DATE: December 14, 2011

TO: Natural Resources Board Members

FROM: Cathy Stepp, Secretary


*Why are these rule changes being proposed?*

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

*What event or action triggered the proposal?*

No one event or action triggered this rulemaking proposal. Instead, the overall process for evaluating and remediating contaminated sites has evolved over the many years since the last major rulemaking occurred. These revisions would make the rules more complete, easier to comply with and consistent with the approach currently being used to address contaminated sites.

*What issues are addressed by this rule?*

The major issues being addressed by this rule making are summarized below:

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 NR 710 because the statutory provision to inventory sites was repealed and use of the existing hazard ranking system is no longer needed to evaluate sites,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

Summary of the rules.

The NR 700 series rules provide a comprehensive, consistent and uniform set of requirements related to the investigation and cleanup of contaminated property. The rules also provide direction on addressing spill situations, carrying out public participation and notification, undertaking enforcement and cost recovery, selecting environmental consultants for state-funded actions, and awarding environmental construction contracts. The proposed rule changes have been developed and modified over the last 3 years in cooperation with a number of external stakeholders, in particular the Brownfields Study Group and the Technical Focus Group.

How does the proposal affect existing policy?

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

Has the Board dealt with these issues before? If so, when and why?

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

Who will be impacted by the proposed rule? How will they be impacted?

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

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

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

Small business analysis.

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

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