

Wis. Admin. Code ch. NR 712 Qualifications and Certifications (RR-081)
Wisconsin Department of Natural Resources
March 2018

This draft document is available for public comment for 30 days. Following completion of the public comment period, all comments will be carefully considered and revisions will be made as appropriate. A comment response summary and a final document will be posted on this web page within 45 days of the end of the comment period.

In addition, the RR Program will host a question and answer session on the qualification and certification requirements in Wis. Admin. Code ch. NR 712 as part of the NR 700 Focus Group meeting scheduled for March 12, 2018. Meeting logistics and agenda can be found on the [DNR's public meetings calendar](#) (dnr.wi.gov search "public meetings").

Send comments concerning this document to Christine Haag at Christine.Haag@wisconsin.gov.

This document is for use by persons who hire and those that provide services associated with conducting certain environmental response actions in Wisconsin. It identifies the necessary professional qualifications and certifications for performing and supervising work, and the requirement for signing and certifying specific submittals for actions conducted under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700 - 754. This document does not describe the personnel qualifications required by Wis. Admin. Code for sampling, fieldwork and the development of plans for field activities for response actions.

History of the definition of Hydrogeologist in DNR's Administrative Code

Wis. Admin. Code § NR 712.03(1) was promulgated in 1994 and became effective in 1995. It incorporated the then-existing NR 600.03(98) definition of hydrogeologist: *"a person who is a graduate of an accredited institution of higher education and who has successfully completed 30 semester hours or 45 quarter hours of course work in geology. At least 6 semester hours or 9 quarter hours of the geology course work shall be hydrogeology, geohydrology or groundwater geology. This person shall also have acquired through education and field experience, the ability to direct the drilling of borings and the installation and development of wells, describe and classify geologic samples and evaluate and interpret geologic and hydrogeologic data."* This definition remained in effect, with only minor alterations, from 1994 to 2013.

The 97-99 state budget bill that became Wisconsin Act 27 included a provision to create a certified remediation professionals program that would have required persons who perform certain cleanup activities to be certified by DNR. This provision was vetoed in favor of implementing Wis. Admin. Code ch. NR 712. (See attached summary.)

In 2000, the Wisconsin Examining Board of Professional Geologists, Hydrologists and Soil Scientists (GHSS), promulgated Wis. Admin. Code chs. 1-5 to specify general requirements and procedures which apply to the licensing of professional geologists, professional hydrologists and professional soil scientists.

In 2013, Wis. Admin. Code § NR 712.03(1) was amended to add the requirement that a "hydrogeologist" also must be licensed as a hydrologist or registered as a geologist with the

Wisconsin Department of Safety and Professional Services (DSPS), which oversees the GHSS Examining Board. The course hours and experience requirements remained in the rule.

The minimum standards of experience and professional qualifications for persons who perform and provide certain environmental response services and scientific evaluations, as stated in several DNR codes, has remained largely stable over the past few decades. The establishment of professional licensing standards by GHSS in 2000, and the incorporation of these standards in 2013 in Wis. Admin. Code § NR 712.03(1), were the only significant, related changes.

Since the early 1990s, the Remediation and Redevelopment program has solicited public input on many issues, including the definition of hydrogeologist, through the NR 700 Focus Group, the Brownfields Study Group and various rule making processes. The following timeline summarizes the history of the definition of hydrogeologist in Wis. Admin. Code ch. NR 712.

- 1994 Wis. Admin. Code ch. NR 712 was promulgated in May 1994. Implementation was delayed until May 1995 to allow affected consultants an opportunity to comply with the new code requirements. The 1994 definition of hydrogeologist in Wis. Admin. Code ch. NR 712 was the same as the existing definition in Wis. Admin. Code § NR 600.03(98).
- 1995 Wis. Admin. Code ch. NR 712 went into effect.
- 1997 The 97-99 state budget bill that became Wisconsin Act 27 included a provision to create a certified remediation professionals program that would have required persons who perform certain cleanup activities to be certified by DNR. This provision was vetoed in favor of implementing Wis. Admin. Code ch. NR 712. (See attached summary.)
- 2000 Wis. Admin. Code GHSS §§ 1-5 went into effect, specifying requirements for licensure of professional geologists, professional hydrologists and professional soil scientists.
- 2008 From November 2008 to July 2010, public input on proposed changes to Wis. Admin. Code chs. NR 700-754 was obtained during 10 meetings of the NR 700 Focus Group and Brownfields Study Group. Comments were received from a diverse group of parties. No comments were received regarding the proposed revisions to Wis. Admin. Code ch. NR 712 (which included the (then) new requirement to be licensed or registered under Wis. Admin. GHSS §§ 1-5).
- 2012 In May 2013, 5 public hearings were held to obtain comments on proposed revisions to Wis. Admin. Code chs. NR 700-754. The hearings were held in Madison, Milwaukee, Green Bay, Rhinelander and Eau Claire. A total of 20 people attended. Written comments were accepted until May 31, 2012. No public comments were received regarding the proposed changes to Wis. Admin. Code ch. NR 712.
- 2013 In November 2013, Wis. Admin. Code § NR 712.03(1) was amended, and the current definition of hydrogeologist went into effect. Since this date, the code defines hydrogeologist to include DSPS registration as a geologist or licensure as a hydrologist, in addition to the long-standing requirements for education and experience specific to hydrology and geology.

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 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.

1997 certified professionals

responsibility requirements for solid waste facilities; (f) requirements for transfer of responsibility for long-term care of a solid or hazardous waste facility with transfer of ownership of the property; (g) enforcement procedures for solid waste facilities licensed on or before January 1, 1977; (h) requirements to take corrective action to protect human health or the environment from any spill, leak or other release into the environment of a hazardous substance at a facility that stores, treats or disposes of hazardous waste; (i) orders by DNR to take action necessary to protect human health or the environment; (j) the requirement that a person who possesses, controls or causes a discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable; (k) the requirement that the person who possessed, controlled or caused the discharge of a hazardous substance shall reimburse DNR for its costs of responding to the discharge; (l) the requirement that DNR may direct the person to take preventive measures and may specify necessary preventive measures by emergency or special order; and (m) the obligation to repay DNR for costs of responding to environmental pollution at the site.

Specify that the exemption from liability would not apply to hazardous substances for which the municipality is responsible as a generator or transporter and which were disposed in the landfill during the time that the landfill was in operation. Use the same definitions of generator and transporter as are included in the local government negotiation and cost recovery program. (Generator would mean a person who, by contract, agreement or otherwise, either arranges or arranged for disposal or treatment, or arranges or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, if the disposal or treatment is done by another person at a site or facility owned and operated by another person and the site or facility contains the hazardous substance. Transporter would mean a person who accepts or accepted a hazardous substance for transport to a site or facility.)

Require that a municipality that receives DNR approval of an exemption from liability shall: (a) obtain prior approval from DNR for any proposed uses of the property, for any physical disturbance of the soil and for any construction on the property; and (b) allow access to the property by any person who, in connection with the closed landfill, is required to conduct monitoring, to operate and maintain equipment or to undertake remedial action.

[Act 27 Section: 3679p]

1997 ACT 27

(FROM FISCAL BUREAU SUMMARY)

1997-99 STATE BUDGET

40. **CERTIFIED REMEDIATION PROFESSIONALS PROGRAM**

	Jt. Finance (Chg. to Base)		Assembly (Chg. to JFC)		Senate/Leg. (Chg. to Assem.)		Veto (Chg. to Leg.)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions	Funding	Positions	Funding	Positions
PR	\$169,600	2.00	-\$169,600	-2.00	\$169,600	2.00	-\$169,600	-2.00	\$0	0.00

Joint Finance: Provide \$74,500 PR in 1997-98 and \$95,100 PR in 1998-99 and 2.0 PR positions and create a certified remediation professionals program that would require persons who perform certain cleanup activities to be certified by DNR. Require that each application for an initial or renewal certificate be accompanied by a fee in an amount, established by rule, that is sufficient to cover all costs of administering and enforcing the program. The program would include the following provisions.

a. Require that as of April 1, 1998, a person: (1) may not submit a report to DNR, Commerce or DATCP with respect to a covered activity unless the report is prepared by, or under the direction of, a certified remediation professional; or (2) may not conduct a covered activity unless the person is, or is under the direction or supervision of, a certified remediation professional. Specify that the requirement would not apply to a report prepared, or an activity performed, by a state employe acting within the scope of his or her employment.

b. Define "covered activity" as: (1) corrective action under the agricultural chemical cleanup program; (2) petroleum tank cleanup under the petroleum environmental cleanup fund award (PECFA) program or Commerce regulation of non-PECFA eligible petroleum tanks; (3) closure and long-term care of unlicensed hazardous waste facilities; (4) corrective action at facilities that store, treat or dispose of solid waste or hazardous waste; (5) response to a discharge of a hazardous substance; (6) remedial action under the purchaser limited liability program; (7) environmental assessment under the lender limited liability program; (8) environmental repair of sites or facilities contaminated by environmental pollution; (9) response, cleanup or removal of an abandoned container; or (10) any other environmental remedial action specified by DNR by rule. Specify that "covered activity" does not include an emergency response under the hazardous substances spill, environmental repair and abandoned containers statutes.

c. Define "report" as a report of a site investigation, a report of interim actions prior to remedial action, a report of the design of a proposed remedial action plan, a report of a site closure or any other report designated by DNR, Commerce or DATCP by rule.

d. Direct DNR to promulgate rules necessary to implement the program in consultation with all state agencies that have oversight responsibility for programs related to environmental remediation and with other interested persons. Require that the rules include requirements for education, continuing education, training, experience and standards of professional conduct for certified remediation professionals. Specify that the requirements and standards shall be sufficiently stringent so that covered activities conducted by or under the direction or supervision of a certified remediation professional and all reports related to covered activities that are prepared by or under the direction or supervision of certified remediation professionals are rendered in a manner that protects public health, safety, welfare and the environment and that is consistent with applicable statutes and rules.

- e. Require DNR to promulgate emergency rules, without the finding of an emergency, by February 1, 1998, to implement the program. Require that the emergency rules authorize a person to become a certified remediation professional by certifying to DNR that the person possesses the minimum education and experience required under the rule for certified remediation professionals. Exempt DNR from the requirement to publish notices of applications for certificates under the emergency rule. Specify that a certificate issued under the emergency rule would be valid until such time, as determined by DNR, that a person may become certified under permanent rules promulgated by DNR or until the certificate is revoked. The emergency rules would remain in effect for a period not to exceed two years.
- f. A certificate under the program may only be issued to an individual and could not be transferred.
- g. DNR would periodically publish notice of each application for a certificate, approval or denial of a certificate, revocation of a certificate and termination of a certificate. Prohibit DNR from approving an application for an initial or renewal certificate until at least 30 days after the notice of application for the initial or renewal certificate has been published. Direct DNR to promulgate rules for the periodic publication of notice of applications.
- h. An initial certificate may only be granted or renewed if the applicant or the holder of the certificate is in compliance with all requirements under the program and under rules promulgated by DNR, Commerce and DATCP. Suspend or revoke a certificate if DNR, Commerce or DATCP determine that the individual holding the certificate fails to comply with all requirements under the program and under rules promulgated by the agencies.
- i. Authorize DNR to bar an individual whose application for an initial certificate or a renewal certificate is denied, or whose certificate is revoked, from applying for a certificate for a period determined by DNR. If a certificate is revoked, DNR would be authorized to permanently bar the individual from applying for a certificate.
- j. Require a certified remediation professional to obtain and maintain insurance against loss, expense and liability, including those caused by pollution, resulting from errors, omissions or neglect in the performance of any professional service in an amount of at least \$1,000,000 per claim and \$1,000,000 in annual aggregate claims, with a deductible of no more than \$100,000 per claim.
- k. Prohibit a person from advertising or otherwise holding himself or herself out to be a certified remediation professional unless that person possesses a valid certificate.
- l. Authorize employes or agents of DNR, Commerce or DATCP to at any reasonable time enter any site or building for the purpose of investigating, sampling or inspecting any condition,

equipment, practice or property relating to a covered activity conducted, supervised or directed by a certified remediation professional.

m. Authorize employees or agents of DNR, Commerce or DATCP to seek a special inspection warrant authorizing entry to a site or building if permission to enter is denied or if one of the three departments determines that entry without prior notice is necessary to enforce the program.

n. Require a certified remediation professional to provide any information requested by DNR, Commerce or DATCP relating to his or her activities as a certified remediation professional. If one of the three agencies has reason to suspect that a violation of any statute or rule related to a covered activity has occurred or may occur, it would be authorized to issue an order requiring the production or analysis of samples, requiring the protection of records or requiring any action by the certified remediation professional that may be necessary to prevent or eliminate the violation.

o. Direct DNR, Commerce and DATCP to enter a memorandum of understanding with respect to common areas of responsibility that relate to the program. The memorandum of understanding would not take effect until it is approved by the Secretary of DOA.

p. Authorize any person aggrieved by a determination or order of DNR under the program to request a contested case hearing under ch. 227.

Assembly: Delete provision.

Senate/Legislature: Restore provision.

Veto by Governor [B-11]: Delete provision.

[Act 27 Vetoed Sections: 169 (as it relates to s. 20.370(2)(fg)), 346s, 3727g, 9137(7n) and 9437(2m)]

41. DRY CLEANER ENVIRONMENTAL RESPONSE PROGRAM

	Jt. Finance (Chg. to Base)		Assembly/Leg. (Chg. to JFC)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
SEG-REV	\$3,550,000		- \$50,000		\$3,500,000	
SEG	\$1,868,000	4.00	-\$24,100	0.00	\$1,843,900	4.00

Joint Finance: Create a Dry Cleaner Environmental Response Fund and Dry Cleaner Environmental Response Program to provide financial assistance for investigation and remedial action



Wis. Admin. Code ch. NR 712 Qualifications and Certifications

Introduction

This fact sheet is for use by persons who hire and those that provide services associated with conducting certain environmental response actions in Wisconsin. It identifies the necessary professional qualifications and certifications for performing and supervising work, and the requirement for signing and certifying specific submittals for actions conducted under Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-754. This document does not describe the personnel qualifications required by Wis. Admin. Code for sampling, fieldwork and the development of plans for field activities for response actions.

Wis. Admin. Code § NR 712.03: Definitions

Wis. Admin. Code ch. NR 712 establishes minimum standards for experience and professional qualifications for persons who perform and provide certain services or scientific evaluations associated with specific environmental response actions.

(1) “Hydrogeologist” means a person who is licensed as a hydrologist or registered as a geologist with the department of safety and professional services, and is a graduate of an accredited institution of higher education and who has successfully completed 30 semester hours or 45 quarter hours of course work in geology. At least 6 semester hours or 9 quarter hours of the geology course work shall be hydrogeology, geohydrology or groundwater geology. This person shall also have acquired, through education and field experience, the ability to direct the drilling of borings and the installation and development of wells, describe and classify geologic samples, and evaluate and interpret geologic and hydrogeologic data.

Note: The term registered geologist means a Professional Geologist that has been licensed in accordance with the provisions in ch. GHSS 2, Wis. Adm. Code and the term licensed hydrologist means a Professional Hydrologist that has been licensed in accordance with the provisions in ch. GHSS 3, Wis. Adm. Code.

(2) “Professional engineer” means an engineer registered with the department of safety and professional services.

(3) “Scientist” means a person who is a graduate of an accredited institution of higher education and who has successfully completed the necessary credit hours to receive a degree in a field of scientific expertise applicable to environmental response actions, including, but not limited to, geology, chemistry, agronomy, crops and soils, soil science, toxicology and biology.

(4) “Supervised field experience” means experience collecting samples of air, soil, water or other media completed with guidance from, and oversight by, a person who meets the requirements of s. NR 712.05(2).

(5) “Supervision” means personal, active oversight and control of the preparation of submittals.

Wisconsin Department of Safety and Professional Services Licensing Information

For information on the licensing of professionals in Wisconsin, visit: <https://app.wi.gov/licensesearch>.

Wis. Admin. Code §§ NR 712.07, NR 712.09: Requirements for Submittal Preparation and Certification

All phases of work necessary to obtain data, develop conclusions and recommendations and prepare submittals shall be conducted or supervised by persons possessing the qualifications required in Wis. Admin. Code, as summarized in the table below. In addition, there are requirements specified under Wis. Admin. Code § NR 712.05 for persons conducting sampling, fieldwork, and the development of plans for conducting field activities.

When submitting documents to DNR, the submittal titles listed in the table should be used, including the rule reference. This will help speed up the review process.

Who must supervise and certify the submittal?				
Submittal	Professional Engineer (PE)	Hydrogeologist	Professional Engineer and Hydrogeologist	PE, Hydrogeologist or Scientist
Phase I and Phase II Environ. Site Assessment ¹		With GW ²		Without GW
Wis. Adm. Code § NR 708.11 (4) Interim Action	Without GW		With GW	
Wis. Adm. Code § NR 708.13 Free Product Removal			With GW	
Wis. Adm. Code ch. NR 716 Site Investigation Submittals		With GW		Without GW
Wis. Adm. Code § NR 718.12(1) Immediate Action	Wis. Adm. Code § NR 712.05(2) sampling and fieldwork requirements apply ³			
Wis. Adm. Code § NR 718.12 (1) and (2) (Interim or Remedial Action)	Without GW		With GW	
Wis. Adm. Code ch. NR 720 Submittals		With GW		Without GW
Wis. Adm. Code ch. NR 722 Remedial Action Options report	Without GW		With GW	
Wis. Adm. Code ch. NR 724 Submittals	Without GW		With GW	
Wis. Adm. Code ch. NR 726 Closure Request	Without GW		With GW	
Wis. Adm. Code ch. NR 727 Request to Modify Continuing Obligations	Without GW		With GW	

Wis. Admin. Code § NR 712.09: Certifications

¹ If a Phase I and /or Phase II are submitted to comply with Wis. Admin. Code ch. 750 or for the DNR to make a regulatory determination under Wis. Admin. Code § 716.05.

² GW = groundwater. NOTE: "With GW" means the report includes an investigation or evaluation of groundwater conditions, or groundwater related conclusions or recommendations.

³ Submittals documenting actions taken pursuant to Wis. Admin. Code § NR 718.12(1) are exempt from Wis. Admin. Code ch. NR 712 certification requirements but are not exempt from the requirements specified in Wis. Admin. Code § NR 712.05(2).

The appropriate certification statement listed below shall be attached to any submittal to the DNR that is required to be prepared by, or under the supervision of, a professional engineer, a hydrogeologist or a scientist to demonstrate that the requirements of Wis. Admin. Code ch. NR 712 have been met. The responsibility for signing the certification may not be delegated per Wis. Admin. Code § 712.09(1). Per Wis. Admin. Code § 712.05(1), the work must be conducted or supervised by the person certifying. The certification statement must match the code per Wis. Admin. Code § 712.09 (3) a thru c as listed below.

Professional Engineer

The following certification shall be attached to any submittal that is required to be prepared by, or under the supervision of, a professional engineer under s. NR 712.07 (2), (3) or (5):

"I, _____, hereby certify that I am a registered professional engineer in the State of Wisconsin, registered in accordance with the requirements of ch. A-E 4, Wis. Adm. Code; that this document has been prepared in accordance with the Rules of Professional Conduct in ch. A-E 8, Wis. Adm. Code; and that, to the best of my knowledge, all information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

Signature, title and P.E. number

P.E. stamp

Hydrogeologist

"I, _____, hereby certify that I am a hydrogeologist as that term is defined in s. NR 712.03 (1), Wis. Adm. Code, am registered in accordance with the requirements of ch. GHSS 2, Wis. Adm. Code, or licensed in accordance with the requirements of ch. GHSS 3, Wis. Adm. Code, and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

Signature and title

Date

Scientist

"I, _____, hereby certify that I am a scientist as that term is defined in s. NR 712.03 (3), Wis. Adm. Code, and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

Signature and title

Date