



State of Wisconsin \ Department of Commerce

# HEARING DRAFT OF PROPOSED RULES

**Rule No.:** Chapter Comm 46

**Relating to:** Petroleum Environmental Cleanup Fund Interagency

Responsibilities

The Department of Commerce proposes an order to repeal and recreate Comm 46.

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### **Analysis of Proposed Rules**

Statutory Authority: ss. 101.143 and 101.144

Statutes Interpreted: ss. 101.143 and 101.144

Under sections 101.143 and 101.144, Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26 (2) (b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An Emergency Rule in response to that directive was adopted by the Department and became effective on January 1, 1999. Since that date, further improvements for jointly administering the PECFA fund were developed which are consistent with the JCRAR directive and which are expected to significantly mitigate the backlog of claims to this oversubscribed fund. Those improvements were adopted as another Emergency Rule on February 18, 1999, and became effective on February 23, 1999. The permanent rule proposed now is identical to the latter Emergency Rule.

SECTION 1. Chapter Comm 46 is repealed and recreated to read:

CHAPTER Comm 46  
PETROLEUM ENVIRONMENTAL CLEANUP FUND INTERAGENCY  
RESPONSIBILITIES

**Comm 46.01 Purpose.** The purpose of this rule is to identify the roles, processes and procedures that guide the departments of commerce and natural resources in the administration of their respective responsibilities for high, medium and low priority petroleum contaminated sites. The requirement, which is the basis of this rule, was established in 1995 Act 27 and mandated that the two agencies determine the:

- (1) Respective functions of the two departments.
- (2) Procedures to ensure that remedial actions taken under this section are consistent with actions taken under s. 292.11, Stats.
- (3) Procedures, standards and schedules for determining whether the site of a discharge of a petroleum product from a petroleum storage tank is classified as high, medium or low priority.

**Comm 46.02 Definitions.** In this chapter:

- (1) "Commerce" means the department of commerce.
- (2) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.
- (3) "Developable groundwater" means a formation, excluding bedrock, that can yield 0.2 gallons per minute or more of groundwater, determined by an open bore hole.
- (4) "DNR" means the department of natural resources.
- (5) "Enforcement standard" means a numerical value expressing the concentrations of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12.
- (6) "High priority site" means a remediation site that meets one or more of the following criteria:
  - (a) Presence of a hazardous substance other than petroleum from a petroleum product storage tank system.
  - (b) Contamination to an area of exceptional environmental value where the discharge would pose a greater than normal threat.

(c) Confirmed groundwater contamination where any compound detected is equal to or greater than an established enforcement standard.

(7) "Low priority site" means a remediation site where:

(a) There is only petroleum contamination and no threat to groundwater, and

(b) No evidence of a hazardous substance other than the petroleum product that was discharged from the petroleum product storage tank system.

(8) "Medium priority site" means a remediation site that meets the following criteria:

(a) No evidence of contamination by a hazardous substance other than the petroleum product, which was discharged from the petroleum storage tank system; and

(b) No confirmed groundwater contamination at or above the enforcement standard.

(9) "Remediation target" means the contamination concentration level(s) at which a site will be granted, or eligible for, closure utilizing an institutional control option, including a groundwater use restriction, or any other appropriate tool.

**Comm 46.03 Site authority.** (1) GENERAL. The assignment of authority for high, medium and low priority petroleum contaminated sites shall be determined according to the following:

(a) The DNR shall have authority for high priority sites.

(b) Commerce shall have authority for low and medium priority sites.

(2) AUTHORITY. The authority for a site falling under an agency's jurisdiction includes but is not limited to enforcement, remediation supervision and direction, referrals for legal action, and decision making regarding granting or denying closure or an approval for no further action.

(3) JOINT ADMINISTRATION. The departments of Commerce and DNR shall implement a system of joint decision making for:

(a) The setting of remediation targets for sites that are competitively bid or bundled with another site(s). When the targets are achieved, the site shall be closed without requiring or reimbursing for additional remedial efforts except for otherwise eligible post closure costs.

(b) The selection of remedial bids.

(4) CLOSURE DECISIONS. For any site with confirmed groundwater contamination equal to or greater than the enforcement standard following completion of the site investigation and for which a closure request has been submitted, the following steps will be taken:

(a) A site closure request is prepared and submitted to DNR with the appropriate fee.

(b) The DNR reviews the request and makes a determination on closure, either with or without institutional controls or tools.

(c) The DNR will forward a copy of all closure determinations to Commerce.

(d) If Commerce identifies a site they believe has met its remediation target(s), but has not submitted a closure request, they may request DNR take action to solicit a closure request from the site owner.

(5) DISPUTE RESOLUTION. Any disputes between the agencies under subs. (3) or (4) will be subject to the following dispute resolution process. Project managers will discuss their differences, and the basis for them, in an attempt to resolve the dispute. If the dispute is not resolved, the decision will be referred to the appropriate division administrators; if the dispute still remains unresolved, the department Secretaries shall be the final decision-makers.

**Comm 46.04 Site investigation.** (1) GENERAL. The investigation of petroleum contaminated sites shall be conducted in a manner designed to meet ch. NR 716 and to minimize costs while providing sufficient data necessary for risk assessment and remediation decision making.

(2) METHODOLOGY. The departments shall develop an agreed upon methodology for determining if there is evidence of an expanding plume and the actions to take if the data provided through the investigation is not adequate. This methodology will be part of the investigation process.

**Comm 46.05 Risk Assessment.** (1) GENERAL. Jointly created risk assessment protocols, shall be used to measure the environmental, safety and health risks associated with petroleum contaminations and to determine a required action level which could include, but not be limited to, adequate source control and measures to address environmental risk factors, or whether the site may be closed without additional action.

(2) RISK CRITERIA. Decisions regarding the remediation and closure of sites shall be based upon an application of risk criteria. The following risk criteria will be used in decision making:

(a) No environmental factor(s), as defined in ch. Comm 47, exists;

(b) Site closure may not take place until environmental factors, that are identified, are addressed;

(c) Contamination in groundwater is below the enforcement standard off-site except in a public roadway or right of way;

(d) No contamination above Table 46.05 values occurs within 4 feet of the ground surface;

(e) On-site contamination, in a water sample from non-developable groundwater, does not exceed 300 times the enforcement standard;

(f) There is a separation distance between contamination and the developable groundwater of 5 feet or more, **or** the contamination is decreasing, in the soil, as it approaches the developable groundwater;

(g) There is no impact or potential impact to a receptor of concern as defined by the departments;

(h) There is no enforcement standard exceedance in any groundwater within 1000 feet of a public well;

(i) There is no enforcement standard exceedance in any groundwater within 100 feet of a private well.

**TABLE 46.05**

Benzene	0.620 mg/kg
1,2 DCA	0.340 mg/kg
Ethylbenzene	230.0 mg/kg
Toluene	520.0 mg/kg
Xylene	860.0 mg/kg

**Comm 46.06 Site closure.** (1) GENERAL. The actions of the DNR and Commerce in making site closure or no further action decisions and in approving remedial actions on a site shall incorporate that:

(a) Sites where contamination is determined to be below the enforcement standard on site and below the enforcement standard off site, and no environmental factors exist, shall be closed without requiring or reimbursing for additional remedial efforts except for otherwise eligible post closure costs.

(b) Sites with contaminants above the enforcement standard on site but below the enforcement standard off site in the developable groundwater, and not greater than 300 times the enforcement standard in the non-developable groundwater, and no environmental factor(s) or requirement for source control, shall be offered closure with a

groundwater use restriction or a GIS registration. Additional funding will not be provided except for otherwise eligible post closure costs. If the off-site owner does not accept the GIS registration or the groundwater use restriction, additional funding will still not be provided except for otherwise eligible post closure costs and additional remedial efforts, beyond natural attenuation, will not be required.

(c) Sites that meet the criteria of s. Comm 46.05 (2) will be closed after investigation without requiring or reimbursing for additional remedial efforts except for otherwise eligible post closure costs.

(d) Sites that do not meet all criteria of s. Comm 46.05 (2) may be closed after only the investigation, if it is determined that the site poses no additional risk and it has been determined that additional source control is not needed.

(e) Sites that do not meet all criteria of s. Comm 46.05 (2) and are determined to pose additional risk shall conduct remedial efforts to address and resolve the risk.

(f) The criteria of s. Comm 46.05 (2) are statements of what constitute risk factors. The elements established through those statements will be used by the departments in the process of setting remediation targets and in decisions on whether to grant closure or no further action.

(2) DETERMINATION OF COMPLIANCE WITH THE ENFORCEMENT STANDARD. When determining whether a site is above or below either the enforcement standard or any other contaminant level or target, recognition shall be made of the impact of error of measurement, repeatability of test results and statistical significance. The DNR and Commerce shall develop, by June 30, 1999, a process for taking these considerations into account and then revise and/or adopt administrative rules as appropriate.

(3) TRACKING OF REMEDIATION PROGRESS. (a) The departments shall establish a system for electronically tracking the achievement of remediation targets. They shall use the tracking system to determine if remediation funding should end and if a site closure request should be submitted.

(b) The departments shall jointly require and enforce the use of the electronic reporting system by claimants.

**Comm 46.07 Transfer of sites.** (1) GENERAL. The DNR will establish the responsibility of either Commerce or DNR for a site within 60 days of the receipt of the site investigation report, unless any of the following apply:

(a) The DNR has requested additional information after reviewing the site investigation report and the requested information has not been submitted.

(b) The site is the subject of an enforcement action initiated by the DNR.

(c) Other circumstances over which the DNR has no control have prevented the DNR from making a site classification determination.

(2) CONSULTANT DETERMINATION. Consultants performing site investigations may determine, as part of a joint agency site classification pilot, whether a site is high, medium or low priority and submit the investigation report directly to the agency they believe has jurisdiction.

(3) CHANGES IN CLASSIFICATION. If a site is classified as high, medium or low priority, and the DNR or Commerce determines that the classification is incorrect, that agency will transfer the site and all related data to the other agency within 14 days.

(4) LIST OF SITES IN REMEDIATION. The departments will develop and maintain a reconciled list of sites in remediation including data on target levels, risk factors, expected closure costs and other relevant data.

(End)



EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.



*File reference: Hearing draft*



Response to  
Legislative Council Rules Clearinghouse  
Comments

Clearinghouse Rule 00-090 and 00-130: Comm 46, NR 746 and NR 700  
Rule Series Changes

Comments on Form, Style and Placement in Administrative Code:

All requested changes have been made, except for the following:

Comment 2.a. "In Appendix A to ch. NR 716, sub. (2)(d) 2., 'groundwater water' is redundant. Can 'groundwater' be deleted?"

Appendix A has been deleted in its entirety, so there was no need to amend the phrase that was commented on.

Comment 2.c. "The definition of 'utility corridor' in s. NR 746.03 is unnecessary. The rule defines that term in s. NR 700.03 (66m), and that definition applies to chs. NR 700 to 750."

In response to Comment 2.c., a change was made, but not the one requested. Rather than deleting the definition of "utility corridor" in s. NR 746.03, the definition now references the definition in NR 700.03 (66m). Because there is no existing definition for "utility corridor" in Department of Commerce rules, and NR 746 is a joint rule with Comm 46, both rules needed a definition of "utility corridor."

Comments on Clarity, Grammar, Punctuation and Use of Plain Language:

All requested changes have been made, except for the following:

Comment 5.c. "In s. NR 746.03 (9) and (10), should the defined terms be hyphenated for consistency with sub. (7)?"

A hyphen was not added to "medium risk" or "low risk" because these terms are not hyphenated in s. 101.144 (3m)(a) 3., Wis. Stats.

Comment 5.d. "Section NR 746.05 (4)(b). The phrase ['more than 10 years old'] in s. NR 746.05 (4)(b) would fit better with this definition by rephrasing it as 'the release . . . occurred more than 10 years ago.'"

In response to Comment 5.d., a different change was made than the one requested. The age of release provision has been rephrased to read: "no release of a petroleum product to the soil or groundwater on the site has occurred within the last 10 years. . .".

Comment 5.g. Section NR 746.06 (2)(a). "The need for 'documented' and 'verified' is unclear. It seems obvious that the department can reject undocumented or unverified information."

In response to Comment 5.g., no change was made because s. NR 746.06 (2)(a) directly quotes language from s. Comm 47.337 (3)(a).

Comment 5.h. "Section NR 746.06 (2)(d). " 'Approved' should be replaced by 'identified'."

In response to Comment 5.h., a different change was made than the one requested. Section NR 726.06 (2)(d) has been amended to read: "For substances not listed in Table 2 that are present within 4 feet of the ground surface and that have been approved by the agency with administrative authority for the site for analysis as contaminants of concern . . ."

Comment 5.m. "Section NR 746.07 (1)(a) 2. The cross-reference to ch. NR 726 should be sufficient; the material after 'including' is part of ch. NR 726 and need not be restated. If there is some need to call particular attention to this, it may be done in a note."

In response to Comment 5.m., no change was made because the agencies believe it is necessary to emphasize in the rule itself the requirements listed after the cross-reference to NR 726.

Comment 5.p. "Section NR 746.07 (2). Apparently, the only difference between this subsection and sub. 1 is the few words in the introductory paragraph. There does not appear to be any reason to have separate subsections. Section NR 746.07 (2) could be replaced by a brief provision stating that closure decisions after remedial action are also to be made based on the requirements of s. NR 746.07 (1)."

In response to Comment 5.p., a different change was made than the one requested. NR 746.07 has been restructured and divided into 4 new sections. The former s. NR 746.07 (2) is now renumbered NR 746.08.

Comment 5.s. "Section NR 746.07 (5)(b). . . . this paragraph should be clarified to state when the department may make a decision to require additional remedial action."

In response to Comment 5.s., the changes requested have been made in part. However, s. NR 746.07 (5)(b) was not amended to clarify when the agency may make a decision to require additional remedial action. Other chapters in the NR 700 rule series would apply – primarily ch. NR 722 and NR 726. There is nothing unique about petroleum-contaminated sites that requires a specific provision in NR 746.

Comment 5.t. "Section 746.07 (6). This subsection refers to the tracking of remediation progress. However, ch. NR 746 generally does not apply to remediation, other than natural attenuation. This provision refers to 'remediation that has been conducted' and suggests that it refers to active types of remediation. This provision should be clarified to indicate its intent."

In response to Comment 5.t., the requested change has not been made. A joint rule on the tracking of remediation progress is statutorily required and the placement of this language in NR 746.07(6), now renumbered as NR 746.10, is logical and does not need clarification.

Comment 5.u. "In s. NR 746.08 (2), if the site investigation report identifies a site as medium- or low-risk site and, pursuant to this provision, the report is submitted directly to the Department of Commerce, how can the Department of Natural Resources 'transfer the site file' to the Department of Commerce? See also s. NR 746.08 (3)."

In response to Comment 5.u., the requested change has not been made. A site file is established by the DNR when the DNR is initially notified of the discharge of a hazardous substance at a site. This is the file that is transferred in the process referred to in s. NR 746.08 (2), renumbered to s. NR 746.11 (2).

DEPARTMENT OF COMMERCE  
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 46 DATE: June 15, July 10, July 12, and

RELATING TO: Risk Screening and Closure Criteria for September 26, 2000

Petroleum Product Contaminated Sites, and  
Agency Roles and Responsibilities  
CITY: Madison, Milwaukee, and Wausau

Name	Representation (Business, Assoc., Group, Self, etc.)	City	Appearing in Support	Appearing for Information
Craig Bartholomew	RMT	Madison	X	
Amy Wren	ECCI	Madison		X
Pat Osborne	BP/Amoco Exxon/Mobil	Madison	X	
Cliff Wright	Gannett Fleming	Madison		X
Jolene Plantz	Kwik Trip	Madison		X
Boyd Possin	ECCI	De Pere	X	
Glenn Mueller	Wis. Environmental Health Association	Woodruff	X	X
John Robinson	Wis. Water Well Association	Wausau		X
Allen O'Leary	Northland Cranberries, Inc.	Wisconsin Rapids		X
Chris Nehrbass	John Muir Chapter of Sierra Club	Wausau		X
Mark Malander	Exxon/Mobil Environmental Remediation	Fairfax, VA		X
Bryan Bergmann	STS Consultants, Ltd.	Milwaukee		X
Lynelle Caine	Northern Environmental	Green Bay		X
Gary Heaningsen	Northern Environmental	Green Bay		X



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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March 22, 1999

MAR 22 1999 MAR 22 1999

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review of  
Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review of  
Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

*Judy* *Glenn*  
Dear Senator Robson and Representative Grothman:

The Departments of Natural Resources and Commerce are pleased to transmit to you the answers to the questions that you raised in your March 10 letter.

If after the Committee reviews the responses we have provided and any questions remain, staff of both agencies will be available to address any points you wish to have clarified.

Thanks again for your interest in the PECFA program.

Sincerely,

*George*  
George E. Meyer  
Secretary  
Department of Natural Resources

*Brenda*  
Brenda J. Blanchard  
Secretary  
Department of Commerce

cc: Mark Bugher - DOA



**DNR and Commerce Joint Responses to JCRAR's Questions on Comm 46  
Dated March 10, 1999**

1. *Section Comm 46.02 (3) defines the term "developable groundwater." Will the creation of this new term have any impact on the interpretation or implementation of the statutory provisions relating to groundwater protection standards contained in ch. 160, Stats? How and what measures will be employed to determine if a groundwater unit is developable or not developable?*

Answer:

We do not believe this term impacts how the provisions in ch. 160, Stats, are applied. Administrative rules are written to reflect how specific statutory provisions will be applied by an agency. In this situation, we believe the statute allows for the consideration of the use of the groundwater and degree of risk posed by contamination when a response is selected.

The current administrative rule sets one criteria based upon the ability of a well to recover and yield at least 0.2 gallons per minute (gpm). Other measures are possible for determining whether this flow rate exists in a formation. Alternatives may include using hydraulic conductivity, grain size analysis and other methods. These additional methods would be developed over time, incorporating suggestions from practitioners in the field

2. *Section Comm 46.02 (6) (b) defines the term "high priority site" in part to mean a site that exhibits contamination to an area of exceptional environmental value where the discharge would pose a greater than normal threat. Please define the phrases "exceptional environmental value" and "greater than normal threat." How are risk criteria considered in designation of "high", "medium", and "low" priority sites? How will the caseload be managed to prioritize response to sites, which do not have risk criteria?*

Answer:

An "exceptional environmental value" is a term used to define sensitive environments in NR 700.03(55). It would include impacts to an ecosystem that supports threatened or endangered species, or other sensitive environments, examples of which include: wetlands; habitat used by state or federally designated endangered or threatened species; national or state fish and wildlife refuges and fish and wildlife management areas; state and federal designated wild and scenic rivers, designated state riverways and state designated scenic urban waterways; calcareous fens, and wild rice waters as listed in NR 19.09. A "greater than normal threat" refers to an impact from a discharge that would result in more environmental harm than a similar discharge in another area.

Within Comm 46, the terms high, medium and low priority are used in the context of determining which agency is responsible for a site. These terms are not based upon the risk criteria but rather simply reflect whether groundwater contamination exists on a site above the enforcement standard. The risk criteria go well beyond this point and set the specific criteria by which sites will be evaluated for remedies. The risk criteria apply equally to all sites regardless of whether groundwater contamination exists at the site.

Risk criteria are used for the purpose of determining the range of responses that must be taken to address petroleum contamination. The criteria attempt to classify the risk that a site poses to human health and the environment with the purpose of separating those that can close after only the investigation and those that must continue on to implement a remedial action. All sites will receive a response based upon the risk that they pose to human health and the environment. The site will be first evaluated at the time that the site investigation is completed and again when a remedial action is proposed, if that is necessary. Sites without risk criteria would be identified during the review of the site investigation, or through the DNR's proactive closure process, and would be closed at that time.

3. *Section Comm 46.04 (2) provides that the departments will develop a methodology for investigating expanding plumes of contamination. When will the methodology be completed and will it be promulgated as an administrative rule? Would the procedures outlined in the ASTM Standard for Groundwater Remediation by Natural Attenuation (RNA) be sufficient?*

Answer:

The methodology for assessing expanding plumes has been a subject of discussion between Commerce and DNR staff and a methodology will be completed by July of 1999. How this methodology will be included in the final Comm 46 administrative rule will be determined once the methodology is finalized. The methodology will need to incorporate information on data gathering, evaluation of data and the incorporation of these activities into the site investigation. The approach may be based in part on the recommendations in the ASTM standard for Groundwater Remediation by Natural Attenuation (RNA).

An expanding plume occurs when the margin of the contaminant plume moves outward or downward. As a result, key factors of the methodology will need to include completing data gathering and analysis of the plume during the site investigation and comparing contaminant concentrations over time in monitoring wells located downgradient of the release and oriented along the direction of groundwater flow.

4. *Section Comm 46.05 (1) provides that jointly created risk assessment protocols will be used to measure risk associated with petroleum contamination and to determine appropriate responses to that contamination. When will the protocols be created and will they be promulgated as administrative rules?*

Answer:

Section Comm 46.05(2), Risk Criteria, contains the risk-based protocols referenced here. Both Commerce and DNR have adopted Comm 46 as an emergency rule and are proceeding towards permanent rule adoption.

5. *Section Comm 46.05 (2) (b) describes environmental risk factors. What is meant by the terms "identified" and "addressed" with regard to COMM 47 environmental factors? Will risk-based procedures be applied to "address" environmental factors?*

Answer:

The term "identified" merely means that a Comm 47 environmental factor has been found to be present at a site, based upon site-specific data. The term "addressed" means an action needs to be taken to deal with the environmental factor and eliminate it or minimize its impact.

Risk-based procedures are not a remedial response that can address an environmental factor. They are criteria applied to site conditions to assist in evaluating whether or not a remedial response is necessary at the site or whether the site can be closed.

6. *Section Comm 46.05 (2) (c), (h), (i) provides risk criteria in regard to groundwater. Do these risk criteria refer just to "developable" groundwater or to any groundwater? How is an ES exceedance in non-developable groundwater a risk factor? If there is an ES exceedance in non-developable groundwater 999 ft from a public water supply well, does this represent a risk to public health? How would this affect ch. 160?*

Answer:

Comm 46.05 (2)(c), (h) and (i) apply to both developable and non-developable groundwater. In the case of Comm 46.05 (2)(c), this means that an ES exceedance in the roadway or right of way, regardless of whether it is in the developable or non-developable groundwater, is not going to prevent the decision to close a site.

An ES exceedance in non-developable or developable groundwater within 1,000 feet of a public well or 100 feet of a private well is considered to represent higher levels of risk and needs to be considered in the context of site conditions and how the wells are constructed. The absolute number of feet between the contamination and the well is not the ultimate deciding factor on what action may need to be taken. The distance is used simply to create a point at which additional analysis is needed to determine whether site specific conditions indicate that a risk to a water supply well exists.

As indicated in question #1, we believe the application of these administrative rules is consistent with the provisions of ch. 160, Stats.

7. *Section Comm 46.05 (2) (d) provides that decisions regarding the remediation and closure of sites will be based on the application of various risk criteria including whether no contamination occurs above stated values in Table 1 within 4 feet of the ground surface. How were the figures in Table 1 determined? Are the figures higher than standards set by the Environmental Protection Agency (nationally or in region 5), ASTM standards or standards used in Michigan. If so, why?*

Answer:

The direct contact numbers in Comm 46 were taken from the table of US EPA Region 9 Preliminary Remediation Goals (PRG) dated May 1, 1998. These PRGs were derived from standard equations that combine the risk to human health from



ingestion, dermal contact and inhalation, simultaneously, with the highest possible PRG being a compound's soil saturation limit, or the level just below where we can expect free-phase contamination (free-product) to be found in the soil.

Table 1, below, compares the values in Comm 46 to: 1.) a Wisconsin residual contaminant level (RCL) calculated using the formula and default values in NR 720; 2.) the US EPA Region 3 soil screening levels (SSL) for determining when a remedial action should be considered at a Superfund site; and 3.) Michigan's risk-based screening levels (RBSL). While the numbers in Comm 46 are similar to the other numbers in Table 1, below, none are directly comparable because of the different exposure assumptions were used and the numbers were created for differing purposes. It should be noted that all the values in Comm 46 are reasonably close (within a factor of three) to values arrived at in the other models. Typically numbers within an order of magnitude (within a factor of ten) are considered equivalent in risk evaluation.

**Table 1.**  
**Direct Contact Levels for Volatile Contaminants in Soil**

	Inhalation of Volatiles (* indicates Soil Saturation Limit)			Comm 46 #s
	WI RCL	EPA SSL	MI RBSL	EPA Reg. 9 PRG
	(mg/kg)	(mg/kg)		(mg/kg)
Benzene	0.74	0.79	1.6	<b>0.62</b>
1,2-DCA	0.43	0.36	2.1	<b>0.34</b>
Ethylbenzene	92. *	395. *	140. *	<b>230. *</b>
Toluene	188. *	654. *	250. *	<b>520. *</b>
Xylene (m+o+p)	295. *	1,290. *	150. *	<b>860. *</b>

8. Section Comm 46.05 (2) (g) describes another risk factor in terms of the impact or potential impact to a receptor of concern as defined by the departments. Please define the phrase "receptor of concern." What other "receptors of concern" need to be evaluated that are not already addressed by risk criteria?

Answer:

Receptors of concern are pathways by which contamination may migrate from the source area and potentially impact other areas or properties. Receptors include but are not limited to: basements where explosive or toxic vapors are present or potentially present; water and sewer lines and other utility corridors along which vapors, free product or highly contaminated water may flow, and interbedded permeable soil layers.

9. Section Comm 46.06 (1) (b) describes use of groundwater use restriction or GIS registry. Does a requirement for groundwater use restriction or GIS registry apply only to developable groundwater or any groundwater?

Answer:

The direction of the current budget bill is to use a GIS registry as a means for tracking groundwater contamination that remains in place. Until the full development of the GIS system is complete, GW use restrictions will be used as the method of documenting contamination remaining in place in both developable and non-developable groundwater. After its development, the GIS system is expected to form the standard basis for documentation.

10. *Section Comm 46.06 (1) (d) provides a "No additional risk" evaluation. What is meant by the terms "no additional risk" and "source control"? Please define.*

Answer:

The term "no additional risk" means that there will be no increase in risk to the public and/or the environment by leaving the contamination in place and not taking a more aggressive response action. The term "source control" encompasses actions which either remove or treat contamination in the soil or groundwater, or both, and those actions which minimize the leaching of contamination to groundwater via installation of an impermeable cap, such as asphalt. Source control actions are targeted at the most contaminated areas of a site (hot spots) and are designed to prevent plume migration, facilitate natural attenuation and reduce the risk to the public from the contamination at the site.

11. *Section Comm 46.06 (1) (e) describes remedial efforts. In short, how will risk-based considerations be applied to management of sites, which do not meet the simple screening criteria of Comm 46.05?*

Answer:

As noted in the response to question #2, risk criteria are used for the purpose of determining the range of responses that must be taken to address petroleum contamination. The criteria attempt to classify the risk that a site poses to human health and the environment with the purpose of separating those that can close after only an investigation and those that must continue on to implement a remedial action.

All sites will receive a response based upon the risk that they pose to human health and the environment. The site will be first evaluated at the time that the site investigation is completed and again when a remedial action is proposed, if that is necessary.

12. *Comm 46.07 (4) describes the list of sites. Please define "target levels." Is this the same as "remediation targets" 46.02(9) and "action levels" 46.05(1)? What are expected closure costs and how are they calculated?*

Answer:

The terms "target levels" and "remediation targets" refer to the same thing. These represent the point at which a site will be granted closure and no further action is required. The term "action level" is used to identify an action that would bring the site into compliance with a

remediation target established for the site. These actions could include a source control measure or it could be a closure utilizing a specific institutional control.

"Expected closure costs" are the caps on total funding that are established through Comm 47. These total caps can be created through the approval of a remedial alternative, through the competitive bid process or through the recosting of an existing remediation. In all cases, the cap will be inclusive of the total cost to bring the site to a point where closure can be offered.

*13. Will the creation of ch. Comm 46 necessitate amendments to the NR 700 series of rules and, in particular, to ch. NR 726? If so, when will these amendments be undertaken?*

Answer:

When Comm 46 is adopted as a permanent rule by DNR it will be renumbered and added to the NR 700 rule series as a new chapter, NR 746. Additional changes to the NR 700 rule series are anticipated as follows:

- Amend ch. NR 722.07 and 722.09 to exempt sites that fall under the Comm 46 risk-based protocol from requirements to "identify and evaluate an appropriate range of remedial action options in accordance with the requirements of this section", and to select an option "from the range of technically feasible options".
- Amend ch. NR 720.11 to exempt sites that fall under the Comm 46 risk-based protocol from other provisions which require, "Determining residual contaminant levels based on protection of human health from direct contact with contaminated soil."
- Add a note or provision to ch. NR 726.05, which currently says that sites will be closed when "the concentration or mass, or both, of a substance and its breakdown products existing in soil or groundwater, or both, have been reduced if the actions are deemed necessary to restore groundwater within a reasonable period of time". This note or provision would provide that sites which fall under the Comm 46 risk-based protocol will be closed when the contaminant concentrations reach the levels specified in Comm 46.

The schedule for permanent rulemaking is still being developed, and should be available by mid-April.

*14. How many contaminated sites exist in Wisconsin in which both petroleum and another hazardous substance are factors? Does PECFA apply to such sites and, if so, will the program pay for all or part of the cleanup?*

Answer:

An accurate number of the contaminated sites that have both petroleum and other hazardous substance contamination is not available at this time. DNR did an informal, qualitative survey of a number of field staff on this question in August of 1998. The response indicated that approximately 5% of petroleum contaminated sites also were contaminated with another hazardous substance. (Earlier reports have stated as many as 20% of petroleum sites might have co-contamination. However, recent information indicates that this estimate was too high and 5% is a more realistic number.) On March 9, 1999, the DNR began a file survey of approximately 5,000 open petroleum sites under its jurisdiction in order to get detailed

information on the type, degree and extent of contamination and site geology. The presence of co-contamination is one of the questions in the survey. The results of this survey are expected to be available in 6 months.

PECFA does apply at these sites. However, it will only cover eligible costs for addressing impacts associated with the petroleum portion of the release. Costs attributable to non-petroleum compounds have to be separated out and are not reimbursable under PECFA.

15. *Do the departments believe that statutory authority exists for the promulgation of a rule that requires a consultant to pay for a cost overrun if notice of the problem has not been provided to a site owner?*

Answer:

The departments believe that some level of legislative direction is needed in this area before implementing a requirement that consultants pay for cost overruns. This issue is complex and includes questions of who asked for or directed the non-reimbursable work and what level of notification is required to an owner. To successfully implement an owner "hold harmless" provision, legislation is necessary to help define terms and conditions under which the consultant would be liable for the additional costs. In addition, the legislation would need to address financial tests for the consultant so that there is an assurance that they will have the financial means to pay the cost overruns and how the owner achieves access to the financial guarantee.

16. *In comparison to current law, what percentage of PECFA sites do the departments expect to close because of the promulgation of ch. Comm 46?*

Answer:

Nothing in Comm 46 changes any of the process requirements of the NR 700 rule series, ch. NR 140 or ch. 160, Stats., pertaining to site closure. However, Comm 46 does make it much clearer to the public, consultants and agency staff when sites meet the criteria for closure. The rule also codifies an assumption that natural attenuation will remediate the petroleum contamination in non-developable groundwater within a reasonable period of time, making it unnecessary for such sites to complete that demonstration. Even though all sites seeking closure under Comm 46 could be closed under current law, we believe that there will be a significant increase in sites actually being closed, due to the clarity and simplification that the rule adds to the process.

In the last few weeks, we have had the opportunity to review a sample of remedial alternatives at existing sites. From this very small initial sample, we believe that 25% or more of sites can be impacted by the provisions of Comm 46. In addition, as mentioned in the response to question #14, DNR is now conducting a review of approximately 5000 case files to compile a more detailed analysis of the impact of Comm 46. The results of this evaluation are expected to be available in 6 months.

17. *With the promulgation of ch. Comm 46, what percentage of sites will be moved from the jurisdiction of the Department of Natural Resources to the jurisdiction of the Department of Commerce?*

Answer:

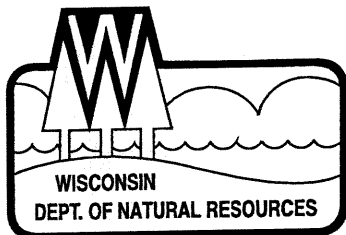
As stated in the answer to question #2, the main focus and impact of Comm 46 is the development of protocols for setting specific criteria by which sites will be evaluated for remedial action or closure. The rule does assign sites with groundwater contamination below the enforcement standard to Commerce, where it was previously set at or below the preventive action limit. This change will move a number of sites to the Department of Commerce. The most significant provision for changing the current assignment of sites, however, is contained in the current budget bill.

18. *At previous meetings, protocols were discussed with regard to differentiating between sand, silt, and clay. Why wasn't this done in Comm 46?*

Answer:

After evaluating the various circumstances that were applicable to the use of the risk-based protocol, it became clear that, regardless of the soil type, the same criteria applied at all sites. We also recognized that in most situations a strictly clay versus sand environment rarely exists at a given site.

To address concerns raised by JCRAR regarding the risk posed by petroleum contamination at clay sites, we recognized the non-developable groundwater concept. This approach encompasses all water-bearing formations that cannot yield at least 0.2 gallons per minute (gpm). We believe this approach addresses not only clay formations, but all formations, such as silt and glacial tills, which are unable to yield 0.2 gpm. We discussed this approach, based on yield, with staff in the Bureau of Drinking Water and Groundwater within DNR. Staff concurred that, in most cases, a potable well would not be constructed in a formation yielding less than 0.2 gpm, excluding bedrock. However, in those rare instances where someone has no choice but to install a potable well in such a formation, the driller in consultation with the DNR would be required to use special well construction features or water treatment, or both, to ensure safe water is delivered.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
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July 19, 1999

JUL 22 REC'D

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review of  
Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review of  
Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

The Department of Natural Resources is sending this letter pursuant to section 227.24 (2), Stats., to request that the Joint Committee for Review of Administrative Rules extend emergency rule ch. Comm 46 for another 30 days. This emergency rule pertains to the classification of petroleum contamination sites and the application of risk screening criteria. Comm 46 took effect on January 1, 1999 and will expire on August 28, 1999 unless another extension is granted.

The extension of the emergency rule is needed so that the emergency rule can remain in effect for another 30 days while the Departments of Natural Resources and Commerce work to finalize a permanent rule for adoption by the two agencies.

If you have any questions about this request, please contact Jay Hochmuth of the Department of Natural Resources at (608) 267-9521.

Sincerely,

George E. Meyer, Secretary  
Department of Natural Resources

cc:

Senator Fred Risser – 220 South, State Capitol  
Rep. Scott Jensen – 211 West, State Capitol  
Jay Hochmuth – DNR, AD/5  
Brenda Blanchard - Commerce  
John Alberts – Commerce  
Carol Turner – DNR





July 13, 1999

✓ Senator Judy Robson  
Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 15 South, Capitol  
Madison, WI 53707

JUL 19 REC'D

Representative Glenn Grothman  
Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 15 North, Capitol  
Madison, WI 53707

Dear Senator Robson and Representative Grothman:

As you know, this Department and the Department of Natural Resources jointly adopted emergency rules earlier this year for chapter Comm 46, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities. And, on June 24, 1999, the Joint Committee for Review of Administrative Rules extended the effective period of the Comm 46 emergency rule by 60 days. The emergency rule will expire at the end of August, 1999, unless a second extension is granted by the Committee.

Following the first extension of the emergency rule and pursuant to chapter 227, Stats., the Department began the public hearing process on a permanent rule for the emergency rule. Based on information from the Revisor's office, the time factors associated with adopting, printing, and publishing will cause the permanent rule to not come into effect prior to September 1, 1999.

The Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 30-day extension of the emergency rule under s. 227.24 (2), Stats., in order to preserve the public safety and welfare and to provide a smooth and orderly transition from the emergency rule to the permanent rule.

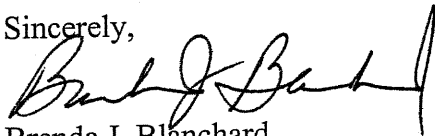
Judy Robson and Glenn Grothman

Page 2

July 13, 1999

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brenda J. Blanchard".

Brenda J. Blanchard

Secretary

*File ref: JCRAR extension request2*



**BEFORE THE  
DEPARTMENT OF COMMERCE**

**NOTICE OF THE JOINT REPEAL AND RECREATION OF  
EMERGENCY RULE Comm 46**

COMMERCE Chapter Comm 46

NOTICE IS HEREBY GIVEN that, pursuant to ss. 227.11 (2)(a), 227.24 and 227.26 (2)(b), Stats., interpreting ss. 101.143, 101.144, 292.11 and 292.31 and ch. 160, Stats., the Department of Commerce is repealing and recreating its emergency rule, ch. Comm 46, Wis. Adm. Code, entitled "Petroleum Environmental Cleanup Fund Interagency Responsibilities," relating to sites contaminated with petroleum products from petroleum storage tanks. This emergency rule was previously adopted by the Department of Commerce on January 1, 1999 and repealed and recreated on February 23, 1999. This action by the Department of Commerce repealing and recreating ch. Comm 46 is taken jointly with the Department of Natural Resources. The DNR noticed the repeal of its prior emergency rule ch. Comm 46 and recreation of this current version of the rule on June 8, 1999.

This recreated emergency rule takes effect upon publication in the official state newspaper as provided in s. 227.24, Stats., and shall expire on August 28, 1999, unless an extension is granted under s. 227.24 (2), Stats.

**ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE**

**REPEALING AND RECREATING EMERGENCY RULES RELATING TO THE  
PETROLEUM ENVIRONMENTAL CLEANUP FUND INTERAGENCY  
RESPONSIBILITIES**

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.143 and 101.144, Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of

Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An emergency rule in response to that directive was then adopted by the two Departments and became effective on January 1, 1999. Subsequently, further improvements for jointly administering the PECFA fund were developed that were consistent with the JCRAR directive, and were adopted by the two Departments in an emergency rule which replaced the initial emergency rule. That second emergency rule became effective on February 23, 1999. Now, significant additional changes have again been developed, which are also consistent with the JCRAR directive.

Chapter Comm 46 defines "high priority site," "medium priority site," and "low priority site," and provides that the Department of Natural Resources has authority for high priority sites and that the Department of Commerce has authority for low and medium priority sites. The rule requires transfer of authority for sites with petroleum contamination in the groundwater below the enforcement standard in ch. NR 140 from the Department of Natural Resources to the Department of Commerce. The rule also establishes procedures for transferring sites from one agency to the other when information relevant to the site classification becomes available.

Chapter Comm 46 requires the two agencies to work cooperatively to develop the following:

1. A system of joint decision-making for the selection of remedial bids and the setting of remediation targets for sites which are competitively bid or bundled with another site or sites.
2. An agreed-upon methodology for determining if there is evidence of an expanding plume and the actions to take if the data provided through the site investigation is not adequate.
3. A process for taking into account the impact of error of measurement, repeatability of results and statistical significance, when determining whether a site is above or below the enforcement standard or any other contaminant level or target.
4. A system for electronically tracking the achievement of remediation targets.
5. A reconciled list of sites in remediation.

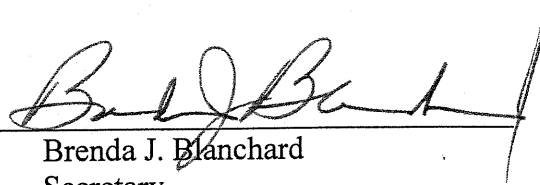
Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes. This rule shall expire on August 28, 1999, unless an extension is granted under s. 227.24 (2), Stats.

Dated at Madison, Wisconsin

7/6/99

STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE

By



Brenda J. Blanchard  
Secretary

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SECTION 1. Comm 46 is repealed and recreated to read:

CHAPTER Comm 46  
PETROLEUM ENVIRONMENTAL CLEANUP FUND INTERAGENCY  
RESPONSIBILITIES

**Comm 46.01 Purpose.** The purpose of this rule is to identify the roles, processes and procedures that guide the departments of commerce and natural resources in the administration of their respective responsibilities for high, medium and low priority petroleum-contaminated sites under ss. 101.143, 101.144, 292.11 and 292.31, and ch. 160, Stats. This rule codifies portions of a memorandum of understanding that has been signed by the two agencies, as required by s. 101.144 (3m), Stats.

**Comm 46.02 Applicability.** This chapter only applies to sites where petroleum products have discharged from petroleum storage tanks.

**Comm 46.03 Definitions.** In this chapter:

- (1) "Commerce" means the department of commerce.
- (2) "Discharge" has the meaning specified in s. 292.01 (3), Stats.

**Note:** Under s. 292.01 (3), Stats., "discharge" means, but is not limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."

- (3) "DNR" means the department of natural resources.
- (4) "Enforcement standard" means a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12.

(5) "Groundwater" has the meaning specified in s. 160.01 (4), Stats.

**Note:** Section 160.01 (4), Stats., defines "groundwater" to mean "any water of the state, as defined in s. 281.01 (18), occurring in a saturated subsurface geological formation of rock or soil. Section 281.01 (18), Stats., defines "waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction."

(6) "High priority site" means a site that is contaminated with a petroleum product and meets one or more of the following criteria:

(a) One or more hazardous substances other than petroleum products from a petroleum storage tank are present at the site.

(b) Contamination from the site discharges to a sensitive environment as defined in s. NR 700.03 (55).

**Note:** Section NR 700.03 (55) defines "sensitive environment" to mean "an area of exceptional environmental value, where a discharge could pose a greater threat than a discharge to other areas, including but not limited to: wetlands; habitat used by state or federally designated endangered or threatened species; national or state fish and wildlife refuges and fish and wildlife management areas; state and federal designated wild and scenic rivers, designated state riverways and state designated scenic urban waterways; riparian areas; rookeries; cold water communities as defined in s. NR 102.04 (3)(b), Lakes Superior and Michigan and the Mississippi river, environmentally sensitive areas and environmental corridors identified in area-wide water quality management plans, special area management plans, special wetland inventory studies, advanced delineation and identification studies and areas designated by the U.S. EPA under section 404 (c), 33 USC 1344 (c); calcareous fens; state forests, parks, trails and recreational areas; state and federal designated wilderness areas; designated or dedicated state natural areas established under ss. 23.27 to 23.29, Stats.; wild rice waters as listed in s. NR 19.09; and any other waters identified as outstanding or exceptional resource waters in ch. NR 102."

(c) Groundwater contamination that is equal to or greater than an enforcement standard has been confirmed at the site.

(7) "Low permeability material" means subsurface material above bedrock, as defined in s. NR 141.05 (5), that is saturated with groundwater and has a hydraulic conductivity less than or equal to  $1 \times 10^{-5}$  centimeters per second as determined by a method specified in s. Comm 46.05.

**Note:** Section NR 141.05 (5) defines “bedrock” to mean “ the solid rock underlying any loose surficial material such as soil, alluvium or glacial drift. Bedrock includes but is not limited to limestone, dolomite, sandstone, shale and igneous and metamorphic rock.”

(8) “Low priority site” means a site that is contaminated with a petroleum product and meets both of the following criteria:

(a) There is no confirmed petroleum product in groundwater equal to or greater than a preventive action limit, and

(b) There is no evidence of a hazardous substance on the site other than petroleum products that were discharged from a petroleum storage tank.

(9) “Medium priority site” means a site that is contaminated with a petroleum product and meets both of the following criteria:

(a) There is no evidence of a hazardous substance on the site other than petroleum products that were discharged from a petroleum storage tank; and

(b) There is no confirmed petroleum product in groundwater equal to or greater than an enforcement standard.

(10) “Monitoring well” means a groundwater monitoring well designed, installed, constructed and developed in accordance with the requirements of ch. NR 141, for the purpose of monitoring groundwater or obtaining geologic or groundwater related data. The term “monitoring well” includes piezometers and water table observation wells.

(11) “Natural attenuation” means the reduction in the concentration and mass of a substance and its breakdown products in groundwater due to naturally occurring physical, chemical, and biological processes without human intervention or enhancement. These processes include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(12) “Permeable material” means a subsurface material that is saturated with groundwater and that is not a low permeability material.

(13) “Petroleum product” has the meaning specified in s. 101.143 (1)(f), Stats.

**Note:** Section 101.143 (1)(f), Stats., defines “petroleum product” to mean “gasoline, gasoline alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel or used motor oil.” The term “petroleum product” includes substances that are, or once were, constituents of a petroleum product.

(14) “Petroleum storage tank” has the meaning specified in s. 101.144(1)(bm), Stats.

**Note:** Section 101.144 (1)(bm), Stats., defines “petroleum storage tank” to mean “a storage tank that is used to store petroleum products together with any on-site integral piping or dispensing system.” The term “petroleum storage tank” does not include a pipeline facility.

(15) “Preventive action limit” means a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15, Stats., and s. NR 140.10 or 140.12.

(16) “Property boundary” has the meaning specified in s. 160.01(6m), Stats.

**Note:** Section 160.01(6m), Stats., defines “property boundary” to mean “the boundary of the total contiguous parcel of land owned by a common owner, regardless of whether public or private roads run through the parcel.”

(17) “Remedial action” means a response action taken to control, minimize or eliminate the discharge of petroleum products so that they do not present an actual or potential threat to public health, safety or welfare or the environment. The term “remedial action” includes actions taken to restore the environment to the extent practicable and to meet applicable environmental standards, and includes natural attenuation. Examples include containment, treatment, excavation, disposal, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment.

(18) “Remediation target” means the contaminant concentration in groundwater or soil, or both, that must be achieved before a site can be granted, or is eligible for, closure under ch. NR 726.

(19) “Responsible person” has the meaning specified in s. 101.144(1)(d), Stats.

**Note:** Section 101.144(1)(d), Stats., defines “responsible person” to mean “a person who owns or operates a petroleum storage tank, a person who causes a discharge from a petroleum storage tank or a person on whose property a petroleum storage tank is located.”

(20) “Site” means any area where a petroleum product has discharged.

(21) “Site closure” or “site closed” means a determination made pursuant to ch. NR 726 that applicable groundwater quality standards in ch. NR 140 have been met or will be met by relying on natural attenuation and that applicable soil cleanup standards in ch. NR 720 have been met or will be met by relying on a remedial action performance standard.

(22) “Source control” means actions taken to remove or treat soil or groundwater contamination, or both, actions taken to minimize the leaching of soil contamination to groundwater, and actions taken to prevent the migration of groundwater contamination. The term “source control” includes tank removal, the removal of free product and contaminant hot spot removal or treatment.

**Note:** The term “source control” does not include groundwater monitoring, soil sampling, recycling or reuse of contaminants, reliance on natural attenuation to address residual contamination, or changes to a facility’s design, operation, construction or waste handling or disposal practices.

**Comm 46.04 Site authority.** (1) **GENERAL.** The assignment of administrative authority for high, medium and low priority petroleum contaminated sites shall be determined according to the following:

- (a) DNR shall have administrative authority for high priority sites.
- (b) Commerce shall have administrative authority for low and medium priority sites.

(2) **ADMINISTRATIVE AUTHORITY.** The administrative authority of Commerce and DNR for a site includes enforcement under ss. 101.02, 101.144 (2) or (3), or s. 292.11 (7), Stats., setting remediation targets, remediation supervision and direction, and decision making regarding granting or denying closure and deciding whether or not further remedial action is required.

(3) **JOINT DECISION-MAKING.** Commerce and DNR shall implement a system of joint decision-making for the setting of remediation targets for sites that are competitively bid or bundled with another site or sites pursuant to s. Comm 47.337 (4)(a)3. and 4., and the selection of remedial bids.

(4) **CLOSURE DECISIONS FOR SITES WITH GROUNDWATER CONTAMINATION.** At any time following completion of the site investigation, the following steps shall be taken for a site with confirmed groundwater contaminant levels equal to or greater than an enforcement standard:

(a) Where a closure request has been submitted by, or on behalf of, a responsible person with the appropriate fee, the DNR shall review the request, make a determination on closure, and if closure is granted, forward a copy of the closure determination to Commerce.

(b) Where a closure request has not been submitted, if Commerce or DNR identifies a site that either agency believes has met its remediation target, DNR may take action to solicit a closure request from the responsible person.

(5) **DISPUTE RESOLUTION.** Any disputes between Commerce and DNR under sub. (3) or (4) shall be subject to the following dispute resolution process:

(a) Project managers shall discuss their differences, and the basis for them, in an attempt to resolve the dispute.

(b) If the dispute is not resolved by the project managers, the decision shall be referred to the project managers’ supervisors.

(c) If the dispute is not resolved by the project managers' supervisors, the decision shall be referred to the appropriate division administrators.

(d) If the dispute still remains unresolved at the division administrator level, the department secretaries shall be the final decision-makers.

**Comm 46.05 Site investigation.** (1) GENERAL. In conducting an investigation of petroleum contaminated sites, the responsible person or a consultant retained by the responsible person shall meet applicable ch. NR 716 requirements and minimize costs while providing sufficient data necessary for risk assessment screening and decision-making under this section and ss. Comm 46.06, 46.07, 47.337 and 47.339, and chs. NR 720, 722 and 726.

(2) GROUNDWATER PLUME EXPANSION DETERMINATION. Commerce and DNR shall develop an agreed upon methodology for determining if there is evidence of a groundwater-contaminant plume margin expansion and the actions to take if the data provided in the site investigation report are not adequate to make this determination. This methodology shall be utilized in the site investigation process.

(3) LOW PERMEABILITY DETERMINATION. (a) *General.* If groundwater is contaminated with petroleum products, the responsible person or a consultant retained by the responsible person shall determine, as part of the site investigation, if the contaminant plume is completely contained within low permeability materials and does not extend into deposits of laterally extensive permeable material, into a water line or sewer line trench or other utility corridor, into a fracture in clay, or into another feature that acts or is anticipated to act as a migration pathway for groundwater contamination.

(b) *Evaluation of existing site data.* Existing site data shall be used to make the determinations required under par. (a), if existing site data are sufficient to make these determinations. Existing site data may include, but are not limited to, monitoring well development data, monitoring well purging and sampling data, rising and falling head test data, yield test data, pump test data, monitoring well and boring logs, grain size analysis, local and regional geology, subsurface description, depositional environment, expected and actual degree and extent of contamination, or a combination of this data. If the responsible person's consultant finds groundwater contamination in low permeability materials, the responsible person or the consultant shall submit to the agency that has administrative authority for the site, for approval, the results of the evaluation of existing site data that is required by this paragraph, or an explanation of why the existing site data are not sufficient to make the determinations required in par. (a).

(c) *Standard hydraulic conductivity tests.* If the agency with administrative authority for the site determines that the existing site data are insufficient to make the determinations required under par. (a), the responsible person, or a consultant retained by the responsible person, shall then determine the hydraulic conductivity of the saturated materials at the site



utilizing a method described in Appendix A, or a method that has been approved under par. (d), in conformance with the following requirements:

1. Hydraulic conductivity shall be determined for at least one monitoring well within the contaminant plume unless subd. 2 is applicable.

2. Notwithstanding the requirements in subd. 1, the agency with administrative authority for the site may determine that hydraulic conductivity test results for one or more monitoring wells outside of the plume are representative of the hydraulic conductivity of the saturated materials within the plume, based upon a comparison of the monitoring well logs for monitoring wells installed inside and outside of the plume, and that it is not necessary to conduct a hydraulic conductivity test for a monitoring well within the plume.

(d) *Alternative methods for determining hydraulic conductivity.* The agency with administrative authority for the site may approve an alternative method for determining the hydraulic conductivity of the saturated materials at a site if the method meets the objectives of this section. The responsible person, or a consultant retained by the responsible person, shall obtain approval from the agency before using an alternative method. If the agency grants approval for use of the alternative method, the responsible person or the consultant shall submit site data and test results, to the agency with administrative authority for the site, documenting that the objectives of this section have been met.

(4) SUPPLEMENTAL SITE INVESTIGATION INFORMATION. If the site investigation report for the site was submitted prior to the effective date of this rule, supplemental site information, evaluating existing site data to make the determinations required under par. (a), may be required by Commerce or DNR to be included as part of a submittal for approval of a remedial action, setting remediation targets or approving or denying closure. If the agency with administrative authority for the site determines that the existing site data are insufficient to make the determinations required in sub. (3)(a), the responsible person or a consultant retained by the responsible person, shall then determine the hydraulic conductivity of the saturated materials at the site in compliance with the requirements of sub. (3)(c).

**Comm 46.06 Risk assessment screening.** (1) GENERAL. The risk criteria in sub. (2) for screening sites shall be used to measure the environmental, public health, safety and welfare risks associated with the discharge of petroleum products to determine whether a remedial action shall be required, which could include, but is not limited to, adequate source control and measures to address environmental factors listed in s. Comm 47.337 (3), to set remediation targets, and to determine whether the site may be closed as provided in s. Comm 46.07.

(2) RISK CRITERIA FOR SCREENING SITES. In making decisions under sub. (1), Commerce and DNR shall utilize, as provided in s. Comm 46.07, the following risk criteria for screening sites:

(a) None of the environmental factors as listed in s. Comm 47.337 (3) are present at the site at the time of the completion of the site investigation;

(b) There is no contaminant concentration in any groundwater that has migrated outside of the property boundary, of the property where the source of the contamination is or was located, that is equal to or greater than enforcement standards, except in a public road or street right of way;

(c) No soil contamination exists within 4 feet of the ground surface that exceeds the direct contact soil concentrations listed in Table 1;

(d) No groundwater contamination, in a water sample collected from a monitoring well in low permeability material, which has been identified using the methods specified in s. Comm 46.05, exceeds the groundwater concentrations listed in Table 1;

(e) 1. There is a vertical separation distance of 5 feet or more between any contaminants contained within low permeability material and any permeable material on the site, or the soil and groundwater contaminant concentrations are decreasing with depth within the low permeability material, and

2. No concentration of any contaminant in the groundwater contained within permeable material is equal to or greater than an enforcement standard;

(f) There is no impact to a water line or sewer line trench or other utility corridor along which vapors, free product or contaminated water may flow, or an interbedded permeable soil layer, and there is no impact or evidence of imminent impact to a basement;

(g) There is no enforcement standard exceedance in any groundwater within 1000 feet of a public well; and

(h) There is no enforcement standard exceedance in any groundwater within 100 feet of a private well.

Table 1

Substance	Direct-Contact Soil Contaminant Concentrations (Top 4 ft)	Basis	Contaminant Concentration in Groundwater within Low-Permeability Materials	Basis
	(mg/kg)		(µg/l)	
Benzene	1.10	Cancer risk	1,500.	Cleanup time
1,2-DCA	0.54	Cancer risk	1,500.	Cleanup time
Ethylbenzene	400.	Soil Saturation Limit	7,100.	Soil Saturation Limit
Toluene	670.	Soil Saturation Limit	20,000.	Soil Saturation Limit
Xylene	470.	Soil Saturation Limit	7,800.	Soil Saturation Limit

**Comm 46.07 Site closure and approval and tracking of remedial actions. (1) SITE CLOSURE DECISIONS.** Commerce and DNR shall make site closure decisions based upon the following requirements:

(a) Sites where contaminant concentrations are below the enforcement standards at every point on site at which groundwater is monitored, and where all of the risk criteria in s. Comm 46.06 (2) are satisfied, shall be closed without reimbursement from Commerce for additional remedial actions except for post closure costs that are otherwise eligible for reimbursement under ch. Comm 47.

(b) Sites where contaminant concentrations within permeable material outside of the property boundary, of the property where the source of the contamination is or was located, are below enforcement standards and where contaminant concentrations within low permeability material outside of the property boundary, of the property where the source of the contamination is or was located, are below the groundwater concentrations listed in Table 1, but where contaminant concentrations above enforcement standards exist within the property boundary, of the property where the source of the contamination is or was located, shall be offered closure with institutional controls that satisfy the requirements of ch. NR 726, if all of the risk criteria in s. Comm 46.06 (2), except ss. Comm 46.06 (2)(b) or 746.06 (2)(e)2., are satisfied. If the owners of all properties on the site with enforcement standard exceedances sign and record a groundwater use restriction, as required under s. NR 726.05 (2)(b)4., the site shall be closed. If the owner of any property on the site with an enforcement standard exceedance does not sign and record a groundwater use restriction, additional remedial action, other than the utilization of natural attenuation, may not be required for areas where all contaminant concentrations that are equal to or greater than enforcement standards are found in low permeability material, except in situations where a risk or potential risk exists to public health, safety or welfare or the environment from the residual

groundwater contamination in the low permeability material, and where a technically feasible and cost effective response is available. Funding under s. 101.143, Stats., shall be terminated by Commerce for sites that are offered closure under this paragraph, except for post closure costs that are otherwise eligible for reimbursement under ch. Comm 47.

**Note:** DNR is currently developing a geographic information system (GIS) registry as a means for tracking residual groundwater contamination which could replace the groundwater use restriction requirement in ch. NR 726. However, until the GIS registry is operable and ch. NR 726 is amended to allow registration on a GIS registry as a substitute for recording a groundwater use restriction, groundwater use restrictions will continue to be used as the method for notifying future property owners and other interested persons of the existence of the residual groundwater contamination.

(c) After an investigation that satisfies the requirements of ch. NR 716, the agency with administrative authority for the site may approve of site closure under ch. NR 726 for sites that do not meet all of the risk criteria in s. Comm 46.06(2) if the requirements of ch. NR 726 are satisfied, or may determine that additional remedial action other than reliance on natural attenuation is not required even though all of the requirements for closure in ch. NR 726 have not been satisfied, without reimbursement from Commerce for additional remedial actions except for post closure costs that are otherwise eligible for reimbursement under ch. Comm 47.

(d) If the agency with administrative authority for a site determines that pars. (a), (b) and (c) do not apply to the site, the responsible person shall be required to conduct a remedial action, and shall be entitled to reimbursement under ch. Comm 47 for all eligible costs of the remedial action.

**Note:** In compliance with s. 160.21(2)(a), Stats., s. NR 140.22(2)(b) establishes the point of standards application to determine whether an enforcement standard has been attained or exceeded, for facilities, practices or activities that do not have an established design management zone, as "any point of present groundwater use and any point beyond the boundary of the property on which the facility, practice or activity is located and s. NR 140.22 (2)(c) establishes a point of standards application for "discharges, releases, sites or facilities" regulated under s. 292.11 or 292.31, Stats. (among other statutes) as "every point at which groundwater is monitored." The environmental factors in s. Comm 47.337 (3) and the other risk criteria in s. Comm 46.06 (2) require an evaluation of groundwater contaminant concentrations at all of these points of standards application.

(2) CLOSURE BASED ON REMEDIATION TARGETS. When the remediation targets developed under s. Comm 46.04 (3) are achieved, the site shall be closed utilizing an institutional control that satisfies the requirements of ch. NR 726, if required, without reimbursement from Commerce for additional remedial actions except for post closure costs that are otherwise eligible for reimbursement under ch. Comm 47.

(3) DETERMINATION OF COMPLIANCE WITH ENFORCEMENT STANDARDS OR REMEDIATION TARGETS. When determining whether contaminant

concentrations at a site are above or below either an enforcement standard or a remediation target, recognition shall be made of the impact of error of measurement, repeatability of test results and statistical significance. Commerce and DNR shall develop, by June 30, 1999, a process for taking these considerations into account and then revise or adopt administrative rules as appropriate.

(4) TRACKING OF REMEDIATION PROGRESS. (a) Commerce and DNR shall establish a system for electronically tracking remediation progress and shall use the tracking system to determine if remediation funding under s. 101.143, Stats., should end or if a site closure request should be submitted.

(b) Commerce and DNR shall jointly require and enforce the use of the electronic reporting system by claimants for reimbursement under s. 101.143, Stats.

**Comm 46.08 Transfer of sites.** (1) GENERAL. Except as provided in sub. (2) or (3), DNR shall determine whether Commerce or DNR has administrative authority for a site. Until that determination is made, DNR has administrative authority for the site. DNR shall make this determination within 60 days after receipt by DNR of the site investigation report, unless any of the following apply:

(a) DNR has requested additional information from a responsible person or a consultant retained by the responsible person after reviewing the site investigation report and the requested information has not been submitted to DNR.

(b) The site is the subject of an enforcement action under s. 292.11, Stats., initiated by DNR.

(c) Other circumstances over which DNR has no control have prevented DNR from making a site classification determination.

(2) CONSULTANT DETERMINATION. Consultants performing site investigations may determine, as part of a joint agency site classification pilot, whether a site is high, medium or low priority and submit the investigation report directly to the agency they determine to have administrative authority under s. Comm 46.04 (1).

(3) CHANGES IN CLASSIFICATION. If a site is classified as high, medium or low priority, and DNR or Commerce determines that the classification is incorrect, the agency making the determination that a site has been incorrectly classified shall transfer the site file and all related data to the other agency within 14 days after making the determination, if the other agency has administrative authority for the reclassified site.

(4) LIST OF SITES IN REMEDIATION. Commerce and DNR shall develop and maintain a reconciled list of sites in remediation including data on remediation targets, risk criteria for screening sites, expected closure costs and other relevant data.

## Appendix A

### STANDARD METHODS FOR DETERMINING HYDRAULIC CONDUCTIVITY

(1) TRANSMISSIVITY TEST. (a) To conduct a transmissivity test, a volume of water is removed from a monitoring well and the water level recovery in the well is measured after a specified time has elapsed. The resultant data may be used to determine the hydraulic conductivity of the area surrounding the monitoring well.

(b) For transmissivity tests, groundwater may not be removed from the well 12 hours prior to beginning the test.

(c) Transmissivity tests shall be conducted in a monitoring well as follows:

1. If using a pump, set the pump intake in the lower half of the screen and allow sufficient time for the water level in the well to equilibrate.

2. Measure and record the initial depth to water and well depth. Subtract the difference to determine the saturated interval of the well, in feet.

3. Pump or bail 2 gallons of groundwater from the well within 2 to 3 minutes.

4. Record the start time and finish time to remove 2 gallons from the well.

5. Measure and record the water level in the well immediately after 2 gallons is removed from the well.

6. After the applicable time listed in Table A has elapsed, measure and record the water level in the well.

7. Calculate hydraulic conductivity utilizing Formula A.

**TABLE A**

Saturated Interval of Well (feet)	Time (minutes)
5	190
6	160
7	140
8	120
9	105
10	95

### FORMULA A

Step 1: Calculate  $T = q / 4 \pi s t$

Where:  $T$  = coefficient of transmissivity, in gallons per day per foot (gpd/ft)

$q$  = volume of groundwater removed (2 gallons)

$s$  = measured residual drawdown, in feet (water level at time in Table A minus initial depth to water in par. (c) 2., above)

$t$  = time, in days, from Table A. (convert minutes to days by dividing by 1440)

Step 2: Convert  $T$  in gpd/ft to  $T$  in  $\text{ft}^2/\text{sec}$  by dividing by 646272.

Step 3: Calculate  $K = T/b$

Where:  $K$  = hydraulic conductivity, in ft/sec

$b$  = saturated interval of well, in feet, as measured in par. (c) 2., above.

Step 4: Convert  $K$  in ft/sec to  $K$  in cm/sec by multiplying by 30.48.

(2) RISING AND FALLING HEAD TEST. (a) To conduct a rising head test, a volume of groundwater is instantaneously removed from a well and the rate of water level recovery in the well is measured. To conduct a falling head test, a solid object is instantaneously inserted into a well and the rate at which groundwater flows out of the well is measured. The results of both tests may be used to determine the hydraulic conductivity of the area surrounding the well. Both tests shall be conducted in accordance with procedures specified by ASTM in guidance number D 4044-96 and D 5912-96, or their successor, and the relevant criteria in pars. (b) and (c) or (d).

**Note:** ASTM guidance number D 5912-96 is based on the Bouwer and Rice method. Rising head test is also referred to as bail-down test, slug-out test and slug extraction test. Falling head test is also referred to as slug-in test and slug injection test. The criteria listed under pars. (a) to (c) are intended for determining the hydraulic conductivity of low permeability materials. They may not be applicable to saturated materials having a hydraulic conductivity greater than  $1 \times 10^{-5}$  cm/sec.

(b) For both the rising and falling head tests, groundwater may not be removed from the well 12 hours prior to the test, the well shall have at least five feet of water within the well screen or well casing, or both, prior to each test, and the borehole diameter of the well shall be at least six inches.

(c) Hydraulic conductivity shall be determined only by rising head tests in wells where the water table intersects the well screen and shall be conducted in accordance with all of the following criteria:

1. Assume the filter pack's specific yield is 0.20 to 0.25, unless measured by the manufacturer.
2. Remove a minimum of 0.75 gallons and a maximum of 1.5 gallons during the test.
3. Each test shall continue for 150 minutes or more unless the test results clearly demonstrate that the hydraulic conductivity of the well is greater than  $1 \times 10^{-5}$  centimeters per second.
4. Determine if the hydraulic conductivity of the well is less than or equal to  $1 \times 10^{-5}$  centimeters per second based upon the test results.

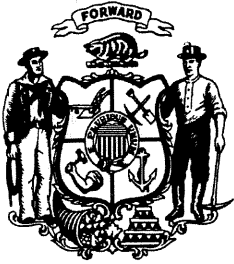
(d) Both rising head and falling head tests may be conducted in piezometers and shall be conducted in accordance with all of the following criteria:

1. Remove a minimum of 0.75 gallons for the rising head test and add a slug with a volume equivalent to 0.75 gallons or more for the falling head test.
2. The volume of groundwater water removed from the well shall be less than the total volume of water within the well casing above the top of the well screen.
3. The sum of the filter pack length and the filter pack seal shall be used as the length of well screen when calculating hydraulic conductivity.
4. The drawdown in the well shall not exceed the top of the filter pack seal.
5. The length of well screen shall be at least four feet.
6. Each test shall continue for 45 minutes or more per well unless the test results clearly demonstrate that the hydraulic conductivity of the well is greater than  $1 \times 10^{-5}$  centimeters per second.
7. Determine if the hydraulic conductivity of the well is less than or equal to  $1 \times 10^{-5}$  centimeters per second based upon the test results.

(End)



APR 12 2000



# STATE OF WISCONSIN

April 12, 2000

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review  
Of Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review  
Of Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

We are writing to inform you that the Department of Commerce and the Department of Natural Resources have jointly developed a new version of Comm 46/NR 746 (copy attached) that will be published as a new emergency rule. The existing emergency rule, which pertains to the classification of petroleum contamination sites and the application of risk screening criteria, took effect on October 20, 1999 and currently expires on May 17, 2000. Before the new emergency rule can be published, the Department of Natural Resources must obtain approval from the Natural Resources Board. The Board is scheduled to consider adoption of the new emergency rule at its meeting on April 26.

Although approval by the Board is anticipated, if for some reason the Board did not approve the new emergency rule in April, we would not be able to publish the new rule before the existing emergency rule expires on May 17. Therefore, we are requesting that the Joint Committee for Review of Administrative Rules at its April meeting extend the existing emergency rule Comm 46 /NR 746 for 30 days. This extension will only be needed if the Natural Resources Board does not approve the new emergency rule in April.

If you have any questions about this request or the new emergency rule, please contact John Alberts of the Department of Commerce at (608) 266-9403 or Jay Hochmuth of the Department of Natural Resources at (608) 267-9521. Thank you.

Sincerely,

Brenda J. Blanchard, Secretary  
Department of Commerce

George E. Meyer  
Dept. of Natural Resources

Cc: JoAnne Kloppenburg – DOJ, John Alberts – Commerce and Jay Hochmuth - DNR



SEP 20 1999

P. O. Box 7970  
Madison, Wisconsin 53707  
(608) 266-1018  
TDD #: (608) 264-8777  
www.commerce.state.wi.us

Tommy G. Thompson, Governor  
Brenda J. Blanchard, Secretary

September 20, 1999

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review of  
Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review of  
Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

The Departments of Commerce and Natural Resources are writing to the Joint Committee for Review of Administrative Rules to provide an update on where our agencies are in the completion of a final version of Comm 46.

At this point in time, the Departments have not arrived at an agreement on a final rule. Although progress has been made in a number of areas, including direct contact soil numbers, consultant site classification and expansion of table values to include MTBE, key points remain to be resolved. These points include the approach to non-saturated soils, table numbers, methods and costs of determining the permeability of a site and criteria for sand and silt locations. Discussions continue on these and other issues and we are optimistic that progress can continue to be achieved.

It is the intent of the Departments to continue to implement the provisions of the current version of Comm 46 as the operating and decision making policies of the agencies. The provisions of Comm 46 specify how interactions are to take place between the Department of Natural Resources and Commerce and how specific closure decisions will be made. These processes and decisions are within existing statutory authorities and can be continued on that basis.

We also wish to share an observation with you. During the period that the Comm 46 emergency rule has been in effect, it appears that the primary impetus for site closure has been the focus the rule has created on existing flexible closure options and the creation of a presumption of natural attenuation at clay sites. Regardless of this progress, it is doubtful that Comm 46 by itself will result in the changes necessary to balance claims and available funding.

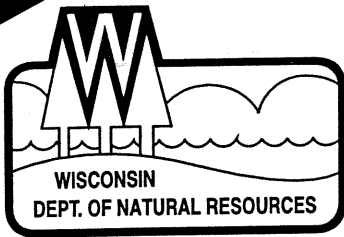
Thank you for your support as we work to resolve the many complicated issues surrounding administration of the PECFA program. If you have any questions regarding the current status of the rule development effort, prior to the Committee meeting in September, please contact John Alberts at 266-9403 or Jay Hochmuth at 267-9521.

Sincerely,

Brenda J. Blanchard  
Secretary  
Department of Commerce

George E. Meyer  
Secretary  
Department of Natural Resources

cc George Lightbourn



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

April 26, 1999

APR 26 1999

APR 26 1999

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review of  
Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review of  
Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

  
Dear Senator Robson and Representative Grothman:



The Departments of Natural Resources and Commerce are pleased to transmit to you a new version of Comm 46. The new rule is presented in two formats. One shows changes to the current version of Comm 46 using underline and strikeout notations, while the other shows the text of the new rule without any editing notations.

The new rule reflects the results of discussions we've had with Ms. JoAnne Kloppenburg, from the Department of Justice, since last month's JCRAR hearing. We believe this new version of the rule addresses concerns raised last month regarding Comm 46's compliance with ch. 160, Wis. Stats.

Please note that Table 1, which is referenced in Comm 46.06, is still being developed by both agencies. We had hoped to finalize this Table by now. However, several technical issues have arisen which require additional time to resolve. We will provide Table 1 to you by May 6. This will still provide sufficient time for the Committee, at its May meeting, to decide whether the most appropriate course of action is:

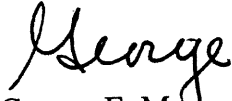
1. To allow the current emergency rule to expire on May 30, 1999, and to direct our agencies to publish the attached rule, with Table 1 values included, as a new emergency rule with an effective date of May 31, 1999, and an expiration date of October 27, 1999, or
2. To grant a 60 day extension to the current emergency rule's expiration date of May 30, 1999, and direct our agencies to repeal the current rule and replace it with the attached rule, with Table 1 values included.

We have also attached the schedule for promulgating Comm 46 and NR 746 (DNR's counterpart permanent rule), and for promulgating related revisions to several existing chapters in the NR 700 rule series. While this timeline is ambitious, we believe it can be met and will assure full consistency between Comm 46, NR 746 and other chapters in the NR 700 rule series.

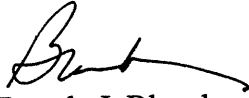


Thanks for your support as we work to resolve the many complicated issues surrounding administration of the PECFA program. If you have any questions regarding the attached material, prior to the Committee meeting on April 27, please contact Jay Hochmuth at 267-9521 or John Alberts at 266-9403.

Sincerely,

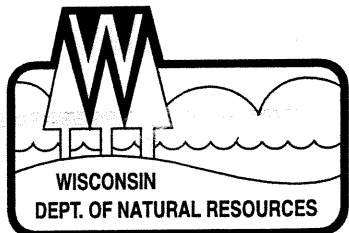


George E. Meyer  
Secretary  
Department of Natural Resources



Brenda J. Blanchard  
Secretary  
Department of Commerce

cc: Mark Bugher – DOA  
JoAnne Kloppenburg - DOJ



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

May 3, 1999

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review of  
Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review of  
Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

*Judy Glenn*

Dear Senator Robson and Representative Grothman:

The Department of Natural Resources, under 227.24(2), Stats., is sending this letter to request the Joint Committee for Review of Administrative Rules to extend the emergency rule for ch. Comm 46 for 60 days. This emergency order pertains to the classification of petroleum contamination sites and the application of risk screening criteria. Comm 46 took effect on January 1, 1999 and will expire on May 30, 1999 unless an extension is granted.

The extension of the emergency rule is needed so that the emergency rule can remain in effect while the Department of Natural Resources works with a Technical Advisory Committee to develop and implement a permanent rule.

I would like to point out, however, that in lieu of granting this 60 day extension, the Committee could allow the emergency rule to expire on May 30, 1999, and direct our agency to publish the revised version of Comm 46 that we provided you on April 26, 1999 with Table 1 values included, as a new emergency rule with an effective date of May 31, 1999, and an expiration date of October 28, 1999.

If you have any questions, please contact Jay Hochmuth of the Department of Natural Resources at 267-9521.

Sincerely,

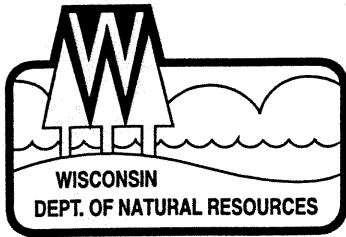
*George*

George E. Meyer, Secretary  
Department of Natural Resources

cc: Senator Fred Risser  
Assembly Speaker Scott Jensen

Brenda Blanchard - Commerce  
Jay Hochmuth - DNR





**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

May 6, 1999

The Honorable Judith Robson  
Senate Chair  
Joint Committee for the Review of  
Administrative Rules  
118 North, State Capitol  
Madison, WI 53702

The Honorable Glenn Grothman  
Assembly Chair  
Joint Committee for the Review of  
Administrative Rules  
125 West, State Capitol  
Madison, WI 53702

Dear Senator *Judy* Robson and Representative *Glenn* Grothman:

In follow-up to our letter to you dated April 26, 1999, we are pleased to provide you a copy of the Table 1 values that will be included in the new version of Comm 46. We have also included the rationale that supports these new values, as you requested.

These values represent our agreements on what contaminant concentrations, if left in place, would be protective of human health and the environment and consistent with Wisconsin's groundwater law. Although we believe these values are well founded, we are committed to continue working together to better refine the numbers as they pertain to petroleum impacted sites. We intend to consider several models that can be used as the basis for refining these values and for resolving questions regarding the expansion of Table 1 to include additional values for sites where groundwater samples are difficult to obtain and sites where only soils have been impacted.

If you have any questions, please contact Jay Hochmuth at 267-9521 or John Alberts at 266-9403.

Sincerely,

*George*  
George E. Meyer, Secretary  
Department of Natural Resources

*for Brenda J. Blanchard*  
Brenda J. Blanchard, Secretary  
Department of Commerce

cc: John Alberts - Commerce  
Jay Hochmuth - DNR



SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 27, 1999

Secretary George Meyer  
Department of Natural Resources  
101 South Webster Street  
PO BOX 7921  
Madison, WI 53707-7921

Secretary Brenda Blanchard  
Department of Commerce  
201 West Washington Avenue  
6<sup>th</sup> Floor  
PO BOX 7970  
Madison 53707-7970

Dear Secretary Meyer and Secretary Blanchard:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on May 27, 1999. At that meeting, JCRAR received public testimony regarding **Administrative Rule Comm 47**, relating to the PECFA program.

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 1999 and adopted the following motion:

Carried unanimously, pursuant to § 227.19(1)(b), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extends the delayed effective date of suspension of **Administrative Rule COMM 47** by **30 days**.

Ayes: (10) Senators Robson, Grobschmidt, Shibilski, Welch, and Darling;  
Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

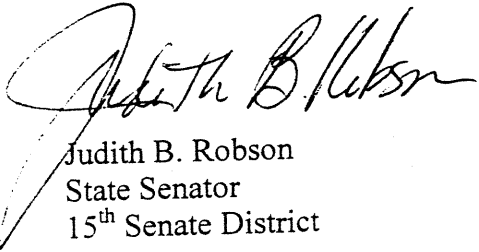
Noes: (0)

Absent: (0)


**Motion Carried: Extension Granted.**  
10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson



SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 27, 1999

Secretary George Meyer  
Department of Natural Resources  
101 South Webster Street  
PO BOX 7921  
Madison, WI 53707-7921

Secretary Brenda Blanchard  
Department of Commerce  
201 West Washington Avenue  
6<sup>th</sup> Floor  
PO BOX 7970  
Madison 53707-7970

Dear Secretary Meyer and Secretary Blanchard:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on May 27, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule Comm 46**, relating to the PECFA program.

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 1999 and adopted the following motion:

Carried unanimously, pursuant to §227.24(2)(a), *Stats.*, the Joint Committee for Review of Administrative Rules extend the effective date of **Emergency Rule Comm 46** by **30 days**, at the request of the Department of Natural Resources and the Department of Commerce.

Ayes: (10) Senators Robson, Grobschmidt, Shibilski, Welch, and Darling; Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

Noes: (0)


Absent: (0)

**Motion Carried: Extension Granted.**


10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson