

Remediation and Redevelopment Program – Rule Development Meeting

June 4, 2019 | 10:00 a.m. to 1:00 p.m.

Wisconsin Dept. of Natural Resources
GEF 2 | Room G27A
101 S. Webster St. | Madison, WI 53701

Meeting materials are available at: <https://dnr.wi.gov/topic/Brownfields/RuleChanges.html>.

Attendees:

Tom Culp, True North Consultants; Frank Dombrowski, WE Energies; Judy Fassbender, DNR; Taylor T. Fritsch, Michael Best; Paul Graham, Ramaker & Associates; Clara Jeong, Wis. Dept. of Health; Jennifer Hagen, OBG Ramboll; Shelley Hildebrandt, Intertek; Bridget Kelly, DNR; Valerie Joosten, DNR Waste Program; Gena Larson, DNR; Emma MacAlister, Geosyntec; Lynn Morgan, Waste Management; Bill Nelson, DNR; Jodie Peotter, Tetra Tech; Michael Prager, DNR; Chris Saari, DNR; Molly Schmidt, DNR; Sarah Slack, Foley & Lardner; Jenna Soyer, DNR; Mark Thimke, Foley & Lardner; Chris Valcheff, True North Consultants

Meeting Notes:

1. Welcome and Introductions.

Staff and guests introduced themselves. Staff provided background on rule development meetings, stating that the purpose of holding these meetings was to provide an additional opportunity for rule input during the rule drafting period of the rulemaking process. Rule development meetings are not part of the formal rule making public input process. Subjects from scope statements are divided up and spread out over the drafting period for discussion at public meetings. Rulemaking timeframe is short due to the legislation that passed in 2017 causing scope statements to expire.

2. Introductory white paper regarding draft rule revisions relating to emerging contaminants (chs. NR 700, NR 706, NR 708, NR 716, NR 722, NR 725, NR 726, NR 749, NR 750).

DNR staff member Judy Fassbender presented an overview of the white paper relating to draft rule revisions to address emerging contaminants. Following the presentation, an attendee asked whether the major takeaways would be that the Remediation and Redevelopment (RR) program planned to rely on the current definition of “hazardous substance” in statute and code and that places where Phase 1 requirements for Voluntary Party Liability Exemption (VPLE) sites are referenced in code would be revised to include emerging contaminants. Staff agreed, adding that the goal of the second item would be to ensure that “hazardous substances” as defined were not overlooked when a Phase 1 was performed for purposes under code. ASTM is likely to eventually address emerging contaminant concerns through its own requirements; however, the program will take the current opportunity to address the issue under rulemaking. An attendee pointed out that the Brownfields Study Group members are preparing a checklist that people can use when doing an ASTM compliant Phase I to screen for emerging contaminants.

An attendee asked about the application of rule revisions to requirements for the VPLE program. Staff replied that the department had recently notified active VPLE applicants that a VPLE certificate of completion applies only to contaminants that have been sampled for at a VPLE site. A subgroup of the Brownfields Study Group would meet June 5, 2019, to discuss potential legislative approaches to emerging contaminants within the VPLE program.

An attendee asked whether CERCLA-listed contaminants were the subject of VPLE requirements only. Staff replied that the VPLE program would require ASTM standards plus emerging contaminants whereas other sites would require a Wis. Admin. Code NR 716 assessment for compounds reasonable expected present due to the hazardous substance discharge.

An attendee asked whether drafts of proposed rules would be posted to the NR 700 rule revisions web page within one or two weeks of the next meeting for this item. Staff replied that items for the meeting would be posted about one week prior to the meeting date.

3. Introductory white paper regarding proposed rule revisions relating to remedy selection cross-references (ch. NR 722).

DNR staff member Judy Fassbender presented an overview of the white paper relating to proposed rules regarding remedy selection. Following the presentation, an attendee asked whether the spreadsheets that assist with RCL/RSL calculations were considered guidance following recent legislation (2018 Wis. Act 369) and how DNR would keep it up to date if guidance needs to go through lengthy review process. Staff replied that the code currently included a note stating that the RCL calculator was one acceptable method and that the program was not planning to change that approach. Staff added that they would take a flexible approach to account for the current lack of certainty for the future legal status of guidance documents.

4. Introductory white paper for rule revisions relating to notification and closure (chapters NR 716, NR 725, and NR 726).

DNR staff member Jenna Soyer presented an overview of the white paper relating to proposed rules regarding notification and closure. Following the presentation, an attendee asked whether the definition of “property” in code would be revised to account for the complexities surrounding contaminated sediment site delineation and notification. Staff replied that the contaminated sediment-related topics would be addressed along with the other contaminated sediments rules and that the definition of property would be addressed under Act 70 rule changes – by inserting the statutory definition for VPLE properties into VPLE-related rule chapters and deleting the current definition of property within chapter NR 700.

5. First draft of proposed rule revisions relating to soil standards (ch. NR 720).

DNR staff member Judy Fassbender presented a first draft of proposed rule revisions relating to soil standards. Following the presentation, an attendee asked about the applicability of the changes discussed – whether the excess cancer risk for calculation of RCL standards would be reduced for all contaminants. Staff replied that the reduction of the RCLs applied only to carcinogenic polycyclic aromatic hydrocarbons (PAHs), with the exception of naphthalene, and that site cumulative risk would no longer use 1×10^{-5} as an excess cancer risk. The change was based on background study results and the program had worked with the Dept. of Health to ensure that these standards were protective.

Naphthalene is excepted because it is sometimes found as a separate discharge as opposed to always being found with the same compounds.

An attendee asked whether there would be a change for polychlorinated biphenyl (PCB) aroclors. Staff replied that the program did not have plans to revise standards relating to PCBs and pointed out that PCBs were bioaccumulators whereas PAHs were not, and that the PAH background study had supported the change. There were no foreseeable changes for PCBs; however, staff would be monitoring the results of any background studies that are done in the future.

An attendee asked whether the change would result in a reduced need for Wis. Admin. Code ch. NR 718 soil management exemptions. Staff replied that the change would probably reduce the number of exemptions sought; however, this had not been the impetus for the change. The program had reviewed the benefits, costs, and overall effectiveness of the requirements in light of the PAH background levels. Staff added that the department would also be looking at eliminating groundwater RCLs for PAHs.

An attendee asked how DNR will develop standards for materials under the definition of sediment in the transition zone that is usually not under water and staff explained that this would be addressed later in rulemaking.

6. Second draft of rule revisions relating to soil management (chapters NR 708, NR 718, NR 724).

DNR staff member Judy Fassbender presented a first draft of proposed rule revisions relating to soil management.

7. Conclude and Adjourn.

Staff thanked attendees for participating and announced that the next rule development meeting would be held July 9, 2019, and would cover proposed rule revisions affecting submittal timelines in the NR 700 rule series, proposed rules relating to submittal preparation requirements and other changes to ch. NR 712, and proposed rule revisions affecting fees required under ch. NR 749.