Guidance on Wis. Admin. Code ch. NR 726 Case Closure Reconsideration Process

Applicability
This guidance applies to responsible parties\(^1\) (RPs) seeking a Wis. Admin. Code ch. NR 726 case closure approval. The process presented in this document commences once the RP submits a case closure request form to the Wisconsin Department of Natural Resources (DNR) and the DNR determines that it does not have sufficient information to recommend case closure; an RP may request reconsideration of its case closure request upon receipt of a closure not recommended letter from the DNR.

Background
Wis. Admin. Code chs. NR 700 to 799 require persons responsible for a hazardous substance discharge or environmental pollution to take actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state. A fundamental responsibility of the DNR, per Wis. Stat. ch. 292, is to ensure that a person who causes, possesses or controls the contamination takes the response actions necessary under local, state and federal law.

Wis. Admin. Code ch. NR 726 specifies the minimum requirements and conditions that must be met before the site may be granted case closure. If the DNR determines that a closure request has not satisfied Wis. Stat. ch. 292 and Wis. Admin. Code ch. NR 726, written comments are provided to the RP outlining additional data and/or actions needed.

Basic NR 700 Process
Several steps are required to achieve case closure under Wis. Admin. Code ch. NR 726. Wis. Admin. Code § NR 700.11 describes the types and timing of reports and other documents that are required from an RP after notifying the DNR of a hazardous substance discharge or environmental pollution. Wis. Admin. Code § NR 716.15 directs RPs to submit a site investigation (SI) report within 60 days after completion of the field investigation and receipt of laboratory data. Please consult the DNR publication *NR 700 Process and Timeline Overview* (RR-967) for more information about required submittals and timelines. (Go to [dnr.wi.gov](http://dnr.wi.gov), search “RR-967.”)

All required submittals and reports are to be provided to the DNR within the timeframes specified by code – as summarized in the DNR publication RR-967 – before a case closure request is submitted. RPs *should not submit what they consider to be a site investigation (SI) report as part of their case closure submittal form.* An SI report is a separate document and must be submitted in a format that complies with Wis. Admin.

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\(^1\) “Responsible party” or “responsible parties” means any of the following: (a) any person who is required to conduct a response action under Wis. Stat. ch. 292, (b) persons liable to reimburse the DNR for the costs incurred by the DNR to take response action under Wis. Stat. chs. 289 and 292, or (c) owners and operators of solid waste facilities that are subject to regulation under Wis. Admin. Code ch. NR 508. See Wis. Admin. Code § NR 700.03(51).

Publication: RR-102
dnr.wi.gov
Search: closure
Code § NR 716.15 following the timeframes specified in code unless otherwise approved in advance by the DNR. When a case closure request is submitted, the DNR will review the submitted materials to ensure all information required by Wis. Admin. Code ch. NR 726 is included with the request. That includes ensuring that all required documents (e.g., SI report) were previously submitted by the RP. Staff discuss data and technical elements of the case closure request with other project managers and supervisors. The closure request is reviewed for compliance with Wis. Admin. Code ch. NR 726 and the DNR determines to either: (a) approve the closure; or (b) recommend that additional information is needed to comply with Wis. Admin. Code ch. NR 726.

More detailed information about the DNR’s case closure request process is available at dnr.wi.gov, search “environmental professionals.” A link to the Case Closure Request Form (4400-202) is also available on this web page.

<table>
<thead>
<tr>
<th>Are you ready for case closure under Wis. Admin. Code ch. NR 726?</th>
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<tbody>
<tr>
<td>Required documents that must be submitted to the DNR prior to case closure, unless otherwise directed:</td>
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<tr>
<td>☐ Ch. NR 708 reports and documentation for any immediate or interim actions.</td>
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<tr>
<td>☐ Ch. NR 712 professional certifications and signatures are included with applicable submittals.</td>
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<tr>
<td>☐ Ch. NR 716 work plan and site investigation report.</td>
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<tr>
<td>☐ Ch. NR 722 remedial action options report (exception is for Dry Cleaners Environmental Response Fund sites), with the selected remedial action identified.</td>
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<tr>
<td>☐ Ch. NR 724 design, construction documentation, operation, maintenance and monitoring plans and reports, including vapor mitigation commissioning.</td>
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<tr>
<td>☐ Ch. NR 725 submittal(s) that confirms that continuing obligations were identified and affected property owners and occupants were notified by the RPs prior to submitting the case closure request.</td>
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<tr>
<td>☐ Ch. NR 726 case closure form and documentation substantiating compliance with Wis. Admin. Code chs. NR 700 to 799.</td>
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Case Closure Reconsideration Process

If case closure is not recommended, the RP will receive a letter from the DNR outlining the legal and technical reasons for not recommending case closure. If the RP disagrees with the written reasons provided by the DNR, the following reconsideration steps are available. This process commences once the DNR has a written or verbal request from the RP, not the environmental consultant, to initiate the closure reconsideration process. The RP may either communicate to the DNR project manager or regional team supervisor its desire to use the case closure reconsideration process. The process includes the following three steps:

Step one – Meet with regional staff and supervisor
- The project manager and supervisor will meet with the RP and its consultant within 10 business days of the RP’s request to initiate the closure reconsideration process.
- The RP and/or its consultant present information and explanations to the DNR to document satisfactory compliance with Wis. Admin. Code ch. NR 726 in response to the written technical comments provided to them by the DNR.
- The DNR will consider the request for case closure and provide written documentation of its reconsideration determination to the RP within 10 business days of the meeting.
If the DNR determines that case closure is appropriate, the reconsideration process is complete and a closure letter (or remaining actions needed letter, as appropriate) will be sent to the RP.

If the DNR and the RP agree on a path forward that involves agreed-upon additional work, then closure reconsideration can stop at step one. If the DNR agrees with some of the RP’s comments, an amended technical letter will be issued to the RP clarifying the agreement and the next steps.

If the DNR determines that not all applicable provisions in Wis. Admin. Code ch. NR 726 were satisfied and case closure is not yet recommended, and the RP would like further DNR review of the case, the reconsideration process will continue to step two.

**Step two – Meet with RR Program directors**

- The RP and its consultant will meet with the RR Program director and field operations director (the “directors”) within 10 business days of the step-two meeting request to review the closure request and preceding recommendations. This meeting will involve the DNR regional supervisor and project manager.
- After the meeting, the DNR will inform the RP of the DNR’s final decision within five business days, unless there is mutual agreement for a longer timeframe due to the complexity of the issues.
  - If the DNR determines that case closure is appropriate, the case reconsideration process is complete and a case closure letter (or remaining actions needed letter, as appropriate) will be written and sent to the RP.
  - If the DNR and RP come to agreement with some of the RP’s comments, an amended technical letter will be issued to the RP clarifying that agreement and the next steps to achieve case closure.
  - If the DNR determines that not all applicable provisions in Wis. Admin. Code ch. NR 726 were satisfied, the DNR will provide a case closure denial letter to the RP. This letter will be provided by certified mail to the RP.

**Step three – Additional data provided or appeal filed**

Following a final DNR decision to deny case closure, the following options are available to the RP:

- Provide the additional data and/or perform the actions identified by the DNR as necessary to obtain closure and resubmit the case closure request; or
- Appeal the DNR’s decision using procedures authorized in Wis. Stat. ch. 227.

Notice of Appeal Rights Procedures:

- If the RP believes it has a right to challenge the decision, the RP should be aware that the Wisconsin statutes and administrative rules establish time periods within which requests to review the DNR decisions must be filed. For judicial review of a decision pursuant to Wis. Stat. §§ 227.52 and 227.53, the RP has 30 days after the decision is mailed or otherwise served by the DNR, to file the petition with the appropriate circuit court and serve the petition on the DNR. Such a petition for judicial review must name the “Department of Natural Resources” as the respondent.
- To request a contested case hearing pursuant to Wis. Stat. § 227.42, the RP has 30 days after the decision is mailed or otherwise served by the DNR, to serve a petition for hearing on the secretary of the DNR. All requests for contested case hearings must be made in accordance with Wis. Admin. Code § NR 2.05(5), and served on the DNR secretary in accordance with Wis. Admin. Code § NR 2.03. The filing of a request for a contested case hearing does not extend the 30-day period for filing a petition for judicial review.
Summary
The DNR’s case closure reconsideration process expands opportunities for RPs to present their case to the DNR if they do not agree with the DNR’s recommendation not to approve case closure. It also identifies prompt response time commitments.

**Case closure not recommended**
- The RP requests case closure reconsideration process

10 Days

**Step one: Meet with DNR regional staff and supervisor**
- The RP presents information to document compliance
- The DNR provides decision within 10 business days

10 Days

**Step two: Meet with RR Program directors**
- The RP requests review by RR Program directors
- The DNR meets with RP within 10 business days of request
- The DNR provides decision within 5 days of meeting

5 Days

**Step three: Additional data provided or appeal filed**
- If request denied, the RP may provide additional data and/or perform additional actions and resubmit request
- The RP may appeal decision using Wis. Stat. ch. 227

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. 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.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Chief, Public Civil Rights, Office of Civil Rights, U.S. Department of the Interior, 1849 C. Street, NW, Washington, D.C. 20240.

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