



Guidance on Post-Closure Modifications

Purpose

The purpose of this guidance is to aid in the preparation and review of post-closure modification (PCM) submittals to the Wisconsin Department of Natural Resources (DNR). Information about the types of PCMs, the process, fees and types of responses available from the DNR is provided. This guidance is for use by property owners, responsible parties, environmental consultants and DNR staff. It is based on authority provided under Wisconsin Statutes (Wis. Stat.) § 292.12(6) and Wisconsin Administrative Code (Wis. Admin. Code) ch. NR 727.

Introduction

PCMs are changes made to a property, site or facility, as defined in Wis. Admin. Code § NR 700.03, with continuing obligations (COs) applied in the DNR case closure letter under Wis. Admin. Code ch. NR 726.

A PCM submittal may be used to notify the DNR of a proposed change to a CO. DNR notification is required at least 45 days before making certain changes to a CO, such as removing or replacing a cover or changing the land use, as described in Wis. Admin. Code § NR 727.07; DNR approval is also required (Wis. Stat. §292.12(6)). Following notification, the DNR determines if further action is required to be protective of human health, safety, welfare or the environment.

In the event that a CO was satisfied or nullified at a property, site or facility, a PCM submittal may be used to request modification to, or removal from, the database, or to request that a deed restriction is updated or extinguished through a deed notice.

Common PCMs are summarized in Table 1. Additional information regarding PCMs is included in DNR publication RR-987, *Post-Closure Modifications – Changes to Property Conditions after a State-Approved Cleanup*. (Go to dnr.wi.gov, search “RR-987.”)

Submittal Process

The PCM process includes the following basic steps.

1. **Prior to submittal:** Notification is recommended to property owners, right-of-way (ROW) holders or occupants of the affected property or to other parties if the proposed change affects a CO. The DNR recommends notifying property owners, ROW holders and occupants per the notification requirements and process defined in Wis. Admin. Code ch. NR 725. The DNR recommends providing notification to these parties at least 30 days prior to submittal of the PCM request.
2. **PCM submittal to the DNR:** The DNR recommends that applicants submit PCM requests using DNR Form 4400-237, *Technical Assistance, Post-Closure Modifications and General Liability Clarification Requests*. (Go to dnr.wi.gov, search “4400-237.”)

To notify or to determine the correct ROW holder, contact the Wisconsin Department of Transportation (WI DOT) if the road is a state trunk or U.S. highway, including business routes. If the ROW affected is part of a connecting or county highway or local road, then contact the applicable city, village or county office.

- The submittal must include the applicable Wis. Admin. Code ch. NR 749 fees.
- Send the request with fees to the DNR.
- If the proposed change is a remedial action (e.g., removing or replacing a cover), the PCM request shall include the plans, reports and specifications as required under Wis. Admin. Code ch. NR 724.
- For proposed changes that are not remedial actions (e.g., change in land use), the DNR recommends that applicants provide adequate information and figures, maps, photographs, sample data results, etc., as appropriate to explain the intended change to the property, site or facility. Include the BRRTS # from the case closure letter.

3. DNR review and response to the PCM request: The DNR may request additional information, if needed, prior to responding to the request.

- If the DNR determines that the requested change(s) will be protective of human health, safety, welfare or the environment, the response may be a notice to proceed, which identifies what changes the DNR approves.
- If the submittal included a proposed remedial action, the DNR may issue a response indicating that DNR approval is required prior to proceeding with the proposed action (Wis. Admin Code § NR 724.07).
- The DNR may determine that additional actions are necessary to protect human health, safety, welfare or the environment. In rare cases, a decision may be made to reopen a site if the criteria of Wis. Admin. Code § NR 727.13 are met.
- If the PCM submittal was to notify the DNR of a change that was already made (e.g., property boundaries changed), the response may be an addendum to the closure letter, clarifying the change to the applicable CO(s) or to the site contamination boundaries.
- The DNR’s response and any applicable documentation will be uploaded to BOTW.

4. Proposed Action is Conducted: The applicant may proceed with the changes as identified in the notice to proceed response from the DNR.

5. Documentation:

- If the change included a remedial action, documentation of construction and completion shall be submitted to the DNR (Wis. Admin Code § NR 724.15). Revisions to the affected operation and maintenance plans must also be submitted (Wis. Admin Code § NR 724.14(4)), as applicable.
- Upon completion of changes that are not remedial actions (e.g., change in land use), the DNR recommends that the applicant provides documentation sufficient to document the change to the DNR. Documentation may include updated maps, figures, photographs, etc., as appropriate.

The DNR project manager assigned to the site can be determined by using the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web (BOTW). Go to dnr.wi.gov and search “BOTW.”

For more information on submitting documents and fees to the Remediation and Redevelopment Program, see DNR publication RR-690, “Guidance for Submitting Documents.” (Go to dnr.wi.gov, search “RR-690.”)

6. Final DNR Review and Response: Upon receipt and review of the documentation, the DNR will provide a response.
- The response may be an addendum to the case closure letter (following a notice to proceed and completion and documentation of the changes).
 - For situations where a CO has not been substantively affected or changed, the response may be an email or a written response; the response may simply indicate that documentation was added to the site file.

PCM Requests

A PCM request may include an entire site or facility, a property or a portion of a property. More than one property may be included in one PCM request. The request may include all the planned changes; however, if all changes are unlikely to occur within the same timeframe, separate requests should be submitted to address subsequent phases.

Adjoining properties may be addressed within one request. If there are different property owners for adjoining properties, one request may be submitted for the site. This option is meant to address sites that were subdivided and for which a common action is being considered on the adjoining parcels. Alternatively, each property owner may submit a separate PCM request.

Each PCM request requires a separate fee (see Table 1 for fees associated with common PCM requests).

Did an agency other than the DNR close your site?

Submit PCM requests and applicable fees for sites closed by the former Department of Commerce, the Department of Safety and Professional Services (DSPS) or by the DNR to the DNR. PCM requests for sites closed by the Department of Agriculture, Trade and Consumer Protection (DATCP) should be submitted to DATCP; fees for PCM request to DATCP must be submitted to DNR.

Updating or Extinguishing a Deed Restriction

In situations where work at the site satisfied a CO, a deed restriction can be updated or extinguished through the PCM process at the request of the property owner. The original deed restriction remains in the property record. A deed notice that references a written determination on the satisfaction of one of more COs is recorded to update the property record. The written determination is prepared by the DNR and summarizes the actions taken to satisfy the CO.

The DNR will prepare the deed notice in a format consistent with Wis. Admin. Code § NR 726.13 and present it to the county Register of Deeds office for recording. For more information on the process for satisfaction of the conditions in a deed restriction, go to dnr.wi.gov and search “RR-045.”

Table 1

PCMs, Other Actions and Applicable Fees

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
General Summary	<p>DNR approval is required for action to be taken as identified in the closure letter, deed restriction or by Wis. Admin. Code ch. NR 727, or if the applicant requests a change to the COs applied at closure or for changes in property boundaries (clarification of contaminated site boundaries). The fees also apply to actions taken at a VPLE site that has already received a Certificate of Completion.</p> <p>Certain actions are prohibited without prior written DNR approval, as defined in either the closure letter or a maintenance plan, typically when a cover has been required.</p> <p>Notification to the DNR is required at least 45 days before taking certain actions, under Wis. Admin. Code § NR 727.07. Written DNR approval is required under Wis. Stat. § 292.12(6), as defined in the closure letter or deed restriction.</p>	See site approval letter or deed restriction for sites closed before 2007.	<p>\$1050 + database fees</p> <p>Responses vary depending on the type of request.</p>

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
Replacement of a cover (for soil)	Repair or replacement of a cover with the same material or equally protective material over the same extent, and any soil that was disturbed is replaced in the same depth and location from which it was removed, or soil is disposed at a landfill. This type of action is typically due to limited utility work. (See publication RR-987, <i>Post-Closure Modifications – Changes to Property Conditions after a State-Approved Cleanup.</i>)	Notification and approval required	No fee for a DNR response Response may be via email.
Cover repair or replacement with no soil removal, disturbance or regrading (for soil)	Repair, removal or replacement of a cover with an equally protective cover over the same extent, provided there is no removal, disturbance or regrading of site soil	Notification and approval required	No fee for a DNR response. Response may be an email.
Cover repair or replacement with soil disturbance, excavation or grading (cover for soil)	Repair, removal or replacement of a cover with an equally protective cover over the same extent, with cover removal, soil disturbance or excavation or regrading of site soil	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
Filling on covered or paved areas (cover for soil)	Adding fill on a required cover, including paved areas required to maintain a surface cover. This is typically a prohibited activity in the closure letter or maintenance plan, without prior DNR approval.	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.
Plowing over a cover (for soil)	Plowing for agricultural purposes where a cover CO has been required. This is typically a prohibited activity in the closure letter or maintenance plan, without prior DNR approval.	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.
Construction or placement of a building or other structure on a cover (for soil)	Construction or placement of a building or other structure on a required cover. This is typically a prohibited activity in the closure letter or maintenance plan, without prior DNR approval.	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.
Structural Impediment Removal	Removal of a structural impediment Upon removal, completion of the site investigation or remedial action is required under Wis. Admin Code NR 727.	Notification required DNR may require additional action.	\$1050 + database fees Response is typically a closure addendum letter. A site may be reopened, based on site-specifics.

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
Change from industrial to non-industrial land use	Change in land use from industrial (required CO) to non-industrial use. These PCM requests are for sites with industrial soil standards applied at closure. Application of industrial soil standards was based on industrial land use exposure assumptions.	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.
VI – Change in use of a vapor mitigation system	Change in use of a vapor mitigation system, either a passive or active system (shutting off, change to system operation or design, etc.)	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.
VI – change in property use from non-residential to residential use setting	Change in land use from a non-residential setting to a residential setting, including where vapor risk screening levels were based on non-residential setting exposure assumptions at closure. This may include sites or facilities where exposures applicable to non-residential settings, (i.e., commercial or industrial uses, or continued use of the compound of concern), changes to a residential setting (i.e., single or multiple family dwellings, or educational, childcare and senior care facilities).	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
VI – future concern (new or revised construction over residual contamination)	Changes in construction of an existing building or construction of a building over residual soil or groundwater contamination by volatile compounds, including construction of a building where one did not exist at closure, but where construction of a building without adequate vapor control may result in a completed exposure pathway. This category includes changes in construction of occupied buildings (modifications, expansion, remodeling).	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.
Change to a site-specific CO	Site-specific conditions, as specified in the closure letter, including any other situation where the agency required notification, on a case-by-case basis, including changes in use or occupancy of a property.	Notification required DNR may require additional action.	\$1050 + database fees Response is likely a closure addendum letter.
Changes to a sediment cap or other sediment engineered control	Changes to a sediment cap/engineered control including removal, repair or enhancement.	Notification and approval required	\$1050 + database fees Response is likely a closure addendum letter.
Satisfaction of one or more COs	A site or property now satisfies one or more or all COs imposed on the site or on an affected property or properties.	Notification is not required, but is recommended	\$1050 + database fees for a DNR response Response is likely a closure addendum letter.

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
Site or one or more affected properties meets soil or groundwater standards applied at closure	A site or property now has contaminant levels which are less than either soil residual contaminant levels or groundwater enforcement standards or both.	Notification is not required, but is recommended	\$1050 + database fees for a DNR response Response is likely a closure addendum letter.
Property boundary changes (in relation to COs applied)	Property boundary changes have occurred due to redevelopment, splitting or combining properties, and the applicant wants the site contamination boundaries redefined. This is typically done by excluding certain parcels where COs were not imposed.	Notification is not required, but is recommended	\$1050 + database fees for a DNR response Response is likely a closure addendum letter.

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
Updating or Extinguishing a Deed Restriction	<p>Applicant requests a PCM for a site or property with a deed restriction. In some cases, applicants request a closure addendum letter to replace or update a deed restriction. This process includes use of a deed notice.</p> <p>If all the conditions of the deed restriction have been met (satisfied or extinguished), the written determination is prepared by the DNR and summarizes the actions taken to satisfy the CO. The DNR will prepare the deed notice.</p> <p>If the applicant wants to file a deed notice that references a closure letter addendum, without having satisfied the conditions of the deed restriction (updated), DNR will prepare the deed notice.</p>	NA	<p>\$1050 + database fees</p> <p>Response is a closure addendum letter and written determination.</p>
Filling and sealing of monitoring wells	<p>Submittal of filling and sealing forms for remaining monitoring wells, per the closure letter/CO, under Wis. Admin. Code ch. NR 141. To document filling and sealing, use the <i>Well/ Drillhole/ Borehole Filling and Sealing Form</i> 3300-005. Go to dnr.wi.gov and search "Form 3300-005."</p> <p><i>The DNR will document in BOTW that the CO has been met once all monitoring wells required to be filled and sealed have been, with Action Code 104 if this was the only CO, or with Action Code 235 if COs other than MW filling and sealing were required and still apply. Filling and sealing forms are tracked using Action Code 43, and forms are included in the site file in BOTW.</i></p>	<p>Submittal of the well forms is required.</p> <p>Notification and approval prior to well filling and sealing are not required.</p>	<p>No fee</p> <p>\$1050 if a DNR response is requested.</p> <p>Response would be a closure addendum letter.</p>

PCM	Description	DNR Notification or Written Approval Required (per Wis. Admin. Code ch. NR 724, ch. NR 727, Wis. Stat. § 292.12(6) or closure letter)	NR 749 Fee* and End of Process DNR Response
Submittal of Post-Closure Sample Results	Sample results collected post-closure (typically via Phase II Environmental Site Assessments) must be submitted to DNR if contaminant concentrations exceed detection limits and the compound is not naturally occurring. The DNR will consider whether the data is from the previous discharge and whether an action might be needed. Typically, only data from a pathway not previously investigated, compounds not previously found, or compounds at significant levels might result in further action being considered.	Notification required. DNR may require additional action.	

* A Wis. Admin. Code ch. NR 749 fee is not required when:

- a DNR response is not requested, or
- the party is required to notify the DNR or to submit certain information, but where DNR approval is not required. *If a response is desired, a fee may be required.*

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