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: DNRRRNIR700input@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

  - 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
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: DNRRRNRI700input@wisconsin.gov
Thank you!