



# **Ensuring adequate guidance in code for contaminated sediment sites**



**Proposed Rule Revisions - Drafting Update**

**Judy Fassbender**

**May 7, 2019**



# Overview

- Wis. Admin. Code chs. NR 700 through NR 754 apply to contaminated sediment sites
- Insufficient guidance in areas of code
  - Lists specific media without clarifying application to sediments
  - Lacks terms, documentation, guidance specific to sediment sites
- Proposed revisions: chs. NR 700, NR 708, NR 716, NR 722, NR 724, NR 725, NR 727, and NR 750



# NR 700

- Provide definitions of terms used in chs. NR 700 to 754
- Reference definitions that are currently in other codes
- New definitions for:
  - “cap”
  - “conceptual site model”
  - “structural impediment”

# NR 708

- Add sediment to NR 708 authority
- Regarding no further response actions:
  - NR 708.09(2) SITE INVESTIGATION, add “(d) if there is evidence of contaminated sediment or surface water”.





# NR 716

- Updates to scoping, sampling methods, work plan, investigation, analysis, and reporting including:
  - Site operational history
  - Bathymetry
  - Conceptual site model
  - Specific investigative techniques
  - Appropriate & typical receptors
  - Treatability studies
  - Sediment specific quality control
  - Public health assessments for plant & wildlife consumption
- Sediment core log form may be developed



## NR 722

- Sediment shall be restored to protect public interest:
  - Public health & welfare
  - Public & private water supplies
  - Fish & wildlife
  - Recreation
  - Agricultural, commercial, industrial & private uses
- Shall not contribute to consumption advisories
- Protective of human health direct contact
- Screen for risk using references approved by the department

# NR 724

Including sediment related language at places within code that address media-specific requirements, confirmation sampling, and long-term monitoring.





## **NR 725**

- Changes to address new notification requirements for sediment covers
  - Including riparian owners with residual contamination
  - River vs. lake
- Factsheet for sediments



## NR 726

- Specific criteria for closure at sediment sites considering:
  - Fish consumption advisories
  - Water quality
- Add authority & approvals to sediment sites
- Clarify deed and parcel info
  - Submittal of geographic position data showing location of CO's

# NR 727

Ensure clear guidance in chapter for sediment sites



# NR 750

Description of areas of VPLE properties below ordinary high water mark





## Next steps

- First draft rule: September 5, 2019, Rule Development Meeting
- Second draft rule: November 6, 2019, Rule Development Meeting
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)

*Thank you!*





# **Financial responsibility for certain contaminated sediment sites**



**Proposed Rule Revisions - Drafting Update**  
**Molly Schmidt and Michael Prager**  
**May 7, 2019**



# Overview

- Act 204 created three new requirements
- Statute establishes basic requirements
- April 18, 2019, subgroup discussion
- White paper for rule development



# Background

- FA/FR
- 2015 Wis. Act 204
  - FR for EC maintenance or impediment removal
  - Insurance or FR for VPLE COC at contaminated sediment site (“full cleanup”)
  - FR for soil or soil/GW at site with contaminated sediment (“partial cleanup”)
- Landfill FR



# Statute requirements

- Wis. Stat. ch. 292
  - Who/where
  - What
  - When
- Wis. Admin. Code.
  - Clarify broad language
  - Describe how to meet requirement



# Rule development

1. Basic requirements – clarifying costs
2. Length of requirement, termination, successors
3. Compliance and use of funds, inspection, fees
4. Methods of FA/FR
5. Duration of methods and changes to methods
6. Cost calculations, estimates, adjustments

# Rule development

## *1. Basic requirements – clarifying costs*

- EC and impediment removal
  - List costs (similar to NR 520.07)
  - Other options
- VPLE full
  - Risk-based costs
  - Sediment cleaned up
  - Costs for set-aside methods?
- VPLE partial
  - Risk-based costs
  - Sediment not cleaned up
  - Costs for set-aside methods?



# Rule development

## *2. Length of requirement, termination, successors*

- EC and impediment removal
  - Duration in plan with potential min/max in rule
- VPLE full
  - Duration?
- VPLE partial
  - Duration?



# Rule development

## *3. Compliance and use of funds, inspection, fees*

- EC and impediment removal
  - Release of funds may vary depending on selected approach for determining costs
- VPLE full & VPLE partial
  - No enforcement against exempt parties
- Inspection fees?



# Rule development

## *4. Methods of FA/FR*

- EC and impediment removal
  - Net worth
  - Alternatives?
- VPLE full & VPLE partial
  - Net worth
  - Insurance



# Rule development

## *5. Duration of methods and changes to methods*

- EC and impediment removal
- VPLE full & VPLE partial
  - May not be applicable to insurance



# Rule development

## *6. Cost calculations, estimates, adjustments*

- EC and impediment removal
  - Follow NR 520 if similar costs established
- VPLE full & VPLE partial
  - Unresolved for set-aside mechanisms





## Next steps

- First draft rule: August 6, 2019, Rule Development Meeting
- Second draft rule: October 1, 2019, Rule Development Meeting
- Post-meeting comments may be directed to:  
[DNRRNR700input@wisconsin.gov](mailto:DNRRNR700input@wisconsin.gov)

*Thank you!*





# **2017 Wisconsin Act 70 Proposed Rule Revisions Draft 1**



**Proposed Rule Revisions - Drafting Update**  
**Michael Prager**  
**May 7, 2019**



# **Act 70 - Rule draft 1**

- Ch. NR 700
- Ch. NR 750
- Ch. NR 754
- Ch. NR 758 (new)



## Next steps

- Second draft rule: September 5, 2019, Rule Development Meeting
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)



*Thank you!*