiring contacting neighborhood associations and other groups in the community near the contaminated site to let them know about the circumstances and inviting them to participate in meetings and other events related to the contamination. (Source: Midwest Environmental Justice Organization)

*Response* – The rule language contained in NR 714.07(3) is broad enough to cover neighborhood associations or other community groups near the contaminated site. Specifically, NR 714.07(3)(j) indicates “Using any other appropriate mechanism to contact and inform the public.....” As a result, the Department does not feel that the additional language is necessary.

21. *Comment* – Add language to NR 714.07(4) specifying that the posting of signs...”include non-English translation (when non-English speakers have been identified in the vicinity of the contaminated site.....” (Source: Midwest Environmental Justice Organization)

*Response* – The proposed change is not necessary as the Department has utilized non-English translation on signs since the rules became effective in 1994.

22. *Comment* – Add paragraph (e) to NR 714.07(4) that specifies: “Non-English translation should be provided in situations where non-English speaking people live, work, or play in the vicinity of the contaminated site. (Source: Midwest Environmental Justice Organization)

*Response* – The proposed addition to the rule is not necessary as the Department has utilized non-English translation of numerous documents since the rules became effective in 1994.

## IX. NR 716 – Site Investigations

1. *Comment* – If the purpose of this chapter is to characterize a site in order to (in part) understand what human, biological, and environmental receptors are at risk, and therefore

what actions are necessary to prevent and/or mitigate risks in order to comply with applicable environmental laws, it should require the identification of the numbers, characteristics, and locations of the people who are most vulnerable or at risk (children, elderly, ill, minorities, poor). This information, in turn, would assist Responsible Parties, the department, and others in notifying, communicating, and engaging with the most vulnerable people in following NR 714 requirements. (Source: Midwest Environmental Justice Organization)

*Response* – The purpose of NR 716 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 and allow an interim or remedial action option to be selected that complies with environmental laws. The assessment of environmental risks are addressed when determining soil cleanup standards and as part of the remedy selection process. The Department feels that all potential receptors need to be identified rather than focusing on certain groups of individuals.

2. *Comment* - Add the following paragraph to NR 716.07: “Locations near within 0.5 mile of site where vulnerable people (pregnant women, children, elderly, ill), minorities and low-income live; locations of buildings where more vulnerable people, minorities, low-income people live, go to school, work, and/or play near site (schools, daycares, community centers, retirement homes, etc.); approximately how many people in these groups are in these locations. (Source: Midwest Environmental Justice Organization)

*Response* - The Department believes that attempting to define who would be considered a vulnerable individual would be difficult, time consuming and potentially open to criticism. Instead, identifying all interested parties regardless of their proximity to the site is a more appropriate use of resources.

3. *Comment* – Expand the language in NR 716.07(7) to include “vulnerable people (pregnant women, children, elderly, ill), minorities and low-income”. (Source: Midwest Environmental Justice Organization)

*Response* – The current rule language includes potential or known impacts to all receptors which would include vulnerable individuals.

4. *Comment* – Add the following provision following paragraph (10) in NR 716.07: “Potential impacts of interim and/or remedial actions on vulnerable people, minorities, low-income people near site. (Source: Midwest Environmental Justice Organization)

*Response* – The intent of this provision of the rule is to identify potential remedial actions that may be able to address the contamination. It is too early in the cleanup process to define the potential impacts of the remedy on any individuals.

5. *Comment* – Section NR 716.09(2) should require a description of how locations, numbers, and characteristics of most vulnerable groups will be identified, as well as the

potential pathways of exposures to these groups to contaminants at the site (based on information above). (Source: Midwest Environmental Justice Organization)

*Response* – This section of the rule is focused on the methods for defining soil, groundwater and other environmental conditions at this site. The previous section requires that potential or known impacts to all receptors (which would include vulnerable individuals) be identified.

6. *Comment* – Add paragraph (e) to NR 716.11(3) requiring that enough information be provided to identify most at-risk and vulnerable groups to contaminants released from the site. (Source: Midwest Environmental Justice Organization)

*Response* – The purpose of this section of the rule is to provide details on the factors that need to be considered when conducting a field investigation to determine the degree and extent of contamination.

7. *Comment* – Expand the provisions in NR 716.11(5)(b) to include the most at-risk and vulnerable people, minorities, low-income people near the site. (Source: Midwest Environmental Justice Organization)

*Response* – The current rule language requires an identification of the impacts of the contamination on all receptors, which would include vulnerable individuals.

8. *Comment* – We strongly agree with the additions to NR 716.11 related to vapor intrusion. Would suggest adding, as above, prioritizing sub-slab and indoor vapor monitoring in buildings where the most vulnerable people, minorities, and low-income people live, work, and play. (Source: Midwest Environmental Justice Organization)

*Response* – The rule requires an evaluation of the presence and concentration of vapors sub-slab and in indoor air when the impact on an occupied structure needs to be determined, regardless of whether the occupants would be considered vulnerable. If vapor intrusion is identified, WDNR would work with the Division of Health to determine the potential risks to the individuals present.

9. *Comment* – The methods of investigation section in NR 716.15(2)(e) should include description of methods for identifying where vulnerable people, minorities, and low-income people are living, working, playing, and/or going to school and how they might be exposed to contamination from site. (Source: Midwest Environmental Justice Organization)

*Response* – The purpose of this section of the rule is to provide direction to Responsible Parties for describing the investigative techniques that were used to complete the site investigation. Identifying how potential receptors might be exposed to contamination is addressed elsewhere in the rule.

10. *Comment* – NR 716.15(3) regarding results should be expanded to include a map of locations where vulnerable people, minorities, and low-income people are living, working, playing, and/or going to school and may be (or have been) affected by currently or past contamination, releases, accidents, etc. (Source: Midwest Environmental Justice Organization)

*Response* – The current rule requires that the extent of contamination in all environmental media be defined, all properties within the contaminated site boundary be identified and the impacts of the contamination on all potential receptors be identified. As discussed earlier, the Department believes that attempting to define who would be considered a vulnerable individual would be difficult, time consuming and potentially open to criticism.

11. *Comment* – The rule changes of greatest interest and concern to WMC members relate to regulation of vapor intrusion at remediation sites. Although the proposal makes clear that vapor intrusion issues must be investigated and addressed, it does not provide detail with respect to conducting vapor intrusion site investigations. We believe that provisions from departmental guidance documents should be added to the final rule in order to clarify the nature and scope of what responsible parties should do to investigate vapor intrusion. For example, it would be helpful to clarify that intrusive sub-slab sampling at nearby buildings will not be required if screening analysis from soil probes suggests vapor intrusion is not a problem in the area of those buildings. (Wisconsin Manufacturers and Commerce)

*Response* – The Department agrees that further clarification in these areas consistent with existing guidance is appropriate. Therefore, the rule language contained in NR 716.11(5)(g) and (h) has been expanded to include the factors that need to be considered when determining whether the field investigation needs to determine the presence of vapors sub-slab or in indoor air.

12. *Comment* – One area where we are submitting comments relates to vapor intrusion. As the Legislature's mandate in Act 10 is to use rules and statutes, as opposed to guidance, we request the Department incorporate more detail in the code relating the scope of a vapor investigation and remediation (as opposed to relying on the current vapor intrusion guidance document). The specific areas where we would like to see more detail are listed below. (Wisconsin Public Service Corporation)

- a. Screening for Petroleum-related Compounds. Section IV.A. of the vapor intrusion guidance lists criteria applicable to screening out the vapor intrusion pathway concern that should be incorporated into appropriate sections on NR 700 (e.g. NR 716, NR 720) – for example, the distance benchmarks of 30 feet from building foundations where free-phase product is present, the requirement of 5 feet of clean unsaturated soil, and/or the trigger of 100 ug/L benzene concentration in groundwater. The specifics of these screening criteria are well referenced and are supported in the technical literature as

cited in the guidance. Adding the criteria categories (if not the actual values, which may understandably change as knowledge is gained) will provide specificity to the process for determining whether a vapor intrusion concern potentially exists at a site.

- b. Allowance for a Phased Assessment Approach. Section V.A. of the vapor intrusion guidance recognizes the appropriateness of a step-wise approach to investigating the vapor pathway where buildings or structures are present, beginning with basic groundwater and soil matrix characterizations. Allowing for this phased approach within the context of NR 700 is appropriate. The step-wise approach is particularly applicable to sites that involve lower volatility compounds, highly biodegradable compounds, and/or a physical setting that would make external sampling a better choice (e.g. soil gas sampling under pavement, in an area of similar concern exterior to a building). Incorporating language for a step-wise approach, in lieu of intrusive sampling techniques (e.g. sub slab and indoor air sampling) allows obtaining the necessary data for assessment purposes, less delay in some cases, while furthering the investigation/remedial decision process.
- c. The Process and Level of Detail Contained in the Code for Determining Risk Posed by the Vapor Intrusion Pathway Should be Commensurate With That Defined for Soil Cleanup Requirements. Section VI of the guidance outlines the process for use of screening and action levels. The revisions to NR 700 reference the required hazard index, cancer risk levels and other default parameters but falls short of outlining other important criteria highlighted in the guidance, such as applicable attenuation factors and related distinctions between residential/small commercial buildings and large commercial/industrial buildings and the process for applying screening/action levels and related decision criteria. These distinctions provided for in the guidance should be incorporated in the code.

*Response* – The Department agrees that further clarification of a number of these suggestions is appropriate. Therefore, the rule language contained in NR 716.11(5)(g) and (h) has been expanded to include the factors that need to be considered when determining whether the field investigation needs to determine the presence of vapors sub-slab or in indoor air. However, as mentioned in the comments, the Department does not intend to include any of the specific numerical values as they are very likely to change in the future.

*13. Comment* – NR 716.15(4)(d) should be reworded to require cross sections for those sites with 3 or more soil borings. It is impractical to create a valid cross section with only two borings. For sites with less than three borings the boring logs can be provided to illustrate the geology at the site. (Bert Cole, Senior Program Manager, AECOM)

*Response* – The Department agrees that there could be situations where a cross section is not necessary when only 2 soil borings are available. However, rather than remove this provision for all sites, there is currently rule language in NR 715.15(1) that gives the Department authority to waive this requirement on a case-by-case basis.

*14. Comment* – The note in NR 716.13(10) may unintentionally limit the methods allowed by consultants. NR 716.13(12) seems to cover methods. (Paul Junio, Regional Account Manager, Northern Lake Service)

*Response* – While the note lists a number of suitable analytical methods, the rule language gives the Department significant flexibility to approve alternative analytical procedures. The methods listed in the note can be modified relatively quickly if EPA changes the acceptable procedures without going through the formal rulemaking process.

## X. NR 720 – Soil Cleanup Standards

*1. Comment* – Citizens for Safe Water Around Badger (CSWAB) supports many of the additions and clarifications in the proposed revisions to NR 720, particularly new language requiring the assessment of human health risks posed by vapor intrusion of volatile soil contaminants into homes and buildings. However, there are several specific areas within the proposed rule which we believe may not be sufficiently protective of children and expectant mothers for certain routes of exposure such as dermal absorption. Additionally, the definition of risks associated with mixtures is limited to additive risks and does not require consideration of synergistic effects or carcinogenic potentiation associated with mixtures such as technical grade DNT (dinitrotoluene). Given the significant potential for uncertainty, contaminant mixtures warrant an extra level of protection rather than a compromise in excess cancer risk. This is especially critical in the calculation of risks associated with prenatal exposure to pesticides and endocrine disruptors. For this reason, we strongly recommend that cumulative excess cancer risk of exposure to mixtures be at least or more protective than for individual contaminants or  $1 \times 10^{-7}$ . (Citizens for Safe Water Around Badger)

*Response* – If the cumulative risk is set at  $1 \times 10^{-7}$ , then whenever more than 1 carcinogenic contaminant is present the standard for each individual compound would need to be less than  $1 \times 10^{-7}$  (i.e. 1-in-10,000,000) excess cancer risk. This would be more stringent than the lowest (or the most strict) level of EPA's risk range. The Department has utilized a  $1 \times 10^{-5}$  cumulative excess risk since the rule was originally promulgated in 1995 and relies on EPA methodology for determining the appropriate standards. We believe the current approach has worked well and provides the necessary protection.

*2. Comment* – The phrase “and soil productivity” should be added to the stated purpose of this chapter to encourage the successful and sustainable future of land including for agriculture. (Citizens for Safe Water Around Badger)

*Response* – “Soil Productivity” is not a parameter that would be addressed by the provisions contained in NR 720. Instead, it could be addressed by existing rule language in the remedy selection portion of NR 722 which requires Responsible Parties to restore the environment to the extent practicable.

3. *Comment* – We recommend adding section (e) or a “note” to NR 720.02 clarifying that the release of hazardous substances such as pesticides, lead, PCBs, and other environmental toxins to soils and matrixes containing these contaminants (such as dried applied lead-based or PCB-contaminated paint associated with building and/or infrastructure demolition) constitutes an environmental release subject to regulation under this chapter. At the Badger Army Ammunition Plant, the responsible party has argued that such circumstances do not constitute an environmental release. (Citizens for Safe Water Around Badger)

*Response* – Chapter 292 of the Wisconsin Statutes requires that a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance is responsible for taking the necessary action to restore the environment to the extent practicable. The terms “hazardous substance” and “discharge” are broadly defined in the statute and therefore the Department does not believe further clarification in NR 720.02 is necessary.

4. *Comment* – For purposes of clarity, “degradation by-products” should be better defined in NR 720.03(3)(g) or listed as a separate entry in this section. The definition should be inclusive of all pathways including contaminants transformed by biological activity (biotransformation), physical means, chemical means, etc. Biotransformation of the explosive dinitrotoluene (DNT) – a common contaminant of concern at Badger Army Ammunition Plant – produces reduction products, metabolites, and degradation products, for example. (Citizens for Safe Water Around Badger)

*Response* – The term “degradation by-products” covers all of the situations described in the comment and therefore no additional rule language is necessary.

5. *Comment* – We recommend striking the second sentence in NR 720.03(3m) altogether as irreparable.

As written, the language could result in the underestimation of risk especially to children. When there is no direct information for a specific chemical, the appropriate conservative presumption that is utilized by EPA, and should be applied here, is that contaminants should be presumed to be 10 times more toxic in order to be protective of children. This approach has been most notably applied in the assessment of risk associated with exposure to pesticides. In the case of endocrine-disrupting contaminants, the risk factor associated with chronic low level exposures may rise by 100 fold.

Moreover, risks associated with dermal absorption for virtually all chemical groups are consistently HIGHER than ingestion. If toxicity factors are unavailable, the rule should err on the part of the conservative and the presumption should be that there is MORE

rather than LESS absorption. This is particularly true in the case of dioxins where there is nearly 100% absorption for certain forms of dioxin across the gut. (Citizens for Safe Water Around Badger)

*Response* – The sentence recommended for deletion is from a previous version of the proposed rule. The current language was taken from EPA’s Dermal Risk Assessment Guidance and is accurate where oral-to-dermal route extrapolation is concerned.

The algorithm developed by EPA for determining soil cleanup standards and included in WDNR’s soil cleanup standard guidance (RR-890) is that the hazards or risks from different pathways (ingestion, dermal contact and inhalation) are combined in determining the direct-contact standard. This results in the overall standard being less than would be calculated using the individual pathways. In addition, the EPA methodology also accounts for potentially higher risks to children for those compounds EPA classifies as mutagenic. As a result, we do not anticipate risk underestimation, even to children, for those chemicals with toxicity values that are in the data base hierarchy (e.g. IRIS, PPRTV, ATSDR, California EPA, HEAST, etc.) that the EPA algorithm utilizes. For those situations where toxicity information is not in one of the data bases for any specific pathway (e.g. dermal) then a site specific approach can be utilized.

6. *Comment* – The definition of ‘inhalation of vapors’ contained in NR 720.03(8m) should be expanded to include indoor air; this recommendation is consistent with new EPA guidance, specifically soil vapor intrusion. (Citizens for Safe Water Around Badger)

*Response* – The definition for inhalation of vapors does not include indoor air because the volatilization factor that is used does not account for the presence of structures, which would be necessary for indoor air to be a factor. Regarding vapor intrusion, there are numerous locations throughout the rule that address that pathway directly.

7. *Comment* – We recommend adding a definition for the term “remedy” as follows: (15) “Remedy” is an action which results in restoration of the environment and soil productivity to the extent practicable, minimizes harmful effects to the air, lands and waters of the state and is protective of public health, safety and welfare, and the environment.

This addition is based on our experience with Badger Army Ammunition Plant. The responsible party has asked that the installation of a municipal water system be treated by state regulators as a “remedy” for groundwater contamination in and near the facility. (Citizens for Safe Water Around Badger)

*Response* – The term remedy is used in 2 different notes in NR 720. The term has been used interchangeably with “remedial action” which is defined in NR 700.03(48). In order to maintain consistency, the definition of “remedial action” has been modified to include “remedy”.

8. *Comment* – We strongly recommend the addition of Drinking Water Health Advisory Levels (HALs) to the rule language contained in NR 720.05(3)(b) as consistent with WDNR Manual Code 4822.1 and other guidance documents which allow the agency to utilize HALs as remedial goals. This addition is especially important at military sites where contaminants may be unique to Department of Defense industry and not commonly detected in the State’s water resources. This clarification affords the department with the authority to require remediation of soil contaminants that pose a risk to nearby residential drinking water wells and public health, and therefore is in the best interest of the state. (Citizens for Safe Water Around Badger)

*Response* – The Drinking Water Health Advisory Levels are not included in NR 140. Most HALs are based on EPA’s non-enforceable lifetime health advisories. In determining HALs, the Department’s Drinking and Groundwater Program uses a non-carcinogen EPA health advisory “as is”, but for carcinogens uses a value that is 100 times less than the EPA HAL.

The Department may utilize various sources of information including HALs or EPA’s risk-based tap water concentrations when evaluating what an appropriate soil cleanup standard should be. However, requiring compliance with non-enforceable standards is not appropriate and therefore the additional language was not added.

9. *Comment* – The note following NR 720.05(3) is viewed as irreparable so we strongly recommend deleting the entire note, for the following reasons:

As in a previous section, the language could result in the underestimation of risk especially to children. When there is no direct information for a specific chemical, the appropriate conservative presumption that is utilized by EPA, and should be applied here, is that contaminants should be presumed to be 10 times more toxic in order to be protective of children. This approach has been most notably applied in the calculation of risk associated with exposure to pesticides and endocrine disrupters. In the case of endocrine-disrupting contaminants, the risk factor associated with chronic low level exposures, especially during pregnancy, may rise by 100 fold.

Moreover, the draft language specifies that risks cannot be anything other than additive. The draft stipulates that multiple exposures “shall” be additive however risks associated with mixtures may be synergistic or result in carcinogenic potentiation. These factors would be expected to result in a higher calculated and actual risk to human health (compared to additive risks). In other words, a numerical risk of 1 plus 1 may actually equal 4 or 8, rather than 2.

Additionally, the proposed language in the last sentence also allows for combined-exposure levels to be decreased but not increased. (Citizens for Safe Water Around Badger)

*Response* – The comment refers to language from an earlier draft which was subsequently modified before being sent out for public comment. The existing language

is now found in the note following NR 720.07(1)(b)1. That language indicates that for single contaminants, the cleanup standard will be determined based on the combined risk from exposure to soil considering ingestion, inhalation, and dermal contact. For situations with multiple contaminants, the note references the cumulative excess cancer risk and the hazard index for non-carcinogens.

*10. Comment* – In order to be consistent with other sections in NR 720, reference to biological receptors in NR 720.07(1)(c)2 is recommended, specifically risks to terrestrial ecosystems and wildlife. (Citizens for Safe Water Around Badger)

*Response* – Based on a review of the rule, the Department believes that biological receptors including terrestrial ecosystems and wildlife are already addressed by the definition of “sensitive environment” and under section NR 720.13 which covers other pathways of concern.

*11. Comment* – Should the word “explosive” in NR 720.07(1)(c)4 be “exposure”? (Citizens for Safe Water Around Badger)

*Response* – The term lower explosive limit is correct. This requirement is for chemicals that may not have human toxicity values, but have the ability to ignite and explode and chemicals that may reach their lower explosive limit before being toxic. A good example is methane.

*12. Comment* – The term “land use classification” needs additional clarification. At Badger Army Ammunition Plant, responsible parties have argued that very large parcels of land should be remediated to “industrial” standards when, in fact, the majority of actual land use activity is and will be as wildlife habitat. As a result, soil remediation goals may not be protective of biological receptors including grassland birds and the human food chain through consumption of wildlife that may live and graze on these lands. (Citizens for Safe Water Around Badger)

*Response* – There is currently language in NR 720.19(6) that requires other pathways of concern to be considered including the human food chain, surface water quality and terrestrial ecosystem, when those pathways of exposure are of concern at a site or facility. This language has been retained in the proposed rule revisions and is found in NR 720.13.

*13. Comment* – We recommend adding the following sentence to the second note in NR 720.07(2)(b): “Soil averaging should not be used to avoid remediation of “hot spots” which are readily accessible or simply remediated”. Again, this is based on our experience at Badger where small distinct areas of surface soil contamination, i.e. “hot spots”, could have been easily remediated when clean-up equipment was mobilized nearby but the responsible party balked at the minor extra effort. (Citizens for Safe Water Around Badger)

*Response* – It was not clear based on the example provided whether the Responsible Party attempted to use soil averaging to address the distinct areas of soil contamination. Regardless, expanding the note further would be considered substantive and would need to be included in the rule. In addition, a definition of the term “hot spot” would be needed as it may not be clear to readers what that term is referring to. The Department believes that the existing language already addresses the issue raised by this comment and therefore is not proposing to make any further changes.

*14. Comment* – NR 720.09 (or another appropriate section) should be amended to include language which encourages a soil remedy which will achieve compliance with groundwater standards, public welfare standards, and health advisory levels (HAL’s) **within a reasonable period of time**. In talking with experienced regulators at WDNR, some closed sites may not achieve compliance with the enforcement standards (ES’s) for more than 100 years!

We suggest adding a note which says: “Whenever possible, soil remedial actions should be designed to achieve compliance with groundwater standards, public welfare standards, and drinking water health advisory levels in a reasonable time frame, preferably less than 5 years. (Citizens for Safe Water Around Badger)

*Response* – There are several issues associated with this comment. First, by identifying the standards for compliance and including a specific time frame for meeting the standards, the note would be considered substantive and as such, would need to be included in the rule. Second, defining “reasonable period of time” was attempted several times in the past, but a specific numerical value could never be agreed upon due to the large number of variables that affect how to select the number. As a result, the Department concluded that establishing a specific number was not appropriate.

*15. Comment* – We recommend adding Drinking Water Health Advisory Levels to the end of the second note in NR 720.09(1). (Citizens for Safe Water Around Badger)

*Response* – The suggested modification was made to the note.

*16. Comment* – We recommend adding “or anticipated” land use to NR 720.05(5). In the case of land parcels at Badger Army Ammunition Plant that are being prepared for transfer to the WDNR and others, the current land use is as an industrial facility however the anticipated land use includes conservation, grazing, hunting, agriculture, and recreation. The proposed language could prohibit the Department from requiring a level of cleanup that is protective of anticipated future uses.

The recommended addition is especially important for federal lands which are **exempted** from local planning and zoning. (Citizens for Safe Water Around Badger)

*Response* – Adding “anticipated” to the rule language is not necessary to address the concerns that were raised as the rule also provides for using more stringent non-industrial cleanup standards are necessary to protect public health on or off the site or facility. In

addition, NR 720.13 requires Responsible Parties to consider human food chain, surface water quality and terrestrial eco-systems regardless of the land use classification of the site.

*17. Comment* – In order to be consistent with other sections, a reference to biological receptors (terrestrial ecosystems) is important. We recommend adding the phrase “and biological receptors” to NR 720.05(5)(b)2. (Citizens for Safe Water Around Badger)

*Response* – The Department has made the requested change.

*18. Comment* – Given the significant potential for uncertainty and the considerable potential for synergistic and carcinogenic potentiation, contaminant mixtures warrant an EXTRA level of protection, not a compromise in excess cancer risk. For this reason, we recommend that cumulative excess cancer risk for exposure to mixtures be at least or more protective than for individual compounds, or  $1 \times 10^{-7}$ .

As the vast majority of contaminated sites throughout the State have multiple contaminants, the draft language for mixtures is a significant short-coming in the proposed rule. As proposed, it appears that a site with a large number of chemicals could pose a greater risk to human health than a simple site with only one contaminant. As cited earlier in our comments, this approach does not allow for known synergistic and other non-additive risks associated with exposures to mixtures.

As noted in the proposed rule, there is limited toxicological information on the potential human health risks and implications associated with mixtures however, in cases where there is no direct information for a specific mixture, the appropriate conservative presumption that is utilized by EPA, and should be applied here, is that mixtures should be presumed to be 10 times **more** toxic in order to be protective of children and infants. In the case of endocrine-disrupting contaminants, the risk factor may rise by 100 fold for chronic low level exposures, especially during pregnancy. This precautionary approach has been most notably applied by EPA in the assessment of risks associated with exposure to pesticides<sup>2</sup>. State environmental regulations are required to be as protective as federal rules and policies.

Children are at a greater risk for some pesticides for a number of reasons. Children’s internal organs are still developing and maturing and their enzymatic, metabolic, and immune systems may provide less natural protection of than those of an adult. There are “critical periods” in human development when exposure to a toxin can permanently alter the way an individual’s biological system operates.<sup>3</sup>

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<sup>2</sup> U.S. Environmental Protection Agency, Guidance for Conducting Health Risk Assessments of Chemical Mixtures, External Scientific Peer Review Draft, NCEA-C-0148, April, 1999.

<sup>3</sup> U.S. Environmental Protection Agency, Fact Sheet: Children are at Greater Risks from Pesticides Exposure, January, 2002.

This recommended additional protection is further warranted as certain Wisconsin communities and neighborhoods are already at greater health risk due to factors beyond regulatory control such as poverty. (Citizens for Safe Water Around Badger)

*Response* – The Department is not aware of any situations where EPA has imposed higher risk factors when soil is impacted by more than one contaminant. Instead, EPA uses a risk range of  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  when determining appropriate cleanup standards. The Department uses a  $1 \times 10^{-6}$  excess cancer risk for individual compounds and a not to exceed risk of  $1 \times 10^{-5}$  when more than one contaminant is present. This is clearly within the risk range established by EPA. In addition, while the Department is generally required to follow federal rules, compliance with federal guidance is typically at the discretion of the state.

The process established in NR 720.11 for determining soil cleanup standards based on direct contact utilizes default exposure assumptions based on EPA's regional screening level guidance. The Department has developed guidance based on that document that is referenced in NR 720. The EPA guidance already accounts for potentially higher risks to children for those compounds that are defined as mutagenic.

*19. Comment* – As stated in previous sections, consideration of only additive risks is limiting and therefore may not be more protective of human health, especially children and expectant mothers. If any assumption is made, it should be MORE, not less protective. (Citizens for Safe Water Around Badger)

*Response* – As discussed above, the calculator developed by EPA accounts for potentially higher risk to children for those compounds considered mutagenic. If EPA further refines the process for addressing cumulative risk, the Department will evaluate the revised approach and work with external parties to determine how best to implement subsequent changes.

*20. Comment* – Recommend adding “and uptake” to the note in NR 720.13 as certain contaminants may bioconcentrate or biomagnify but may not meet all criteria as bioaccumulative. (Citizens for Safe Water Around Badger)

*Response* – The proposed change was made.

*21. Comment* – Large sections of the proposed rule appear to be derived from the U.S. EPA exposure factors handbook of which there are 2 – one is specific for children. If this is the case, specific reference should be made to these handbooks in the rule to allow for updates and consistency with future EPA policy. The final rule should stipulate where and how and why these particular documents were chosen. Both specifics and references to national guidance documents are recommended for clarity and consistency. (Citizens for Safe Water Around Badger)

*Response* – The reference to the handbook is implicit because the Department's guidance document (RR-890), which is referenced in NR 720, cites the EPA website. The

calculations available from this EPA website use default values that are from the U.S. EPA exposure factors handbook.

*22. Comment* -- The proposed rule should be amended to include references to Groundwater Preventive Action Limits (PALs) found in other rules such as NR 140 for consistency and to encourage early proactive responses to environmental releases BEFORE an exceedance of a groundwater Enforcement Standard (ES) occurs. Restoration of groundwater is very often an exceedingly expensive and technically difficult task to accomplish and as a result, the State's groundwater resources are at increasing risk for long-term impairment. The "caution light" approach afforded by the PAL allows regulators to work with responsible parties to reduce costs and future liabilities by encouraging early deliberate actions to prevent groundwater exceedances and subsequent enforcement action. The PALs are an important tool that serves both the responsible party and the State so reference in the text is recommended. (Citizens for Safe Water Around Badger)

*Response* -- The change that has been included in the proposed rule is to utilize the Enforcement Standards (and not the PALs) when calculating site specific soil cleanup standards that are protective of groundwater. This does not change the need to comply with NR 140. In fact, most sites utilize groundwater specific information to determine if soil contamination is at levels that pose a concern.

*23. Comment* -- We strongly support the comments submitted by Citizens for Safe Water Around Badger on this section of the rules. (Source: Midwest Environmental Justice Organization)

*Response* -- See the Department's responses to the comments provided by Citizens for Safe Water Around Badger, above.

*24. Comment* -- Section NR 720.11(1)(a) identifies procedures for determining soil direct contact residual contaminant levels (RCL's) and states that the RCL for individual compounds should be determined using an excess cancer risk of  $1 \times 10^{-6}$  and a hazard quotient for non-carcinogens of one. These are reasonable target cancer risk and non-cancer hazard goals when deriving RCLs.

All site evaluations and decisions should be made using a consistent metric which is the cumulative risk associated with a site. Currently, this principle is incorporated in the rule at several locations where a cumulative excess cancer risk goal of  $1 \times 10^{-5}$  is identified. However, it is unclear in the current draft rule that RCLs can be adjusted upward when the cumulative cancer risk for the site is below the cumulative cancer risk goal of  $1 \times 10^{-5}$ . This lack of clarity results in regulatory inconsistency when sites are treated differently based solely on the number of chemicals present. In other words, it is unreasonable to have one site cleaned up to a risk of  $1 \times 10^{-6}$  because one chemical is present while another site is cleaned up to a risk of  $1 \times 10^{-5}$  because ten chemicals are present.

I recommend adding the following sentence to section NR 720.11(1)(b): “Individual compound RCLs can be adjusted upward when the resulting cumulative cancer risk is less than  $1 \times 10^{-5}$  and the non-cancer hazard quotient is less than one. (Brad Grimsted, Pioneer Technologies Corporation)

*Response* – The goal of this provision of the rule, which has been in effect since 1995, was to minimize the risks posed by sites with soil contamination. The majority of sites dealt with by the Department have more than one compound of concern, so the single compound risk level was set at  $1 \times 10^{-6}$  with the knowledge that the total site risk would be higher.

25. *Comment* – The soil parameter values in section NR 720.11(4) are different for air filled soil porosity, water filled porosity, and organic carbon content for soil and groundwater. For example, air filled soil porosity for direct contact is 0.28 and air filled soil porosity for soil to groundwater modeling is 0.13. Either the parameter values should be the same or text should be added to clarify why the parameter values are different. (Brad Grimsted, Pioneer Technologies Corporation)

*Response* – The Department added a note to this section to clarify that the values used in this section are the default values set out in WDNR publication RR-890, “Soil Residual Contaminant Level Determination Using the U.S. EPA Regional Screening Level Web Calculator”.

#### XI. NR 725 – Notification Requirements for Residual Contamination and Continuing Obligations

1. *Comment* – The NR 725, Appendix A Notification letter template is needlessly complex and legalistic. The letter should be reduced to the following items:

- a. A description of the release and the remedy,
- b. A description of the remaining soil and groundwater contamination on the current owner’s property,
- c. A description of the owners continuing obligations,
- d. A description of prohibited activities,
- e. A summary of what will happen next, and
- f. The attachments.

Most of what they need to know is contained in the attachments. The letter is confusing and much too long. What most people care about is that the condition of their property and what they can and cannot do in the future. (Bert Cole, Senior Program Manager, AECOM)

*Response* – We have tried to simplify the language, while providing the basic information on the residual contamination and potential continuing obligations, as well as a discussion of what is legally their liability or responsibility after a cleanup has been conducted, and what options they may have. We have also changed the template to a

form, for ease of use. We retained language regarding all the situations we have come across to date. However, not all these options are likely at a given site. The actual notification letter will be relatively short for most situations. By providing a standardized format, we feel a more consistent and complete message will be provided to those who are left with residual contamination and some type of continuing obligation on their property.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original    Updated    Corrected

2. Administrative Rule Chapter, Title and Number

Chs. NR 700 to 754, Environmental Protection - Investigation and Remediation, Order RR-04-11

3. Subject

Proposed revisions to rules for the investigation and cleanup of Brownfield's and other contaminated properties.

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

s. 20.370(2)(dh)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

9. Policy Problem Addressed by the Rule

DNR currently has 9 positions funded by program revenue. Since the fees have not been increased since 1998 it is no longer possible to cover all of these positions with the amount of Program Revenue being generated. A fee increase based on cost-of-living changes should be sufficient to fully fund these positions.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The proposed fee increases should not affect most small businesses, local governments or other entities for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who cause the discharge must take action to restore the environment. Most small businesses and many local governments do not have to address this situation. Second, the NR 700 rule series is largely self-implementing which means that the Responsible Party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a review fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing the cleanup.

11. Identify the local governmental units that participated in the development of this EIA.

The following local governmental units are members of the Brownfield's Study Group and were sent the draft Economic Impact Analysis for review: City of Milwaukee, City of Appleton, City of LaCrosse, City of West Allis, Fond du Lac County and Dane County. No comments were received from these or any other local governmental units during the public comment period.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

It is estimated that the overall increase in fees will be approximately \$190,000/year. How these fee increases would potentially affect a typical site was determined by reviewing past history of fee related requests. This evaluation indicated that most sites do not request DNR review of any additional documents besides case closure and that most sites have some contamination remaining at the completion of the cleanup. It was therefore assumed that most parties responsible for completing a cleanup, including small businesses and local governments, would request DNR review of

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

case closure for a site that has both residual soil and groundwater contamination. In this scenario, the total increase in fee related costs would be \$500. This example illustrates the most common situation but the actual cost increase will be dependent on the specific needs and requests of the Responsible Party.

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### 13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The fees in ch. NR 749 have not been increased since the rule was originally promulgated in 1998. The proposed increases are based on cost-of-living changes since that time and the additional revenue would be used to ensure that the 9 positions currently funded by fees could be maintained. It is estimated that the increase in fees will result in approximately \$190,000/year of additional state revenue being received.

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### 14. Long Range Implications of Implementing the Rule

The long-range fiscal implications for Responsible Parties that need to complete the cleanup of contamination should be neutral to positive. For those sites where the cleanup is completed and case closure is obtained, no future work (or additional costs) should be necessary. If the Responsible Party ultimately plans to sell the property, having a letter from the Department indicating that the cleanup was properly completed can make the property more marketable and valuable.

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### 15. Compare With Approaches Being Used by Federal Government

EPA is largely funded directly through the Federal budget although the Superfund Program has the ability to bill Responsible Parties for any oversight costs incurred.

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### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

None of the surrounding states have a flat fee system like Wisconsin. All states have a variety of funding sources including some combination of the following: Federal grants, general purpose revenue (GPR), waste tipping fees, professional registration fees, tank registration fees and generator fees. Several of the states also charge hourly fees for the technical oversight they provide, typically for sites choosing to become part of their voluntary cleanup program.

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<h3>17. Contact Name</h3>	<h3>18. Contact Phone Number</h3>
Mark Gordon	608-266-7278

This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The total increase is estimated to be approximately \$190,000/year. In addition to small businesses, this increase would include local governments and large businesses. It is not possible to project the impact by business sector since these increased costs are dependent on whether an individual business requests DNR assistance.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The Department tracks the number and type of fee submittals received and an analysis was completed of that information in order to estimate the potential increase in the amount of revenue generated.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The current rule is largely self implementing, which means that small businesses generally only pay fees when the request assistance from the Department. This allows each individual business to determine the amount of fees they will be assessed.

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5. Describe the Rule's Enforcement Provisions

There are no specific enforcement provisions related to payment of fees. As explained above, fees are generally only required when the responsible party requests Department assistance. In those limited cases when a fee is required, the Department would not proceed to issue a response letter until the fee is received.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes  No
-

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING  
AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 169.23 (9) (b) 1. d. (Note), 700.01 (2) (Note), 700.02 (3), (4) and (5), 700.03 (27) (Note), 700.09, 700.11 (1) (a) (Notes) and (b) to (f) and (Notes), (2), (3) (a) to (d) and (Notes), and (4), 700.13 (2) and (3), 706 Subchapter I (title), 706.01 (Note), 706.03 (1) and (Note), (3) and (Note), and (7) (Note), 706 Subchapter II (title), 706.07 (1) (b) and (Note), 706.11 (1) and (4), 706.13, 706.15, 706.17, 710, 712.03 (1) (Note), 716.01 (Note), 716.03 (5) and (10) (Note), 718.09 (8) (d) 3. i. (Notes), 718.11, 718.13, 718.14, 720.02 (1m) and (Note), 720.03 (4) (Note), (9) and (Note), (10), and (12), 720.07 (1) (c) 3. (Note), 720.09, 720.11, 720.19, 722.01 (Note), 722.02 (3m) and (Note), 722.03 (1) and (2), 722.07 (2) (Note), (3) (b) 1. and 2. (intro.), and (4) (b) 1. and 2., 722.09 (2) (b) 1. (Note), 722.15 (3) (a) and (b), 724.01 (Note), 724.05 (1), 724.13 (3) (a) to (f), 724.17 (3), 734.05 (3), 736.03 (1) and (7), 736.07 (3), 738.045, 750.03 (2) to (10), and 750.07 (3) (b) and (6); to **renumber** NR 700.03 (1), 706.07(1) (c), 708.11(1), 716.07 (8) (b) to (e), and 738.04; to **renumber and amend** NR 169.15, 700.02 (6) and (Note), 700.03 (51), 700.11 (3) (intro.), 706.07 (1) (d), 708.11 (1), 722.03 (intro.), 722.07 (3) (b) 2. a. to c., 722.07 (4) (a) 4. h. (Note) and (b) 1. a. to e., 722.09 (2) (d), 722.15 (3) (intro.), 724.13 (3) (intro.) and (e) (Note), 738.03 (4), 738.05, 738.07, 738.08, 738.09, and 750.07 (3) (a); to **amend** NR 169.11 (1) (c) 9. and (Note), 169.13 (3) (a) 6., 169.19 (4) (c), 169.23 (9) (b) 1. d., 700.01 (1) and (2), 700.02 (1), (2) and (Notes), and (2m), 700.03 (intro.), 700.03 (2) (a), (6), (17), (27), (28) (Note), (28m) (Note), (36) and (Note), (43) and (Note), (45m), (48), (60), (66) (Note), 700.05 (1) and (2), 700.07 and (Note), 700.11 (1) (a) and (3) (title), 700.13 (1), 706.01, 706.02 and (Note) and (3), 706.03 (5) (Note) and (7), 706.05 (title), (1) (a) and (Note), (b) and (Note), (c) (intro.), 3. and 11, and (2), 706.07 (1) (title) and (2) (b) 1, 706.11 (title), 708.01, 708.02 (1) and (2) (Note), 708.03 (intro.), 708.05 (3) (b) 2. and 4. (Note), (5) (b), and (6) (c) 3, 708.09 (2) (intro.) and (a) and (3) and (Note), 708.11(1)(a) (Note), 708.11 (2) (d) and (4) (b), 708.15 (1), (2), and (3) (b), 712.01, 712.02 (2), (3), and (4) and (Note), 712.03 (1), 712.05 (1), 712.07 (1), 712.09 (2) and (3) (b), 712.11 (1) (d), and (f), and (2) (b), 716.01, 716.02 (1) (a), (b), and (c) and (2) and (Note), 716.03 (2), (8) and (Note), (9), and (10), 716.05 (1), 716.07 (12), 716.09 (1), (2) (a), (f) 3., 5., and 8., and (g), and (3) (b), 716.11 (3) (c), 716.17 (4), 718 (title), 718.01 and (Note), 718.02 (1) (a) 1. and 2. and (b) 1 and 2, 718.03 (5) and (8) and (Note), 718.05 (2) (f), (h) 5. and 7., and (i) 5., and (4) (b), 718.09 (4) (b) 2. and 5., (8) (b) 1. c. Table 1 and d., and 2. b. and c., (c) 2. a., and (d) 3. g., i., m., and o., and 4., (e) (title) and 1., 2. a. and b., 3., 4., and 5., 718.15, 718.17, 720.01, 720.02 (1) (intro.) and (a) and (Note), and (b), (3), and (5) (Note), 720.03 (4), (6) (Note), (8), (11) (Note), and (14), 720.05 (1) (b) and (c), (2), and (3) (intro.), 720.07 (title), (1), and (2) (b) and (d) 2., 722.01, 722.02 (1), (2), (2m), (3) and (Note), and (4) and (Note), 722.05 (2) (b) and (c), (4), and (5) (Note), 722.07 (3) (a) and (Note) and (b) (intro.), (4) (a) (intro.), 3. a. and b., and 4. d. and g., and (b) (intro.), and (5) (a) (Note), (b) and (c), 722.09 (2) (a) (Note), (b) 1. and 2., (e) 2., and (4) (a) 1., and (b) 3. (Note), 722.11 (3), 722.13 (1) and (2) (e) 1. and 3., 722.15 (2) (d) 1. to 5., 724.01, 724.02 (1) (intro.) and (a), (2) and (Note), (3) and (4), 724.03, 724.05 (2) (title), (intro.), (b), and (e) 2. d. and e., 724.09 (8), 724.11 (6) (d), 724.13 (1) (a) and (b), (2) (intro.), (a) and (e) 2., and (4) (title) and (c), 724.17 (4) (a) and (c), 724.19 (title), (1) and (2), 728 (title), 728.01, 728.02, 728.03 (1), 728.05, 728.07 (title), (1), and (2) (intro.), (b), (c), (d) and (f), 728.11 (1), 734.01, 734.02, 734.03 (2) and (4), 734.05 (2) and (4) (Note), 734.13 (title), 734.21 (4), 736 (title), 736.01, 736.02 and (Note), 736.03 (5) and (6), 736.05 (1) (intro.), (2) and (3) (intro.), 736.09 (1), (2) (intro.), (3), and (5), 736.15 (2) (a), 738.01 and (Note), 738.02, 738.03 (9), 738.06 (1) (a), (b), and (c) and (2) (d), 738.12 (4) (Note), 749.01, 749.02, 749.04 (1) (second

Note), 750.01, 750.05 (1) and (Note) and (2) (a) 1. and 2. and (c), 750.07 (1) (a) and (e) and (7), and 750.09 (intro.) and (2); to **repeal and recreate** NR 700.11 (1) (title) and (intro.), chapter NR 714, 716.05 (2) (b) (Note), 716.13, 716.15, 722.09 (5), chapter NR 726, 736.05 (title), chapter NR 746, and 749.04 Table 1; and to **create** NR 169.05 (12m) and (Note), (16g), (16r) and (Note), (29e) and (Notes), (29m) and (Notes), and (29s) and (Note), 169.13 (2) (f) 3. and (Notes), 169.15 (2), 700.02 (2) (Note), 700.03 (1e) and (Note), (1s) and (Note), (3m) and (Note), (4m) and (Note), (6m) and (Note), (11m) and (Note), (17) (Note), (30g) and (Note), (30r) and (Note), (33m) and (Note), (34m), (39m), (43g), (43r) and (Note), (45e), (46m), (49g), (49r) and (Note), (51) (a) to (c), (52m), (55m), (59m), (60m), (62m), (64g), (64r) and (Note), (66p) and (Note), (66s), (66w) and (Note), and (66y), 700.08, 700.10, 700.11 (1) (a) (Note), (bm), (cm), (dm) and (em), (3) (Note), (3g) and (Notes), and (3r) and (Note), 700.13 (1m) and (Note), 706.05 (1) (bm) and (Note), (1)(c) 3m. and (Note), 706.07 (intro.), and (3), 706.11 (3m) and (Note), 708.02 (2r), 708.03 (1) and (2) and (Note), 708.11 (1) (b), 708.15 (3) (k), 708.17, 712.07 (1) (Note), 716.02 (1) (d), 716.03 (8m), 716.03 (9) (Note), 716.07 (8) (d) (Note), 716.09 (1) (Note), (2) (a) (Note), and (3) (d) (Note), 716.11 (2g), (2r) and (Note), (3) (d) and (Notes), (5) (e) and (Note), (f) and (Note), (g), (h) and (Note), and (7), 716.14, 718.02 (1) (a) (Note), 718.12, 718.15 (Note), 720.02 (1) (e) and (Note), 720.03 (1m) and (Note), (3m) and (Note), (9m), (12m), (15), and (16), 720.05 (1) (title), (2) (title), (3) (title), (4) and (Note), and (5) and (Notes), 720.07 (1) (c) 4., (2) (b) (Notes), and (3) and (Note), 720.08, 720.10, 720.12, 720.13, 722.02 (2) (Note), 722.07 (3) (a) (Note) and (am), (4) (a) 3. c. (Note), i., j., and 4. i. and (Note), 722.09 (2) (d) 1. and 2., and (2m) and (Note), 722.13 (2) (e) 7., 722.15 (2) (e) and (Note), 722.17, 724.02 (1) (bm) and (Note), 724.05 (2) (b) (Note), 724.07 (2) (Note), 724.13 (1) (c) and (d), (2) (f), (g) and (Note), (h), (i), (j) and (Note), and (k) to (n), and (3) (Note), 724.17 (3m) and (4) (a) (Note), chapter NR 725, chapter NR 727, 728.03 (3) and (Note), 728.06 and (Note), 728.065 and (Note), 728.07 (2) (bm) and (g), 728.09 (1m) and (3) (Note), 728.10, 734.13 (1) (f), 734.15 (5) (g), 736.03 (7m), 738.02 (Note), 738.03 (4) (a) to (d), (5g) and (Note), (5r) and (Note), (6m) and (Note), and (9) (Note), 738.06 (1m) and (Note), 738.12 (3) (c), 738.14 (2) (d), 749.05, 750.03 (2m), and (3m) and (Note), 750.05 (2) (a) 3., (4), and (5), 750.07 (1) (f), and 750.09 (4) and (5), relating to investigation and cleanup of contaminated properties and affecting small business.

RR-04-11

Analysis Prepared by Department of Natural Resources

**1. Statutes Interpreted:** In promulgating these rules, ch. 227, 281, 287, 289, 291 and 292, Stats. have been interpreted as authorizing rule revisions.

**2. Statutory Authority:** Sections 227.11(2) (a), s. 281.19(1), 287.03, 289.05, 289.06, 291.05(6) (f), 292.11(5), 292.11(7) (d), 292.12(2) (c), 292.13(3), 292.15(2) (a), 292.15(2) (ae), 292.15(5), 292.31(2), 292.41, 292.65, 292.68(11), 292.94, and 299.45 (7), Wis. Stats.

**3. Explanation of agency authority to promulgate the proposed rules under the statutory authority:**

Section 227.11 (2) (a) allows the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Section 281.19 (1) allows the Department to issue orders and to adopt rules for the construction, installation, use and operation of systems, methods and means for preventing and abating pollution of the waters of the state, after an opportunity to be heard has been provided to interested parties.

Section 287.03 (1) (a) requires the Department to promulgate rules necessary to regulate solid waste management and disposal.

Section 289.05 requires the Department to promulgate rules establishing minimum standards regarding solid waste facilities and the closure, long term care, and maintenance of such facilities, and establishing standards for the reuse of high volume industrial waste.

Section 289.06 requires the department to promulgate rules that are consistent with and implement the provisions of ch. 289, Wis. Stats. (solid waste facilities), and ss. 292.31 (remedial action – environmental repair) and 292.35 (remedial action – local governmental unit negotiation and cost recovery).

Section 291.05 (6) (f) requires the Department to adopt rules which prescribe requirements for corrective actions under s. 291.37, Wis. Stats. (response actions to address hazardous or solid waste)

Section 292.11 (5) requires the Department to establish by rule, criteria and procedures for the development, establishment and amendment of a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances.

Section 292.11(7) (d) allows the Department to negotiate and enter into agreements for conducting nonemergency actions with a responsible party if the discharge does not endanger public health, and with a local governmental unit in certain cases; and allows the Department to charge fees in accordance with promulgated rules to offset costs of negotiating and entering into agreements, and to refer violations of these agreements to the Department of Justice for enforcement.

Section 292.12(2) (c) requires the Department to promulgate rules to identify limitations or conditions that may be imposed, related to residual contamination at a property, to ensure that conditions remain protective of public health, safety, welfare and the environment, and as applicable to promote economic development. These statutory changes were passed in 2006. The changes repealed the use of deed restrictions to enact continuing obligations, replacing deed restrictions with approval letters when continuing obligations were imposed to address residual contamination. These approvals are issued either at the time of closure or remedial action plan approval, or when the department directs an action be taken by a local governmental unit or economic development corporation.

Section 292.13(3) allows the Department to assess and collect fees in accordance with promulgated rules, to offset the costs of issuing determinations concerning liability.

Section 292.15(2) (a) and (ae) define when voluntary parties are exempt from provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8) and rules promulgated under those provisions, with respect to discharges of hazardous substances on or originating from a property, and with respect to the use of natural attenuation, under certain, specified conditions. In order to obtain the liability exemption, the voluntary party must meet certain criteria, including conducting a cleanup in accordance with rules promulgated by the Department, maintaining and monitoring the property as required under rules promulgated by the Department.

Section 292.15(5) allows the Department to assess and collect fees from a voluntary party to offset the cost of the Department's activities, in accordance with promulgated rules.

Section 292.31(2) requires the Department to promulgate rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution.

Section 292.41 requires the Department, in consultation with other affected federal, state and local agencies and private organizations to adopt rules and procedures for the development, establishment and amendment of a contingency plan for the taking of emergency actions in relation to abandoned containers.

Section 292.65(3) requires the Department to promulgate rules to administer the dry cleaner environmental response program.

Section 292.68 (11) requires the Department to promulgate rules specifying procedures for the submission, review, and approval of claims for reimbursement for disposal of PCB contaminated sediment.

Section 292.94, Wis. Stats., requires the Department to promulgate rules regarding fee assessment and collection, and allows the Department to assess and collect fees from those subject to an order or other enforcement action for a violation of s. 292.11 or 202.31 to cover costs incurred by the Department in regard to an environmental investigation or cleanup that the party was required to conduct.

Section 299.45(7) requires the Department to adopt rules prescribing the methods and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs.

**4. Related statute or rules:** Chapter NR 169, Dry Cleaner Environmental Response Program, is also being revised, as a result of repealing ch. NR 710.

**5. Plain language analysis of the proposed rules:** The major policy issues being addressed by these rule revisions are 1) modifying many of the rules to remove references to deed restriction which were replaced with passage of WI Act 418; 2) removal of the simple site process which was originally included to provide responsible parties with the ability to self-certify closure as this option is almost never used; 3) eliminating ch. NR 710 because the statutory provisions to inventory sites was repealed and use of the hazard ranking system is no longer needed to inventory sites; 4) consolidating the NR 718 provisions on managing contaminated soil; 5) revising NR 720 to account for EPA's updated methodology for calculating site specific soil cleanup standards, 6) revising NR 722 on Remedy Selection to require an evaluation of sustainability; 7) simplifying the case closure requirements by splitting NR 726 into 3 separate rules as the current rule is lengthy and complicated; 8) removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites that are seldom sued or are technically unsound, and 9) increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

**6. Summary of and preliminary comparison with any existing or proposed federal regulation:** combined with #7.

**7. Comparison of similar rules in adjacent states:**

*Comparison with Federal Rules and Rules in Adjacent States* – Since the NR 700 rule series has been in-place for over 15 years, this comparison focuses on the 4 most important issues addressed by the proposed rule changes. These include: 1) The Process for Establishing Soil Cleanup Standards, 2) Requirements for Addressing the Vapor Intrusion Pathway, 3) Fees for Review of Cleanup Related Documents, and 4) Regulatory Closure of Contamination Cases. Below is a summary of the issues and a comparison of Wisconsin's approach to how EPA and the adjacent states address the topic.

1. The Process for Establishing Soil Cleanup Standards – The Department's rule on soil cleanup standards allows Responsible Parties to use either soil performance standards (i.e. engineering controls) or compound specific soil cleanup values. Both options are being retained as part of the proposed revisions. The Department currently uses a process developed by EPA in the mid 1990's for determining numeric soil cleanup standards. EPA has since developed a

new web calculator for determining soil cleanup standards. The proposed rule revisions utilize the new EPA methodology.

The approach for developing site specific soil cleanup standards is complex and very state specific. All of the surrounding states use EPA's risk range and compound specific toxicity information in determining soil cleanup levels. Not all states account for cumulative risk from multiple contaminants.

Each of the surrounding states have similar approaches for determining site specific soil cleanup standards although none are exactly the same. For example, all neighboring states provide values for an extensive list of compounds and those values are within the Federal excess cancer risk guidelines of 1:10,000 to 1:1,000,000. Illinois, Michigan and Minnesota rely on their Health Departments to set compound specific toxicity values, while Iowa and Wisconsin use the hierarchy established by EPA's Superfund Program.

Michigan and Illinois do not account for cumulative risk from multiple contaminants while Minnesota, Iowa and Wisconsin do. Minnesota uses a cumulative risk limit of 1:100,000 for soil exposure. Iowa allows cumulative risk up to 1:10,000 but their approach differs from the other states in that "cumulative" accounts for the aggregated exposures from contaminants in air, water and soil. In Illinois the risk posed by each individual compound cannot exceed 1:1,000,000 while in Michigan individual compound risk cannot exceed 1:100,000. Wisconsin uses a 1:1,000,000 excess cancer risk for individual compounds with the cumulative risk from all compounds not to exceed 1:100,000.

2. Requirements for Addressing the Vapor Intrusion Pathway – Vapor intrusion occurs when subsurface contaminants volatilize and then migrate through the soil into homes or other buildings. Assessing the vapor intrusion pathway is a relatively new issue for many states. U.S. EPA developed guidance for assessing the vapor pathway in 2002. As experience increased and additional data became available, EPA determined their guidance had several technical problems and it is currently making significant revisions. Wisconsin released draft guidance for external review in June, 2010. Feedback indicated that the guidance was technically sound and provided appropriate direction on how to evaluate the vapor intrusion pathway. The guidance was ultimately finalized in December, 2010 and training was provided to interested external parties in March, 2011.

The surrounding states have several different approaches for dealing with vapor intrusion. Michigan and Minnesota use general statutory and/or rule authority along with detailed guidance to address vapor intrusion. Illinois and Iowa don't have rules or guidance, but Illinois is in the process of developing rules. Currently, both states only address the vapor pathway when the responsible party requests assistance. Wisconsin uses an approach similar to Michigan and Minnesota's, although Wisconsin has more detailed statutory and rule authority related to vapor intrusion than either of these states.

3. Fees for Review of Cleanup Related Documents – The Department has had authority to charge fees for providing technical assistance since 1998. Fees are paid if the Responsible Party requests DNR review or other technical assistance. Most Responsible Parties request a case closure determination from the Department and pay the associated fees. Otherwise, the rule is largely self-implementing which means Responsible Parties can generally proceed without DNR approval and without paying review fees.

None of the surrounding states or EPA have a flat fee system like Wisconsin. All states have a variety of funding sources including some combination of the following: Federal grants,

general purpose revenue (GPR), waste tipping fees, professional registration fees, tank registration fees and generator fees. Several of the states also charge hourly fees for the technical oversight they provide, typically for sites choosing to become part of their voluntary cleanup program. EPA is largely funded directly through the Federal budget although the Superfund Program has the ability to bill Responsible Parties for any oversight costs incurred.

4. Case Closures – The Department has the authority to issue “case closure” decisions when a responsible party has completed an investigation and cleanup in accordance with state rules. Responsible Parties typically want a letter from the regulatory agency to document that the cleanup was completed properly. In addition, case closure letters are important for property transactions so that potential purchasers are aware that any known contamination has been properly addressed.

All four of the surrounding states have authority to issue a letter indicating that cleanup of environmental contamination was completed in accordance with state standards. All of the surrounding states also rely on engineering controls to ensure the remedy remains protective into the future. States apply these controls differently and in some cases use deed restrictions, restrictive covenants or other site specific agreements to impose the necessary controls.

Since a number of the Federal cleanup programs have been delegated to the states to implement, EPA typically does not issue many “no further action letters”. EPA uses restrictive covenants to impose engineering controls and other long-term obligations at sites where it has lead responsibility. This occurs primarily at Federal lead Superfund sites.

Several years ago the Wisconsin legislature approved changes in state law which allowed the case closure letter to be used as the legally enforceable document to impose any necessary on-going requirements such as maintaining engineering controls. This change largely did away with deed restrictions, which were used extensively in Wisconsin prior to that time. The use of GIS mapping that shows the location of all contaminated sites and our on-line database that contains the status of cleanup provides an easy and comprehensive method for tracking the status of contaminated sites.

**8. Summary of factual data and analytical methodologies that the agency used in support of the proposed rules and how any related findings support the regulatory approach chosen for the proposed rules:**

Since most of the changes are legal and administrative clarifications, the Department did not conduct analysis or use specific data to support these changes to the rule. Analytical changes made include removing references to specific analytical techniques, sample containers and holding times, and replacing them with a requirement that the sampling and analytical techniques used be appropriate for the sample media and type and potential concentration of contaminant.

**9. Any analysis and supporting documentation that the agency used in support of the agency’s determination of the rule’s effect on small business under s. 227.114, Stats., or that was used when the agency prepared an economic impact report:** Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III action. A Type III action is one that normally: 1) does not have the potential to cause significant environmental effects, 2) does not significantly affect energy usage and 3) does not involve unresolved conflicts in the use of available resources.

**10. Effects on small business, including how the rule will be enforced:** The major purpose of this rule making effort is to incorporate requirements set forth by statutes and to address policy changes that have been implemented over the years. Another major change is to streamline and consolidate the rule language so that out-of-date provisions are removed and the current regulatory requirements are easier to understand and comply with. As such, the promulgation of these rule changes should not have an impact on small businesses.

The one area of these rule revisions that have the potential to impact some small businesses is the proposal to increase the fees set out in ch. NR 749. These fees have not been increased since they were originally promulgated in 1998 and the average increase typically ranges from \$200 to \$300 depending on the type of submittal. The fee increases should not affect a significant number of small businesses for several reasons. First, the NR 700 rule series is largely self-implementing which means that Responsible Parties typically decide whether or not they want agency review of the documents they prepare, and only pay a fee if a written DNR response is requested. Second, the fees are often a one-time expenditure and generally are a small percentage of the overall cost for completing a cleanup.

**11. Agency Contact Person:** Mark Gordon, (608) 266-7278 or [Mark.Gordon@wisconsin.gov](mailto:Mark.Gordon@wisconsin.gov).

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SECTION 1. NR 169.05 (12m) and (Note) are created to read:

**NR 169.05 (12m)** "High priority site" means the site of a discharge of dry cleaning product if at least one of the following applies:

(a) Dry cleaning product is present at or above preventive action limits in any well used to provide water for human consumption.

(b) Concentration of dry cleaning product in groundwater exceeds one-tenth solubility levels expected for that product.

(c) Enforcement standards in groundwater are exceeded within 1,200 feet of a well operated by a public utility or within 100 feet of any other well used to provide water for human consumption.

(d) Vapors from dry cleaning product at or above a vapor action level are confirmed within occupied buildings, except for operating dry cleaning facilities and dry stores.

**(Note)** Vapor concentrations within occupied buildings are confirmed through time-integrated air sampling and the use of laboratory methods to achieve detection levels appropriate to human inhalation risk for the contaminants.

SECTION 2. NR 169.05 (16g), (16r) and (Note) are created to read:

**NR 169.05 (16g)** "Low priority site" means a site that does not meet the definition of a high or medium priority site.

**(16r)** "Medium priority site" means the site of a discharge of dry cleaning product if at least one of the following applies and the site does not meet the definition of a high priority site:

(a) Contaminants from dry cleaning product in groundwater, soil, or soil vapor extend beyond the boundary of the source property.

(b) Vapor concentrations at or above a vapor risk screening level are confirmed beneath buildings but a vapor action level is not exceeded within occupied buildings regardless of the location or use of the buildings.

(Note) Vapor concentrations beneath buildings are confirmed through time-integrated air sampling and the use of laboratory methods to achieve detection levels appropriate to human inhalation risk for the contaminants.

SECTION 3. NR 169.05 (29e) and (Notes), (29m) and (Notes), and (29s) and (Note) are created to read:

NR 169.05 (29e) "Vapor action level" has the meaning specified in s. NR 700.03 (66p).

(Note) Section NR 700.03 (66p) defines "vapor action level" as "the concentration of vapors from volatile compounds is at or above the 1-in-100,000 ( $1 \times 10^{-5}$ ) 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](http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/Generic_Tables/index.htm).

(29m) "Vapor risk screening level" has the meaning specified in s. NR 700.03 (66w).

(Note) Section NR 700.03 (66w) defines "vapor risk screening level" as "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 by an appropriate attenuation factor".

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

(29s) "Vapors" has the meaning specified in s. NR 700.03 (66y).

(Note) Section NR 700.03 (66y) defines "vapors" as "chemicals that are sufficiently volatile and toxic to pose an inhalation risk to human health via vapor intrusion from a soil or groundwater source".

SECTION 4. NR 169.11 (1) (c) 9. and (Note) are amended to read:

**NR 169.11 (1) (c) 9.** After receiving departmental approval for the site investigation report, submit a complete reimbursement application on a form developed by the department and specified in s. NR 169.19 which documents all eligible actions and associated costs. The owner or operator may submit an application for the reimbursement of site investigation costs prior to the approval submittal of the site investigation report ~~if a change order to the approved site investigation scope of work is necessary~~. The minimum eligible reimbursement request shall be \$15,000 and no more than 3 reimbursement requests, each accompanied by ~~a change order or orders~~ a summary of work completed, may be submitted prior to submittal of the site investigation report. Only one interim reimbursement request may be submitted during any fiscal year.

(Note) Forms are available at no charge on the DNR Web site (~~[www.dnr.state.wi.us/org/aw/r/r](http://www.dnr.state.wi.us/org/aw/r/r)~~) (<http://dnr.wi.gov/topic/Brownfields/Pubs.html>) and from the remediation and redevelopment program in any department regional or central office.

SECTION 5. NR 169.13 (2) (f) 3. and (Notes) are created to read:

NR 169.13 (2) (f) 3. Costs that do not exceed \$15,000 that the department determines are integral to the response action for dry cleaning solvent discharged from a dry cleaning facility and are incurred for any of the following purposes:

- a. To remove existing structures, fixtures, and building components in order to access and investigate, treat, or remove contaminated soil or water.
- b. To reinstall existing structures, fixtures, and building components.

c. To replace existing building components destroyed or damaged beyond reuse by removal. Existing building components shall be salvaged and reused to the extent practicable, but existing building components destroyed or damaged beyond reuse by removal may be replaced by building components of comparable or lesser value than the value of the destroyed or damaged components before removal.

**(Note)** Building components include windows, siding, and interior and exterior concrete, asphalt, walls, and doorways.

**(Note)** All other costs to construct, repair, replace, improve, relocate, or demolish a structure, fixture, or building component are ineligible costs under sub. (3).

SECTION 6. NR 169.13 (3) (a) 6. is amended to read:

NR 169.13 (3) (a) 6. Costs to construct, repair, replace, improve, relocate or demolish any building or fixture except as allowed by sub. (2) (f) 3.

SECTION 7. NR 169.15 is renumbered NR 169.15 (1) and (Note) are amended to read:

**NR 169.15 Site hazard categorization system. (1)** The department project manager shall assign a preliminary high, medium or low priority to the site consistent with ch. NR 710 after reviewing site information provided in an interim action or an interim site investigation reimbursement application submitted by an eligible applicant. ~~To determine reimbursement priorities pursuant to s. NR 169.17, the department project manager shall assign a final high, medium or low priority to the site consistent with ch. NR 710 after approving a complete site investigation report submitted to the department.~~

~~Note: Section NR 710.11 (4) states that the department may develop and implement a prioritization system for each program to quickly estimate the environmental impact of a site or facility and to establish a general priority for department action.~~

SECTION 8. NR 169.15 (2) is created to read:

NR 169.15 (2) To determine reimbursement priorities pursuant to s. NR 169.17, the department project manager shall assign a final high, medium or low priority to the site after approving a complete site investigation report submitted to the department.

SECTION 9. NR 169.19 (4) (c) is amended to read:

NR 169.19 (4) (c) An owner or operator who incurs costs for a ch. NR 716 site investigation may submit a request for reimbursement ~~when a change order to the site investigation scope of work is submitted. The department may not pay the reimbursement request until it has approved the change order and the work accomplished on the site investigation during the period covered by the reimbursement request~~ prior to completing the site investigation report. The minimum reimbursement request shall be \$15,000 and only one reimbursement request may be submitted within any fiscal year. No more than 3 reimbursement requests, each accompanied by ~~a change order or orders and a summary of work accomplished~~ completed through the date of the last invoice may be submitted prior to submittal of the site investigation report. A final reimbursement request may be submitted upon department approval of the site investigation report.

SECTION 10. NR 169.23 (9) (b) 1. d. is amended to read:

NR 169.23 (9) (b) 1. d. The maximum deductible amount per claim of the policy that provides the coverage specified in subd. 1. a. is ~~[INSERT AMOUNT]~~.

SECTION 11. NR 169.23 (9) (b) 1. d. (Note) is repealed.

SECTION 12. NR 700.01 (1) and (2) are amended to read:

**NR 700.01 Purpose. (1)** The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to ~~750754~~, 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 ~~702700~~ to ~~750754~~.

**(2)** The purpose of chs. NR 700 to ~~750754~~ 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 ~~s. 292.11, 292.15, 292.31 or 292.44~~ 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 ~~736754~~ 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., ~~requires department oversight 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), 292.11, 292.15, 292.31 and 292.44, Stats., and ch. 460 292, Stats.

SECTION 13. NR 700.01 (2) (Note) is repealed.

SECTION 14. NR 700.02 (1), (2) and (Notes) and (2m) are amended to read:

**NR 700.02 Applicability. (1)** This chapter and chs. NR 702, 704 and 708 to ~~750754~~ apply to actions taken by the department under the authority of ~~s. 292.11, 292.15, 292.31 or 292.44~~, chs. 289, and 292, Stats.

**(2)** This chapter and chs. NR ~~706, 708, 712~~ to ~~728 754~~ apply to 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~~ 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 natural resources has been informed that the~~ department of agriculture, trade and consumer protection intends has confirmed their intention to require that this chapter and chs. NR ~~708 and 712~~ to ~~726727, 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, and 712 to 726 727 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 ~~724 754~~ unless the person is seeking the liability exemption under s. 292.15, Stats. However,

the department is may not likely to consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to 724 754 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 meet 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 (4) 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 724 754 in order to satisfy be consistent with CERCLA and the NCP.

**(2m)** This chapter and chs. NR ~~708, 742~~ 706 to 728, 750, and 750 754 apply to actions taken by persons who are seeking the a liability exemption under s. 292.15, Stats.

SECTION 15. NR 700.02 (2) (Note) is created to read: (first note)

**NR 700.02 (2) (Note)** The department of safety and professional services has the authority under s. 101.144, Stats., to administer a program under which responsible parties investigate, and take remedial action in response to, those discharges of petroleum products from petroleum storage tanks that are classified as either medium risk or low risk. The department of safety and professional services 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 safety and professional services under s. 101.144, Stats. For actions directed by the department of safety and professional services under s. 101.144, Stats., submittals under chs. 708 to 727, and 749 shall be sent to the department of safety and professional services, and approvals required by these chapters shall be obtained from the department of safety and professional services.

SECTION 16. NR 700.02 (3), (4) and (5) are repealed.

SECTION 17. NR 700.02 (6) and (Note) are renumbered NR 700.02 (3m) and (Note), and amended to read:

**NR 700.02 (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 ~~s. 292.11 or 292.34~~ 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.

SECTION 18. NR 700.03 (intro.) is amended to read:

**NR 700.03 Definitions.** (intro.) The following definitions apply to chs. NR 700 to ~~750~~754:

SECTION 19. NR 700.03 (1) is renumbered NR 700.03 (1m).

SECTION 20. NR 700.03 (1e) and (Note) and (1s) and (Note) are created to read:

**NR 700.03 (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., defines "agency with administrative authority" to mean "the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73, Stats., the department of safety and professional services with respect to a site over which it has jurisdiction under s. 101.144 (2) (a), Stats., or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7), Stats.

**(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.

SECTION 21. NR 700.03 (2) (a) is amended to read:

**NR 700.03 (2) (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 from attributable to atmospheric deposition including the following constituents; lead, polynuclear aromatic hydrocarbons or polychlorinated biphenyls attributable to atmospheric deposition, but not attributable to hazardous substance discharges or the discharge of pollutants, as that phrase is defined in s. 283.01, Stats.

SECTION 22. NR 700.03 (3m) and (Note) and (4m) and (Note) are created to read:

**NR 700.03 (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.

**(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.

SECTION 23. NR 700.03 (6) is amended to read:

**NR 700.03 (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 ~~736~~ 754.

SECTION 24. NR 700.03 (6m) and (Note) and (11m) and (Note) are created to read:

**NR 700.03 (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". Par. (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.

**(11m)** "Department database" means the publically 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>.

SECTION 25. NR 700.03 (17) is amended to read:

**NR 700.03 (17)** ~~"Engineering control" means an action designed and implemented to contain contamination and minimize the spread of contamination within a media or to another media. Engineering controls include, but are not limited to: the installation of a cover with low permeability; groundwater extraction and treatment; slurry walls; solidification; and stabilization. has the meaning specified in s. 292.12 (1) (c), Stats.~~

SECTION 26. NR 700.03 (17) (Note) is created to read:

**NR 700.03 (17) (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."

SECTION 27. NR 700.03 (27) is amended to read:

**NR 700.03 (27)** ~~"High groundwater level" has the meaning specified under s. NR 214.03 (14) 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.~~

SECTION 28. NR 700.03 (27) (Note) is repealed.

SECTION 29. NR 700.03 (28) (Note) and (28m) (Note) are amended to read:

**NR 700.03 (28) (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) (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.

SECTION 30. NR 700.03 (30g) and (Note), (30r) and (Note), (33m) and (Note), and (34m) are created to read:

**NR 700.03 (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."

**(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. "

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

SECTION 31. NR 700.03 (36) and (Note) are amended to read:

**NR 700.03 (36)** "Municipality" has the meaning specified in s. ~~299.04 (8)~~ 292.01 (11), Stats.

**(Note)** Section ~~299.04 (8)~~ 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."

SECTION 32. NR 700.03 (39m) is created to read:

**NR 700.03 (39m)** "Non-residential setting" means a setting other than a residential setting, used for commercial or industrial purposes.

SECTION 33. NR 700.03 (43) and (Note) are amended to read:

**NR 700.03 (43)** "Person" has the meaning specified in s. ~~299.04 (10)~~ 292.01(13), Stats.

**(Note)** Section ~~299.04 (10)~~ 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."

SECTION 34. NR 700.03 (43g), and (43r) and (Note) are created to read:

**NR 700.03 (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](http://www.epa.gov) for more information.

SECTION 35. NR 700.03 (45e) is created to read:

**NR 700.03 (45e)** "Property" means a contiguous area of land the entire legal description of which is found in one deed.

SECTION 36. NR 700.03 (45m) is amended to read:

**NR 700.03 (45m)** "Property boundary" means the boundary of the total contiguous parcel of land property owned or leased by a common owner or lessor, regardless of whether public or private roads run through the parcel property.

SECTION 37. NR 700.03 (46m) is created to read:

**NR 700.03 (46m)** "RCRA" means the resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

SECTION 38. NR 700.03 (48) is amended to read:

**NR 700.03 (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.

SECTION 39. NR 700.03 (49g), and (49r) and (Note) are created to read:

**NR 700.03 (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.

SECTION 40. NR 700.03 (51) is renumbered NR 700.03 (51) (intro.) and amended to read:

**NR 700.03 (51)** (intro.) "Responsible party" or "responsible parties" means any of the following: ~~person who is required to conduct a response action or is liable to reimburse the department for the costs incurred by the department to take response action under s. 292.11, 292.31 or 292.41, Stats.~~

SECTION 41. NR 700.03 (51) (a) to (c) are created to read:

**NR 700.03 (51)** (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.

SECTION 42. NR 700.03 (52m), (55m), and (59m) are created to read:

**NR 700.03 (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.

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

**(59m)** "Source property" means the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred.

SECTION 43. NR 700.03 (60) is amended to read:

**NR 700.03 (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 ~~702700~~ to ~~750754~~.

SECTION 44. NR 700.03 (60m), (62m), (64g), and (64r) and (Note) are created to read:

**NR 700.03 (60m)** "Sub-slab" means beneath the lowermost building foundation slab.

**(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.

**(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 buildings, roads and other structures and materials that have been discarded at a site or facility."

SECTION 45. NR 700.03 (66) (Note) is amended to read:

**NR 700.03 (66) (Note)** This definition of "underground storage tank" is based on the definition found in s. ~~Comm 10.01 (98)~~ SPS 310.050 (122).

SECTION 46. NR 700.03 (66p) and (Note), (66s), (66w) and (Note) and (66y) are created to read:

**NR 700.03 (66p)** "Vapor action level" means the concentration of vapors from volatile compounds is at or above the 1-in-100,000 ( $1 \times 10^{-5}$ ) 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](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 by an appropriate attenuation factor.

(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.

SECTION 47. NR 700.05 (1) and (2) are amended to read:

**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 ~~750~~ 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 ~~750~~ 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.

SECTION 48. NR 700.07 and (Note) are amended to read:

**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, dated November 1986, as amended by December 1987 update and November 1990 update II "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 (3)(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

SECTION 49. NR 700.08 is created to read:

**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.

SECTION 50. NR 700.09 is repealed.

SECTION 51. NR 700.10 is created to read:

**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.

SECTION 52. NR 700.11 (1) (title) and (intro.) are repealed and recreated to read:

NR 700.11 (1) (title) GENERAL.

(intro.) Unless otherwise directed by the department, responsible parties shall comply with the following:

SECTION 53. NR 700.11 (1) (a) is amended to read:

NR 700.11 (1) (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 ~~a letter of compliance is submitted as required by par. (b)~~ 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 458.06 or 705.05 706.05. 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.

SECTION 54. NR 700.11 (1) (a) (Notes) are repealed.

SECTION 55. NR 700.11 (1) (a) (Note) is created to read:

NR 700.11(1) (1) (a) (**Note**) Copies of site progress report forms may be obtained at: <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

SECTION 56. NR 700.11 (1) (b) to (f) and (Notes) are repealed.

SECTION 57. NR 700.11 (1) (bm), (cm), (dm) and (em) are created to read:

NR 700.11(1) (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.

SECTION 58. NR 700.11 (2) is repealed.

SECTION 59. NR 700.11 (3) (title) is amended to read:

NR 700.11 (3) (title) ~~ADDITIONAL SUBMITTALS OR MORE EXTENSIVE REVIEW.~~

SECTION 60. NR 700.11 (3) (intro.) is renumbered NR 700.11 (3) and amended to read:

**NR 700.11 (3)** The department may ~~require additional submittals or perform more extensive department review than is provided for in sub. (1) or (2) in the following circumstances: 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.~~ perform more extensive department review than is provided for in sub. (1) or (2) in the following circumstances: 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.

SECTION 61. NR 700.11 (3) (a) to (d) and (Notes) are repealed.

SECTION 62. NR 700.11 (3) (Note) is created to read:

NR 700.11 (3) (**Note**) Section 292.15, Stats., applies to persons who conduct remediation of contaminated property to obtain an exemption from liability.

SECTION 63. NR 700.11 (3g) and (Notes), and (3r) and (Note) are created to read:

**NR 700.11 (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/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.

**(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>.

SECTION 64. NR 700.11 (4) is repealed.

SECTION 65. NR 700.13 (1) is amended to read:

**NR 700.13 (1) PETROLEUM PRODUCTS. GENERAL REQUIREMENTS.** ~~Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for compliance with chs. NR 700 to 736 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", as specified in s. NR 149.03 (5). Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for 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", as specified in s. NR 149.03(5). 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.~~

SECTION 66. NR 700.13 (1m) and (Note) are created to read:

**NR 700.13 (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 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/org/es/science/lc/OUTREACH/4Meth/DROSep95.pdf> and <http://dnr.wi.gov/org/es/science/lc/OUTREACH/4Meth/GROSep95.pdf>. These methods are referenced in s. NR 149, Appendix III, List of Authoritative Sources.

SECTION 67. NR 700.13 (2) and (3) are repealed.

SECTION 68. NR 706 Subchapter I (title) is repealed.

SECTION 69. NR 706.01 is amended to read:

**NR 706.01 Purpose.** The purpose of this chapter is to adopt by administrative rule notification requirements for discharges of hazardous substances. ~~In order to retain authorization to implement the federal underground storage tank program in Wisconsin, subch. III contains requirements that are mandated by U.S. EPA, that are only applicable to discharges from underground storage tanks.~~ This chapter is adopted pursuant to ss. 227.11 (2) and 292.11, Stats.

SECTION 70. NR 706.01 (Note) is repealed.

SECTION 71. NR 706.02 (2) and (Note) and (3) are amended to read:

**NR 706.02 (2) Subchapter II Section 706.05** applies to all persons who have responsibility under s. 292.11, Stats., for any hazardous substance discharge that may occur. ~~Subchapter III Section 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 SPS 310, 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 SPS 310, 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. 166.20, 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 state emergency

response board 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).

SECTION 72. NR 706.03 (1) and (Note) and (3) and (Note) are repealed.

SECTION 73. NR 706.03 (5) (Note) is amended to read:

**NR 706.03 (5) (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.

SECTION 74. NR 706.03 (7) is amended to read:

**NR 706.03 (7)** "Petroleum products product " ~~mean gasoline products, diesel-like products and light crude oils, medium grade crude oils and intermediate products, and heavy crude oils and residual products~~ 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.

SECTION 75. NR 706.03 (7) (Note) is repealed.

SECTION 76. NR 706 Subchapter II (title) is repealed.

SECTION 77. NR 706.05 (title), (1) (a) and (Note) are amended to read:

**NR 706.05 Discharger responsibilities 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. ~~For the purpose of determining if a substance is hazardous and whether its discharge is required to be reported, responsible parties shall consider the quantity, concentration and physical, chemical and infectious characteristics of the substance and the location where the discharge occurred, and whether the substance has been discharged to the environment.~~ 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 "immediate" 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 ~~spill 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 ~~spill 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.

SECTION 78. NR 706.05 (1) (b) and (Note) are amended to read:

**NR 706.05 (1) (b)** Hazardous substance discharges shall be immediately reported to the department by telephoning, ~~telefaxing, or visiting a department office during normal business~~

hours or by telephoning a the department-designated 24-hour hotline telephone number after normal business hours. 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 24-hour hotline operated by the division of emergency management in cooperation with the department can be reached at 1-800-943-0003. Directories for the telephone numbers of the department's offices can be found in local telephone books and in various department guidance documents.

SECTION 79. NR 706.05 (1) (bm) and (Note) are created to read:

NR 706.05 (1) (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>.

SECTION 80. NR 706.05 (1) (c) (intro.) and 3. are amended to read:

**NR 706.05 (1) (c) (intro.)** The notification required by this subsection shall contain the following information to the extent practicable or applicable:

3. Date, time, and duration of the discharge and location of the discharge including street address, if appropriate, county, town, city or village, 1/4, 1/4 section, township, range, and legal description of lot, if located in a platted area.

SECTION 81. NR 706.05 (1) (c) 3m. and (Note) are created to read:

**NR 706.05 (1) (c) 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.

SECTION 82. NR 706.05 (1) (c) 11. and (2) are amended to read:

**NR 706.05 (1) (c) 11.** Other agencies on-scene during the spill discharge incident.

**(2) CONTAINMENT, CLEANUP, DISPOSAL AND RESTORATION.** Responsible parties shall comply with the requirements of chs. NR 700 to ~~726~~ 754 for response actions to discharges of hazardous substances.

SECTION 83. NR 706.07 (intro.) is created to read:

**NR 706.07** (intro.) 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:

SECTION 84. NR 706.07 (1) (title) is amended to read:

**NR 706.07 (1)** (title) STATUTORY NOTIFICATION EXEMPTIONS.

SECTION 85. NR 706.07 (1) (b) and (Note) are repealed.

SECTION 86. NR 706.07(1) (c) is renumbered NR 706.07(1) (bm).

SECTION 87. NR 706.07 (1) (d) is renumbered NR 706.07(1) (cm) and amended to read:

**NR 706.07 (1)** (cm) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial ~~agromenic~~ agronomic rates, is exempt with respect to that pesticide or fertilizer application.

SECTION 88. NR 706.07 (2) (b) 1. is amended to read:

**NR 706.07 (2)** (b) 1. The discharged substance has not evaporated or has not been cleaned up in compliance with the requirements of chs. NR 700 to ~~726~~ 754.

SECTION 89. NR 706.07 (3) is created to read:

**NR 706.07 (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 discharges of a hazardous substance occurring within the performance of their duties.

SECTION 90. NR 706.11 (title) is amended to read:

**NR 706.11** (title) Discharger Additional responsibilities for owners or operators of underground storage tank systems.

SECTION 91. NR 706.11 (1) is repealed.

SECTION 92. NR 706.11 (3m) and (Note) are created to read:

**NR 706.11 (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.

SECTION 93. NR 706.11 (4) is repealed.

SECTION 94. NR 706.13 is repealed.

SECTION 95. NR 706.15 is repealed.

SECTION 96. NR 706.17 is repealed.

SECTION 97. NR 708.01 is amended to read:

**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 and welfare and 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, ~~292.11, 292.15 and 292.31,~~ and ch. 292, Stats.

SECTION 98. NR 708.02 (1) and (2) (Note) are amended to read:

**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 ~~s. 292.11, 292.31 or 292.44~~ 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.

**(2) (Note)** Persons who wish to conduct response actions that will meet 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 ~~724~~ 754 in order to satisfy be consistent with CERCLA and the NCP.

SECTION 99. NR 708.02 (2r) is created to read:

**NR 708.02 (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.

SECTION 100. NR 708.03 (intro.) is amended to read:

**NR 708.03 Definitions.** (intro.) ~~The definitions in s. NR 700.03 apply to this chapter. In this chapter:~~

SECTION 101. NR 708.03 (1), (2) and (Note) are created to read:

**NR 708.03 (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."

SECTION 102. NR 708.05 (3) (b) 2., and 4. (Note), (5) (b), and (6) (c) 3. are amended to read:

**NR 708.05 (3) (b) 2.** The response does not result in the excavation and disposal, treatment or storage of more than 100 cubic yards of contaminated soil, debris, sediment or a combination of these media from a single site or facility, unless an alternative volume is approved by the department.

**4. (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.

**(5) (b)** Contaminated soils, as defined in s. NR 718.03 (4) (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 536, for a period of 72 hours after the initial excavation of the contaminated soils.

**(6) (c) 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.

SECTION 103. NR 708.09 (2) (intro.) and (a) and (3) and (Note) are amended to read:

**NR 708.09 (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 ~~from a UST~~ meets any of the following conditions:

(a) There is evidence that groundwater wells have been affected by a discharge of a hazardous substance, ~~including any evidence found during the release confirmation procedures required in ch. NR 706.~~

**(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 ~~726~~ 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 ~~726~~ 754, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

SECTION 104. NR 708.11 (1) is renumbered NR 708.11 (1) (a) and NR 708.11 (1) (a) (Note) is amended to read:

**NR 708.11 (1) (a) (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.

SECTION 105. NR 708.11 (1) (b) is created to read:

**NR 708.11 (1)** (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.

SECTION 106. NR 708.11 (2) (d) and (4) (b) are amended to read:

**NR 708.11 (2)** (d) Constructing a temporary engineering control, such as a low permeability cover, or installing and operating a vapor mitigation system.

(4) (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.

SECTION 107. NR 708.15 (1), (2) and (3) (b) are amended to read:

**NR 708.15 (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 ~~a written~~ 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) (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.

SECTION 108. NR 708.15 (3) (k) is created to read:

NR 708.15 (3) (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.

SECTION 109. NR 708.17 is created to read:

**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=brrts2>, 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.

SECTION 110. Chapter NR 710 is repealed.

SECTION 111. NR 712.01 is amended to read:

**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 ~~ss. s. 227.11 (2), 292.11, 292.15, 292.31 and 292.41,~~ and ch. 292, Stats.

SECTION 112. NR 712.02 (2), (3), and (4) and (Note) are amended to read:

**NR 712.02 (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 ~~726~~ 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 ~~s. NR 708.11 (4) chs. NR 700 to 754~~ for a site, facility or portion of a site or facility that is subject to regulation under ~~s. 292.11 or 292.31~~ 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.

(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 ~~s. 292.11 or 292.31~~ 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.

SECTION 113. NR 712.03 (1) is amended to read:

NR 712.03 (1) ~~“Hydrogeologist” has the meaning specified in s. NR 110.03 (14t) 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.

SECTION 114. NR 712.03 (1) (Note) is repealed.

SECTION 115. NR 712.05 (1) is amended to read:

**NR 712.05 (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 ~~726-754~~ 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.

SECTION 116. NR 712.07 (1) is amended to read:

**NR 712.07 (1)** Submittals that are prepared to satisfy the requirements of s. NR 708.11 (4) or 708.13 or chs. NR 716 to ~~726754~~, 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 conducted or supervised by the professional engineer, hydrogeologist or scientist.

SECTION 117. NR 712.07 (1) (Note) is created to read:

**NR 712.07 (1) (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.

SECTION 118. NR 712.09 (2) is amended to read:

**NR 712.09 (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 ~~726~~754. Conclusions and recommendations in the submittal shall represent the certifier's best professional opinions and judgments.

SECTION 119. NR 712.09 (3) (b) is amended to read:

**NR 712.09 (3) (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

SECTION 120. NR 712.11 (1) (d), and (f) and (2) (b) are amended to read:

**NR 712.11 (1) (d)** Plans or specifications submitted to the department's bureau of water supply water quality for approval of lagoon or treatment system abandonment.

(f) Tank closure assessments performed in accordance with the requirements of ch. SPS 310 by a site assessor certified by the department of ~~industry, labor and human relations~~ safety and professional services, and any other plans, specifications or reports required by the department of ~~industry, labor and human relations~~ safety and professional services not specifically required by ~~ch. NR 706, 708, 716, 724 or 726~~ chs. NR 700 to 754.

**(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 ~~726~~ 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.

SECTION 121. NR 714 is repealed and recreated to read:

NR 714  
PUBLIC PARTICIPATION AND NOTIFICATION

**NR 714.01 Purpose.** The purpose of this chapter is to identify the required public participation-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), 289.06 (1), and ch. 292, Stats.

**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. 144.442, 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.

**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.

**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), Stats. 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 activities 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.

**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 NR 716, NR 722 and NR 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.

SECTION 122. NR 716.01 is amended to read:

**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 a 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), 289.06, ~~292.11, 292.15 and 292.34~~ and ch. 292, Stats.

SECTION 123. NR 716.01 (Note) is repealed.

SECTION 124. NR 716.02 (1) (a), (b), and (c) are amended to read:

**NR 716.02 (1) (a)** The department under the authority of ~~s. 292.11 or 292.34~~ 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 ~~s. 292.11 or 292.34~~ ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department.

(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 ~~purchaser~~ voluntary party” or “person under contract with the ~~purchaser~~ voluntary party” where an action is being taken to comply with s. 292.15, Stats.

SECTION 125. NR 716.02 (1) (d) is created to read:

NR 716.02 (1) (d) Other persons seeking closure under NR 726.

SECTION 126. NR 716.02 (2) and (Note) are amended to read:

**NR 716.02 (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 ~~control~~ 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 ~~s. 292.11 or 292.31~~ 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 ~~meet~~ 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 ~~726~~754 in order to ~~satisfy~~ be consistent with CERCLA and the NCP.

SECTION 127. NR 716.03 (2) is amended to read:

**NR 716.03 (2)** "Field 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".

SECTION 128. NR 716.03 (5) is repealed.

SECTION 129. NR 716.03 (8) and (Note) are amended to read:

**NR 716.03 (8)** "Replicate sample" has the meaning specified in s. NR 149.03 (~~2770~~).

**(Note)** Section NR 149.03 (~~2770~~) defines "replicate sample" to mean "2 or more substantially equal aliquots taken from the same sampling location and analyzed independently for the same constituent parameter." This is also known as a "duplicate."

SECTION 130. NR 716.03 (8m) is created to read:

**NR 716.03 (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).

SECTION 131. NR 716.03 (9) is amended to read:

**NR 716.03 (9)** "Temperature blank" means a water sample which undergoes the same cooling procedure used for the samples for analysis, but which is only checked to determine the temperature of the samples upon arrival at the laboratory has the meaning specified in s. NR 149.03 (15) (c).

SECTION 132. NR716.03 (9) (Note) is created to read:

NR 716.03 (9) **(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."

SECTION 133. NR 716.03 (10) is amended to read:

**NR 716.03 (10)** "Trip blank" ~~has the meaning specified in s. NR 149.03(32)~~ 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.

SECTION 134. NR 716.03 (10) (Note) is repealed.

SECTION 135. NR 716.05 (1) is amended to read:

**NR 716.05 General. (1)** ~~Responsible parties shall conduct a site investigation that meets the requirements of this chapter and s. NR 746.05, for discharges of petroleum products from petroleum storage tanks, when~~ 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) through (n) and (2) (a) through (c) to determine whether or not a site investigation is necessary.

SECTION 136. NR 716.05 (2) (b) (Note) is repealed and recreated to read:

**NR 716.05 (2) (b) (Note)** The appropriate review fee specified in ch. NR 749 must accompany any request for the department to review a specific document.

SECTION 137. NR 716.07 (8) (b) to (e) are renumbered NR 716.07 (8) (a) to (d).

SECTION 138. NR 716.07 (8) (d) (Note) is created to read:

**NR 716.07 (8) (d) (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/>.

SECTION 139. NR 716.07 (12) is amended to read:

**NR 716.07 (12)** The need to gather data to determine the hydraulic conductivity of materials where contaminated groundwater is found ~~and, for sites with petroleum-product~~

contamination discharged from a petroleum storage tank, to determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08.

SECTION 140. NR 716.09 (1) is amended to read:

**NR 716.09 (1) GENERAL.** Unless otherwise directed by the department, in cases where a site investigation ~~is~~ 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 ~~if the site or facility is classified as complex under s. NR 700.09 (2) or if the responsible party chooses to proceed with the complex site process under s. NR 700.11 (2).~~ 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).

SECTION 141. NR 716.09 (1) (Note) is created to read:

**NR 716.09 (1) (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/rr/RR690.pdf>.

SECTION 142. NR 716.09 (2) (a) is amended to read:

NR 716.09 (2) (a) Site name, address, and location by quarter-quarter section, township, range and county, ~~or a more precise location description if necessary to adequately define the location of the site or facility~~ and the location information specified in s. NR 716.15 (5) (d).

SECTION 143. NR 716.09 (2) (a) (Note) is created to read:

NR 716.09 (2) (a) **(Note)** Paragraph NR 716.15 (5) (d) requires submittal of Wisconsin Transverse Mercator (WTM) coordinates.

SECTION 144. NR 716.09 (2) (f) 3., 5., and 8., and (g) and (3) (b) are amended to read:

NR 716.09 (2) (f) 3. A description of sampling methods to be used, including methods for collecting, preserving and delivering samples, and leak detection methods.

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.

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 biodegradation attenuation.

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

(3) (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 60 ~~30~~ days after its receipt by the department, the responsible parties ~~may~~ shall proceed with the field investigation.

SECTION 145. NR 716.09 (3) (d) (Note) is created to read:

**NR 716.09 (3) (d) (Note)** The department will only provide an approval if a review was requested, and the appropriate fee was submitted.

SECTION 146. NR 716.11(2g) and (2r) and (Note) are created to read:

NR 716.11 (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.

SECTION 147. NR 716.11 (3) (c) is amended to read:

NR 716.11 (3) (c) Provide sufficient information to determine the hydraulic conductivity of materials where contaminated groundwater is found ~~and, for sites with petroleum product contamination discharged from a petroleum storage tank, determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08.~~

SECTION 148. NR 716.11 (3) (d) and (Notes) are created to read:

NR 716.11 (3) (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.

SECTION 149. NR 716.11(5) (e) and (Note), (f) and (Note), (g), and (h) and (Note) and (7) are created to read:

NR 716.11 (5) (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.

(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.

SECTION 150. NR 716.13 is repealed and recreated to read:

**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:** Paragraph 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, subsection 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 s. 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 preserved 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:** Subsection 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.

SECTION 151. NR 716.14 is created to read:

**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).

SECTION 152. NR 716.15 is repealed and recreated to read:

**NR 716.15 Site investigation report. (1) REPORT REQUIREMENTS. (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) through (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-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, 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/org/water/dwg/gw/forms/4400\\_89.pdf](http://dnr.wi.gov/org/water/dwg/gw/forms/4400_89.pdf), [http://dnr.wi.gov/org/water/dwg/gw/forms/4400\\_113\\_1\\_2.pdf](http://dnr.wi.gov/org/water/dwg/gw/forms/4400_113_1_2.pdf),

[http://dnr.wi.gov/org/water/dwg/gw/forms/4400\\_122.pdf](http://dnr.wi.gov/org/water/dwg/gw/forms/4400_122.pdf),  
<http://dnr.wi.gov/org/water/dwg/gw/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 number(s) 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.

SECTION 153. NR 716.17 (4) is amended to read:

**NR 716.17 (4)** When a site investigation conducted under this chapter indicates that, based on the criteria in s. NR ~~726.05(1)~~ 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.

SECTION 154. NR 718 (title) is amended to read:

NR 718 (title) **MANAGEMENT OF CONTAMINATED SOIL OR SOLID WASTES EXCAVATED DURING RESPONSE ACTIONS**

SECTION 155. NR 718.01 and (Note) are amended to read:

**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 ~~726754~~. 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 536, 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, ~~292.11, 292.15, 292.31~~, and 227.11 (2), 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.

~~The following portion of 40 CFR part 280 has been included in the text of this chapter: 40 CFR 280.62 (a) (4).~~

SECTION 156. NR 718.02 (1) (a) 1. and 2. are amended to read:

NR 718.02 (1) (a) 1. Is excavated as part of a response action conducted pursuant to chs. NR 700 to ~~726754~~, at sites or facilities subject to regulation under s. 289.67, ~~292.11, or 292.31~~ 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.

[Drafter's Note: the hyphen between "6901" and "6991" is stricken, and replaced with the word "to".]

SECTION 157. NR 718.02 (1) (a) (Note) is created to read:

**NR 718.02 (1) (a) (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/rr/RR705.pdf>.

SECTION 158. NR 718.02 (1) (b) 1. and 2. are amended to read:

NR 718.02 (1) (b) 1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to ~~726754~~, at sites or facilities subject to regulation under s. 289.67, ~~292.11, or 292.31~~ 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

[Drafter's Note: The hyphen between "6901" and "6991" is stricken, and replaced with the word "to".]

SECTION 159. NR 718.03 (5) and (8) and (Note) are amended to read:

**NR 718.03 (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.

(8) "Leachate" has the meaning specified in s. NR 500.03 (~~75123~~).

**Note:** Section NR 500.03 (~~75123~~) defines "leachate" to mean "water or other liquid that has been contaminated by dissolved or suspended materials due to contact with percolated through or contacted solid waste or with gases generated by solid waste."

[Drafter's Note: In sub. (5), the hyphen between "6901" and "6991" is stricken, and replaced with

SECTION 160. NR 718.05 (1), (2) (e), (f), (h) 5. and 7., and (i) 5., (3) (intro.), and (4) (intro.) and (b) are amended to read:

**NR 718.05 (2) (f) Signs.** Responsible parties shall post signs as required by s. NR 714.07(~~34~~).

(h) 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.

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) 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.

**(4) (b)** Containers shall be labeled and buildings shall have a sign posted in accordance with the requirements of s. NR 714.07(~~3~~)(4).

SECTION 161. NR 718.09 (1) and (Note), (2) (a) (intro.), (3), (4) (b) 2. and 5., (5) (b) and (d), (6) (b) (intro.), (8) (b) 1. c. Table 1 and d., and 2. b. and c., (c) 2. a., and (d) 3. g. and i. are amended to read:

**NR 718.09 (4) (b) 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.

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.

(8) (b) 1. c.

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	GRO, PVOC & Pb
Diesel; jet fuel; kerosene; & nos. 1 & 2 fuel oil	DRO, PVOC & PAH

d. ~~The following analytical methods shall be used to complete the laboratory analyses required by this paragraph:~~

- ~~GRO: Gasoline range organics by the Wisconsin DNR Modified GRO Method, with a maximum detection level of 10 mg/kg.~~
- ~~DRO: Diesel range organics by the Wisconsin DNR Modified DRO Method, with a maximum detection level of 10 mg/kg.~~
- ~~PVOC: Petroleum volatile organic compounds by EPA Method 5030/8020 or GRO/PVOC run concurrently as specified in the GRO method.~~
- ~~PAH: Polynuclear aromatic hydrocarbons by EPA Method 8310 (HPLC) or 3540/8270 or 3550/8270.~~
- ~~Total lead (Pb): Combined inorganic and organic by methods approved under SW-846 with a maximum detection level of 1.~~

Soil samples shall be collected and analyzed in accordance with the provisions in s. NR 716.13 (11) and (12).

2. b. The metal contaminant concentrations in the excavated contaminated soil to be landspread may not exceed the residual concentration levels listed in s. NR 720.11, Table 2, except as provided in s. NR 720.11 (5) established in accordance with ch. NR 720.

c. The excavated contaminated soil to be landspread may not be a hazardous waste as defined in ch. NR 600 s. NR 660.10 (52).

(c) 2. a. If a facility approval application is not complete, the department shall notify the application applicant within 15 business days of receipt that it is not complete and identify the information necessary to complete the application.

(d) 3. 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 590538.

(d) 3. 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) or the emission rate for benzene in Table 3 of s. NR 445.04.

SECTION 162. NR 718.09 (8) (d) 3. i. (Notes) are repealed.

SECTION 163. NR 718.09 (8) (d) 3. m., o. and 4., (e) (title), 1., 2. a. and b., and 3., 4., and 5. are amended to read:

NR 718.09 (8) (d) 3. m. The landspreading facility may not be seeded with a crop intended for human consumption prior to submittal of a closure treatment verification report

which indicates that the contaminants have been reduced to comply with the residual contaminant levels in tables 1 and 2 in determined in accordance with the provisions of ch. NR 720.

o. Signs shall be posted at any access points to the facility in accordance with s. NR 714.07 ~~(3)~~(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 ~~s. NR 720.19 (3)~~ 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) (title) ~~Site closure~~ 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 ~~s. NR 720.09 (4)~~ 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. 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 ~~s. NR 720.09 (4)~~ 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 ~~s. NR 720.09 (4)~~ 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 ~~s. NR 720.09 (4)~~ 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 ~~s. NR 720.09 (4)~~ 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 closure requirements 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 s. NR 720.09 (4) 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. ~~Written closure~~ Treatment verification report.' Responsible parties shall submit a written closure 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.

SECTION 164. NR 718.11 is repealed.

SECTION 165. NR 718.12 is created to read:

**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, 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 and welfare and 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.

SECTION 166. NR 718.13 is repealed.

SECTION 167. NR 718.14 is repealed.

SECTION 168. NR 718.15 is amended to read:

**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 ~~726~~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.

SECTION 169. NR 718.15 (Note) is created to read:

**NR 718.15 (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>.

SECTION 170. NR 720.01 is amended to read:

**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 ~~ss. 292.14, 292.15, and 292.31,~~ 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), 289.06 (1), (2), ~~292.11, 292.15, and 292.31, ch. 292, Stats.~~

SECTION 171. NR 720.02 (1) (intro.), (a) and (Note) and (b) are amended to read:

**NR 720.02 Applicability. (1)** (intro.) ~~Except as provided in sub. (1m), this~~ 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 ~~s. 292.11 or 292.31~~ 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 ~~s. NR 508.04 (4); 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 ~~s. NR 508.04 (4) 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 ~~685664~~, or to institute corrective action pursuant to s. 291.37, Stats., or s. NR 635.17664.0100, or to meet requirements imposed by the department under s. NR 600.07 where a discharge has occurred. 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.

SECTION 172. NR 720.02 (1) (e) and (Note) are created to read:

**NR 720.02 (1) (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/rr/rr786.pdf>.

SECTION 173. NR 720.02 (1m) and (Note) are repealed.

SECTION 174. NR 720.02 (3) and (5) (Note) are amended to read:

**NR 720.02 (3)** This chapter applies to remedial actions taken by the department where a department-funded response action is being taken under the authority of ~~s. 292.11 or 292.31~~ ch. 292, Stats.

**(5) (Note)** Sites, facilities or portions of a site or facility that are subject to regulation under ~~s. 292.11 or 292.31~~ 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.

SECTION 175. NR 720.03 (1m) and (Note), and (3m) and (Note) are created to read:

**NR 720.03 (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.

**(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.

SECTION 176. NR 720.03 (4) is amended to read:

**NR 720.03 (4)** "Direct contact" means human exposure to substances in soil through one or more of the following pathways: inhalation of particulate matter, ~~or~~ dermal absorption, incidental ingestion, ~~or~~ inhalation of vapors from the soil.

SECTION 177. NR 720.03 (4) (Note) is repealed.

SECTION 178. NR 720.03 (6) (Note) and (8) are amended to read:

**NR 720.03 (6) (Note)** Hazard quotients and the hazard index indices are measures of the potential for noncarcinogenic risk effects.

**(8)** "Inhalation of particulate matter" means inhalation by humans of ~~air with~~ contaminated contaminants adsorbed to respirable soil particles less than 10 microns in diameter.

SECTION 179. NR 720.03 (9) and (Note) and (10) are repealed.

SECTION 180. NR 720.03 (9m) is created to read:

**NR 720.03 (9m)** "Inhalation of vapors" means inhalation by humans of soil contaminants that volatilized into outdoor air.

SECTION 181. NR 720.03 (11) (Note) is amended to read:

**NR 720.03 (11) (Note)** ~~The~~ An example of the food chain pathway for cadmium, for example, refers to cadmium being is when a substance is taken up in from soil to plant tissue and the plant tissue being is then ingested by an-organism a person.

SECTION 182. NR 720.03 (12) is repealed.

SECTION 183. NR 720.03 (12m) is created to read:

**NR 720.03 (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.

SECTION 184. NR 720.03 (14) is amended to read:

**NR 720.03 (14)** "Risk" means the probability that a hazardous substance, when released to the environment, will cause adverse carcinogenic effects in exposed humans or other biological receptors.

SECTION 185. NR 720.03 (15) and (16) are created to read:

**NR 720.03 (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<sub>sat</sub>" 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<sub>sat</sub>, 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.

SECTION 186. NR 720.05 (1) (title) is created to read:

NR 720.05(1) (title) REMEDIAL ACTION.

SECTION 187. NR 720.05 (1) (b) and (c) are amended to read:

**NR 720.05 (1) (b)** Solid waste ~~in-field conditions~~ site investigation report prepared in accordance with the requirements of s. ~~NR 508(04(4))~~ 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 685 664~~ or s. ~~NR 635.17 or 600.07664.0100~~.

SECTION 188. NR 720.05 (2) (title) is created to read:

NR 720.05 (2) (title) RESIDUAL CONTAMINANT LEVELS OR PERFORMANCE STANDARDS.

SECTION 189. NR 720.05 (2) is amended to read:

**NR 720.05 (2)** 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 ~~soil cleanup~~ residual contaminant levels or performance standards for the site or facility determined in accordance with this chapter.

SECTION 190. NR 720.05 (3) (title) is created to read:

NR 720.05 (3) (title) NO FURTHER ACTION.

SECTION 191. NR 720.05 (3) (intro.) is amended to read:

**NR 720.05 (3) (intro.)** If all soil contaminant concentrations meet applicable ~~soil cleanup~~ 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:

SECTION 192. NR 720.05 (4) and (Note), and (5) and (Notes) are created to read:

**NR 720.05 (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.

SECTION 193. NR 720.07 (title) and (1) are amended to read:

NR 720.07 (title) **Procedures for 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 ss. NR 720.09 to 720.19 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 of those 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 ss. NR 720.09 to 720.19 (3); or this chapter.

**Note:** ~~Numeric~~ For a single contaminant, a numeric land use specific residual contaminant ~~levels~~ level is determined separately for each exposure or migration pathway of concern at a site based on aggregate exposure through incidental ingestion of soil, inhalation of soil vapors and particulates, and dermal contact with soil. These residual contaminant levels are not the soil cleanup standard for the site. The soil cleanup standard for the site When more than one contaminant is present, the residual contaminant level is determined by selecting the lowest concentration from among the individual residual contaminant levels determined for each pathway 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 720.19 (2)~~ 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 shall may not adversely affect surface water; ~~and~~

2. Residual soil contamination at the site or facility shall may not adversely affect a sensitive environment; ~~and~~

3. Residual soil contamination at the site or facility shall may not concentrate through plant uptake and adversely affect the food chain.

SECTION 194. NR 720.07 (1) (c) 3. (Note) is repealed.

SECTION 195. NR 720.07 (1) (c) 4. is created to read:

NR 720.07 (1) (c) 4. Residual soil contamination at the site or facility may not result in vapor concentrations reaching a substance's lower explosive limit.

SECTION 196. NR 720.07 (2) (b) is amended to read:

**NR 720.07 (2) (b)** If ~~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.

SECTION 197. NR 720.07 (2) (b) (Notes) are created to read:

NR 720.07 (2) (b) (**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.

SECTION 198. NR 720.07 (2) (d) 2. is amended to read:

NR 720.07 (2) (d) 2. If a soil contaminant is reported above the limit of detection but below the limit of quantitation, ~~the soil cleanup standard shall be considered to have been exceeded if the presence of that soil contaminant has been confirmed by the use of an appropriate analytical method. 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.~~

SECTION 199. NR 720.07 (3) and (Note) are created to read:

NR 720.07 (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.

SECTION 200. NR 720.08 is created to read:

**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 and 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 not 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.

SECTION 201. NR 720.09 is repealed.

SECTION 202. NR 720.10 is created to read:

**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)** If no enforcement standard or maximum contaminant level exists, then the methodology set forth in guidance document RR-890 for determining residual contaminant levels protective of groundwater quality should be used.

**(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>.

SECTION 203. NR 720.11 is repealed.

**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  $1 \times 10^{-6}$  and a hazard quotient for non-carcinogens of one; and

(b) The cumulative excess cancer risk will not exceed  $1 \times 10^{-5}$  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.

**(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 cm<sup>2</sup> with a skin-soil adherence factor of 0.2 mg/cm<sup>2</sup> 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  $1.43 \times 10^9$  m<sup>3</sup>/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 cm<sup>2</sup> with a skin-soil adherence factor of 0.2 mg/cm<sup>2</sup> 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-hr 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  $1.43 \times 10^9$  m<sup>3</sup>/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 cm<sup>2</sup> with a skin-soil adherence factor of 0.2 mg/cm<sup>2</sup>, and an adult's daily exposed skin-surface area of 5,700 cm<sup>2</sup> with a skin-soil adherence factor of 0.07 mg/cm<sup>2</sup> 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-hr 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 x10<sup>9</sup> m<sup>3</sup>/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 cm<sup>2</sup> with a skin-soil adherence factor of 0.2 mg/cm<sup>2</sup> 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-hr 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 x10<sup>9</sup> m<sup>3</sup>/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](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 and social 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/cm<sup>3</sup>.

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/cm<sup>3</sup>.
6. A soil organic carbon content of 0.006.

(b) *For soil to groundwater:*

1. A dry soil bulk density of 1.5 gm/cm<sup>3</sup>.
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/cm<sup>3</sup>.
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>.

SECTION 205. NR 720.13 is created to read:

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.

SECTION 206. NR 720.19 is repealed.

SECTION 207. NR 722.01 is amended to read:

**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, 289.06 (1) and (2), ~~292.11, 292.15 and 292.34~~ ch. 292, Stats.

SECTION 208. NR 722.01 (Note) is repealed.

SECTION 209. NR 722.02 (1) and (2) are amended to read:

**NR 722.02 Applicability. (1)** ~~Except as provided in sub. (3m), this~~ This chapter applies to all remedial actions taken by the department under the authority of ~~s. 292.11 or 292.34~~ 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)** ~~Except as provided in sub. (3m)~~ 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 ~~s. 292.11 or 292.34~~ 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.

SECTION 210. NR 722.02 (2) (Note) is created to read:

**NR 722.02 (2) (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.

SECTION 211. NR 722.02 (2m) and (3) and (Note) are amended to read:

**NR 722.02 (2m)** ~~Except as provided in sub. (3m), this~~ 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 s. ch. 292.11 or 292.31, Stats., this chapter~~ 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 s. NR 508.20(11) ch. NR 508.

**(Note)** Persons who wish to conduct response actions that will meet 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 (1) (b) or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA-quality response action may will likely require compliance with additional requirements beyond those contained in chs. NR 700 to ~~736~~754 in order to satisfy be consistent with CERCLA and the NCP.

SECTION 212. NR 722.02 (3m) and (Note) are repealed.

SECTION 213. NR 722.02 (4) and (Note) are amended to read:

**NR 722.02 (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 ~~s. 292.11 or 292.31~~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. ~~When necessary, the department will, to the best of its ability, facilitate coordination between the regulatory programs involved.~~

SECTION 214. NR 722.03 (intro.) is renumbered NR 722.03 and is amended to read:

**NR 722.03 Definitions.** ~~In~~ The definitions in s. NR 700.03 apply to this chapter.

SECTION 215. NR 722.03 (1) and (2) are repealed.

SECTION 216. NR 722.05 (2) (b) and (c), (4), and (5) (Note) are amended to read:

NR 722.05 (2) (b) Sites or facilities being addressed under a contract with the department under s. 292.31-~~(1) (b)~~, 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.

**(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 is ~~completed~~ happens:

(a) A site investigation report ~~developed~~ is completed in accordance with ch. NR 716.

(b) An ~~in-field conditions report prepared~~ evaluation of remedial action options is required in accordance with ch. NR 508.

**(5) (Note)** Each remedial action option identified may be ~~utilized~~ 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.

SECTION 217. NR 722.07 (2) (Note) is repealed.

SECTION 218. NR 722.07 (3) (a) and (Note) are amended to read:

NR 722.07 (3) (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. ~~Responsible parties shall document their evaluation of a remedial option or combination of options which would utilize recycling or treatment technologies that destroy or detoxify contaminants, rather than transfer the contaminants to another media.~~

**(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. ~~The department would consider such an evaluation as simply an attempt to give the false impression that a wide range of options were considered.~~ Emphasis must 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.

SECTION 219. NR 722.07 (3) (a) (Note) and (am) are created to read:

**NR 722.07 (3) (a) (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.

SECTION 220. NR 722.07 (3) (b) (intro.) is amended to read:

NR 722.07 (3) (b) (intro.) 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 ~~meets one or both of the following requirements~~ 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:

SECTION 221. NR 722.07 (3) (b) 1. and 2 (intro.). are repealed.

SECTION 222. NR 722.07 (3) (b) 2. a. to c. are renumbered NR 722.07 (3) (b) 1m., 2m., and 3., and NR 722.07 (3) (b) 3. and (Note) are amended to read:

NR 722.07 (3) (b) 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) ~~and (3) 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. ~~A remedial action that results in landfill disposal of volumes of untreated contaminated soil or other unconsolidated material of 250 cubic yards or less can be reasonably expected to meet the technical feasibility and economic feasibility criteria in s. NR 722.07 (4) and further detailed evaluation of alternatives would not be warranted. Remedial actions meeting the requirements of s. NR 722.07 (3) (b) 2. can be reasonably expected to be appropriate and further detailed evaluation of alternatives would not be necessary as such remedial actions could be considered "presumptive remedies" as described in U.S. EPA OSWER Directive 9355.0-47FS.~~

SECTION 223. NR 722.07 (4) (a) (intro.) and 3. a. and b. are amended to read:

**NR 722.07 (4) (a) *Technical feasibility.*** (intro.) The technical feasibility of each appropriate remedial action option option that effectively and efficiently addresses the sources of contamination shall be evaluated using the following criteria:

3. 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.

SECTION 224. NR 722.07 (4) (a) 3. c. (Note), i., and j. are created to read:

**NR 722.07 (4) (a) 3. c. (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.  
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.

SECTION 225. NR 722.07 (4) (a) 4. d. and g. are amended to read:

NR 722.07 (4) (a) 4. d. Current and potential use of the aquifer, including proximity to private and public water supplies and surface water bodies.  
g. Effectiveness, reliability and enforceability of institutional controls continuing obligations.

SECTION 226. NR 722.07 (4) (a) 4. i. and (Note) are created to read:

NR 722.07 (4) (a) 4. 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.

SECTION 227. NR 722.07 (4) (a) 4. h. (Note) is renumbered NR 722.07 (4) (a) 4. i. (Note) and amended to read:

**NR 722.07 (4) (a) 4. i. (Note)** ~~A longer restoration time frame may be appropriate to achieve the environmental laws and standards referenced in s. NR 722.07 (2) (a) and (b), if on-site treatment or recycling is selected or if engineering controls are selected for an industrial property to allow urban redevelopment.~~ The purpose of s. NR 722.07 ~~(5) (b) 4(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.

SECTION 228. NR 722.07 (4) (b) (intro.) is amended to read:

NR 722.07 (4) (b) (intro.) 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:

SECTION 229. NR 722.07 (4) (b) 1. is repealed.

SECTION 230. NR 722.07 (4) (b) 1. a. to e. are renumbered NR 722.07 (4) (b) 1m., 2m., and 3. to 5., and NR 722.07 (4) (b) 4. is amended to read:

NR 722.07 (4) (b) 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 ~~or federal LUST trust funds~~ are being expended; and

SECTION 231. NR 722.07 (4) (b) 2. is repealed.

SECTION 232. NR 722.07 (5) (a) (Note) is amended to read:

**NR 722.07 (5) (a) (Note)** Engineering controls include on-site or off-site containment methods, such as ~~solid or hazardous waste landfill 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 ~~considered an institutional control~~, not an engineering control.

SECTION 233. NR 722.07 (5) (b) and (c) are amended to read:

NR 722.07 (5) (b) ~~*Institutional Controls Continuing Obligations*~~. Responsible parties shall consider the appropriateness of ~~utilizing institutional controls, including land use and access restrictions, to supplement engineering controls and treatment remedial actions, as necessary 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.

SECTION 234. NR 722.09 (2) (a) (Note) and (b) 1. are amended to read:

**NR 722.09 (2) (a) (Note)** Chapter NR 720 provides for ~~generic~~ residual contaminant levels and ~~for site-specific residual contaminant levels or performance standards. An on-site remedial action or combination of on-site actions that does not meet applicable residual~~ residual contaminant levels in ~~Tables 1 and 2 are used instead of performance standards they must be determined in accordance with the requirements set forth in ch. NR 720 may be selected, alone or in combination with off-site remedial actions, if site-specific residual contaminant levels or a performance standard are developed.~~ 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) 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.

SECTION 235. NR 722.09 (2) (b) 1. (Note) is repealed.

SECTION 236. NR 722.09 (2) (b) 2. is amended to read:

NR 722.09 (2) (b) 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 and social services, to protect public health, safety and welfare or to prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or non-consumptive uses.

SECTION 237. NR 722.09 (2) (d) is renumbered NR 722.09 (2) (d) (intro.) and amended to read:

NR 722.09 (2) (d) *Discharges to the air.* (intro.) 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:

SECTION 238. NR 722.09 (2) (d) 1. and 2. are created to read:

NR 722.09 (2) (d) 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 and welfare or to prevent a significant damaging effect on indoor air quality for present or future use.

SECTION 239. NR 722.09 (2) (e) 2. is amended to read:

NR 722.09 (2) (e) 2. Management of materials contaminated with polychlorinated biphenyls (PCBs) shall comply with the requirements of ch. NR 157 and TSCA, if applicable.

SECTION 240. NR 722.09 (2m) and (Note) are created to read:

**NR 722.09 (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/>.

SECTION 241. NR 722.09 (4) (a) 1. and (b) 3. (Note) are amended to read:

**NR 722.09 (4) (a) 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 ~~(5)~~ (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.

(b) 3. **(Note)** Material contaminated with polychlorinated biphenyls (PCBs) must be managed in accordance with the requirements of ~~ch. NR-157.~~ 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/rr/rr786.pdf>

SECTION 242. NR 722.09 (5) is repealed and recreated to read:

NR 722.09 (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, welfare and the environment.

SECTION 243. NR 722.11 (3) is amended to read:

**NR 722.11 (3)** When the department enters into a contract pursuant to s. 292.31 (1) (b), Stats., the department shall determine whether or not a risk assessment should be prepared and by whom.

SECTION 244. NR 722.13 (1) and (2) (e) 1. and 3. are amended to read:

**NR 722.13 (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 3060 days after submitting the completion of the site investigation report, unless the responsible parties are not required to submit it under s. NR 700.11 (1) or (2) (f), or are notified otherwise specified by the department that the report is not required to be submitted.

(2) (e) 1. A brief summary of the rationale for choosing the remedial action, based on the evaluation required under s. NR 722.07. ~~If appropriate, this summary shall include a brief description of why landfill disposal of more than 250 cubic yards of contaminated media has been selected.~~

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.

SECTION 245. NR 722.13 (2) (e) 7. is created to read:

NR 722.13 (2) (e) 7. A description of how the criteria in s. NR 722.09 (2m) regarding sustainable remedial action were addressed.

SECTION 246. NR 722.15 (2) (d) 1. to 5. are amended to read:

NR 722.15 (2) (d) 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; and

SECTION 247. NR 722.15 (2) (e) and (Note) are created to read:

NR 722.15 (2) (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, 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, 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.

SECTION 248. NR 722.15 (3) (intro.) is renumbered NR 722.15 (3) and amended to read:

**NR 722.15 (3) AUTHORIZATION NOTICE TO PROCEED.** Unless otherwise directed, ~~responsible parties shall proceed to implement the selected remedial action in accordance with the following requirements: 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.~~

SECTION 249. NR 722.15 (3) (a) and (b) are repealed.

SECTION 250. NR 722.17 is created to read:

**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 s. NR 725.05 (2) and s. NR 722.15 (2) (e), 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.

SECTION 251. NR 724.01 is amended to read:

**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, 289.06 (1) and (2), ~~292.11, 292.15 and 292.34~~ and ch. 292, Stats.

SECTION 252. NR 724.01 (Note) is repealed.

SECTION 253. NR 724.02 (1) (intro.) and (a) are amended to read:

**NR 724.02 Applicability. (1)** (intro.) 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 ~~s. 292.11 or 292.34~~ 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.

SECTION 254. NR 724.02 (1) (bm) and (Note) are created to read:

NR 724.02 (1) (bm) Vapor mitigation systems.

(Note) Remedial actions to actively remediate vapor contaminant sources fall under pars. (a) or (b).

SECTION 255. NR 724.02 (2) and (Note), (3) and (4) are amended to read:

**NR 724.02 (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 ~~s. 292.11 or 292.34~~ 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 meet 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 ~~728~~754 in order to satisfy 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 ~~s. 292.11 or 292.31~~ 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 "~~purchaservoluntary parties~~" where an action is being taken to comply with s. 292.15.

SECTION 256. NR 724.03 is amended to read:

**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 "~~purchaservoluntary parties~~" where an action is being taken to comply with s. 292.15, Stats.

SECTION 257. NR 724.05 (1) is repealed.

SECTION 258. NR 724.05 (2) (title), (intro.), and (b) are amended to read:

**NR 724.05 (2) (title) ~~COMPLEX SITES. GENERAL REQUIREMENTS.~~** (intro.) Unless otherwise directed by the department, ~~for sites or facilities classified as complex under s. NR 700.09 (2) and for sites and facilities where a responsible party chooses to proceed with the complex site process,~~ responsible parties shall submit the plans and reports required by this chapter in compliance with all of the following requirements:

(b) ~~Two copies~~ 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).

SECTION 259. NR 724.05 (2) (b) (Note) is created to read:

NR 724.05(2) (b) (**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>.

SECTION 260. NR 724.05 (2) (e) 2. d. and e. are amended to read:

NR 724.05 (2) (e) 2. d. Site name, address and location by, ~~at a minimum,~~ 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. ~~The location of the site or facility shall be given in sufficient detail to allow department personnel to locate and inspect the site or facility.~~

e. A location map that meets the requirements of s. ~~NR 716.15(2) (h) 1.~~ NR 716.15 (4) (a).

SECTION 261. NR 724.07 (2) (Note) is created to read:

NR 724.07 (2) (**Note**) In accordance with ch. NR 749, the appropriate review fee must accompany any request for the department to review a specific document.

SECTION 262. NR 724.09 (8) is amended to read:

**NR 724.09 (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.

SECTION 263. NR 724.11(6) (d) is amended to read:

**NR 724.11 (6)** (d) Use uniform, graphic scales.

SECTION 264. NR 724.13 (1) (a) and (b) are amended to read:

**NR 724.13 (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 ~~726~~754.

(b) ~~Unless otherwise directed by the department, responsible~~ Responsible parties shall operate and maintain any ~~final covers~~ 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, for at least 30 years until no longer required by the department.

SECTION 265. NR 724.13 (1) (c) and (d) are created to read:

**NR 724.13 (1)** (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.

SECTION 266. NR 724.13 (2) (intro.), (a), and (e) 2. are amended to read:

**NR 724.13 (2) OPERATION AND MAINTENANCE PLAN.**(intro.) 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)~~(1) (e).

(e) 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~~(7)~~ (14).

SECTION 267. NR 724.13 (2) (f), (g) and (Note), (h), (i), (j) and (Note), and (k) to (n) are created to read:

**NR 724.13 (2)** (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 a 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.

SECTION 268. NR 724.13 (3) (intro.) is renumbered NR 724.13 (3) and amended to read:

~~NR 724.13 (3) Unless otherwise directed by the department, for sites or facilities classified as complex under s. NR 700.09 (2) and for sites or facilities where a responsible party chooses to proceed with the complex site process, In addition to the general progress reporting requirements in s. NR 700.11, responsible parties shall submit quarterly~~ semi-annual operation and maintenance progress reports to the department in accordance with this subsection. Progress reports shall be sequentially numbered, starting with the first report which is due no later than 3 6 months after the remediation system begins operation, ~~and shall include all of the following: 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.~~

SECTION 269. NR 724.13 (3) (Note) is created to read:

**NR 724.13 (3) (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.

SECTION 270. NR 724.13 (3) (a) to (d) are repealed.

SECTION 271. NR 724.13 (3) (e) (Note) is renumbered as the second note to NR 724.13 (3) and is amended to read:

NR 724.13 (3) **(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>.

SECTION 272. NR 724.13 (3) (e) and (f) are repealed.

SECTION 273. NR 724.13 (4) (title) and (c) are amended to read:

**NR 724.13 (4) (title)** OPERATION AND MAINTENANCE PLAN REVISIONS.

(c) Document any changes in the time of anticipated case closure and any conditions the department may place on case closure under ch. NR 726.

SECTION 274. NR 724.17 (3) is repealed.

SECTION 275. NR 724.17 (3m) is created to read:

**NR 724.17 (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.

SECTION 276. NR 724.17 (4) (a) is amended to read:

NR 724.17 (4) (a) The department shall review and respond to the results of long-term monitoring data every 5 years, 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.

SECTION 277. NR 724.17 (4) (a) (Note) is created to read:

NR 724.17 (4) (a) (**Note**) In accordance with ch. NR 749, the appropriate review fee must accompany any request for the department to evaluate environmental data.

SECTION 278. NR 724.17 (4) (c) is amended to read:

NR 724.17 (4) (c) The department may require additional remedial action, pursuant to s. ~~292.11, Stats., or a contract under s. 292.31~~ ch. 292, Stats., based on the evaluation of monitoring results.

SECTION 279. NR 724.19 (title), (1) and (2) are amended to read:

**NR 724.19 (title) Application of new soil or groundwater quality environmental standards.** (1) If, after a remedial action selected in accordance with the requirements of ch. NR 722 is implemented, ~~the soil cleanup any applicable environmental standards in ch. NR 720 or the groundwater quality standards in ch. NR 140~~ are modified by the department to be more stringent, or if soil or groundwater quality additional environmental standards are promulgated for additional substances, the department shall require responsible parties to comply with the new or modified soil or groundwater quality 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 and welfare and the environment.

(2) If, after a remedial action selected in accordance with ch. NR 722 is implemented, ~~the soil cleanup standards in ch. NR 720 or the groundwater quality any applicable environmental standards in ch. NR 140~~ 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 and welfare and the environment at a specific site or facility that is the subject of a case closure request under ch. NR 726.

SECTION 280. NR 725 is created to read:

NR 725  
NOTIFICATION REQUIREMENTS FOR RESIDUAL CONTAMINATION AND  
CONTINUING OBLIGATIONS

**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, 289.06 and ch. 292, Stats.

**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.

**NR 725.03 Definitions.** The definitions in s. NR 700.03 apply to this chapter.

**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 or 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.

**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 Residual 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](mailto: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 s. 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 sub. 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" and RR 589 - "When Contamination Crosses a Property Line – Rights and Responsibilities of Property Owners".

SECTION 281. NR 726 is repealed and recreated to read:

#### CHAPTER NR 726 CASE CLOSURE

**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, 289.06, and ch. 292, Stats.

**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.

**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 all three agencies (Department of Natural Resources (DNR), Department of Safety and Professional Services (DPS) and Department of Agriculture, Trade and Consumer Protection (DATCP)) have 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.

**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 chapters NR 700 through 754, NR 140 and NR 141, 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/rism.html>.

**Note:** "Petroleum storage tank" is defined in s. 101.144 (1) (bm), Stats., 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.

**(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 ( $1 \times 10^{-5}$ ) 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 s. NR 726.09, and s. NR 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 chs. 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. SPS 310 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. SPS 310.

**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. SPS 310.

2. All new and replacement underground storage tanks regulated under ch. SPS 310 have been constructed and are being monitored in accordance with ch. SPS 310.

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 and welfare and 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 700 to 754 and ch. NR 141, 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 par. 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.

**NR 726.07 Department Database Requirements. (1)** All sites or facilities meeting any of the criteria in s. NR 725.05 (2) or s. NR 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.

**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 department database form (4400-246) for sites or facilities over which the department has administrative authority may be accessed at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>, 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/rr/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 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 sub. 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.

**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 sub. NR 726.07(1), the information required in sub. (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 (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 s. NR 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 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. 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 preventive

action limits and 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 sub. 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](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 location(s) 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 par. 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](http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_113_1_2.pdf).

**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 sub. 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 ( $1 \times 10^{-5}$ ) 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 s. NR 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, DSPS 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 s. NR 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.

**NR 726.15 Closure Letters and Continuing Obligations. (1)** For sites or facilities meeting the criteria of s. NR 725.05 (2) or s. NR 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, welfare and 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 (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, 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 construction, 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, 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.

SECTION 282. NR 727 is created to read:

CHAPTER NR 727  
CONTINUING OBLIGATIONS REQUIREMENTS AND REOPENING CLOSED CASES

**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, 289.06, and ch. 292, Stats.

**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.

**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 all three agencies (Department of Natural Resources (DNR), Department of Safety and Professional Services (DSPA) and Department of Agriculture, Trade and Consumer Protection (DATCP)) have authority to review and approve closure requests, and to review information on the department database regarding compliance with conditions of closure.

**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, NR 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, NR 722.15, or 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, NR 722.15, or 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.

**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, or NR 722.15, or NR 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, welfare and 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, 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 didn't 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.

**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, or NR 722.15 or NR 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, NR 722.15 or NR 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, or NR 722.15 or NR 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.

**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 either the department of safety and professional services or the department of agriculture, trade and consumer protection have 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.

**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.

SECTION 283. NR 728 (title) is amended to read:

NR 728 (title) **ENFORCEMENT AND COMPLIANCE AUTHORITIES**

SECTION 284. NR 728.01 is amended to read:

**NR 728.01 Purpose.** The purpose of this chapter is to describe the enforcement tools that are available to the department to ensure compliance with enforce chs. NR 700 to ~~750-754~~ 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), ~~292.34, 292.11, 292.15 and 292.44~~ and ch. 292, Stats.

SECTION 285. NR 728.02 is amended to read:

**NR 728.02 Applicability.** This chapter applies to enforcement actions taken by the department under the authorities of ~~s. 292.11, 292.15, 292.31 or 292.41~~ chs. 289 and 292, Stats.

SECTION 286. NR 728.03 (1) is amended to read:

**NR 728.03 (1)** "Environmental repair ~~contract~~ agreement" means an agreement entered into by one or more persons and the department pursuant to ~~s. 292.15 or 292.31~~ ch. 292, Stats., which requires the performance of a response action at a site or facility which causes or threatens to cause environmental pollution.

SECTION 287. NR 728.03 (3) and (Note) are created to read:

**NR 728.03 (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.

SECTION 288. NR 728.05 is amended to read:

**NR 728.05 Referrals for rule violations.** Any person who violates the requirements of chs. NR 700 to 750 754 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.

SECTION 289. NR 728.06 and (Note) are created to read:

**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.

SECTION 290. NR 728.065 and (Note) are created to read:

**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.

SECTION 291. NR 728.07 (title) is amended to read:

NR 728.07 (title) **Environmental ~~repair contracts~~ agreements.**

SECTION 292. NR 728.07 (1) and (2) (intro.) and (b) are amended to read:

**NR 728.07 (1) APPLICABILITY AGREEMENTS.** The department may enter into an environmental ~~repair contract agreement~~ with any person for response actions pursuant to ~~s. 292.15 or 292.34~~ ch. 292, Stats., or into intergovernmental agreements with local governments or municipalities pursuant to s. 66.0301, Stats.

**(2) CONTENT.** (intro.) All environmental ~~repair contracts~~ agreements entered into pursuant to ~~s. 292.15 or 292.34~~ ch. 292, Stats., shall contain at a minimum, all of the following provisions:

(b) A listing of the parties to the ~~contract~~ agreement.

SECTION 293. NR 728.07 (2) (bm) is created to read:

NR 728.07 (2) (bm) A description of the roles and responsibilities of the persons who are parties to the agreement.

SECTION 294. NR 728.07 (2) (c), (d) and (f) are amended to read:

NR 728.07 (2) (c) A schedule for completing the response action covered by the ~~contract~~ agreement.

(d) Provision for stipulated penalties if the response action is not completed in accordance with the ~~contract~~ agreement schedule.

(f) The method for modifying the ~~contract~~ agreement.

SECTION 295. NR 728.07 (2) (g) is created to read:

NR 728.07 (2) (g) Fees associated with the department's cost of review and approval as set forth in ch. NR 749.

SECTION 296. NR 728.09 (1m) is created to read:

**NR 728.09 (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.

SECTION 297. NR 728.09 (3) (Note) is created to read:

**NR 728.08 (3) (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.

SECTION 298. NR 728.10 is created to read:

**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.

SECTION 299. NR 728.11 (1) is amended to read:

**NR 728.11 (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.

SECTION 300. NR 734.01 is amended to read:

**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), 289.06 (1) and (2), ~~292.11, 292.31 and 292.41~~ and ch. 292, Stats.

SECTION 301. NR 734.02 is amended to read:

**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 ~~s. 292.14 or 292.34~~ ch. 292, Stats.

SECTION 302. NR 734.03 (2) and (4) are amended to read:

**NR 734.03 (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.

**(4)** "Minority business" means a business certified by the department of ~~development~~ administration pursuant to s. 560.03616.287 (2), Stats.

SECTION 303. NR 734.05 (2) is amended to read:

**NR 734.05 (2)** ~~Consultant Updated consultant data record forms may be requested by or verification that the information currently on file is still accurate shall be submitted to the department every 2 years by January 15<sup>th</sup> of even numbered years in order to remain eligible for the purpose of maintaining a list of consultants interested in providing professional services to the department. Invitations to submit a consultant data record form shall be published as a class 2 notice in the state's official newspaper.~~

SECTION 304. NR 734.05 (3) is repealed.

SECTION 305. NR 734.05 (4) (Note) is amended to read:

**NR 734.05 (4) (Note)** Consultant data record forms may be obtained by contacting the ~~DNR's Bureau of Solid and Hazardous Waste Management, Emergency and Remedial Response Section, Bureau for Remediation and Redevelopment, Fiscal and Information Technology Section,~~ Public Information Request, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

SECTION 306. NR 734.13 (title) is amended to read:

NR 734.13 (title) **Advertisement Public notice for proposals.**

SECTION 307. NR 734.13 (1) (f) is created to read:

NR 734.13 (1) (f) Name and phone number of the department contact.

SECTION 308. NR 734.15 (5) (g) is created to read:

NR 734.15 (5) (g) A proposed schedule for completing each phase of work.

SECTION 309. NR 734.21 (4) is amended to read:

NR 734.21 (4) Projects with a cost greater than \$30,000 ~~\$60,000~~ shall be signed by the governor, in addition to the signatures required pursuant to sub. (3).

SECTION 310. NR 736 (title) is amended to read:

NR 736 (title) ~~ADVERTISING PUBLIC NOTICE~~, BIDDING AND AWARD OF ENVIRONMENTAL CONSTRUCTION CONTRACTS

SECTION 311. NR 736.01 is amended to read:

**NR 736.01 Purpose.** The purpose of this chapter is to establish procedures for the department to implement the ~~advertising and~~ 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.

SECTION 312. NR 736.02 and (Note) are amended to read:

**NR 736.02 Applicability.** This chapter applies to the department's advertising, bidding and award of environmental construction contracts with estimated construction costs that exceed \$30,000 ~~\$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 \$30,000 ~~\$60,000~~ or less, will be processed by the department using expedited procedures not set forth in this chapter.

SECTION 313. NR 736.03 (1) is repealed.

SECTION 314. NR 736.03 (5) and (6) amended to read:

**NR 736.03 (5)** "Bidding period" means the time from the date of first ~~publication~~ posting of the advertisement for proposals ~~public notice~~ to the time of bid opening.

**(6)** "Bid guarantee" means a properly executed ~~department~~ 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.

SECTION 315. NR 736.03 (7) is repealed.

SECTION 316. NR 736.03 (7m) is created to read:

**NR 736.03 (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.

SECTION 317. NR 736.05 (title) is repealed and recreated to read:

NR 736.05 (title) **Public notice.**

SECTION 318. NR 736.05 (1) (intro.), (2) and (3) (intro.) are amended to read:

**NR 736.05 (1)** (intro.) All drawings and specifications for the project shall be available for distribution to prospective bidders on or before the date upon which the advertisement public

notice for proposals shall be published posted. The advertisement public notice for proposals shall specify the following information:

(2) The department shall advertise for proposals by publication of a class 1 notice under ~~ch. 985, Stats., in the official state newspaper.~~ The notice shall be published 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) (intro.) In addition to the class 1 public notice required in sub. (2), the department may solicit and advertise for proposals by either or both of the following methods:

SECTION 319. NR 736.07 (3) is repealed.

SECTION 320. NR 736.09 (1), (2) (intro.), (3), and (5) are amended to read:

**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) (intro.) ~~The~~ For sealed bids, the bidder shall place all of the following information on the face of the envelope containing the bidder's proposal:

(3) The bidder is responsible for the sealed bid being delivered to the place designated in the ~~published advertisement~~ public notice for proposals, on or before the date and time specified.

(5) Sealed bids received by the department, after the date and time designated in the ~~advertisement for proposal~~ public notice, shall have the date and time of receipt stamped upon the face of the envelope and be returned to the bidder unopened.

SECTION 321. NR 736.15 (2) (a) is amended to read:

**NR 736.15 (2) (a)** ~~Submittal of~~ No bid bond on a form other than that contained in the ~~specification volume~~ was submitted.

SECTION 322. NR 738.01 and (Note) are amended to read:

**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 ~~ss. s. 227.11 (2), 292.11 (7), and 292.31 (3)~~ ch. 292, Stats.

**(Note)** Section ~~444.027~~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.

SECTION 323. NR 738.02 is amended to read:

**NR 738.02 Applicability.** This chapter applies to actions taken by the department under ~~ss. 292.11 (7) and 292.31 (3)~~ ch. 292, Stats., to provide temporary emergency water supplies to ~~persons an affected party with a "contaminated well" or "contaminated private water supplies~~ adversely affected supply" impacted by environmental pollution from a site or facility subject to s. 292.31, Stats., or ~~adversely affected~~ 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.

SECTION 324. NR 738.02 (Note) is created to read:

NR 738.02 (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. 28.01 (3), Stats.

SECTION 325. NR 738.03 (4) is renumbered NR 738.03 (4) (intro.) and amended to read:

**NR 738.03 (4)** (intro.) "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 in s. NR 738.045.:

SECTION 326. NR 738.03 (4) (a) to (d) are created to read:

- NR 738.03 (4) (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.

SECTION 327. NR 738.03 (5g) and (Note), and (5r) and (Note) are created to read:

**NR 738.03 (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:

1. Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24 (Stats.); or
2. Constructed by boring or drilling."

SECTION 328. NR 738.03 (6m) and (Note) are created to read:

NR 738.03 (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."

SECTION 329. NR 738.03 (9) is amended to read:

**NR 738.03 (9)** "Well" means an excavation or opening in the ground made by boring, drilling or driving for the purpose of obtaining a supply of groundwater. "Well" does not include dug wells and springs. has the meaning specified in s. NR 812.03 (119).

SECTION 330. NR 738.03 (9) (Note) is created to read:

NR 738.03 (9) (Note) Section NR 812.03 (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."

SECTION 331. NR 738.04 is renumbered NR 738.11.

SECTION 332. NR 738.045 is repealed.

SECTION 333. NR 738.05 is renumbered NR 738.10, and NR 738.10 (intro.), (2) and (3) are amended to read:

**NR 738.10 (intro.)** 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 ~~emergency and remedial response~~ fiscal and information technology section, bureau of ~~solid and hazardous waste management~~ for remediation and redevelopment, and shall contain the following information:

(2) A copy of the test analyses required in s. NR ~~738.04(3)~~ 738.11 (3).

(3) A copy of the advisory which was issued or approved by the department as required in s. NR ~~738.04 (4)~~ 738.11 (4).

SECTION 334. NR 738.06 (1) (a), (b) and (c) are amended to read:

NR 738.06 (1) (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 ~~738.09~~ 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 and ~~social~~ services.

(c) Bulk water supplied only if a skin contact or inhalation advisory has been issued by the department of health and ~~social~~ services.

SECTION 335. NR 738.06 (1m) and (Note) are created to read:

**NR 738.06 (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.

SECTION 336. NR 738.06 (2) (d) is amended to read:

**NR 738.06 (2)** (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 ~~738.09~~ 738.14.

SECTION 337. NR 738.07 is renumbered NR 738.12 and NR 738.12 (1) and (3) (intro.) are amended to read:

**NR 738.12 (1) GENERAL.** The department shall ~~approve~~ evaluate requests for a temporary emergency water supply in accordance with the criteria in ss. NR ~~738.04 and 738.05~~ 738.10 and 738.11.

**(3) APPROVAL.** (intro.) ~~Based on the~~ When the department determines that the eligibility criteria in subs. (1) and (2) have been met, if the department approves shall approve the use of environmental fund moneys, ~~the department and~~ shall do all of the following:

SECTION 338. NR 738.12 (3) (c) is created to read:

NR 738.12 (3) (c) Select the most appropriate temporary emergency water supply.

SECTION 339. NR 738.12 (4) (Note) is amended to read:

NR 738.12 (4) **(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 ~~738.09~~ 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.

SECTION 340. NR 738.08 is renumbered NR 738.13 and NR 738.13 (7) is amended to read:

**NR 738.13 (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 NR 738.06 (1m).

SECTION 341. NR 738.09 is renumbered NR 738.14, and NR 738.14 (2) (c) 3. is amended to read:

NR 738.14 (2) (c) 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 123.2, less a deductible amount of 5% of the annual family income. ~~The department may pay the greater of the costs under sub. (1) or (2) or this paragraph.~~

SECTION 342. NR 738.14 (2) (d) is created to read:

NR 738.14 (2) (d) The department may pay the greater share of the eligible costs computed under par. (c).

SECTION 343. Chapter NR 746 is repealed and recreated as:

CHAPTER NR 746  
AGENCY ROLES AND RESPONSIBILITIES FOR PETROLEUM CONTAMINATED  
SITES

**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. 101.143, 101.144, 292.11 and 292.31, 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. SPS 347.

**NR 746.02 Applicability.** This chapter only applies to sites where petroleum products have discharged from petroleum storage tanks.

**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.

4. 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. 101.143 (1) (f), Stats.

**Note:** Section 101.143 (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 and welfare and 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 by the department of safety and professional services in ch. SPS 347. 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."

**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.

**NR 746.05 Tracking of remediation progress.** By no later than January 1 of the year following the effective date of this chapter [LRB insert date...], and annually thereafter, responsible persons shall submit an annual report to the agency with administrative authority for the site, as required by s. 101.143 (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.

**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 the effective date of this rule [LRB insert date...] 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.

**NR 746.07 Interagency staff training.** In order to ensure that employees understand the requirements of this chapter and the NR 700 rule series, and to ensure that the agencies will issue approvals when the requirements of the NR 700 rule series are satisfied, interagency staff training shall be held when necessary, as jointly determined by the departments of safety and professional services and natural resources.

**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.

SECTION 344. Section NR 749.01 is amended to read:

**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 ~~ss. 292.11 (7) (d) 2., 292.13 (3), 292.21 (1) (c) 1. d., 292.35 (13) and 292.55 (2) in ch. 292, Stats.~~

SECTION 345. NR 749.02 is amended to read:

**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 empty 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.

SECTION 346. NR 749.04 (1) (second Note) is amended to read:

**NR 749.04 (1) (Note)** ~~The department has prepared a document which provides 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>. A copy can be obtained by contacting the Bureau for Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707.~~

SECTION 347. NR 749.04, Table 1 – Fee Schedule is repealed and recreated to read:

**TABLE 1 -- FEE SCHEDULE**

TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
(a) <i>Agreements.</i>		
1. Tax assignment agreement.	ss. 75.106 (2) (d) and 292.55	\$700
2. Tax cancellation agreement.	ss. 75.106 (2) (d) and 292.55	\$700
3. Negotiated agreements. <sup>a</sup>	s. 292.11 (7) (d) 2.	\$1400
4. Enforcement actions. <sup>a</sup>	s. 292.94 (d)	<sup>a</sup>
5. Negotiation and cost recovery. <sup>a</sup>	s. 292.35 (13) (a)	<sup>a</sup>

**Note:** For Negotiated Agreements, the \$1400 fee is for

**TABLE 1 -- FEE SCHEDULE**

TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
<p>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.</p>		
(b) <i>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
(c) <i>Technical assistance.</i>		
1. ch. NR 708 No further action letter. <sup>b</sup>	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
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) <i>Department database fees.</i>		
	ss. 292.12 and 292.57	
1. Sites with groundwater contamination that attains or exceeds ch. NR 140 enforcement standards.		\$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
<p><b>Note:</b> This may include, but is not limited to sites where a vapor mitigation system is required as a condition of closure.</p>		
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
<p><b>Note:</b> This fee applies each time a request is made for modification or removal of a site from the database.</p>		
<p><b>Note:</b> In accordance with s. 292.12 (3) and 292.57,</p>		

**TABLE 1 -- FEE SCHEDULE**

TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
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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, 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., and listing the site on the database is necessary due to residual contamination. More than one of these fees may apply to a site.

- <sup>a</sup> Persons subject to or entered into such orders, agreements or processes shall pay fees for each service requested or required by the department.
- <sup>b</sup> 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.

SECTION 348. NR 749.05 is created to read:

**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 oversight as determined by the provisions set forth in ch. NR 750.

SECTION 349. NR 750.01 is amended to read:

**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 parties 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.

SECTION 350. NR 750.03 (2) to (10) are repealed.

SECTION 351. NR 750.03 (2m) and (3m) and (Note) are created to read:

**NR 750.03 (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."

SECTION 352. NR 750.05 (1) and (Note), and (2) (a) 1. and 2. are amended to read:

**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 the 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 telephoning the Contaminated Land Recycling Information Line at 1-800-367-6076 (in-state long distance) or (608) 264-6020 (Madison area or out of state long distance) or by writing to Public Information Requests, the Bureau of for Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707-7921. The application form is also available by request from the regional Land Recycling contact or by download from the Program's website at [www.dnr.state.wi.us/org/aw/rr/archives/pubs/4400-178.pdf](http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/4400-178.pdf) <http://dnr.wi.gov/files/PDF/forms/4400/4400-178.pdf>.

**(2) (a) 1.** The applicant is a "purchaser voluntary party" under s. 292.15, Stats.  
2. The response actions that are proposed will be conducted by the person specified in property is eligible to receive a liability exemption under s. 292.15(2) (a) 292.15, Stats.

SECTION 353. NR 750.05 (2) (a) 3. is created to read:

**NR 750.05 (2) (a) 3.** The area of land for which the application was submitted meets the definition of a property in s. NR 700.03 (45e).

SECTION 354. NR 750.05 (2) (c) is amended to read:

**NR 750.05 (2) (c) Notification to applicant.** The department shall mail written notice to the applicant stating whether or not the department believes that the applicant is and the property are eligible under s. 292.15, Stats. If the department finds that the applicant meets 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 ~~750~~ 754 and ss. 292.11 and 292.15, Wis. Stats.

SECTION 355. NR 750.05 (4) and (5) are created to read:

**NR 750.05 (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.

SECTION 356. NR 750.07 (1) (a) and (e) are amended to read:

**NR 750.07 (1) (a)** Review of submittals required under this chapter, chs. NR 700 to 736754 or under ~~a contract~~ 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.

**(e)** Providing assistance in response to any other request by the applicant after the applicant is notified that the department believes that the ~~applicant~~ property is eligible under s. 292.15, Stats.

SECTION 357. NR 750.07 (1) (f) is created to read:

**NR 750.07 (1) (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. 749 to add sites to the database.

SECTION 358. NR 750.07 (3) (a) is renumbered NR 750.07 (3) and amended to read:

**NR 750.07 (3) DEPOSIT.** ~~(a) For all applications submitted after March 1, 1996, the~~ 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 ~~applicant~~ property is eligible under s. 292.15, Stats. The advance deposit shall be ~~\$4,000~~ \$2,000 for properties of one acre or less and ~~\$3,000~~ \$4,000 for properties larger than one acre.

SECTION 359. NR 750.07 (3) (b) and (6) are repealed.

SECTION 360. NR 750.07 (7) is amended to read:

**NR 750.07 (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 (2) ~~(a) 3.~~, Stats.

SECTION 361. NR 750.09 (intro.) and (2) are amended to read:

**NR 750.09 (intro.)** 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 ~~(2) (a) 3~~, Stats., when all of the following requirements are satisfied:

(2) The applicant satisfies all the requirements of s. 292.15, Stats., including conducting a thorough an environmental investigation of the property, including any discharges that have or may have migrated off the property.

SECTION 362. NR 750.09 (4) and (5) are created to read:

**NR 750.09 (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.

SECTION 363. Effective date. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 364. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)