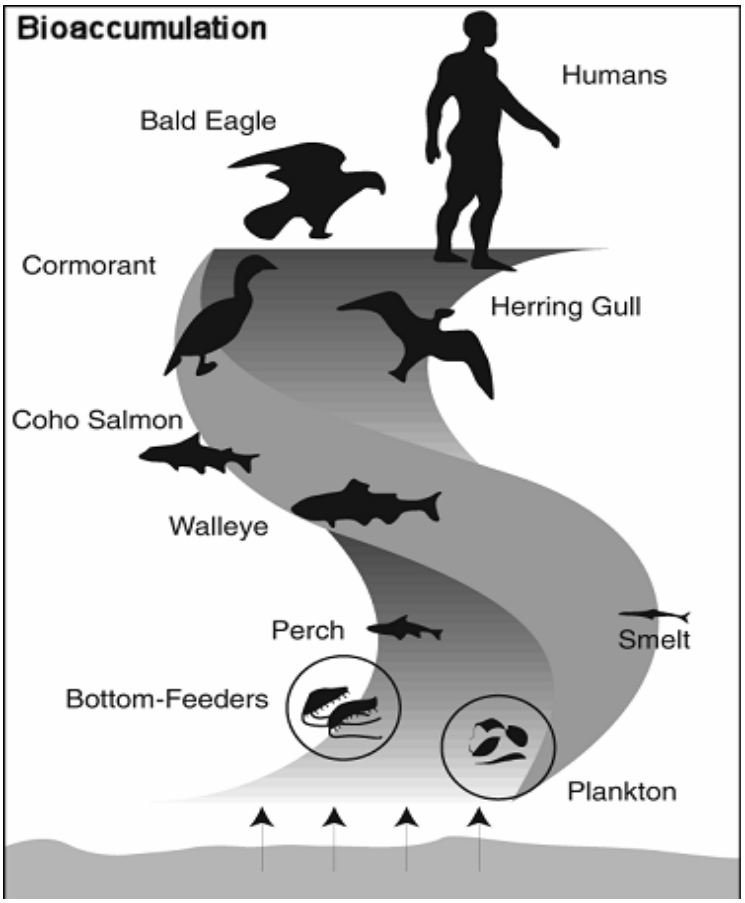
PCB Remediation in Wisconsin under the One Cleanup Program Memorandum of Agreement

RR-786 **November 2014**



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List of Acronyms

EPA – U.S. Environmental Protection Agency
GLC – General liability clarification
LUC – Land use control
MOA – Memorandum of Agreement
OCP – One Cleanup Program
PCB – Polychlorinated biphenyls
PM – DNR RR project manager
RCL – Residual concentration limit
RP – responsible parties
RAOR – Remedial action options report
RR – DNR Remediation and Redevelopment Program
SIR – Site investigation report
TSCA – Toxic Substances Control Act
VPLE – Voluntary party liability exemption
DNR – Wisconsin Department on Natural Resources

1) Purpose, Disclaimer and Contacts & Revisions

Purpose

This guidance is intended to provide a description of how responsible parties (RPs), DNR project managers (PMs) and staff should work with EPA on PCB remediation cases through the NR 700 rules series process in accordance with the One Cleanup Program (OCP) Memorandum of Agreement (MOA) between the State of Wisconsin Department of Natural Resources (DNR or the Department) and the U.S. Environmental Protection Agency (EPA) Region 5.

The guidance outlines the applicability of key cleanup regulations under the federal Toxic Substances Control Act (TSCA). Finally, it outlines how to obtain the DNR and EPA approvals needed to remediate PCB contamination.

This guidance clarifies how certain EPA TSCA regulatory land-use terminology and cleanup options may affect DNR managed cleanup sites. It clarifies applicability of TSCA requirements at DNR managed cleanups and applicable EPA requirements. These include:

- EPA's TSCA law as applied in Wisconsin and communications with EPA on PCB cleanups,
- Application of the EPA PCB cleanup level,
- The use of EPA's "high occupancy use" and "low occupancy use" terms.

This guidance is written for responsible parties and consultants who are conducting remedial actions and for DNR Remediation and Redevelopment (RR) Program staff who are reviewing submittals prepared by RPs. This guidance mainly applies to soil and groundwater cleanups and isn't intended for use at sediment cleanups.

Disclaimer

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the U.S. EPA, the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

This guidance is based on requirements found in the NR 700 rules series of the Wis. Adm. Code; the Hazardous Substance Spill Law, s. 292.11, Wis. Stats., the Environmental Repair Statute, s. 292.31, Wis. Stats., federal regulations in section 761 of Title 40 of the Code of Federal Regulations (40 C.F.R. § 761), and the federal Toxic Substances Control Act (TSCA).

Contacts & Revisions

This guidance will be updated as needed. Please contact Gary A. Edelstein, P.E. at 608/267-7563 or via email at gary.edelstein@wisconsin.gov if you have questions, comments or concerns. Questions about Attachment 5 – PCB Direct Contact Non-Industrial Residual Concentration

Limit – may be directed to Resty Pelayo at 608-267-3539 or via email at aristeo.pelayo@wisconsin.gov. The EPA point of contact on PCB remediation issues is the EPA Region 5 PCB coordinator.

2) General Discussion, Related Guidance and Applicability to NR 700 Cleanups

a) DNR and EPA signed the OCP MOA in 2006. The Federal One Cleanup Program is EPA's vision for how different cleanup programs at all levels of government can work together to improve the coordination, speed, and effectiveness of cleanups at the nation's contaminated sites. EPA recognized DNR's consolidated approach to the cleanup of a wide range of sites through the NR 700 rule series. Information about the One Cleanup Program MOA is available on the DNR Remediation and Redevelopment program website.

b) Related guidance. When using this guidance, the following DNR documents may be helpful. Using these documents is encouraged where appropriate.

- The DNR RR program *Guidance on Case Closure and the Requirements for Managing Continuing Obligations* (RR-606) contains the information on these topics.
- The DNR RR program *Guidance for Cover Systems as Soil Performance Standard Remedies* (RR-709) contains guidance on how to address soil cover requirements.
- The DNR RR program *Guidance for Determining Soil Contaminant Background Levels at Remediation Sites* (RR-721) contains guidance on determining background soil contaminant levels.

EPA Regulations and Guidance:

- Federal PCB TSCA regulations
- Interpretive Guidance on PCBs

c) This guidance is mainly applicable to sites undergoing a full investigation, cleanup and closure under the NR 700 series. It is expected that new discharges from items like PCB transformers, capacitors and bulk materials will be responded to immediately with a complete cleanup and removal of discharged PCBs, documented with soil samples that all the PCBs are removed and submit a report in accordance with the immediate action requirements in ch. NR 708.

It should be noted that EPA has required all persons who store or use PCB transformers that contain PCBs at or above 500 ppm to register them. See the PCB Transformer Registration Database for more information.

3) One Cleanup Program MOA Overview

Note: Attachment 8 is a flow chart map for the One Cleanup Program MOA process.

The federal law regulating PCB management is the Toxic Substances Control Act (TSCA) passed by congress in 1976 [Toxic Substances Control Act Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003 (15 U.S.C. 2601 et seq.)]. Prior to the OCP MOA, with the exception of Superfund

sites, there was no formal mechanism for coordinating PCB cleanup reviews between EPA and DNR. An RP had to follow the NR 700 rules series cleanup and closure process as well as the federal TSCA rules separately to perform proper site remediation. DNR staff did not review cleanups for TSCA compliance and were not required to notify EPA of the existence of PCB sites in the NR 700 rules series process, although they could do so voluntarily.

Under the MOA, there is an opportunity for certain types of PCB sites to follow a coordinated approval process led by DNR. In addition, a minimum level of communication between the agencies is now required for all PCB sites. An RP may choose to follow the NR 700 and TSCA cleanup processes separately as was done before and not take advantage of the new coordinated approval process. However, it is believed that following the new process will be advantageous for the RP and can better assure that liability concerns are addressed by both agencies. The MOA is not a delegation of EPA's authority under TSCA as EPA can not delegate TSCA to states.

The MOA defines three types of PCB sites, Types A, B, and C (see attachment 1), and how DNR will communicate with and coordinate remedial activities with EPA.

Type A sites are generally sites where both the TSCA cleanup requirements and the NR 700 rule series are applicable and where separate DNR and EPA review and approval processes outside the MOA coverage must be conducted. These are typically complex sites or sites involving environmentally diverse or multiple complex issues. An example of this sort of site is the Fox River sediments. For these sites, DNR is required to notify EPA of the existence of the site with an electronic form when DNR is first notified of a discharge. DNR should actively manage Type A sites, so the RP should submit reports to DNR for review along with the appropriate fees for all necessary NR 700 rules series reports leading up to site remediation to DNR.

Note: It may be possible to split off a soil portion of a complex site if it isn't related to sediment or other elements of the site and possibly manage that portion separately as a Type B or C site and for a Type C site, be eligible for a coordinated approval.

Type B sites are PCB discharge sites where the TSCA cleanup requirements are not applicable and DNR solely reviews the cleanup in accordance with the NR 700 series rule, unless EPA Region 5 and DNR make a finding that an unreasonable risk of injury to health or the environment exists. If such a determination is made and agreed to by both agencies, then EPA Region 5 and DNR may direct the owner or operator of the site to remediate the site as either a Type A or Type C site. If one agency finds that an unreasonable risk of injury to health or the environment exists, then the site may not be a Type C site can only be managed as a Type A site. Active management of Type B sites by DNR is optional, so the submittal of reports and fees before a closure request is submitted is required if the DNR or the RP chooses to have the site actively managed.

Note: A determination of unreasonable risk of injury or health to the environment is discussed starting on page 35401 in the Preamble to the June 29, 1998 FR EPA Final Disposal of PCBs rule. This language includes "unreasonable risk of exposure" to PCBs. DNR believes this decision is based on the conditions at a site, including how easily exposure could occur, how far

the contamination has migrated into the environment, how easily the contamination can migrate further into the environment and the concentrations present.

Type C sites are all other PCB sites that aren't classified as Type A or B. These are now eligible for the optional coordinated approval process led by DNR. This requires that the cleanup process outlined in the NR 700 rules series be followed and that communication be maintained with EPA. In addition, for Type C sites, DNR must notify EPA in writing of the completion of the remedial action options report (RAOR) and drafting of an approval letter for remediation. If an RP chooses to take advantage of this process, active project management will be necessary. In these cases, the RP must submit reports to DNR for review along with the appropriate fees for all necessary NR 700 rules series reports leading up to site remediation to DNR.

Because the coordinated approval process is optional, an RP may choose to pursue separate state and federal regulatory approval for Type C site cleanups. However, there are potential risks (e.g., failure to satisfy requirements found in both rules as well as timeliness of the review and final approval) when trying to meet each agency's requirements separately without coordination, so RPs are encouraged to use the Type C coordinated process instead.

EPA should be notified for all sites, Types A, B and C, at the time of state Spill Law notification/identification of the release/discharge using the electronic form Attachment 4.

Note: DNR has already provided information to EPA about all PCB sites known to exist in Wisconsin including those that provided discharge notifications before the date of the MOA.

Note: TSCA requires RPs to notify the Federal Government of certain PCB discharges when they occur or are discovered. This is in addition to notification of a discharge under state Spill Law. This TSCA requirement is not replaced by DNR's notification under the MOA. More detail about state and federal notification requirements were provided in an article in the April 26, 2013 RR Report email newsletter. The article is reproduced in Attachment 7 to this guidance.

Attachment 2 to this guidance is a table that outlines how communication between DNR Project Managers and EPA will take place under the MOA as a function of TSCA applicability. Attachment 3 is questions and answers for application of this guidance. Attachment 4 lists the types of notices DNR staff should send EPA, the notification forms to be completed, and language for the RP to include when notifying EPA of sites seeking coordinated approval under the MOA.

4) TSCA Law Applicability, Communication with DNR and EPA for PCB Cleanups under the MOA, Project Teams, Other Contaminated Material and On-Site Management under s. NR 718.15.

The remedial portions of the federal TSCA law affecting the DNR RR program are codified at 40 CFR 761. The MOA allows DNR to take the lead at Type C PCB contamination cases under the coordinated approval process, following the NR 700 rules series cleanup process, with the understanding that WI remediation efforts will be equivalent to a federal cleanup for the

environmental pathways addressed by the NR 700 rules series (TSCA cleanup regulatory coverage as compared to NR 700 pathways is discussed at the end of this section). The MOA clarifies the review and signoff process as well as EPA's involvement in PCB remediation projects.

a) TSCA Applicability. In order to determine if a cleanup site is subject to TSCA and eligible for the coordinated approval process, it is necessary to determine if TSCA applies to the cleanup. To do so, an RP must determine the PCB concentration in the material discharged (released) as well as the date of the release. TSCA applies to the following PCB remediation cases:

- If the release took place after April 18, 1978 and the PCB concentration in the material released was 500 ppm or greater,
- If the release took place after July 2, 1979 and the PCB concentration in the material released was 50 ppm or greater.
- If either the date or concentration of the PCB at the time of the release is unknown, TSCA regulations assume the PCB release is regulated (59 FR 62788, 62799 (Dec. 6, 1994)).

It is the owner / operator's (this is usually the RP) responsibility to determine the timing and initial concentration of the PCB release for the purpose of determining TSCA applicability. This determination should include a thorough and good faith inquiry into the nature and origin of the PCB contamination. Where a facility owner or operator makes a good faith effort to determine the date and concentration of the material at the time of the release, but cannot make a definitive determination because documentation regarding the date of the release and source of contamination is unavailable or inconclusive, then EPA may presume that PCBs are illegally disposed of at a site and require remediation under TSCA (See 59 FR 62788, 62799 (Dec. 6, 1994)). DNR recommends that responsible parties interview current and former employees and take other reasonable steps, such as using available site-specific and waste-specific information such as manifests, vouchers, bills of lading, sales and inventory records, accident reports, site investigation reports, spill reports, inspection logs, enforcement orders, etc., to determine the timing and concentration of the PCB release.

DNR encourages RPs to work with DNR project managers (PMs) and staff in this evaluation. If the RP wants a letter from DNR regarding the regulatory status of the contamination, this would be considered a request for technical assistance, which requires a review fee. In cases where the RP works with the DNR RR PM, the PM can then use professional judgment to assist the RP to determine the applicability of TSCA.

b) Project teams. For larger cleanup projects, such as large redevelopment projects at brownfield sites with historic PCB contamination, the DNR PM should work with other affected environmental program staff. In many instances, it may be best for the DNR PM to form and lead a working team with staff representatives from the other programs, such as the Waste and Materials Management Program when contaminated media or building material is to be managed in state, reused or redisposed of at the site, the Watershed Management Program for storm water and wastewater issues and the Air Management Program if there is to be any activity that could result in a regulated air emission, including the management of asbestos materials from building

demolition. For such sites undergoing a coordinated approval, the assigned EPA Regional TSCA staff person should also be a team member.

Note: The Waste and Materials Management Program has developed a guide for planning demolition or renovation projects, including guidelines on hazard evaluation, recycling and waste disposal.

As previously mentioned, the EPA point of contact on PCB remediation issues is the EPA Region 5 PCB coordinator. While it is the RP's responsibility to inform EPA of a TSCA-applicable PCB release, DNR PMs should also contact the Regional PCB Coordinator to inform EPA of the site and provide the information listed in the first form in Attachment 4. This may be necessary when dealing with brownfields, tax delinquent properties, or government parties who are interested in, but do not own a property. The DNR PM should work with RPs and inform EPA early in a project when TSCA may be applicable. Early notification and a request from the RP to participate are requirements of the coordinated review process. DNR recommends the RP notify EPA as soon as the RP makes a TSCA applicability determination.

c) Other contaminated material. It should be noted that there may be PCB contamination at a site that doesn't fall under an NR 700 rules series environmental pathway but is subject to TSCA cleanup regulations. This includes contaminated building surfaces (for example, a building foundation, basement wall(s), on-grade slab that is impregnated with PCB contamination is considered contaminated building material and not environmental media), bulk product waste such as building materials like caulk, PCB transformer oil, PCB capacitors and PCB lighting ballasts. The RP is responsible for coordinating with EPA as necessary to meet TSCA requirements for cleanups and removals for such items that don't fall under an NR 700 rules series. The RP is also responsible for meeting TSCA disposal/management requirements for such wastes, and NR 500 series requirements for in-state disposal/management. More information about these TSCA requirements may be found at the EPA regulations and guidance web links in section 2, above.

In a situation where the materials described in the last paragraph are situated in a location or are in a condition to be causing or about to cause a discharge to the environment, then that pathway could be addressed under the NR 700 rule series. Examples include PCB contaminated paint that is flaking onto soil and PCB oil or coolant saturated surfaces that are shown by sampling or through visual observation of oily runoff to be directly contaminating soil, surface water or sediments. In some instances, EPA may allow some contaminated building material to remain at a site under their approval. The DNR PM should work with EPA ensure that such material will not cause a future discharge to the environment. If the materials could, then the potential pathway must be addressed. It is expected that material left on a site in compliance with EPA TSCA requirements would normally not pose such a risk. Removal and management of those materials would still be addressed under TSCA and for in-state waste management, including re-use at the site, under the NR 500 series requirements and not under the NR 700 requirements.

d) On-site management under s. NR 718.15. On-site management of building materials and other non-soil solid waste may be conducted under s. NR 718.15. This may allow the on-site management and redisposal of some building materials to be managed by the RR Project

Manager under the NR 700 cleanup process. The on-site management and redisposal of TSCA regulated building materials and other non-soil solid waste must also be approved by EPA and meet their requirements. There are currently no comprehensive guidelines for implementing this rule for contaminated materials – those may be developed later. The criteria in s. NR 718.12(2) for on-site redisposal of soil can be considered. Also, the RR Project Manager can request assistance from other technical staff and DNR Waste and Materials Management staff for s. NR 718.15 decisions.

5) Coordinated Approval Process under the MOA

The coordinated process for Type C sites allows for an expedited review and approval of remediation. It allows for the state, when working with EPA, to take the lead and oversee the cleanup under state authority for the pathways addressed under the NR 700 rules series, provided that:

1. The applicable requirements set forth in the MOA are met (as discussed in this guidance); and
2. The RP requests a Coordinated Approval to follow the state process under the MOA at the time the RP is planning to conduct an investigation and cleanup of a Type C site.

The RP must submit a letter to EPA to participate as a Type C case in the coordinated cleanup program as is required by 40CFR761.77(a)(1). Therefore, if an RP makes this request, DNR may then oversee the site following the NR 700 rules series remediation process including the review of all submitted reports.

For Type C sites under the coordinated approval process, DNR will provide EPA with key documents (site investigation work plan, site investigation report (SIR), remedial action options report (RAOR), and draft RAOR approval). EPA and DNR will then have the opportunity to issue approvals at approximately the same time to the RP. In this case, the EPA approval will be largely based on the work the RP has conducted at the direction of the DNR PM.

Under the MOA, for Type C sites following the coordinated approval process, EPA has accepted cleanups that meet the requirements under NR 700 as being generally equivalent to a TSCA cleanup for the environmental pathways addressed under the NR 700 rules series. However, EPA will review the cleanup plans under the coordinated approval process and issue a letter to the RP and DNR approving or denying the approach. The MOA envisions these reviews will normally occur in less than 30 days, but EPA may ask for more time if needed. If EPA approves the approach, they may require that additional conditions be met. Therefore, the RP and the DNR PM should consider the TSCA cleanup requirements for the NR 700 rules series pathways at these sites when developing cleanup plans so as to minimize additional EPA conditions The next section discusses how the NR 700 rules series and TSCA cleanup requirements are related.

6) NR 720 and TSCA Site Cleanup Requirements

a) NR 720 Closure Requirements. The NR 700 rule series applies to all cleanups in Wisconsin with few exceptions. For the direct contact pathway for contaminated soils, NR720 allows closure under the following three scenarios:

1. Cleanup to background,
2. Cleanup to a residual contaminant level (RCL) established under NR 720: Industrial or non-industrial, or
3. Cleanup using a performance standard (e.g., a cover).

Note: Revisions to NR 720 went into effect on November 1, 2013 that eliminated table values and specify a new method to calculate RCLs at sites. See attachment 5a for the recommended approach for determining direct contact RCLs for PCBs. In accordance with ch. NR 720, a RP may propose a different approach than the recommended one on a site specific basis.

Sampling and analysis methods for PCB sites are discussed in attachment 5b. It is important to note that only reporting the sum of the 7 Aroclors analyzable by SW-846 Method 8082 may no longer be accepted by EPA at certain types of sites. For compliance with NR 720 at many sites, individual Aroclors will need to be reported. See attachment 5b for additional discussion.

For cleanup to background, refer to *Guidance for Determining Soil Contaminant Background Levels at Remediation Sites* (RR-721). This outlines how to determine background concentrations for soil contaminants. Background concentrations are defined to include ubiquitous, widespread deposition of contaminants from the air that cannot be traced to a specific source. PCBs may fall into that category in some locations in the state. Contaminants from known sources are excluded from the definition of background.

For an unrestricted closure for the soil direct contact pathway, soil at a PCB site must meet a non-industrial site-specific RCL or background value (in addition to groundwater standards). See attachment 5 for more discussion on unrestricted closure.

Closure using an industrial site-specific RCL or using a performance standard will require a continuing obligation requirement be included in the closure letter. Please see *Guidance on Case Closure and the Requirements for Managing Continuing Obligations* (RR-606) for additional information.

Contaminated soil at the surface of a site may pose a threat through another pathway – runoff to surface water. If this pathway exists due to PCB contamination, then it must be addressed before closure can be granted. Often, this pathway can be addressed through soil removal or a performance standard remedy. The DNR RR program *Guidance for Cover Systems as Soil Performance Standard Remedies* (RR-709) contains guidance on how to address this pathway.

b. TSCA Self Implementing On-site Cleanup and Disposal of PCB Remediation Waste and Understanding the TSCA Self Implementing Cleanup terms “High Occupancy” and “Low Occupancy” Areas and their Relationship to NR 720. (40CFR761.61(a)) The TSCA self-

implementing cleanup procedures can only be used at sites with certain characteristics. It's expected that they may be used at most Type C sites. The procedures may not be used to clean up surface or ground waters, sediments in marine or freshwater ecosystems, sewers or sewage treatment systems, drinking water sources or distribution systems, grazing lands or vegetable gardens etc. (see also 40 CFR 761.61(a)(1)). This rule specifies cleanup levels for materials being remediated, including bulk PCB remediation waste, non-porous surfaces, porous surfaces, and liquids. EPA may, in response to a notification, require cleanup to more stringent cleanup levels than are otherwise required based on the proximity to areas such as residential dwellings, hospitals, schools, nursing homes, playgrounds, etc. (40CFR761.61(a)(4)(vi)). Additional guidance on the self-implementing regulations can be found in EPA's Site Revitalization Guidance.

For self implementing sites, an RP is required to characterize a site and submit to EPA (and the state), a notification and certification 30 days prior to beginning the cleanup (see s. 40CFR761.61(a)(3)). RPs may choose to follow the self implementing process for meeting federal TSCA requirements and may pursue the NR 700 rules series cleanup process separately. However, there are potential risks (e.g., failure to satisfy requirements found in both rules as well as timeliness of the review and final approval) when trying to meet each agency's requirements separately without coordination, so RPs are encouraged to use the Type C coordinated process instead. Sites that are eligible for the self implementing process under the TSCA regulations may proceed with remediation that meets the cleanup levels specified in that process.

The EPA self implementing cleanup rules include the terms "high occupancy" areas and "low occupancy" areas. EPA uses the terms "*high occupancy*" areas and "*low occupancy*" areas to describe post remediation use of the property and to establish cleanup standards. These EPA use classifications are not necessarily analogous to the land use classifications in NR 720. Therefore, separate determinations should be made for the NR 720 and self-implementing use classifications for sites that meet the TSCA self-implementing requirements as well as NR 700 series requirements.

These terms are defined in federal regulations as (40CFR761.3):

- *High occupancy area* means any area where PCB remediation waste has been disposed of on-site and where occupancy for any individual not wearing dermal and respiratory protection for a calendar year is: 840 hours or more (an average of 16.8 hours or more per week) for non-porous surfaces and 335 hours or more (an average of 6.7 hours or more per week) for bulk PCB remediation waste. Examples could include a residence, school, day care center, sleeping quarters, a single or multiple occupancy 40 hours per week work station, a school class room, a cafeteria in an industrial facility, a control room, and a work station at an assembly line.

- *Low occupancy area* means any area where PCB remediation waste has been disposed of on-site and where occupancy for any individual not wearing dermal and respiratory protection for a calendar year is: less than 840 hours (an average of 16.8 hours per week or less) for non-porous surfaces and less than 335 hours (an average of 6.7 hours per week or less) for bulk PCB remediation waste. Examples could include an electrical

substation or a location in an industrial facility where a worker spends small amounts of time per week (such as an unoccupied area outside a building, an electrical equipment vault, or in the non-office space in a warehouse where occupancy is transitory).

EPA Region 5 has indicated that if the case can be made that the use of an area would not exceed the allowable exposure times listed in the definition of low occupancy Area, then it could be managed in that way. In the past, Region 5 has considered some parking lots as examples of low-occupancy areas.

There are <u>two high occupancy use cleanup levels</u> in 40 CFR 761.61 (a)(4)(i)(A):

1. PCBs </= 1 ppm – no further conditions. In Wisconsin, to comply with NR 720, DNR also requires that a non-industrial site-specific RCL be established and achieved for an analogous NR 700 rules series unrestricted closure. See attachment 5 for more discussion on unrestricted closure.
2. PCBs > 1 ppm to </= 10 ppm – Site must have a cover and deed notice per EPA requirements (40 CFR 761.61(a)(7) and (a)(8)). In Wisconsin, covering the site constitutes a performance standard closure requiring a continuing obligation and maintenance plan. Please note that by EPA definition, a site with a concentration exceeding 10 ppm PCB can <u>not</u> close as a "high occupancy" area.

Similarly, in 40 CFR 761.61 (a)(4)(i)(B), EPA establishes cleanup actions based on the level of residual contamination in low occupancy areas. These are:

1. PCBs </= 25 ppm – No specific condition of closure other than low occupancy and meet the deed instrument requirements in 761.61(a)(8) for notice that the land has remaining PCB contamination (the regulation states: "been used for PCB remediation waste disposal") and is restricted to use as a low occupancy area.
2. 25 ppm to </= 50 ppm PCB – Site must be secured by a fence, maintain the fence in perpetuity, marked with a sign and meet the deed restriction requirements for a fence for low occupancy land use in 40CFR761.61(a)(8), or use a cover and meet the requirements in 3.
3. 25 ppm to </= 100 ppm PCB – Site must have a cover meeting the requirements of 40CFR761.61(a)(7), maintain the cover in perpetuity, and meet the deed restriction requirements for a cover for low occupancy land use in 40CFR761.61(a)(8). So, if the concentrations are greater than 50 ppm PCB but less than or equal to 100 ppm PCB, a cover is required, but between 25 ppm PCB and 50 ppm PCB a cover is an option instead of a fence under 2.

Note: EPA Region 5 generally discourages RPs from depending only on a fence with a sign and a deed instrument for concentrations between 25 and 50 ppm PCB. Also, a fence may not be an adequate remedy for meeting NR 700 requirements, as discussed elsewhere in this guidance.

The federal rules require the use of a deed restriction for use of covers, fences, or cleanup of low occupancy areas (40CFR761.61(a)(8)). Wisconsin requires continuing obligations in the closure approval letter for this type of closure. The DNR closure letter must specify the applicable

obligations, and the site must be listed on the RR Program Online Database (formerly known as the GIS Registry). However, this listing does not satisfy EPA's TSCA deed restriction requirement. Consequently, the RP must normally have a deed restriction to satisfy this federal requirement if they conduct a cleanup that meets both TSCA and the NR 700 rules series requirements.

If there is a site undergoing a coordinated approval where the RP is unable to obtain a required deed restriction, and there is a good reason why they can't, the Department is willing to discuss using the DNR Database entry as a substitute with EPA, provided all other requirements are met.

If an RP wants to leave in place soil PCB concentrations greater than 100 ppm, the site will not meet EPA's self implementing process cleanup requirements.

DNR generally encourages RPs to clean up to less than 10 ppm to allow "high occupancy" classification when closure is allowed with a performance standard cover and a continuing obligation. However, after discussion with the RP regarding their site-specific conditions at a site undergoing a coordinated approval, DNR may consider a cleanup level of total PCBs > 10 ppm, possibly to less than 100 ppm, for "low occupancy" if the RP is willing to voluntarily meet all EPA TSCA requirements, (i.e., fence, sign and/or deed restriction, as appropriate) in addition to the NR 700 rules series requirements. In many instances such sites will require a performance standard cover to meet NR 700 rules series requirements if the NR 700 rules series direct contact RCLs are exceeded (see attachment 5). Site specific closures should be consistent, that is the site should be designated as high occupancy or low occupancy. There should not be some areas designated as high occupancy and some areas designated as low occupancy, unless it is a large site which may be subdivided at a later date into separate properties.

c. TSCA Risk Based Approval (40CFR761.61(c)) and Coordinated Approvals. At a site that is not eligible for the self implementing TSCA cleanup and other sites the RP chooses to not use the self implementing rule, the RP may pursue a risk based cleanup with EPA Region 5. The RP must submit their proposal to EPA in writing, outlining how the cleanup will occur. EPA considers and approves of such proposals on a case-by-case basis. The cleanup may not begin until approval is received from EPA.

The coordinated approval process may be used at sites that are not eligible for a self implementing TSCA cleanup and the process can use the risk based approach. The RP would outline their cleanup plans in the documents submitted to both agencies. The key document where this would be outlined is the Remedial Action Options Report. The DNR PM would coordinate with the EPA reviewer when EPA considers the proposed cleanup approach. The cleanup approach would have to be approved by both agencies. The approach might involve human health as well as an ecological risk assessment, if necessary. Prior approval from DNR to conduct a risk assessment in accordance with NR 722.11 would be necessary and the risk assessment reviewed and accepted by DNR before EPA would be asked to consider it. Generally, the appropriate public participation under ch. NR 714 would be expected to take place, consistent with EPA guidelines.

EPA Region 5 has indicated they may be willing to consider leaving soils with >100 ppm PCBs under a performance standard cover that meets DNR requirements or management of PCB

contaminated soils under a ch. NR 718 management option on a case-by-case basis under a risk based approach under a coordinated approval. They would have to view such remedies as protective and consistent with their risk based guidelines.

Region 5 provided a guidance checklist prepared by Region 1 that outlines the type of information they would expect to be submitted for a risk based approval. Attachment 6 presents the guidance, with notes providing cross references to chs. NR 714 and 722 to indicate where a Remedial Action Options Report would provide the information and EPA guidelines for public participation. This is provided in Attachment 6. DNR encourages RPs to include the information outlined in Attachment 6 in the Remedial Action Options Report for a risk based approach under a coordinated approval and show where each of the items in the checklist are discussed in the report. The RP and the DNR PM should agree on the need for any public participation and the RP should take the necessary steps to implement it.

d. Closure Letter Language and Attachments. At sites where the TSCA self implementing remediation regulations require a deed restriction per 40CFR761.61(a)(8) [e.g., property is a high occupancy area requiring a cover or a low occupancy area possibly requiring a cover, fence, signage, etc.], the RP who intends to meet TSCA requirements should describe the deed restriction in the cleanup plans and include the recorded deed restriction in the closure request package. However, the deed restriction must also be consistent with the type of continuing obligation that is required per a cleanup in the closure approval letter. DNR staff should take care to ensure that the continuing obligation language in the closure letter is consistent with DNR guidance, in addition to requiring that the property or portion of the property be restricted to a future land use that meets the EPA definition of high or low occupancy. Deed restriction instruments should be referenced in the closure letter, attached to the letter and placed in the Online Database. Areas with higher contamination could potentially be closed separately, if the RP proposes an acceptable alternative site-specific RCL.

Residual PCBs that do not pose a direct contact threat or threat to groundwater may not need remedial action. However, this residual contamination must be identified in the closure letter with a notice to the owner that if the area is excavated in the future, the soil must be sampled and analyzed to ensure proper management of the material and compliance with state solid waste and TSCA requirements. Please remember that residual soil contamination does not always require a continuing obligation per s. 292.12, Stats. However, whenever residual contamination exceeds soil standards, the site should always be placed on the RR Online Database. Please note however, EPA requirements for high and low occupancy sites must be met based solely on contaminant concentration remaining on site because EPA rules do not consider depth to contamination.

It is strongly recommended that the closure letter note any PCB contaminated building material remaining at the site in accordance with an EPA approval and include a notice to the owner that if the material is removed in the future that it must be managed in accordance with EPA TSCA and, if managed in state, in accordance with NR 500 requirements. It is also strongly recommended that, if available, the EPA TSCA contaminated building material approval and any deed instruments associated with that approval be mentioned in the letter and provided as an attachment. The DNR PM should ensure that such material will not cause a future discharge to

the environment. If it could, then the site should not be closed and the potential pathway addressed before closure is granted. It is expected that building material left on a site in compliance with EPA TSCA requirements would normally not pose such a risk

e. Cover system requirements. When an RP follows DNR guidance for performance standard covers (*Guidance for Cover Systems as Soil Performance Standard Remedies – RR-709*) and closure is granted, the closure should generally meet the requirements in 40CFR761.61(a)(7). It should be noted that the DNR guidance does not specify a minimum thickness of concrete, and the above federal citation requires a minimum of 6 inches of concrete, **if** concrete is used for a cover. However, the DNR guidance does outline engineering design practices for pavement covers and a concrete pavement cover with acceptable sub-base preparation and concrete thickness, properly designed for the site and site uses, should be acceptable in most instances.

Note: EPA Region 5 has indicated in comments on this document that they would be willing to consider a cover that is acceptable under the DNR guidance document.

f. General Liability Clarification (GLC) letters. When preparing GLC letters for properties with PCB contamination, it is suggested that Project Managers include the following language, if TSCA applicability is uncertain: *"Because PCBs were discharged at the property, the Toxic Substances Control Act (TSCA), 40 CFR 761 Subpart D, may apply to the remediation of the PCB contamination at this site. The Department recommends that the responsible party contact the EPA Region 5 PCB Coordinator concerning its applicability. Should this rule be applicable, the Department further recommends the party conducting the cleanup follow 40 CFR 761.61(a); EPA's Self-implementing on-site cleanup and disposal of remediation waste and/or the coordinated approval process under the One Cleanup Process Memorandum of Agreement between the Department and EPA. Please refer to the Department's One Cleanup Process for additional information."* This language may vary depending upon the level of PCB contamination at the location. This will not apply if groundwater is impacted, as the coordinated approval process is required and the language would need to be modified appropriately.
Note: Type C sites that seek a GLC letter can use the Coordinated Approval process.

g. Waste Management Issues. The RP is responsible for properly managing any contaminated media, bulk materials and other PCB contaminated wastes in accordance with EPA TSCA and DNR Waste and Materials Management (WMM) Program requirements. The RP is expected to determine what those requirements are and contact EPA and the WMM Program as appropriate. RR PMs are not normally expected to assist RPs with offsite waste management issues when reviewing cleanup plans or closure submittals.

This document provides guidelines for how to manage PCB contaminated soil in Attachment 3, questions and answers. While the guidelines apply to many cases, it is not meant to be comprehensive guidance on the proper management of PCB contaminated materials.

7) Sites Not Using the Coordinated Approval Process

For other PCB sites that are not subject to the Type C MOA expedited coordinated review process under the MOA, DNR PMs are encouraged to obtain a short description of how a site

cleanup meets the federal requirements before a closure request is reviewed by the DNR. However, given that the DNR is not responsible for enforcing the federal requirements, if a responsible party refuses to provide that information, then the closure request may be processed, and the Project Manager is encouraged to notify U.S. EPA Region 5 TSCA staff about the site and that refusal. DNR PMs are not expected to review cleanup plans for compliance with TSCA at these sites where the RP provides TSCA compliance information. The RP is responsible for working with EPA to satisfy TSCA requirements. It may be necessary to include the following language in the closure letter: *"Because PCBs were discharged at the property, the Toxic Substances Control Act (TSCA), 40 CFR 761 Subpart D, may apply the remediation of the PCB contamination at this site. The Department recommends that the responsible party contact the EPA Region 5 PCB Coordinator concerning its applicability"*. Should the RP provide a deed restriction in the closure package to satisfy TSCA requirements at a site DNR isn't reviewing for TSCA compliance, then the instrument should be referenced in the closure letter, attached to the letter and a copy placed in the Online Database if the site is to be included in the Registry as part of an NR 700 series closure approval.

Attachment 1
OCP / MOA TSCA Site Types

The MOA identifies three "types" of sites. Specific criteria to determine the type of site and agency review for a site are identified below. Once an appropriate determination has been made involving PCBs, the type of DNR and EPA regulatory review for the proper investigation, cleanup and disposal of the contamination can be made. The screening criteria are used as guidance to determine the appropriate agency and process to follow in order to receive approval for the cleanup actions.

Type A: PCB sites which are subject to TSCA Section 6(e), are not subject to the expedited coordinated review and approval under this MOA, and are subject to DNR and EPA Region 5 review and approval outside of this MOA. These sites would typically be complex sites or sites involving environmentally diverse or multiple complex issues such as those described in the first through third bullets, below. Type A sites include:

- sites where there is widespread sediment contamination beyond that which is merely incidental to soil contamination;
- sewers or sewage treatment systems
- private or public drinking water sources or distribution systems; or
- sites where the responsible party has not met the DNR's procedures or standards.

Type A sites would include sites where the owner or operator has not met the DNR's procedures or standards or fails to submit adequate information to the DNR and does not receive an approval from the DNR. Sites which do not receive an approval or a decision and enforcement document from the DNR cannot be approved by EPA Region 5 under 40CFR 761.77 because the party must have such a state-issued document for EPA to issue a coordinated approval (See 40CFR 761.77(c)). For Type A sites, the owner or operator is subject to separate DNR and EPA Region 5 review and approval, outside of this MOA.

Type B: PCB sites <u>generally</u> not subject to TSCA Section 6(e) and only subject to DNR review and approval. These sites are subject to DNR review and approval and are managed by the DNR under the NR 700 rule series, because they are presumed not to present an unreasonable risk of injury to health or the environment under TSCA Section 6(e) and the federal PCB regulations at 40CFR 761.50(b)(3)(i)(A). Type B sites include sites where:

- the PCB remediation waste resulted from spills, or other releases into the environment:
  - prior to April 18, 1978, regardless of the concentration of the spill or release, or
  - on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was greater than or equal to 50 ppm but less than 500 ppm;
- the date the PCBs were released was on or after July 2, 1979, and the PCB concentration of the actual material that was released was less than 50 ppm.

However, if a site meets either of the criteria under the first bullet above and EPA Region 5 and DNR make a finding that an unreasonable risk of injury to health or the environment exists, EPA Region 5 and DNR may direct the owner or operator of the site to remediate the site under TSCA Section 6(e) and the federal PCB regulations at 40 CFR 761.50(b)(3)(i)(A) and the DNR's NR 700 rule series, Wis. Adm. Code, respectively. In cases where EPA Region 5 and DNR direct

the owner or operator of the site to remediate the site and the site is also determined by EPA Region 5 and DNR to be a Type C site, it may be subject to the expedited coordinated review and approval process (See provisions for Type C sites, below).

If a site meets either of the criteria under the first bullet above and EPA Region 5 or DNR makes a unilateral finding that an unreasonable risk of injury to health or the environment exists and EPA Region 5 or DNR directs the owner or operator of the site to remediate the site, the sites would not be subject to the expedited coordinated review and approval under this MOA and instead would be subject to separate EPA or DNR review and approval outside of this MOA.

Note: A determination of unreasonable risk of injury or health to the environment is discussed starting on page 35401 in the Preamble to the June 29, 1998 FR EPA Final Disposal of PCBs rule. This language includes "unreasonable risk of exposure" to PCBs. DNR believes this decision is based on the conditions at a site, including how easily exposure could occur, how far the contamination has migrated into the environment, how easily the contamination can migrate further into the environment and the concentrations present.

Type C: PCB sites subject to DNR review and approval under this MOA, with EPA TSCA Section 6(e) expedited coordinated review and approval. These are PCB contamination sites that do not fall into either the Type A or Type B site classification. Sites that meet the criteria for a Type C site may use the DNR-EPA Region 5 expedited coordinated review process. Type C sites can include those where there is sediment contamination as long as that contamination is merely incidental to soil contamination. Type C sites include sites where:

- the PCB remediation waste resulted from spills, or other releases into the environment:
  - on or after July 2, 1979, where the concentration of the spill or release was greater than or equal to 50 ppm, or
  - on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was greater than or equal to 500 ppm; or
- the following provisions are met:
  - the screening criteria under the first bullet for a Type B site, above, are met,
  - the site is determined by DNR and EPA not to be a Type A site,
  - the as-found (pre-remediation) concentration is greater than or equal to 50 ppm,
  - EPA Region 5 and DNR make a finding that an unreasonable risk of injury to health or the environment exists in accordance with 40 CFR 761.50(b)(3)(i)(A) and the NR 700 rule series, Wis. Adm. Code, respectively, and
  - EPA Region 5 and DNR direct the owner or operator of the site to remediate the site under TSCA Section 6(e) and the federal PCB regulations at 40 CFR 761.50(b)(3)(i)(A) and the NR 700 rule series, Wis. Adm. Code, respectively, based on their findings of unreasonable risk.

Attachment 2 – OCP / MOA TSCA Coordinated Review Analysis

Disclaimer: This table is intended solely as guidance and does not contain mandatory requirements except where those requirements are found in statute or administrative rule. Parties should review the complete discussion in DNR / EPA MOA and any criteria in the referenced rules specific to their site. Any regulatory decisions will be made by applying the governing statues and administrative rules to the relevant facts. This table does not establish legal rights or obligations and is not finally determinative of any or all the requirements of the Federal PCB regulations at 40 CFR Part 761 or the Wis. Adm. Code NR 700 rule series, nor does this table create any rights enforceable by any party in litigation with the EPA, the State of Wisconsin, or the Department of Natural Resources.

PCB Concentration (discharge concentration)	Discharge date prior to April 18, 1978	Discharge date April 18, 1978 to July 2, 1979	Discharge date on or after July 2, 1979	Comments[1]
PCBs – Less than 50 ppm	DNR lead -Type B site[3] -TSCA Section 6(e) does not apply -Coordinated review is not necessary	DNR lead -Type B site[3] -TSCA Section 6(e) does not apply. -Coordinated review is not necessary	DNR lead -Type B site[3] -TSCA Section 6(e) does not apply. -Coordinated review is not necessary	TSCA Section 6(e) would not be applicable
PCBs – Equal to 50 – 500 ppm	DNR lead -Type B site[3] -TSCA Section 6(e) does not apply unless residual PCB contamination levels are determined by EPA or DNR to be an unreasonable risk -Coordinated review may be used in that case	DNR lead --Type B site[3] TSCA Section 6(e) does not apply unless residual PCB contamination levels are determined by EPA or DNR to be an unreasonable risk - Coordinated review may be used in that case	Possible DNR lead -Type A[2] or Type C site[4] -TSCA Section 6(e) applies. -Coordinated review is necessary for Type C site[4]	Once waste is generated, TSCA Section 6(e) is applicable to PCB contamination in remediation waste.
PCBs – Greater than 500 ppm	DNR lead -Type B site[3] -TSCA Section 6(e) does not apply unless residual PCB contamination levels are determined by EPA or DNR to be an unreasonable risk -Coordinated review may be used in that case	Possible DNR lead -Type A[2] or Type C site[4] -TSCA Section 6(e) applies. -Coordinated review is necessary for Type C site[4]	Possible DNR lead -Type A[2] or Type C site[4] -TSCA Section 6(e) applies -Coordinated review is necessary for Type C site[4]	Once waste is generated, TSCA Section 6(e) is applicable to PCB contamination in remediation waste.

Note 1. If the date or concentration of the release is unknown, TSCA Section 6(e) regulations assume the PCB release is regulated, in other words, that it took place after April 18, 1978 and the PCB concentration was 500 ppm or greater or after July 2, 1979 and the PCB concentration was 50 ppm or greater.(59 FR 62788, 62799 (Dec. 6, 1994))

Note 2. Type A sites, such as sediment sites and sites that fail to submit adequate information to the DNR, are not subject to the coordinated review process and the responsible party must work cooperatively with the DNR and EPA Region 5 to receive all necessary reviews and approvals.

Note 3: The coordinated review process may be used for Type B sites (DNR lead) where an unreasonable risk of injury to health or the environment is determined to exist by the DNR or EPA Region 5.

Note 4: The coordinated review process can be used for Type C sites (DNR lead).

Attachment 3
Questions and Answers

TSCA Applicability

- *Can PCB concentrations in soil as found before a cleanup be low enough (or considered "minimal") for TSCA to not be applicable?* Yes, but keep in mind this is a case-by-case determination. The RP must examine the known information about the source or sources of the discharge and when the discharge took place. An example of a site where TSCA may not be applicable is one where a good faith effort is made to determine the date(s) of the discharge, but the date(s) can't be determined and the as found concentrations in soil are in the 5-10 ppm range. Sites where the discharge is known to have taken place after 1978 and an as-found concentration is 50 ppm or higher are considered TSCA applicable sites.

Site Submittals and Notices

- *Do RPs for PCB contamination sites need to submit reports with fees?* Yes, for sites following the Type C coordinated approval process. For those, DNR agreed with EPA as part of the MOA, to review the SIR work plan, the SIR and ROAR submittal. Furthermore, we have agreed with EPA to provide a copy of our DRAFT approval to the RP for EPA's review (along with the above documents) as part of our coordinated review. Therefore, for us to be able to conduct these reviews as they are submitted and to be able to prepare the draft approval, the RP must submit the appropriate fees with the reports. In addition, to be eligible for the EPA self implementing onsite cleanup program, the RP must submit to EPA (and the state), a notification and certification 30 days prior to beginning the cleanup (see s. 40CFR761.61(a)(3)). DNR should provide review letters as well as closure letters and other necessary documents for the site. In addition, when DNR is overseeing a Type A site, we should actively manage the site and have the RP submit reports and necessary fees. Finally, review fees for reports submitted before a closure request is submitted are required at a Type B site only if the DNR is actively managing the site.
-
- *What notices are required and by who?* In accordance with the OCP MOA, DNR has agreed to provide EPA with two site specific notifications as part of the EPA coordinated review process (40CFR761.77). Notice #1 is the initial notice to EPA for any PCB case and should be submitted for any Type A, B or C case. This notification provides EPA with basic information and enables us to track PCB sites. Notice #2 is the key to the coordinated review process in that this is where DNR provides to EPA the documents we have reviewed and we provide EPA with a draft of our approval for remediation. This only applies to Type C cases and is not necessary for Type A or B sites. In addition, please note that the RP must also submit a letter to EPA to participate as a Type C case in the coordinated cleanup program as is required by 40CFR761.77(a)(1). In addition, if an RP is strictly adhering to the EPA self implementing onsite cleanup program, the RP must submit a notification to EPA as mentioned above.
-
- *At what point in the cleanup process can a site enter the Type C coordinated approval process?* RPs should submit a written request to both agencies as early in the cleanup process as possible, preferably after it is known PCB contamination due to discharge is present at the site and the site investigation is being scoped. However, it may be possible to enter the process after the investigation is complete and a draft remedial action options report is prepared. Generally, sites that are not actively managed where remedial actions are conducted and only closure request packages are submitted to the DNR may not enter the process and the RP will have to work with the agencies separately.

Soil Cleanup

- *What is the site-specific non – industrial direct contact soil cleanup level for PCBs in soil in Wisconsin*? Please see Attachment 5.

- *What are the soil PCB concentration levels that are eligible for the self implementing TSCA standards and process?* The self implementing approval process and cleanup standards can only be used if the cleanup will result in residual PCB soil concentrations less than or equal to 100 ppm and there are no impacts to groundwater above the ES. These can be pursued with EPA separately from the NR 700 rules series process under the self implementing process or under the Type C coordinated approval process using the self implementing cleanup standards. Sites desiring greater than 100 ppm cleanup levels or sites with ground water impacts above the ES can follow the Type C coordinated approval process.

- *Where can excavated soils be managed?* These guidelines apply to a cleanup following the TSCA self-implementing rules (40CFR761.61(a)), which should govern a majority of smaller cases. Large or complex cases or cases following the risk-based approval (40CFR761.61(c)) can follow soil disposal provisions as determined by EPA on a case by case basis. EPA may consider alternatives to these guidelines on a case by case basis under a risked-based approval.

  Normally, testing of soil at the source should occur before excavation to properly characterize the site as part of a site investigation and to help determine what remedy to implement and how to manage any PCB contaminated soil as part of that remedy. An effort should be made to determine the source of the PCB discharge to the soil, if possible, during the site investigation. Source areas found to have PCB concentrations of less than 50 ppm where the source of the discharge is unknown or the source of the discharge is known to be below 50 ppm may have excavated soil managed at an approved solid waste facility in Wisconsin. Source areas where the source of the discharge is unknown or the concentrations of the discharged material are unknown must have the soil managed according to the concentrations as found; soils as found having 50 ppm or greater concentrations may be separated and must be managed as a TSCA waste and the remaining separated soils with a concentration less than 50 ppm may be managed at an approved solid waste facility in Wisconsin. The soil separation process during excavation and staging may not allow any mixing of higher concentration soil with lower concentration soil to cause dilution of the concentrations so as to lower the 50 ppm or greater PCB contaminated soil concentrations to below 50 ppm unless it will all be managed as TSCA waste regardless of concentration. A source area of contamination where the known source of the discharge had concentrations greater than or equal to 50 ppm must be all be managed as TSCA waste, even if some portion of the individually excavated soil has a concentration of less than 50 ppm. Another option under the TSCA regulations is the RP may assume a source area is all regulated as TSCA waste without source soil testing and knowing the source of the discharge and manage it all as TSCA waste.

  Note: The DNR Waste and Materials Management Program has prepared a memo listing incinerators and landfills that are licensed to accept waste containing PCBs in accordance with NR 157.

- *Can PCBs with concentrations greater than 1 ppm be left on site and still be consistent with the NR 700 rules series and EPA's High Occupancy area criteria?* Yes, a site can be closed consistent with Total PCBs > 1 ppm and </= 10 ppm in soil provided such soil is not disturbed and is contaminated soil can remain on-site but the site must be properly covered. This must be done consistent with the NR 700 rules series and EPA's self implementing rule. A continuing

obligation per state requirements will be needed, the cover would need to be maintained and EPA may require a deed restriction as well.

- *Can PCB's be left on site consistent with the NR 700 rules series and EPA's Low Occupancy area criteria?* Yes, however all NR 700 rules series remediation and closure requirements as well as all the appropriate low occupancy criteria must be met. In addition, the closure letter must contain information about the remaining residual soil contamination even when buried at depth. As per NR726, the closure letter must specify where the residual soil contamination remains and state that if the soil in the specific locations is excavated in the future, then the property owner at the time of excavation must sample and analyze the excavated soil to determine if residual contamination remains. If sampling confirms that contamination is present the property owner at the time of excavation will need to determine whether the material would be considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules, including, if applicable, TSCA. In addition, all current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans. Any previously applicable requirements of TSCA and its regulations will continue to apply to a site after a property transfer (see EPA's Interpretive Statement on Change in Ownership of Real Property Contaminated with PCBs – http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/guidance.htm#RealProperty).

Land Use, Institutional Controls and Continuing Obligations

- *When are land use, institutional controls and continuing obligations needed at PCB sites?* The DNR RR program *Guidance on Case Closure and the Requirements for Managing Continuing Obligations* (RR-606) applies to all cleanups in Wisconsin including PCB remedial activities. Continuing obligations are required as a condition of case closure under s. 292.12 Stats. when certain conditions exist. Deed restrictions and deed notices may be required under s. NR 726.05 (8)(c) as a discretionary tool based on the post-remediation conditions, but generally the Program has moved away from using these tools. Wisconsin Statutes and DNR rules must be followed regardless of what EPA rules require concerning low and high occupancy areas as is discussed in this guidance.

- *When can a PCB site close without an Institutional control?* In Wisconsin, a PCB remediation site can get an unrestricted closure only if all contamination is removed below background or a non-industrial site specific RCL (per NR 720) and all other clean closure criteria are met. See attachment 5 for more discussion on unrestricted closure. For all other cases (even if all EPA high occupancy area criteria are met including PCB, but the site does not clean up to the NR 720 site specific RCL), a continuing obligation and placement on the Online Database is necessary. In cases involving PCBs where the TSCA self implementing cleanup is followed and a deed restriction it required, the instrument must include information required under 40CFR761.61(a)(8)(i). The RP is responsible for preparing the deed restriction. If a deed restriction is required by EPA a copy of it should be included in the Online Database Package for the site. However, DNR PMs should review (not prepare) the deed restriction to ensure it is consistent with the cleanup conducted. If there is a site undergoing a coordinated approval where the RP is unable to obtain a required deed restriction, and there is a good reason why they can't, the Department is willing to discuss using the DNR Database entry as a substitute with EPA, provided all other requirements are met.

Covers

- *When is a cover needed and does a cover need to be identified on the Online Database?* When following EPA self implementing cleanup process, EPA states no cover is needed for a high occupancy area if the residual PCB concentration is less than 1 ppm. However, EPA may require a cover or a cleanup to more stringent cleanup levels than are otherwise required based on the proximity to areas such as residential dwellings, hospitals, schools, nursing homes, playgrounds, etc. (40CFR761.61(a)(4)(vi)). In addition, as explained in attachment 5, a cleanup meeting NR 700 requirements for a non-industrial site may have a calculated site-specific Aroclor-specific RCL that is lower than 1 ppm total PCBs. If so, a performance standard cover could be an acceptable response to address remaining contamination above the RCL. Any cover is a performance standard and needs to be included on the Online Database with a maintenance plan.

Ground water PCB remediation

- *What action do I take if I find PCB in groundwater?* While PCBs are hydrophobic and not readily soluble, they can be found in groundwater. In that case, the EPA self implementing rule can not be used to remediate groundwater at the site. The site could still potentially be managed under the coordinated approval process spelled out in the DNR/ EPA OCP MOA if it is a Type C site and both agencies agree to follow that process. If PCBs in groundwater exceed DNR enforcement standards, or are in a private or public water supply well, then the case would be either a Type A or Type C site and EPA notification is necessary and it is likely EPA would conduct an independent investigation under either TSCA or CERCLA (Superfund). Where groundwater concentrations are between the PAL and ES, it is possible a PAL exemption can be issued under NR 140.28(2) which would not require cleanup or EPA notification.

Attachment 4
DNR OCP MOA PCB Notifications to EPA

The PCB portion of the DNR / EPA One Cleanup Program (OCP) MOA requires DNR to communicate regularly with EPA on PCB cases. Two formal site specific notifications are required. These formal notifications are described below. For a Type C site where the coordinated approval process is followed, there is an expedited review by EPA (typically no more than 30 days) resulting EPA granting an approval that will limit the future site liability under the federal Toxics Substances Control Act (TSCA).

- Notice #1. This is the initial notice for all PCB sites. This should be submitted for any Type A, B or C site. This notification will enable us to track all PCB sites. The relevant language for this notification is found in page 1 of attachment 1 of the MOA – "DNR and USEPA will provide each other with information on the status of Type A, B or C sites…"

  Note: DNR has already notified EPA Region 5 of any known PCB discharge sites at the time the OCP MOA was entered into.

- Notice #2. This is the second notice for Type C PCB cases undergoing the coordinated approval process. This will enable us to conduct the coordinated review and approval for Type C cases. The relevant language for this notification is found on page 4, bullet ii of attachment 1 of the MOA – "If the DNR determines that the site investigation and remedial action options report or other appropriate vehicle (including revisions required by the DNR as part of its review) satisfy the DNR's NR 700 rule series, Wis. Adm. Code, processes and criteria, the DNR will transmit information relevant to the PCB remediation and approval activities to EPA Region 5. The DNR will use an electronic form to verify to EPA Region 5 that the regulatory package is complete and identify significant site-specific issues, if any. The form will include a summary description of the site, contamination, remediation targets, proposed cleanup activities, including any disposal activities, public comments, proposed conditions, and a draft approval." This notice is not necessary for Type A or B sites.

- RP Request for a Type C Coordinated Approval. The relevant language for this request is found on page 4 bullet i of attachment 1 of the MOA. This states "Any person seeking approval from the DNR on response activities to address PCB contamination under a remedial action options report prepared pursuant to ch. NR 722, Wis. Adm. Code, or other appropriate vehicle must also, and will be encouraged by the DNR to, formally request coordinated approval from EPA Region 5." Please note that the RP must submit a letter to EPA to participate as a Type C case in the coordinated clean up program as is required by 40CFR761.77(a)(1). A suggested template for this letter is provided after the notices.

- EPA Follow up. When the agencies follow the coordinated review process, EPA Region 5 has agreed that within 30 days of receipt of the Notice #2 information from DNR, and the request for coordinated approval, EPA will issue a letter to the RP and DNR informing the RP and DNR of EPA's intent to grant or deny a TSCA coordinated approval; request further information; or, requesting additional time to complete its review. If EPA Region 5 intends to grant a TSCA coordinated approval, their letters will include any additional conditions EPA determines are necessary to prevent unreasonable risk of injury to health or the environment. EPA Region 5 also agrees that if it must request additional information or time, it will complete its review as expeditiously as possible. All requirements, conditions and limitations of the DNR's draft approval of the remedial action options report or other determinations are conditions of EPA's coordinated approval.

- Reporting and recordkeeping. Please note that any person receiving a coordinated approval must comply with the applicable reporting and record keeping requirements of 40 CFR 761, Subparts J and K.

- Post Approval follow up. DNR agrees to monitor the site's compliance with the approved PCB remediation measures in the DNR closure letter and to notify EPA Region 5 of changes relating to PCB remediation measures, including all closure letter continuing obligation requirements or changes in facility ownership.

- The EPA Region 5 PCB coordinator can be found on the EPA website.

Notice #1 – DNR Notification to EPA Form for PCB Contamination per OCP MOA

For notification of EPA new discovered PCB sites entered onto BRRTS. EPA will also track these cases. DNR agrees to provide the following in electronic form:

	(to be completed by DNR)
BRRTS #	
Start Date	
Site Name	
Site Address	
County	
DNR PM Name	
DNR PM Phone #	
DNR PM Email	
PCB Site MOA Type if known (A, B or C – see guidance)	
Impact (Soil, GW, etc. if received)	

DNR will identify PCBs as being a substance type in BRRTS for these sites.

A copy of DNR's RP notification letter should be converted to a pdf file and accompany this form.

Upon completion of this form by DNR, please email this form and a pdf of the RP letter to the EPA Region 5 PCB coordinator with an email cc to the DNR RR Bureau PCB Contact.

Add BRRTS Action Code 99 with the date and comment stating "OCP PCB Notice #1, Notification of a PCB Contamination Site sent to EPA"

Upon receipt of the form by EPA, EPA will assign a Region 5 contact to the case and notify the DNR PM and the DNR RR Bureau PCB contact. The DNR PM should enter the name of the EPA contact into BRRTS for the site.

Notice #2 – DNR Notification for PCB Remediation Signoff by EPA under the Coordinated Approval Process per OCP MOA

This form is only for Type C sites undergoing the coordinated approval process.

This is a request to EPA from DNR for implementation of the TSCA coordinated approval process as authorized in 40 CFR 761.77 in accordance with EPA / DNR One Cleanup Program MOA.

	(to be completed by DNR)
BRRTS #	
Date notice #1 sent to EPA (if applicable)	
Site Name	
Site address	
DNR PM Name	
DNR PM Phone #	
DNR PM Email	

Upon completion of this form by DNR, please email this form and the list of above items to the EPA Region 5 PCB coordinator with an email cc to the DNR RR Bureau PCB Contact.

In addition to this form, DNR has agreed to provide to EPA the following materials via mail as hard copies or as scanned pdf files by email or CD:

- Site Investigation Work plan (NR 716.09)
- Site Investigation Report (NR 716.15)
- Remedial Action Options Report (NR 722.13)
- DRAFT DNR Remedial Action Options Report Response (NR 722.15)

Please remember to provide a copy of this form with the above documents either as a cover letter for hard copies, in an email with an emailed pdf or as a cover letter on a CD and send it to the EPA Region 5 PCB coordinator.

Add BRRTS Action Code 99 with the date and comment stating “OCP PCB Notice #2 sent to EPA”

Upon receipt of the form and documents by EPA, EPA has agreed that within 30 days of receipt of the complete package, they will assign a Region 5 contact to the case, and notify the DNR PM and the DNR RR Bureau PCB contact.

RP Request of EPA for a Type C Coordinated Approval Letter Template

A letter must be sent by certified mail to the EPA Region 5 PCB Coordinator and the Regional Administrator with a cc to the DNR PM containing, at a minimum, the following information:

- Subject Header: Subject: Request for PCB Discharge Cleanup Site Coordinated Approval in Wisconsin
- Site name and address as used by DNR in their correspondence
- DNR BRRTS Number
- RP name, address, phone number and email address if available
- Environmental consultant name, address, phone number and email address if available
- DNR PM name, address, phone number and email address if available
- Language requesting a TSCA coordinated approval, to be led by DNR, in accordance with the One Cleanup Program Memorandum of Agreement between USEPA and DNR.
- Information outlining the progress of the cleanup and at what point the cleanup is at in the NR 700 Series cleanup process.
- A certification that the RP and/or site owner is aware of and will adhere to the TSCA PCB reporting and recordkeeping requirements at subparts J and K of 40 CFR 761.

Attachment 5a
PCB Direct Contact Non-Industrial Soil Residual Concentration Levels (RCLs)

General Introduction

This attachment outlines DNR's recommended approach for determining acceptable non-industrial RCLs at PCB sites in accordance with the requirements in ch. NR 720.

In accordance with ch. NR 720, a RP may propose a different approach than outlined here on a site specific basis.

Non-Industrial Direct Contact RCLs and Unrestricted Closure

The recommended approach for determining whether soil-contaminant levels collected from a site are protective for the direct contact pathway under ch. NR 720 is through the use of the DNR spreadsheet of RCLs that is available at: http://dnr.wi.gov/topic/Brownfields/Professionals.html#tabx2.

The current worksheet dc-RCLs for PCB related contaminants are shown in the following table.

Contaminant	CAS Number	NC RCL (mg/kg)	C RCL (mg/kg)	Not-To-Exceed D-C RCL (mg/kg)	Basis
Tetrachlorobiphenyl, 3,3',4,4'- (PCB 77)	32598-13-3	0.393	0.034	0.034	ca
Tetrachlorobiphenyl, 3,4,4',5- (PCB 81)	70362-50-4	0.131	0.011	0.011	ca
Pentachlorobiphenyl, 2,3,3',4,4'- (PCB 105)	32598-14-4	1.31	0.114	0.114	ca
Pentachlorobiphenyl, 2,3,4,4',5- (PCB 114)	74472-37-0	1.31	0.114	0.114	ca
Pentachlorobiphenyl, 2,3',4,4',5- (PCB 118)	31508-00-6	1.31	0.114	0.114	ca
Pentachlorobiphenyl, 2',3,4,4',5- (PCB 123)	65510-44-3	1.31	0.114	0.114	ca
Pentachlorobiphenyl, 3,3',4,4',5- (PCB 126)	57465-28-8	3.93E-04	3.41E-05	3.41E-05	ca
Hexachlorobiphenyl, 2,3,3',4,4',5- (PCB 156)	38380-08-4	1.31	0.114	0.114	ca
Hexachlorobiphenyl, 2,3,3',4,4',5'- (PCB 157)	69782-90-7	1.31	0.114	0.114	ca
Hexachlorobiphenyl, 2,3',4,4',5,5'- (PCB 167)	52663-72-6	1.31	0.114	0.114	ca
Hexachlorobiphenyl, 3,3',4,4',5,5'- (PCB 169)	32774-16-6	0.001	1.14E-04	1.14E-04	ca
Heptachlorobiphenyl, 2,3,3',4,4',5,5'- (PCB 189)	39635-31-9	1.31	0.114	0.114	ca
Aroclor 1016	12674-11-2	3.93	6.34	3.93	nc
Aroclor 1221	11104-28-2	-	0.159	0.159	ca
Aroclor 1232	11141-16-5	-	0.159	0.159	ca
Aroclor 1242	53469-21-9	-	0.222	0.222	ca
Aroclor 1248	12672-29-6	-	0.222	0.222	ca
Aroclor 1254	11097-69-1	1.12	0.222	0.222	ca
Aroclor 1260	11096-82-5	-	0.222	0.222	ca
Polychlorinated Biphenyls (high risk)	1336-36-3	-	0.222	0.222	ca

It should be noted there could be other soil contaminants in addition to the PCB related contaminants that must be considered for the direct contact soil pathway; hence, use of DNR's spreadsheet of RCLs is recommended.

Note: Notes in s. NR 720.07(2)(b) discuss averaging soil sampling results. Guidance on such averaging is under preparation.

For unrestricted closure under ch. NR 726, it is expected that the non-industrial direct contact RCLs for the individual Aroclors will be met and the TSCA self-implementing level of 1 ppm PCBs will also be met. This means the sampling and analysis results for the individual Aroclors are expected to be presented.

Questions about this attachment may be directed to Resty Pelayo at 608-267-3539 or via email at aristeo.pelayo@wisconsin.gov.

Attachment 5b
PCB Analysis Methods and Laboratories

EPA has, in many instances, accepted the sum of the 7 Aroclors analyzable by SW-846 Method 8082 as representing total PCB concentrations for TSCA compliance, including compliance with TSCA:

- Cleanup regulation applicability determinations
- Self-implementing cleanup levels
- Waste management decisions

Aroclors are different industrial-grade mixtures of up to 209 PCB congeners. It is important to note that soil cleanups often deal not with fresh, but with weathered Aroclors. The weathering processes in soil would cause the loss of less-chlorinated PCB congeners, such that a "weathered" soil-Aroclor analysis may indicate it to be more like another Aroclor with more-chlorinated congeners. For instance, weathered Aroclor-1242 or -1248 may look like Aroclor-1260, so the lab result will be a concentration of Aroclor-1260. There has been an EPA recommendation to add 2 more Aroclors (Aroclor-1262 and -1268) so as not to miss the more-common heavier PCB congeners (e.g., PCB-206) that may comprise 30% of the Aroclors. DNR-certified PCB aroclor labs (such as UW's State Lab of Hygiene) should be able to analyze for 9 Aroclors upon request.

As a result of this recommendation, some EPA Regions have been requiring the analysis of all 9 Aroclors for all cases. At this time, Region 5 is still evaluating the issue and is considering guidelines for specifying the types of site characteristics for which they may require the analysis for all 9. Therefore, persons responding to and investigating sites should be contacting EPA and DNR before sampling plans are developed for any sort of PCB sampling, including Phase 1 investigations, to discuss site characteristics and if sampling for all 9 will be necessary or simply always sample for all 9.

The DNR strongly recommends that the analysis for Aroclor-1262 and -1268 be included when reporting total PCB concentrations based on Aroclors at all sites, regardless of the site characteristics.

The DNR may, based on site characteristics, accept the sum of the 7 Aroclors for the TSCA self-implementing levels for sites undergoing a coordinated approval, are not proposing a risk assessment under NR 722 and using the self-implementing rules to meet TSCA. As noted in Attachment 5a, for compliance with NR 720 soil direct contact RCLs, sampling and analysis results for the individual Aroclors are expected to be presented.

The DNR and/or EPA may require sampling for all 9 for any new sampling required for additional site investigation and, if needed, confirmation sampling after an action is taken, even if initial sampling was only for the 7 Aroclors.

Strictly speaking, total PCBs is the sum of the results for all 209 PCB congeners. A preferred alternative to Aroclor analysis for the purpose of comparison to TSCA's self-implementing levels is the sum of PCB congeners analyzable by DNR-certified PCB-congener labs. (The sum of 19 congeners listed in Method 8082 is not representative of total PCBs.) For example, the State Lab of Hygiene is able to sum the results of 90 congeners for a more robust Total PCB result for comparison to TSCA's self-implementing PCB levels.

The DNR will normally only expect the analysis and the reporting of the results for all 209 congeners, including the PCB congeners with RCLs in the table above (*e.g.* PCB-126, -169), at sites where a RP

proposes a risk assessment under NR 722 as an alternative to the above, or a RP is pursuing a risk-based approach to meet TSCA requirements for a coordinated approval where unrestricted closure is being pursued. If a performance standard cover is to be part of the remedy, then full congener analysis may not be necessary in areas where the cover is to be constructed, depending on total PCB levels proposed to be left under the cover and the overall site characteristics.

Note: The DNR, with EPA concurrence at Type A or C sites, can give consideration to testing for PCB homologs following EPA Method 8270 C-SIM on a case-by-case basis instead of all 209 congeners.

EPA Region 4 guidance for site evaluation should be considered where a risk assessment based approach is proposed.

Sample analysis should be accomplished at DNR certified laboratories.

All PCB certified labs will be able to analyze for Aroclors, but if necessary, RPs should contact the DNR Laboratory Certification Programs or the certified labs themselves to determine if they can do PCB congener analysis for either Total Aroclors (using Method 8082) or all 209 congeners (using Method 1668).

The EPA Region 4 guidance sited above addresses changes in laboratory methods for PCB related contaminants.

Questions about this attachment may be directed to Gary Edelstein at 608-267-7563 or via email at Gary.Edelstein@wisconsin.gov or Steve Geis at 608-266-0245 or via email at Steven.Geis@wisconsin.gov.

Attachment 6
EPA Risk Based Approval Checklist with References to Chs. NR 714 and NR 722

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912

RISK-BASED CLEANUP AND DISPOSAL APPROVAL § 761.61(c) CHECKLIST

IV. Risk-Based Cleanup and Disposal Request to EPA with the following:

Cover letter stating purpose of the submission and signed by the Site owner or operator, or by the party responsible for conducting the cleanup, such as a former Site owner. [NR 722.13(2)(a)]

A plan which includes the following information:

Site background and history. This should include a discussion of past activities (e.g. use of PCBs and/or PCB equipment, storage, manufacturing, etc), site ownership, and current or proposed site uses. This section should also include information on any cleanups/remediations that have occurred at the Site. [NR 722.13(2)(c)]

The nature of the contamination, including the kinds of materials contaminated (§ 761.61(a)(3)(i)(A)). [NR 722.13(2)(c)]

A summary of the standard operating procedures (SOPs) employed during characterization of the Site, including a table and/or cleanup site map showing PCB concentrations measured in pre-cleanup characterization samples. The SOPs must include information on the sample collection procedures and extraction/analytical procedures. Copies of the laboratory analytical reports should be provided to document the extraction/analytical dates and methods and laboratory QC (§ 761.61(a)(3)(i)(B)). [NR 722.13(2)(c)]

If extensive, the laboratory analytical reports may be provided on a CD-ROM.

A Site map showing the PCB sampling locations cross-referenced to the sample identification numbers provided as part of the characterization information. The extent of the identified PCB contaminated area(s) must be clearly identified
(§ 761.61(a)(3)(i)(C)). [NR 722.13(2)(c)]

A cleanup plan for the Site, including the proposed disposal technology and approach, and a cleanup schedule. The plan must include contingency plans in the event that higher PCB concentrations and/or a wider distribution of PCBs are identified during the cleanup (§ 761.61(a)(3)(i)(D)). [NR 722.13(2)(d) & €]

Evaluation of PCB Cleanup Alternatives – An evaluation of PCB cleanup alternatives must be submitted for the following:

- Sites that may not be cleaned up under the self-implementing procedures (see § 761.61(a)(1)(i)), or

- Sites where the proposed cleanup involves leaving PCBs at concentrations greater than the cleanup criteria established under § 761.61(a).

The evaluation should include an alternative to achieve the prescriptive cleanup standard(s) under § 761.61(a). The evaluation should clearly state the reasons why the provisions available under § 761.61(a) cannot be implemented. [NR 722.07(4)(c), 722.07(5)(C), and 722.13(2)€(1)]

If a cleanup will involve the use of an engineered cap, the cap design specifications and a cross-section showing the design should be provided. Please insure that it is clear where the engineered cap will be used. Please note: the use of an engineered cap will require a deed notation documenting this fact and the limitations on the use of the Site. Financial assurance1 and a long-term monitoring and maintenance plan for the cap will be required. In addition, long-term groundwater monitoring may be required to document no migration of PCBs from the Site

(§ 761.61(a)(7)). [NR 722.09(2)(a) and note]

If a cleanup will involve encapsulation of PCBs on a building or structure, please provide the MSDS of the proposed encapsulant and a discussion of the effectiveness of this product for encapsulation of PCBs based on the Site and the receptors at the Site. Please note: the use of an encapsulant under § 761.61(c) will require a deed notation documenting this fact and the limitations on the use of the Site. Financial assurance1 and a long-term monitoring and maintenance plan for the encapsulant(s) will be required.

IV For certain public entities (cities, towns, and municipalities) documentation of financial assurance generally will not be required.

A written certification, signed by: 1) the owner of the property where the cleanup site is located, and 2) the party conducting the cleanup, that all sampling plans, sample collection procedures, sample preparation procedures, extraction procedures, and instrumental/chemical analysis procedures used to assess or characterize the PCB contamination at the cleanup site, are on file at the location designated in the certificate, and are available for EPA inspection (§ 761.61(a)(3)(i)€). [NR 722.15(2)€]

Subpart Q alternative method: If an alternative method of extraction and/or analysis is/will be used, the certification shall include a statement to this fact and that a comparison study which meets or exceeds the requirements of Subpart Q has been completed prior to the verification sampling. In the event that the alternative extraction and/or analytical method was previously validated under Subpart Q using materials from other projects, the laboratory must provide a certification that the sample types used during that comparison study are similar to (e.g., %

organic content, grain size, etc) the sample types that will be cleaned up under the Notification. A copy of the Subpart Q comparison study should be included in the Notification

(§ 761.61(a)(3)(i)€). [NR 722.07(5)]

QA/QC plan for documenting that the cleanup levels have been achieved (e.g. confirmatory sampling/analysis QA/QC, initial testing of encapsulated surfaces, etc). The QA/QC plan should at a minimum include information on the types and numbers of samples; extraction and analytical methods; MS/MSDs (both frequency and acceptance criteria), etc. The QA/QC plan should also discuss data validation. [NR 722.07(5)]

Human Health Risk Assessment and Ecological Risk Assessment. A Human Health Risk Assessment (HHRA) may be required to support a Risk-Based Disposal Request under § 761.61(c) where PCB concentrations above the prescriptive PCB standards at

§ 761.61(a) are left in-place2. The HHRA should evaluate site exposures and provide a justification as to the controls proposed to address these exposures. An Ecological Risk Assessment will be required in the event that wetlands, water bodies, sediments, or other similar matrices are impacted with PCBs regulated under 40 CFR Part 761.

2 A determination on the requirement for submittal of an HHRA will be determined based on the site and the remedial approach. [NR 722.07(5) & 722.11 & 722.15(2)]

In the event that the party conducting the cleanup is not the Site owner, EPA will require documentation that the party conducting the cleanup legally has the authority to access the Site and to conduct the proposed PCB cleanup activities. This documentation for example may be in the form of a Site Access Agreement stating this fact or perhaps in a lease agreement or a property transfer agreement. [NR 722.07(5)(c)]

II. EPA Review of § 761.61(c) submittal [NR 722.15(2)]

EPA will review and provide comments on any deficiencies and/or questions it has regarding any information submitted under the § 761.61(c) process. Once EPA has determined that all deficiencies and/or questions have been addressed, EPA may require public notice and comment. EPA may determine that public notice/comment is not required based on the proposed PCB cleanup standards and plan (see Section III).

Please note: The 30-day EPA review timeframe specified under § 761.61(a) does not apply under § 761.61(c).

III. Public Participation [NR 714]

For § 761.61(c) requests, EPA may conduct a 30-day public notice/comment period. As indicated above, based on the proposed PCB cleanup standards, the remediation plan itself, and/or the public participation that may have been ongoing as part of a state and/or federal program requirement (such as the 401 Water Certification or Conservation Commission process),

EPA may determine that adequate public participation has occurred. If EPA deems public participation is necessary, EPA will work with the Site owner to develop an acceptable public participation process for the Site.

For schools, EPA may require an outreach plan for school users, including parents. This outreach plan will be required when PCBs at greater than

(>) 1 part per million will remain at a school site, when a cleanup is being conducted while school is in session, or if EPA determines that such a plan may be appropriate.

IV. EPA Approval

Following the 30-day public notice/comment period, if warranted, EPA: will respond to pertinent written comments received on the risk-based plan; or will respond to pertinent written comments received on the risk-based plan and will issue the approval with/without modifications; or will not issue the approval, but will require additional information supporting the request to be submitted.

As an additional point of clarification, please note that EPA has issued § 761.61(c) approvals to both single party and multiple parties. This

determination is made based on the Site ownership as well as the proposed risk-based plan and is determined on a case-by-case basis.

IMPORTANT:

Please note that this checklist provides only a summary of the information that Region 1 recommends be included in a risk-based request for sampling, cleanup, or disposal of PCB remediation waste other than prescribed under § 761.61(a) or

§ 761.61(b), or for storage of PCB remediation waste other than prescribed under
§ 761.65. It is for reference only and does not supercede the regulations.

The requestor may include any additional information that supports the proposed PCB cleanup and disposal activities, such as information regarding state regulations, community involvement (especially for schools), and environmental justice communities. In addition, any documentation that has been developed for a state regulatory agency, such as a remedial investigation report, may be submitted to support the pertinent required documentation in lieu of generating a new document.

PLEASE BE AWARE THAT AS SPECIFIED AT 40 CFR § 761.61(c), A RISK-BASED CLEANUP ACTIVITY MAY NOT BE CONDUCTED WITHOUT APPROVAL FROM THE EPA REGIONAL ADMINISTRATOR OR HIS/HER DESIGNEE.

Attachment 7
April 26, 2013 RR Report PCB Notification Article

State and Federal PCB Discharge Notification Requirements

The Department of Natural Resources (DNR) has recently become aware of sites where historical discharges of polychlorinated biphenyls (PCBs) to soil were discovered through sampling conducted several years ago, yet the responsible party (RP) failed to notify DNR, the U.S. Environmental Protection Agency (EPA) or both agencies. DNR is taking this opportunity to remind responsible parties (RPs), their consultants and legal counsel of the legal requirements to notify DNR and EPA about PCB discharges, even if it is a historic discharge, in order to be in compliance with the state and federal laws.

Under s. 292.11, Wis. Stats., (the "Spill Law"), s. NR 706.05, Wis. Adm. Code and the federal Toxic Substances Control Act (TSCA) requirements under 40 C.F.R. Part 761, both DNR and EPA must be notified of a discharge of PCBs immediately upon discovery (e.g., either discovery of a discharge through "knowledge" or through sampling results). Such discharges are required to be appropriately responded to under the state Spill Law. Most PCB discharges are required to be addressed under TSCA; however, those cleanup requirements do not apply to certain PCB discharges if they occurred before a certain date or are below certain concentrations. The exception to this general rule is where EPA determines that the PCB discharge poses "unreasonable risk" at the site.

The state notification procedures for reporting a historic discharge to the department can be found on the DNR's Spills website.

The federal notification procedures for reporting a PCB discharge can be found at the EPA's TSCA Section 8(e) Notices website.

If action is required once the discharge is reported, DNR has entered into an agreement with EPA to cooperate on and coordinate PCB soil cleanups that are subject to both federal and state laws. The One Cleanup Program Memorandum of Agreement (MOA) provides an option for responsible parties to have DNR take the lead in overseeing a PCB soil and/or groundwater investigation and cleanup subject to both federal and state laws. The MOA has established criteria to be used to determine if a PCB site can take advantage of this option. This coordinated approach has the potential to provide cost and time savings as separate reviews and approvals of the response action from each agency are avoided.

DNR has prepared guidance for implementing the MOA. That guidance outlines when a PCB discharge is TSCA regulated. You may view information, download the MOA and guidance from the Remediation and Redevelopment (RR) Program's Environmental Professionals website.

Responsible parties should be advised that the failure to properly notify DNR and EPA, and take the necessary response actions when a PCB discharge is discovered, can have unintended, negative consequences. As mentioned previously, it can result in a situation where the RP may

have satisfied the state Spill Law, but did not comply with TSCA. Thus, in those cases, RPs risks incurring the additional costs of remobilizing and conducting further sampling to satisfy EPA. In addition, the options on how to treat and dispose of a TSCA-regulated discharge may be different than what would be allowed under the state Spill Law. Thus, the RP risks not selecting the appropriate remedy at a site that should have been regulated under TSCA as well.

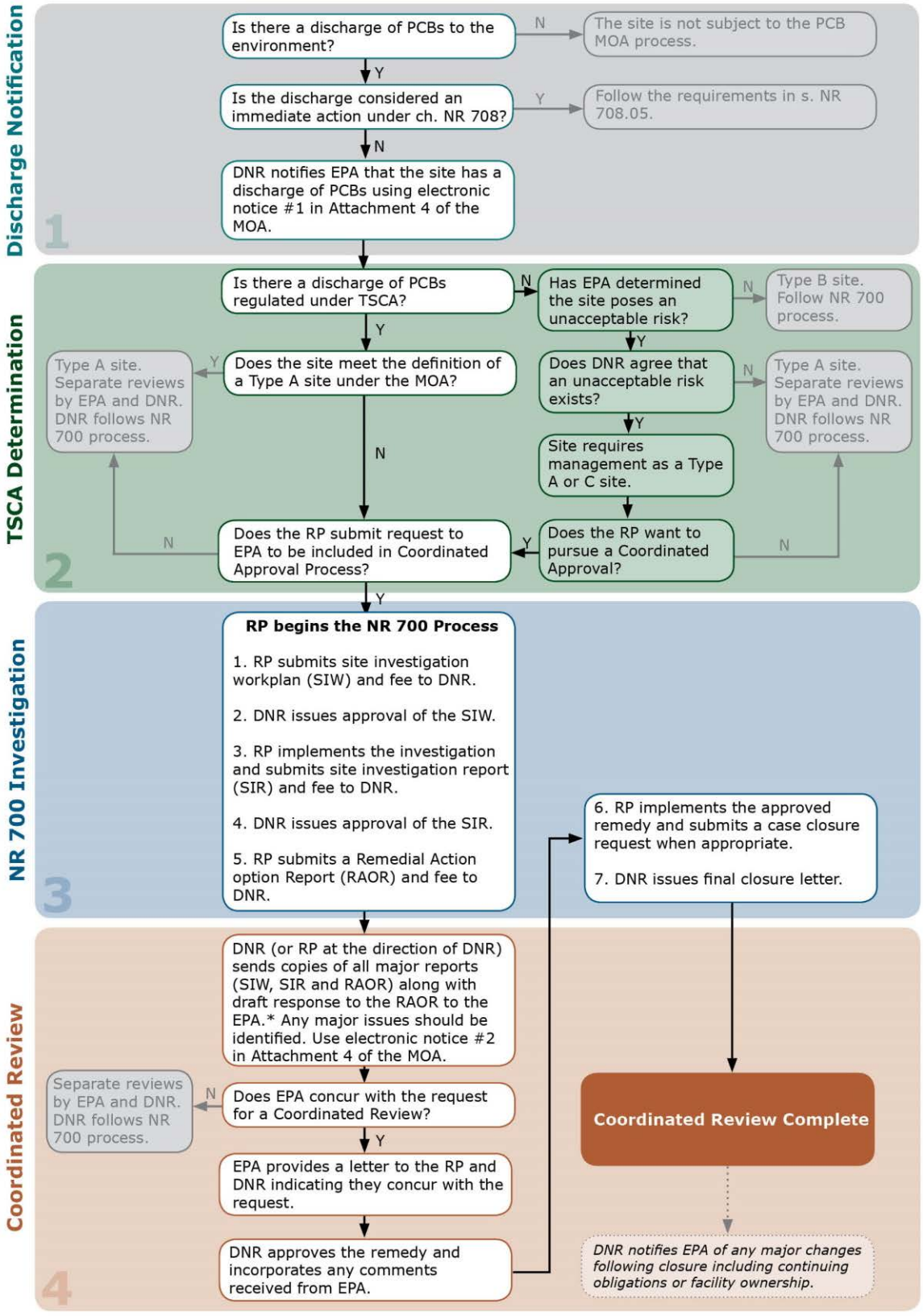
Ultimately, both the Department and EPA may exercise their enforcement authority against a responsible person who fails to properly notify and/or respond to a discharge of PCBs. DNR has the legal authority to assess a penalty of $5,000 per violation for failure to comply with the Spill Law; each day is considered a separate violation. However, DNR and EPA prefer to work cooperatively with responsible parties to ensure that they are in compliance with all applicable laws, and that they minimize their response action costs by not having to incur unnecessary costs that may result by failing to take into account the applicability of the federal TSCA regulations at a site.

Questions about this article and the MOA may be directed to:
Gary A. Edelstein, PE
Phone: 608-267-7563
E-mail: gary.edelstein@wisconsin.gov.

Questions regarding EPA's TSCA and Federal PCB requirements may also be directed to:
Peter Ramanauskas
Phone: 312-886-7890
E-mail: ramanauskas.peter@epa.gov

Attachment 8
PCB Remediation Process Map

This map provides a summary of the major steps in the process of PCB remediation in Wisconsin under the One Cleanup Program Memorandum of Agreement (OCP MOA).



* In many cases, if the DNR and EPA Project Managers agree in advance, DNR can provide EPA with copies of all the major reports (site investigation work plan, site investigation report and remedial action options report) along with a draft response to the remedial action options report at one time. If the case is more complex and/or controversial, the Project Manager may decide to provide the documents and draft responses to EPA following review of each document submitted in order to obtain consensus between the agencies before proceeding to the next step.