

DRAFT rule revisions for 1/9/2019 Rule Development Meeting

Comments on this draft may be sent to DNRRNR700input@wisconsin.gov.

Subject matter (group/subgroup): Rule modifications to create a process for requiring continuing obligations after approval of an interim action. Authority to do this was included in Act 204.

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

NR 708.11 (4) is amended to read:

NR 708.11 (4) DESIGN AND IMPLEMENTATION REQUIREMENTS. For the types of interim actions listed in pars. (a) through (c) responsible parties shall prepare and submit to the department all reports and plans required by ch. NR 724 with the fee that is required under ch. NR 749 for department review and approval prior to proceeding to the next step in design, implementation or operation of an interim action under ch. NR 724, unless otherwise directed.

NR 708.15 (1) is amended to read:

NR 708.15 Interim action reports. (1) GENERAL. Responsible parties shall prepare and submit to the department an interim action report, in accordance with this section, describing each interim action taken. The interim action report shall be submitted with the fee that is required under ch. NR 749 within 45 days after the interim action has been completed, unless otherwise directed by the department or unless sub. (2) is applicable. The report may be submitted alone or as part of the remedial action report or the site investigation report unless otherwise directed by the department or unless sub. (2) is applicable if that report is submitted within 45 days after the interim action has been completed.

NR 708.15 (4) is created to read:

NR 708.15 (4) CONTINUING OBLIGATIONS. If the interim action includes a permanent or temporary engineering control, installation of a vapor intrusion mitigation system, managing contaminated soil under ch. NR 718 or other actions that would necessitate the need for a continuing obligation, the responsible party shall comply with and provide the documentation required under s. NR 708.16 with the interim action report.

Note to readers: new proposed language discussed at the April meeting created a new section, NR 708.16, which sets forth the database requirements for interim action continuing obligations.

<https://dnr.wi.gov/topic/Brownfields/documents/rules/Act204DraftRule2.pdf>

NR 708.165 is created to read:

NR 708.165 Department response. The department shall provide a written response when plans and reports are submitted as required under s. NR 708.11(4) before an interim action is taken and when an interim action report is submitted. In the written response, the department may do all of the following:

- (1) Ask for more information or modifications and establish a deadline for providing the information.
- (2) State that the responsible party can proceed to take the next step in design, implementation or operation of an interim action.
- (3) Include requirements to comply with continuing obligations, if applicable, on the source property or an off-site property.
- (4) If continuing obligations are required, require the responsible party to submit additional documentation in accordance with s. NR 708.16 if not all the required information necessary for listing the site on the department database has been submitted.

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Note to readers: related proposed rule changes relating to database listing, fees, and notifications were presented as a [second draft](#) at the 4/9/2019 Rule Development Meeting. These changes clarified that the notification requirements in NR 725 apply to interim actions with continuing obligations.

NR 727.01 is amended to read:

NR 727.01 Purpose. The purpose of this chapter is to specify the minimum responsibilities of responsible parties and owners and occupants of properties with residual contamination, where continuing obligations have been imposed in a closure approval letter, ~~or in a remedial action plan approval, or an~~ interim action approval, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

NR 727.05 (1) (intro.) is amended to read:

NR 727.05 (1) A party or person who owns or occupies a property where a continuing obligation has been imposed under either s. NR 708.165, NR 708.17 or 722.15 or ch. NR 726 shall:

NR 727.07 (intro.) is amended to read:

NR 727.07 Notification of the agency with administrative authority regarding continuing obligations. For situations where a continuing obligation has been imposed under either s. NR 708.165, NR 708.17, 722.15, or 726.13, the property owner shall notify the agency within 45 days prior to taking any of the following actions, to determine whether further action may be necessary to protect human health, safety, or welfare or the environment:

NR 727.09 (1) is amended to read:

NR 727.09 (1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The agency may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either s. NR 708.165, 708.17, 722.15, or 726.13, in cases where compliance with the restriction, condition, or continuing obligation has not been maintained.

NR 727.09 (4) is amended to read:

NR 727.09 (4) REMOVAL FROM THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.165, NR 708.17, 722.15, or 726.13, the responsible party, property owner or other party may apply to the agency for removal of the site or facility or property, as applicable, from the department database. A site may not be removed from the database until all applicable standards have been met and all requirements imposed have been satisfied or nullified. A request may be submitted to the agency at any time after any of the following have been achieved:

NR 727.09 (5) (intro.) is amended to read:

NR 727.09 (5) MODIFICATION OF THE DEPARTMENT DATABASE. For cases that have been included on the department database under s. NR 708.165, NR 708.17, 722.15, or 726.13, the responsible party, property owner or other party may request that the department modify information on the department database at any time after any of the following have been achieved:

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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:

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

Economic impact comments:

This rule revision is expected to have minimal economic impacts since it generally clarifies requirements that are currently applicable under statute. The rule requires fees to be submitted with interim action reports that are not currently required.