

Wis. Admin. Code ch. NR 726 Case Closure Reconsideration Process (RR-102)

Wisconsin Department of Natural Resources

May 2018

This draft document is available for public comment for 21 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.

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

The purpose of this document is to provide responsible parties (RPs) with guidance on the opportunities available to engage the department to receive feedback on the adequacy of the Wis. Admin. Code chs. NR 700-754 response actions undertaken and submitted by the RP to document case closure. This guidance presents the process and feedback opportunities available if case closure is not recommended by the department. This general process is referred to as the case closure reconsideration process.

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.



Remediation and Redevelopment Program

May 2018

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

Purpose

The purpose of this document is to provide responsible parties (RPs) with guidance on the opportunities available to engage the department to receive feedback on the adequacy of the Wis. Admin. Code chs. NR 700-754 response actions undertaken and submitted by the RP to document case closure. This guidance presents the process and feedback opportunities available if case closure is not recommended by the department. This general process is referred to as the case closure reconsideration process.

Applicability

This guidance applies to responsible parties¹ (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 Department of Natural Resources (the “department”) and the department determines that it does not have sufficient information to recommend case closure. If this occurs, an RP may obtain additional reconsideration of their closure request from the department. This process may be initiated by the RP for a site or a consultant acting as an agent under the Petroleum Environmental Compensation Fund Act program.

Background

Wis. Admin. Code chs. NR 700 - 754 rule series (the “NR 700 rule series”) requires RPs to take response actions that are protective of human health and the environment to

remedy hazardous substance discharges and environmental pollution (the “contamination”) that impact soil, surface waters, groundwater, air and sediment. A fundamental responsibility of the department, per Wis. Stat. ch. 292, is to ensure that a person that causes, possesses, or controls the contamination takes the response actions necessary under local, state and federal law.

The NR 700 rule series specifies the minimum requirements and conditions that must be met before the RR Program can determine that a case related to environmental contamination at a specific site may be granted case closure. Most responsible parties and their consultant submit a case closure request to the department with the applicable fees to obtain a case closure approval in writing. When the department determines that a closure request has not satisfied the Wis. Stats. ch. 292 and the NR 700 rule series, written comments are provided to the RP outlining additional data and/or actions needed to satisfy the law.

Basic NR 700 Process

There are several steps that lead up to case closure, the last step in the cleanup process. Wis. Admin. Code § NR 700.11 describes the types and timing of reports and other documents that are required from a responsible party after notifying the department of a hazardous substance discharge to the

¹ “Responsible party” or “responsible parties” means any of the following: (a) Any person who is required to conduct a response action under ch. 292, Stats. (b) Persons liable to reimburse the department for the costs incurred by the department to take response action under chs. 289 and 292, Stats. (c) Owners and operators of solid waste facilities that are subject to regulation under ch. NR 508. [NR 700.03(51)]

environment. Wis. Admin. Code § NR 716.15 directs responsible parties to submit a site investigation (SI) report within 60 days after completion of the field investigation and receipt of laboratory data. These timeframes should be strictly followed, unless otherwise approved by the department. Please consult the DNR publication [NR 700 Process and Timeline Overview. \(RR-967\)](#), if you have questions on the response process.

All NR 700-required submittals and reports are to be provided to the department in the timeframes specified by law – as summarized in the DNR publication RR-967 - long before a case closure request is submitted. Further, RPs *should not submit what they consider to be an SI report as part of their case closure submittal form*. The SI report is a separate document, and must be submitted in a format that complies with Wis. Admin. Code § NR 716.15 and done so consistent with the timeframes in law, unless otherwise approved in advance by the department. When a case closure request is submitted, the RR Program initially conducts an “administrative review” of the submitted materials to ensure all information required by code is included with the request. That includes ensuring that the required NR 700 documents have been submitted by the RP.

If any required information is missing, the RP will receive written notification identifying the missing elements. When administrative review is approved, project managers conduct a “technical review” of the closure request submittal. They often discuss data and technical elements of the request with other project managers and supervisors. If everything is in order, the closure request is reviewed for compliance with applicable laws, and the department determines to either: (a) approve the closure; or (b) recommend that additional information is needed to comply with applicable law. The case closure reconsideration process is available to RPs at this stage in the process, if the department does not recommend case closure and the RP disagrees with those reasons provided to them in writing.

More detailed information about the RR Program’s case closure request process is available at dnr.wi.gov and search “environmental professionals.” A link to the case closure request form is also available on this web page.

Are you ready for case closure under Wis. Admin. Code chs. NR 700 - 726?

Required documents that must be submitted to the department prior to case closure, unless otherwise directed:

- Ch. NR 708 reports and documentation for any immediate or interim actions.
- Ch. NR 712 professional certifications and signatures are included with applicable submittals, as required by administrative code.
- Ch. NR 716 work plan and site investigation report.
- Ch. NR 722 remedial action options report (exception is for Dry Cleaners Environmental Response Fund sites), with the selected remedial action identified.
- Ch. NR 724 design, construction documentation, operation, maintenance and monitoring plans and reports, including vapor mitigation commissioning.
- Ch. NR 725 submittal(s) that confirms that continuing obligations have been identified and affected property owners have been notified by the RPs 30 days prior to case closure.
- Ch. NR 726 case closure form and documentation substantiating compliance with the NR 700 rule series
- Ch. NR 749 fees have been paid, as applicable, including closure and database fees.

Benefits of Pre-Closure Technical Fee Reviews

The RR Program project managers are available throughout the process to answer questions, extend timelines if necessary, receive submittals, and compile site records as the case moves toward closure. More in-depth, fee-based technical assistance is also available upon request. Obtaining technical assistance from project managers throughout the process is an effective way to prevent problems and delays when case closure is requested. The following documents may be of assistance:

- [*Technical Assistance, Environmental Liability Clarification or Post-Closure Modification Request \(DNR Form 4400-237\)*](#)
- [*Guidance for Electronic Submittals for the Remediation and Redevelopment Program \(RR-690\)*](#)
- [*Case Closure Request Form \(DNR Form 4400-202\)*](#)

Case Closure Reconsideration Process

If case closure is not recommended, the RP will receive a letter from the department project manager outlining the legal and technical reasons for not recommending case closure, along with a telephone call to discuss those reasons. If the RP disagrees with the written reasons provided by the department, the following reconsideration steps are available. This process commences once the department has a written or verbal request from the RP, not the environmental consultant, to initiate this process². In those instances, the RP may either communicate to the department project manager or regional team supervisor their 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, supervisor and one or more closure committee members will meet with the RP and their consultant within 10 business days of the request by the RP to use the closure reconsideration process.
- The RP and/or their consultant present information and explanations to the department to document satisfactory compliance with Wis. Admin. Code chs. NR 700-754, in response to the written technical comments provided to them by the department.
- Following the meeting, the department considers the request for case closure and provides written documentation of its reconsideration determination to the responsible party within 10 business days of the meeting.
 - If the department determines, following the meeting, that case closure is appropriate, then the reconsideration process is complete, and a closure letter (or remaining actions needed letter, as appropriate) will be written and sent to the RP.
 - If the department and the RP agree on a path forward that involves agreed upon additional work, then closure reconsideration can stop at step one. If the department agrees with some of the RP's comments, an amended technical letter will be issued to the RP clarifying that agreement and the next steps.
 - If the department determines that not all applicable provisions in law are satisfied and case closure is not yet recommended, and the RP would like further department review of this case, the reconsideration process will continue to step two.

² If this is a PECFA site, and the consultant is acting as an “agent” for the site, then they may initiate the case closure reconsideration process.

Step two – Meet with RR Program directors

- The RP and their consultant will meet with RR Program director and field operations director (the “directors”) to review the closure request and preceding recommendations, within 10 days of the step two meeting request. This meeting will involve the department regional supervisor and project manager.
- After the meeting, the directors will inform the RP of the department’s final decision within five (5) days, unless there is mutual agreement for a longer timeframe due to the complexity of the issues.
 - If the directors determine that all applicable laws are satisfied and case closure is appropriate, then a case closure letter (or remaining actions needed letter, as appropriate) will be written and sent to the RP.
 - If the department 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 RR Program directors determine that additional site information or action is necessary to satisfy requirements in Wis. Admin. Code chs. NR 700-754, the directors 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 department decision from the directors, if the request for case closure is denied, the following options are available to the RP:

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

Notice of Appeal Rights Procedures:

- If the RP believes that they have a right to challenge this decision, they should be aware that the Wisconsin statutes and administrative rules establish time periods within which requests to review the department decisions must be filed. For judicial review of a decision pursuant to Wis. Stats. §§ 227.52 and 227.53, the RP has 30 days after the decision is mailed, or otherwise served by the department, to file the petition with the appropriate circuit court and serve the petition on the department. 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. Stats. § 227.42, the RP has 30 days after the decision is mailed or otherwise served by the department, to serve a petition for hearing on the secretary of the department. All requests for contested case hearings must be made in accordance with Wis. Adm. Code § NR 2.05(5), and served on the department secretary in accordance with Wis. Adm. 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 department’s case closure reconsideration process expands opportunities for RPs to present their case to the department if they do not agree with the department’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



Step one: Meet with DNR regional staff and supervisor

- The RP presents information to document compliance
- The DNR provides decision within 10 business days



Step two: Meet with RR Program directors

- The RP requests review by RR Program directors
- The DNR meets RP within 10 business days of request
- The DNR provides decision within 5 days of meeting



Step three: Additional data provided or appeal filed

- If request denied, the RP can provide additional data and/or perform additional actions and resubmit request
- The RP can appeal decision using Wis. Stats. ch. 227

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