

DRAFT rule revisions for 12/3/2019 Rule Development Meeting

Subject matter (group/subgroup): Rule modifications to clarify rights and responsibilities of owners and occupants at sites with residual contamination consistent with statutory changes included in Act 204

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Changes (include treatment, list in order of rules):

NR 708.16 (5) is created to read:

NR 708.16 (5) If another person has entered into a legally enforceable agreement to comply with continuing obligations pursuant to s. 292.12 (5) or 292.12 (5m), Stats., the responsible party shall provide to the department a copy of the agreements for inclusion in the department's database.

NR 722.17 (5) is created to read:

NR 722.17 (5) If another person has entered into a legally enforceable agreement to comply with continuing obligations pursuant to s. 292.12 (5) or 292.12 (5m), Stats., the responsible party shall provide to the department a copy of the agreements for inclusion in the department's database.

Note to readers: new language in s. NR 726.11 (3m) requiring submittal of a legally enforceable agreement at closure was presented at the April rule development meeting as part of database, notifications and fees-related changes, available at: <https://dnr.wi.gov/topic/Brownfields/documents/rules/Act204DraftRule2.pdf>.

NR 727.05 is amended to read:

NR 727.05 Continuing obligation responsibilities. (1) For all media other than sediments, the party or person who owns or occupies a property where a continuing obligation has been imposed under either s. NR 708.17 or 722.15 or ch. NR 726 or another person has entered into a legally enforceable agreement to comply with continuing obligations pursuant to s. 292.12 (5) or 292.12 (5m) and the agreement is in the database, shall:

~~Note: Ch. 292, Stats., allows for legally enforceable agreements (private contracts) between parties to address the continuing obligations imposed by an agency. Since the agency is not a party to these agreements, the property owner remains responsible for compliance with a continuing obligation if an issue arises.~~

Note to readers: contaminated sediment-related rule changes created new subsections within NR 727.05 that describe responsibilities for owners and responsible parties. The second draft of these changes, presented at the November rule development meeting are available at (see page 21): https://dnr.wi.gov/topic/Brownfields/documents/rules/20191106_RuleDraft2_ContamSediments_FINAL.pdf

NR 727.05 (7) is created to read:

NR 727.05 (7) A person who owns or occupies a property may not interfere with another person's actions on the property that are required to comply with continuing obligations.

Plain language explanation/analysis:

An explanation of the rule revisions above is available in the [white paper](#) on this topic that was presented at the August 6, 2019, Rule Development Meeting.

Comparable state or federal rules or policies:

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Most other states and the USEPA use different systems to record continuing obligations so these changes can not be compared. Also, the changes here are restating and clarifying statutory responsibilities.

Economic impact comments:

This rule revision is not likely to introduce economic impacts since it would only clarify requirements that are currently applicable under statute.