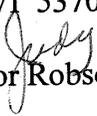


June 16, 2000

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

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

Dear Senator  Robson and Representative  Grothman:

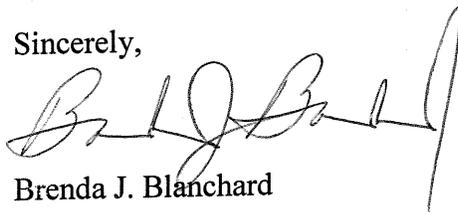
The Department of Commerce is sending this letter pursuant to section 227.24 (2), Stats., to request that the Joint Committee for Review of Administrative Rules extend emergency rule s. Comm 47.53, Wis. Adm. Code for 60 days. This emergency rule pertains to the filing of appeals of Department reimbursement decisions under the Petroleum Environmental Cleanup Fund Act (PECFA). The rule temporarily extends, from 30 to 90 days, the time period that claimants have for filing appeals of reimbursement decisions. This extension is necessary because of the large number of decisions being issued in a short period of time. This acceleration in payments is a result of bonding revenues being used to payoff a backlog of PECFA claims.

S. Comm 47.53, Wis. Adm. Code took effect on February 15, 2000 and will expire on July 14, 2000 unless an extension is granted. An extension is needed so that the emergency rule will remain in effect for another 60 days and claimants under the PECFA program, who are receiving payments because of the reduction in the claim backlog, will have time to review program decisions and file appeals on disallowed costs.

Pursuant to chapter 227, Stats., the Department held a hearing on the rule on March 27, 2000.

If you have any questions about this request, please contact John Alberts of the Department of Commerce at (608) 266-9403. Thank you.

Sincerely,



Brenda J. Blanchard
Secretary

cc: John Alberts

August 10, 2000

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

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 may recall, this Department adopted an emergency rule earlier this year relating to filing appeals for the Petroleum Environmental Cleanup Fund. The emergency rule took effect on February 15, 2000, and is currently in effect. The emergency rule temporarily extends the time period for filing appeals on Departmental funding decisions, from 30 days to 90 days. The additional 60-day period was created to accommodate a large number of appeals resulting from a recent legislative bonding initiative for the PECFA program. The 90-day appeal period contained in the rule extends to September 28, 2000.

Pursuant to chapter 227, Stats., the Department held a hearing on the rule on March 27, 2000. Subsequently, the Joint Committee for Review of Administrative Rules granted an extension of the rule, and the rule will now expire in mid-September unless another extension is granted.

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.

An extension of the emergency rule is needed to avoid expiration of the rule prior to the end of the expanded appeal-filing period cited above.

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.

A copy of the emergency rule is enclosed for your reference.

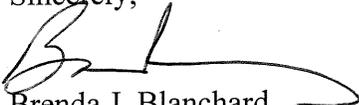
Judy Robson and Glenn Grothman

Page 2

August 10, 2000

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 black ink, appearing to read 'B. Blanchard', with a long horizontal flourish extending to the right.

Brenda J. Blanchard

Secretary

Enc.

File ref: JCRAR extension request

**ORDER OF THE
DEPARTMENT OF COMMERCE

CREATING EMERGENCY RULE**

The Wisconsin Department of Commerce proposes an order amending Comm 47.53, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

Analysis prepared by the Department of Commerce

Statutory authority: Sections 227.11 (2) (a) and 227.24, Wis. Stats.

Statutes interpreted: Sections 101.02 (6) and 101.143, Wis. Stats.

The proposed amendment of §Comm 47.53 expands the period for filing appeals from 30 days to 90 days and applies to decisions issued by the department between February 15, 2000 and June 30, 2000.

FINDING OF EMERGENCY

The Department of Commerce finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of funding. Because these decisions will be issued over a very short time frame, parties receiving

decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

SECTION 1. Comm 47.53 (1) (b) is amended to read:

Comm 47.53 (1) (b)(b) *Appeal requirements.* All appeals pursuant to this chapter shall be filed no later than 30 calendar days from the date of the decision being appealed, except that appeals from decisions issued between February 15, 2000, and June 30, 2000, shall be filed no later than 90 calendar days from the date of the decision being appealed. The department may make a determination not to proceed with a request for a hearing depending on the nature of or amount of the cost item being appealed.

This rule is adopted as an emergency rule to take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Wis. Stats.

Dated at Madison, Wisconsin February 11, 2000

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

By _____
Brenda J. Blanchard, Secretary

(SEAL)

AUG 14 2000



STATE OF WISCONSIN

August 7, 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

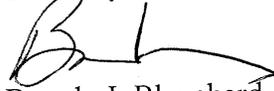
Dear Senator Robson and Representative Grothman:

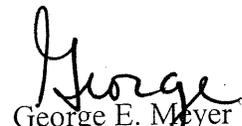
The Department of Commerce and the Department of Natural Resources are sending this letter pursuant to section 227.24 (2), Stats., to request that the Joint Committee for Review of Administrative Rules extend emergency rule ch. Comm 46 /NR 746 for 60 days. This emergency rule pertains to the classification of petroleum-contaminated sites and the application of risk screening criteria. The current version of chapter Comm 46/NR 746 took effect on May 18, 2000 and will expire on October 15, 2000 unless an extension is granted.

The extension of the emergency rule is needed so that the emergency rule will remain in effect for another 60 days while the Departments of Commerce and Natural Resources work to adopt permanent rules. We expect to ask the Natural Resources Board to approve of the adoption of a permanent version of NR 746 at the Board's September meeting, and we anticipate that the Department of Commerce will adopt an identical version of Comm 46 shortly after the Natural Resources Board adopts NR 746. However, the permanent rules will not become effective until they are published after the end of the legislative review period.

If you have any questions about this request, 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: John Alberts - Commerce

Jay Hochmuth - DNR



STATE OF WISCONSIN

OCT 10 2000

October 4, 2000

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

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

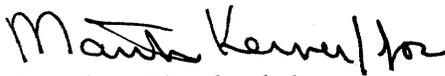
Dear Senator Robson and Representative Grothman:

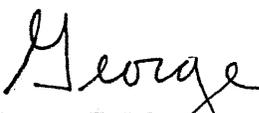
The Department of Commerce and the Department of Natural Resources are sending this letter pursuant to section 227.24 (2), Stats., to request that the Joint Committee for Review of Administrative Rules extend the existing emergency rule Comm 46 /NR 746 (and related emergency rule changes to the NR 700 series) for another 60 days. These emergency rules pertain to the classification of petroleum-contaminated sites and the application of risk screening criteria. The existing emergency rules took effect on May 18, 2000 and will expire on Dec. 14, 2000 unless an extension is granted.

On September 27, 2000, the Natural Resources Board adopted a permanent rule version of NR 746 (with related changes to the NR 700 series), and we anticipate that the Department of Commerce will adopt an identical permanent rule Comm 46 in the near future. However, because of the time it will take for legislative review and publication of the permanent rules, an extension of the emergency rules is needed so that they will not expire before the permanent rules become effective.

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: John Alberts – Commerce
Jay Hochmuth – DNR

Timeline for Comm 46 - PECFIR

<u>Action</u>	<u>Date</u>
Obtain approval to announce Hearing and transmit to Revisor	August 31, 2000
Announcement noticed in register	September 15, 2000
Hold Public Hearing	September 26, 2000
Summarize hearing comments	September 29, 2000
Transmit legislative review package to Secretary	October 10, 2000
Transmit for legislative review	October 17, 2000
Assignment of rules	October 26, 2000
Legislative review ends (includes no hearing)	November 25, 2000
Adoption and filing of rules	December 1, 2000
Code in effect (unless delayed date is used)	March 1, 2001
Emergency rule effective date	May 17, 2000
Request 1st extension	
Expiration of emergency rule	October 14, 2000
Request 2nd extension	November 13, 2000
Expiration of 1st extension	December 13, 2000
Expiration of 2nd extension	February 11, 2001

STATE OF WISCONSIN

SENATE CHAIR
BRIAN BURKE

316 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882
Phone: 266-8535



ASSEMBLY CHAIR
JOHN GARD

315 North, State Capitol
P.O. Box 8952
Madison, WI 53708-8952
Phone: 266-2343

JOINT COMMITTEE ON FINANCE

May 11, 2000

Secretary Brenda Blanchard
Department of Commerce
201 West Washington Avenue, 6th Floor
Madison, WI

Dear Secretary Blanchard:

This is in response to your letter of April 27, 2000, that described why the Department of Commerce did not submit a report to the Joint Committee on Finance on March 1, 2000, as required by the 1999-01 biennial budget act. 1999 Act 9 (Section 9110 (3yx)) directed the Department of Commerce to submit a report related to interest costs under the Petroleum Environmental Cleanup Award (PECFA) program to this Committee and to the Joint Committee for Review of Administrative Rules containing recommendations for actions that Commerce could take to reduce interest costs incurred by PECFA claimants, including a review of schedules for making progress payments to claimants.

We appreciate your efforts to date to make timely PECFA payments with the revenue obligation proceeds authorized in Act 9 and to reduce the claim backlog. It is important to complete disbursing revenue bond proceeds to eliminate the PECFA claim backlog. It is also important to review the impact of the bonding provisions and progress payment schedules on interest costs incurred by claimants, particularly due to the interest reimbursement caps contained in Act 9.

*DAVID
Please
Blow up -
Should I copy?
Send a letter? - Thanks
✓ to G. Ammon*

Although you indicate that the required report may not be completed until December 1, we encourage you to give the report a high priority and to submit it as soon as possible. Please keep us informed of your progress to implement provisions that will minimize interest costs incurred by PECFA claimants.

Sincerely,



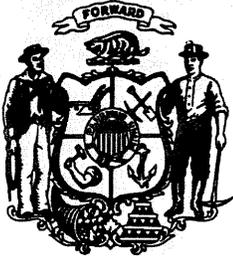
BRIAN BURKE
Senate Chair



JOHN GARD
Assembly Chair

BB:JG:js

cc: Members, Joint Committee on Finance
Members, Joint Committee for Review of Administrative Rules



STATE OF WISCONSIN

February 11, 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

Judy *Glenn*
Dear Senator Robson and Representative Grothman:

The Department of Commerce and the Department of Natural Resources are 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 /NR 746 for 60 days. This emergency rule pertains to the classification of petroleum contamination sites and the application of risk screening criteria. Chapter Comm 46/NR 746 took effect on October 20, 1999 and will expire on March 18, 2000 unless an extension is granted.

The extension of the emergency rule is needed so that the emergency rule will remain in effect for another 60 days while the Departments of Commerce and Natural Resources work to finalize a permanent rule for adoption by the two agencies.

If you have any questions about this request, 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: John Alberts - Commerce
Jay Hochmuth - DNR

Department of Commerce

Emergency Rule 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 directs 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. The rule included with this order is in response to that directive.

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.

Dated at Madison, Wisconsin, this
~~20th~~ day of December, A.D. 1998,
By the Department of Commerce


Philip Edw. Albert, Acting Secretary

File ref.: finding of emer2

SECTION 1. Chapter Comm 46 is created 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) "DNR" means the Department of Natural Resources.
- (4) "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, Stat., and s. NR 140.12.
- (5) "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.

(6) "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.

(7) "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.

(8) "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 selection of remedial bids.
- (b) The setting of remediation targets for sites which are competitively bid or bundled with another site(s).

Comm 46.04 Site investigation. (1) GENERAL. The investigation of petroleum contaminated sites shall be conducted in a manner designed to meet NR 716 and to

minimize costs while providing sufficient data necessary for risk assessment and remediation decision making.

(2) 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. The departments shall develop, by April 15, 1999, an agreed upon risk assessment protocol to measure environmental, safety and health risks associated with petroleum contamination 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. Environmental risk factors include the possibility that groundwater at the site could be used for drinking, the extent to which petroleum is floating on the groundwater, the impact of contamination on surface waters or wetlands, expansion of a petroleum contamination off-site, and proximity of contamination to bedrock. The features of the protocol shall include:

(a) Allowing sites, with contaminants above the enforcement standard on site and below the enforcement standard off site to be closed after investigation;

(b) Allowing the joint setting of remediation target levels for sites that can not be closed at the end of the investigation stage, and

(c) Determining the extent to which the protocol applies during the site investigation.

Comm 46.06 Site closure decisions. (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 all of the following:

(a) Sites where contamination is determined to be below the enforcement standard on site and below the enforcement standard off site shall be closed without requiring or reimbursing for additional remedial efforts.

(b) Sites, which will be competitively bid or bundled with other sites shall have established, through joint agency decision-making, a remediation target at which point the site shall be closed without requiring or reimbursing for additional remedial efforts.

(c) Sites, for which the original remedial action plan is approved, shall have a jointly established remediation target at which point the site shall be closed without requiring or reimbursing for additional remedial efforts.

(2) JOINT 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.

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

(d) If Commerce identifies a site they believe has met the remediation target(s), they may request DNR take action to solicit a closure request from the site owner.

(e) Any disputes between the agencies as to whether a site qualifies for closure under (d) 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.

(3) 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.

(4) 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 46.04 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 .

FISCAL ESTIMATE
DOA-2048 (R10/92)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Comm 46

Amendment No. if Applicable

Subject: Petroleum Environmental Cleanup Fund Interagency Responsibilities

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation

Increase Existing Appropriation
 Decrease Existing Appropriation
 Create New Appropriation
 Increase Existing Revenues
 Decrease Existing Revenues

Increases Costs - May be possible to Absorb
Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenue
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The department is promulgating the rule as directed by the Joint Committee for Review of Administrative Rules, to implement new provisions in the Memorandum of Understanding that controls the working relationship between the Departments of Natural Resources and Commerce in the administration of the PECFA program. At this point in time, the longer-term agency fiscal impact of some of these changes cannot be determined.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)

Bill Morrissey 266-7605

Authorized Signature/Telephone No.

Bill Morrissey
(608) 276-0770

Date

12/28/98

Subject: **Petroleum Environmental Cleanup Fund Interagency Responsibilities**

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ -	\$ -
(FTE Position Changes)	(0 FTE)	(0
State Operations - Other Costs	-	-
Local Assistance	-	-
Aids to Individuals or Organizations	-	-
TOTAL State Costs By Category	\$ 0	\$ 0
B. State Costs By Source of Funds		
GPR	\$ -	\$ -
FED	-	-
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ -	\$ -
GPR Earned	-	-
FED	-	-
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 0	\$ 0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

Philip Cole Albert
 (608) 267-0770

12/28/98

Bill Morrissey 266-7605

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create Comm 46 as a joint rule with the Department of Natural Resources, relating to sites contaminated with petroleum products from petroleum storage tanks.

Analysis prepared by the Department of Commerce

Statutory authority: Section 227.11 (2)(a) and 227.24, Wis. Stats., and Section 9110 (3yu)(b) of 1999 Wisconsin Act 9.

Statutes interpreted: Sections 101.143, 101.144, 292.11, and 292.31 and ch. 160, Wis. Stats.

The proposed ch. Comm 46 is identical to ch. NR 746 that is being promulgated by the Department of Natural Resources.

Chapter Comm 46 provides that the Department of Natural Resources has authority for "high-risk sites" and that the Department of Commerce has authority for "low and medium risk sites." The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a "high-risk site" or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter Comm 46 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

SECTION 1. Comm 46 is created to read:

CHAPTER COMM 46
PETROLEUM ENVIRONMENTAL CLEANUP FUND INTERAGENCY
RESPONSIBILITIES

Comm 46.01 Purpose. The purpose of this chapter is to identify the roles, processes and procedures that guide the departments of commerce and natural resources in the administration of their respective responsibilities under ss. 101.143, 101.144, 292.11 and 292.31, and ch. 160, Stats., for oversight and supervision of high, medium and low risk sites where petroleum products have discharged from petroleum storage tanks. This chapter codifies a memorandum of understanding that is required by s. 101.144 (3m), Stats. It also establishes standards to be applied by both agencies for determining when sites can be closed because it can be documented during either the investigation or remediation phase that the risk screening criteria in s. Comm 46.06 and the closure criteria in s. Comm 46.07 have been satisfied. The risk screening and closure criteria in this chapter, when used to make closure decisions, define on a site-specific basis when natural attenuation will achieve groundwater enforcement standards within a reasonable time. Nothing in this chapter is intended to limit the independent authority of either agency to carry out responsibilities not specifically described in this chapter, including, without limitation, the authority of the department of commerce to apply chapter Comm 47.

Note: This rule, adopted jointly by the Department of Commerce and the Department of Natural Resources, also appears in the Wisconsin Administrative Code as ch. NR 746.

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" has the meaning specified in s. 160.01 (2), Stats.

Note: Section 160.01 (2), Stats., defines “enforcement standard” to mean “a numerical value expressing the concentration of a substance in groundwater which is adopted under ss. 160.07 and 160.09.”

(5) "Free product" means petroleum product that is not in dissolved phase, and is present with a thickness of 0.01 feet or more as verified by more than one sampling event .

(6) “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.”

(7) “High-risk site” has the meaning specified in s. 101.144 (1)(aq), Stats. (as created by 1999 Wis. Act 9).

Note: Section 101.144 (1)(aq), Stats., defines “high-risk site” to mean “the site of a discharge of a petroleum product from a petroleum storage tank if at least one of the following applies:

1. Repeated tests show that the discharge has resulted in a concentration of contaminants in a well used to provide water for human consumption that exceeds a preventive action limit, as defined in s. 160.01 (6).

2. Petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements.

3. An enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.

4. An enforcement standard is exceeded in fractured bedrock.”

(8) “Low permeability material” means subsurface material above bedrock, as defined in s. NR 141.05 (5), that is at or below the water table and has a hydraulic conductivity less than or equal to 1×10^{-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.”

(9) “Low risk site” means the site of a discharge of a petroleum product from a petroleum storage tank where contaminants are contained only within the soil on the source property and there is no confirmed contamination in the groundwater.

(10) “Medium risk site” means the site of a discharge of a petroleum product from a petroleum storage tank where contaminants have extended beyond the boundary of the source property, or there is confirmed contamination in the groundwater, but the site does not meet the definition of a high-risk site.

(11) “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.

(12) “Natural attenuation” has the meaning specified in s. 101.143 (1)(cq), Stats.

Note: Section 101.143 (1)(cq), Stats., defines “natural attenuation” to mean “the reduction in the concentration and mass of a substance, and the products in to which the substance breaks down, due to naturally occurring physical, chemical and biological processes.” These processes occur without human intervention or enhancement, and include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(13) “Permeable material” means a subsurface material that is at or below the water table and that is not a low permeability material.

(14) “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, including petroleum product additives.

(15) “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.

(16) “Preventive action limit” has the meaning specified in s. 160.01 (6), Stats.

Note: Section 160.01 (6), Stats., defines “preventive action limit” to mean “a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15.”

(17) “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.”

(18) “Release” means the original discharge to the environment.

(19) “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.

(20) “Remediation target” means a goal that may be set for a site, to clearly establish the contaminant concentration in groundwater or soil, or both, that when achieved will result in the granting of site closure.

(21) “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.”

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

Note: Because the term “discharge” has been interpreted by the Wisconsin Supreme Court to include the migration of hazardous substance contamination after it is released to the environment, the term “site” includes all areas to which petroleum-product contamination has migrated, as well as the source property.

(23) “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.

(24) “Soil” has the meaning specified in s. NR 700.03 (58).

Note: Section NR 700.03 (58) defines “soil” to mean “unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rest on bedrock other than foundry sand, debris and any industrial waste.”

(25) “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. 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.

(26) “Source property” means the parcel of land on which petroleum-product contamination was originally released to the environment.

(27) “Unsaturated” means soil or other material that is found above the water table.

(28) “Utility corridor” means any utility line that runs underground and any backfilled trench that was constructed to install a water main or lateral, a sewer main or lateral or other utility line.

(29) “Water table” has the meaning specified in s. NR 141.05 (45).

Note: Section NR 141.05 (45) defines “water table” to mean “the surface of unconfined groundwater where the water pressure is equal to atmospheric pressure.” The term “water table” is used in this chapter to establish the upper elevation of “groundwater” as that term is defined in s. 160.01 (4), Stats. Section 160.01 (4), Stats., defines “groundwater” to mean “any of the waters

of the state, as defined in s. 281.01 (18), occurring in a saturated subsurface geological formation of rock or soil.”

Comm 46.04 Site authority. (1) ADMINISTRATIVE AUTHORITY. The administrative authority of Commerce and DNR for a site includes enforcement, setting remediation targets, remediation supervision and direction, and decision making regarding the granting or denying closure and deciding whether or not further remedial action is required. DNR has the authority under s. 292.11 (7) (c), Stats., to issue orders to a person who possesses or controls a hazardous substance that was discharged, or who caused the discharge of a hazardous substance, specifying the remedial action that the responsible person is required to take under s. 292.11 (3), Stats. Commerce has the authority under s. 101.144 (2) (a), Stats., to issue orders to a person who owns or operates a petroleum storage tank, a person who causes a discharge from a petroleum tank or a person on whose property a petroleum storage tank is located, to require that person to take remedial action in response to those discharges of petroleum products from petroleum storage tanks over which Commerce has jurisdiction. The assignment of administrative authority for high-risk sites and medium and low risk sites, where discharges of petroleum products from petroleum storage tanks have occurred, shall be determined according to the following criteria:

(a) DNR shall have administrative authority for those sites that meet any of the following criteria:

1. Sites that have not been classified.
2. Sites that are classified as high-risk sites.
3. Sites with soil or groundwater that is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank, where the petroleum contamination is commingled with one or more hazardous substances other than petroleum products from a petroleum storage tank.

(b) Commerce shall have administrative authority for those sites that meet both of the following criteria:

1. Sites that have been classified as low risk or medium risk.
2. Sites where petroleum contamination is not commingled with one or more hazardous substances other than petroleum products discharged from a petroleum storage tank.

(2) REMEDIATION TARGETS. (a) Commerce and DNR shall jointly determine remediation targets for high-risk sites that are competitively bid or bundled with another site or sites pursuant to s. Comm 47.337 (4)(a) 3. and 4., and shall jointly review and select remedial bids.

(b) Commerce shall set remediation targets for low-risk and medium-risk sites that are competitively bid or bundled with another site or sites pursuant to s. Comm 47.337 (4) (a) 3 and 4., and review and select remedial bids.

(c) When a remediation target is not established under par. (a) or (b), the goal that shall be achieved to obtain site closure is prescribed by applicable provisions in this chapter and ch. NR 726.

Comm 46.05 Site investigation. (1) GENERAL. In conducting an investigation of a site where petroleum products have discharged from a petroleum storage tank, the responsible person shall meet the requirements of ch. NR 716 and minimize costs while providing sufficient data necessary for risk screening and decision-making under this section and ss. Comm 46.06 and 46.07, ss. Comm 47.337 and 47.339, and chs. NR 720, 722 and 726. If a responsible person does not have the expertise and qualifications required under ch. NR 712 to adequately respond to any of the requirements of this chapter, the responsible person shall retain the services of a qualified consultant to conduct the required work or analysis on behalf of the responsible person.

(2) SITE DATA. (a) *General.* The data collected by the responsible person during the site investigation shall include, but not be limited to, the following information:

1. Whether contamination is found in soil or groundwater, or both.
2. The degree and extent of soil contamination and groundwater contamination, if any.
3. Nature and distribution of geologic materials on the site and general hydrogeologic information.
4. The hydraulic conductivities of materials where contaminated groundwater is found, including the downgradient perimeter of the groundwater contaminant plume .
5. Whether the groundwater contaminant plume is contained within low permeability material or extends into permeable material.
6. Whether there is evidence of migration of petroleum product contamination within a utility corridor or a permeable soil layer along which vapors, free product or contaminated water may flow.
7. Whether there is evidence of migration or imminent migration of petroleum product contamination to building foundation drain tile, sumps or other points of entry into buildings.

(b) *Standard hydraulic conductivity tests.* During the site investigation, or during the gathering of additional information as directed by the agency with administrative authority under sub. (3), the responsible person shall determine the hydraulic conductivity of materials where

contaminated groundwater is found at the site utilizing a method described in Appendix A of ch. NR 716, or a method that has been approved under par. (c), in conformance with the following requirements:

1. Hydraulic conductivity shall be determined at a monitoring well located within but near the downgradient perimeter of the groundwater 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 a hydraulic conductivity result from a monitoring well outside of the plume is representative of the hydraulic conductivity of materials within the plume, based on a comparison of 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 at a monitoring well within the plume.

3. The need to determine the hydraulic conductivity of materials where contaminated groundwater is found shall be considered part of a NR 716 site investigation and may not be considered a reason or justification for an increase in site investigation funding.

(c) *Alternative methods for determining hydraulic conductivity.* The DNR may approve an alternative method for determining the hydraulic conductivity of the materials where contaminated groundwater is found at a site if the method meets the objectives of this section. The responsible person shall obtain approval from the DNR before using an alternative method. If the DNR grants approval for use of the alternative method, the responsible person 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.

(3) SUPPLEMENTAL SITE INVESTIGATION INFORMATION. If the site investigation report was submitted prior to the effective date of this rule, supplemental site information that is necessary to make the determinations required under sub. (1) may be required by the agency with administrative authority. The responsible person shall utilize existing site data unless the agency with administrative authority for the site determines that the existing site data are insufficient to make the determinations required in sub. (1). 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 the data. If a determination is made by the agency with administrative authority for the site that existing site data is insufficient, the responsible person shall then gather the information necessary to make the determinations required under sub. (1), including determining the hydraulic conductivity of the materials where contaminated groundwater is found at the site in compliance with the requirements of sub. (2)(b).

(4) GROUNDWATER CONTAMINANT BEHAVIOR. (a) Except where par. (b) is applicable, the responsible person shall collect data during the site investigation to determine

whether the groundwater plume margin is expanding. Whenever a responsible person or their agent is required by s. Comm 47.335 (2) to contact Commerce to notify the agency that it will not be possible to complete the site investigation for less than \$40,000, the responsible person shall submit the notice to both DNR and Commerce that summarizes the reasons why the \$40,000 cost cap will be exceeded. In the notice, the responsible person shall enumerate which, if any, of the conditions described in s. Comm 46.06 (2) (a), (f), (g) and (h) have been identified at the site.

(b) For sites where all groundwater contamination is contained within low permeability material, if no evidence is found of groundwater plume margin expansion during the site investigation, and the most recent release of a petroleum product to the environment on the site is more than 10 years old, the assumption for agency decision making on remedial actions, closure and other related decisions shall be that the groundwater plume margin is not expanding.

Comm 46.06 Risk screening criteria. (1) GENERAL. The risk criteria in sub. (2) for screening sites shall be used to determine whether a remedial action shall be required, which could include, but is not limited to, source control and measures to address the risk screening criteria; to set remediation targets; to evaluate consultant reports required under s. 101.143 (2)(h) and (i), Stats., and to determine whether the site may be closed, as provided in s. Comm 46.07, at the completion of the site investigation or after remedial action.

(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 criteria for identifying sites that are eligible for closure:

(a) None of the following environmental factors are present at the site:

1. Documented expansion of plume margin.
2. Verified contaminant concentration in a private or public potable well that attains or exceeds the preventive action limit.
3. Contamination within bedrock or within 1 meter of bedrock.
4. Petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, and has been verified by more than one sampling event.
5. Documented contamination discharges to a surface water or wetland.

(b) No soil contamination is present at the site that exceeds any of the soil screening levels in Table 1.

Table 1
Indicators of Residual Petroleum Product in Soil Pores

	Soil Screening Levels (mg/kg)
Benzene	8.5
1,2-DCA	0.6
Ethylbenzene	4.6
Toluene	38
Xylene	42
1,2,4 – Trimethylbenzene	83
1,3,5 – Trimethylbenzene	11
Naphthalene	2.7

(c) There is no soil contamination within 4 feet of the ground surface that exceeds any of the direct contact soil contaminant concentrations for the substances listed in Table 2.

Table 2
Protection of Human Health from Direct Contact with Contaminated Soil

Substance	Soil Contaminant Concentrations (Top 4 ft of the soil) (mg/kg)
Benzene	1.10
1,2-Dichloroethane (DCA)	0.54

(d) For substances not listed in Table 2 that are present within 4 feet of the ground surface and have been approved by the agency with administrative authority for the site as contaminants of concern as defined in s. NR 720.03 (2), any potential human health risk from direct contact has been addressed.

(e) If there are petroleum-product contaminants in soil or groundwater, the most recent release that caused or contributed to the contamination is more than 10 years old.

(f) There is no evidence of migration of petroleum product contamination within a utility corridor or within a permeable material or soil along which vapors, free product or contaminated water may flow.

(g) There is no evidence of migration or imminent migration of petroleum product contamination to building foundation drain tile, sumps or other points of entry into a basement or other enclosed structure where petroleum vapors could collect and create odors or an adverse impact on indoor air quality or where the contaminants may pose an explosion hazard.

(h) No enforcement standard is attained or exceeded in any groundwater within 1000 feet of a well operated by a public utility, as defined in s. 196.01 (5), Stats., or within 100 feet of any other well used to provide water for human consumption.

Note: The definition of "public utility" that is found in s. 196.01 (5), Stats., includes, with certain limited exceptions, "every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control . . . all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public." This definition includes all wells operated by any entity (city, village, town or private company) that is in the business of distributing water to the public. It would not include wells operated by commercial establishments that conduct some other kind of business (for example, restaurants, bars or golf courses) where the well water is used by the business or by customers of the establishment.

Comm 46.07 Site closure, and approval and tracking of remedial actions. (1) **SITE CLOSURE DECISIONS AT THE COMPLETION OF A SITE INVESTIGATION.** Commerce and DNR shall make site closure decisions at the completion of a site investigation based on the following requirements:

(a) *Soil contamination only.* Sites that only have soil contamination shall be closed, at the completion of a site investigation that complies with the requirements of ch. NR 716, if the site complies with all of the following requirements:

1. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
2. The requirements of ch. NR 726 have been complied with, including the signing and recording of any required deed restriction or deed notice.
3. There is at least a 5-foot separation between the soil contamination and the water table.

(b) *Groundwater contamination within low permeability material.* Sites that have groundwater contamination within low permeability material shall be closed at the completion of a site investigation that complies with the requirements of ch. NR 716, if the site complies with all of the following requirements:

1. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
2. The requirements of ch. NR 726, other than ss. NR 726.05 (2)(b) 1.f. and 2., have been complied with, including the signing and recording of a groundwater use restriction for each property where an enforcement standard is attained or exceeded within low permeability material, and the signing and recording of any required deed restriction or deed notice.
3. One of the following criteria is satisfied:
 - a. All groundwater contamination is contained within low permeability material and there is at least a 5-foot separation between the contamination in the low permeability material and any underlying or downgradient permeable material.
 - b. If there is any groundwater contamination within downgradient or underlying permeable material, one of the following requirements is satisfied:
 - i. All groundwater contaminant concentrations in permeable material are below preventive action limits.
 - ii. All groundwater contaminant concentrations in permeable material are below enforcement standards and where preventive action limits have been attained or exceeded, a preventive action limit exemption has been granted.
 - iii. The requirements of one of the tests listed in par. (c) 2 have been satisfied for sites where enforcement standards are attained or exceeded in permeable material.

(c) *Groundwater contamination exceeding preventive action limits, but below enforcement standards, within permeable material.* Sites that have groundwater contamination that attains or exceeds preventive action limits, but does not attain or exceed enforcement standards, within permeable material, shall be closed if the site complies with the following requirements:

1. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
2. The requirements of ch. NR 726 have been complied with, including the signing and recording of any required deed restriction or deed notice.
3. A preventive action limit exemption has been granted.

(d) *Groundwater contamination exceeding enforcement standards within permeable material.* Sites that have groundwater contamination that attains or exceeds enforcement standards within permeable material shall be closed at the completion of a site investigation that complies with the requirements of ch. NR 716, if the site complies with all of the following requirements:

1. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.

2. The requirements of ch. NR 726, other than s. NR 726.05 (2)(b) 2., have been complied with, including the signing and recording of a groundwater use restriction for each property where an enforcement standard is attained or exceeded within permeable material, and the signing and recording of any required deed restriction or deed notice.

3. One of the following tests has been satisfied:

a. There is a minimum of four rounds of sampling data that is free of seasonal variation, and those sample results establish, through the use of the Mann-Kendall statistical test that is set forth in Appendix A, that the concentrations of contaminants with confirmed exceedances of enforcement standards are decreasing at the downgradient perimeter and along the centerline of the contaminant plume.

b. An appropriate number and frequency of sampling rounds has been conducted consistent with the requirements of Appendix A, and the sample results establish, through the use of the Mann-Whitney U statistical test that is set forth in Appendix A, that the concentrations of contaminants with confirmed exceedances of enforcement standards are decreasing at the downgradient perimeter and along the centerline of the contaminant plume.

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.” Groundwater contaminant concentrations at points of standards application have been taken into account in the development of the risk screening criteria in s. Comm 46.06 (2) and the closure requirements in s. Comm 46.07.

(2) **SITE CLOSURE DECISIONS AFTER REMEDIAL ACTION TO ADDRESS ONE OR MORE OF THE RISK SCREENING CRITERIA.** Commerce and DNR shall make site closure decisions after remedial action to address one or more of the risk screening criteria based on the following requirements:

(a) *Soil contamination only.* Sites that have residual contamination only in soil shall be closed without requiring any additional remedial action other than natural attenuation, if the site complies with all of the following requirements:

1. A site investigation that complies with the requirements of ch. NR 716 has been conducted.
2. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
3. The requirements of ch. NR 726 have been complied with, including the signing and recording of any required deed restriction or deed notice.
4. There is at least a 5-foot separation between the soil contamination and the water table.

(b) *Groundwater contamination within low permeability material.* Sites that have groundwater contamination within low permeability material shall be closed if the site complies with all of the following requirements:

1. A site investigation that complies with the requirements of ch. NR 716 has been conducted.
2. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
3. The requirements of ch. NR 726, other than NR 726.05 (2) (b) 1.f. and 2., have been complied with, including the signing and recording of a groundwater use restriction for each property where an enforcement standard is attained or exceeded within low permeability material, and the signing and recording of any required deed restriction or deed notice.
4. One of the following criteria is satisfied:
 - a. All groundwater contamination is contained within low permeability material and there is at least a 5-foot separation between the contamination in the low permeability material and any underlying or downgradient permeable material.
 - b. If there is any groundwater contamination within downgradient or underlying permeable material, one of the following requirements is satisfied:
 - i. All groundwater contaminant concentrations in permeable material are below preventive action limits.
 - ii. All groundwater contaminant concentrations in permeable material are below enforcement standards and where preventive action limits have been attained or exceeded, a preventive action limit exemption has been granted.

iii. The requirements of one of the tests listed in par. (c) 2 have been satisfied for sites where enforcement standards are attained or exceeded in permeable material.

(c) *Groundwater contamination exceeding preventive action limits, but below enforcement standards, within permeable material.* Sites that have groundwater contamination that attains or exceeds preventive action limits, but not attaining or exceeding enforcement standards, within permeable material, shall be closed if the site complies with all of the following requirements:

1. A site investigation that complies with the requirements of ch. NR 716 has been conducted.
2. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
3. The requirements of ch. NR 726 have been complied with, including the signing and recording of any required deed restriction or deed notice.
4. The site has been granted a preventive action limit exemption.

(d) *Groundwater contamination exceeding enforcement standards within permeable material.* Sites that have groundwater contamination that attains or exceeds enforcement standards within permeable material shall be closed if the site complies with all of the following requirements:

1. A site investigation that complies with the requirements of ch. NR 716 has been conducted.
2. All of the risk screening criteria in s. Comm 46.06 (2) have been satisfied.
3. The requirements of ch. NR 726, other than s. NR 726.05 (2) (b) 2., have been complied with, including the signing and recording of a groundwater use restriction for each property where an enforcement standard is attained or exceeded within permeable material.
4. One of the following tests has been satisfied:
 - a. There is a minimum of four rounds of sampling data that is free of seasonal variation, and those sample results establish, through the use of the Mann-Kendall statistical test that is set forth in Appendix A, that the concentrations of contaminants with confirmed exceedances of enforcement standards are decreasing at the downgradient perimeter and along the centerline of the contaminant plume.
 - b. An appropriate number and frequency of sampling rounds has been conducted consistent with the requirements of Appendix A, and the sample results establish, through the use of the Mann-Whitney U statistical test that is set forth in Appendix A, that the concentrations of

contaminants with confirmed exceedances of enforcement standards are decreasing at the downgradient perimeter and along the centerline of the contaminant plume.

Note: Deed restrictions and deed notices may be required as a condition of site closure under s. NR 726.05 (8) (a) or (b). Under some circumstances, deed restrictions and groundwater use restrictions are mandatory under s. NR 726.05 (8) (am) and (9). For example, a deed restriction must be required if the responsible person is relying on an industrial land use classification in order to satisfy the requirements of ch. NR 720. A groundwater use restriction must be required if groundwater enforcement standards are attained or exceeded.

(3) CLOSURE UNDER CH. NR 726. If the agency with administrative authority for a site determines that the site does not comply with the requirements of sub. (1) or (2), closure may still be granted on a case-by-case basis in compliance with the requirements of ch. NR 726.

(4) ADDITIONAL REMEDIAL ACTION. If closure is not granted, the responsible person shall conduct additional remedial action in compliance with chs. NR 140 and NR 700 to 726.

(5) REMEDIATION FUNDING. (a) Paragraphs (b) and (c) shall apply to sites that meet any of the following conditions:

1. Sites where groundwater contaminant concentrations attain or exceed enforcement standards, but closure could be granted under sub. (2) if the owners of the properties where enforcement standards are attained or exceeded sign and record a groundwater use restriction, and a deed restriction or deed notice, if required.

2. Sites where remediation targets have been achieved, and the site could be closed under sub. (2) if a required groundwater use restriction, deed restriction or deed notice that complies with ch. NR 726 is signed and recorded.

3. Sites that have been closed with a required groundwater use restriction, deed restriction or deed notice.

(b) Additional remedial action, other than natural attenuation, may not be required at such sites, unless the agency with administrative authority for the site determines that an actual or potential risk to public health, safety or welfare or the environment exists.

(c) Funding under s. 101.143, Stats., shall be terminated by Commerce for sites that are eligible for closure under sub. (1) or (2), even if a groundwater use restriction, deed restriction or deed notice is not signed and recorded for one or more properties, and the site shall be ineligible for additional reimbursement except for post-closure costs that are otherwise eligible for reimbursement under ch. Comm 47.

(d) Sites requiring no action under this chapter other than the signing and recording of a groundwater use restriction or deed restriction shall be classified for tracking purposes as "conditionally closed," which means that a closure application has been submitted and the site will be closed when the conditions are satisfied.

(6) TRACKING OF REMEDIATION PROGRESS. By no later than January 1, 2001, and annually thereafter, responsible persons shall submit an annual report to the agency with administrative authority for the site, as required by s. 101.143 (2) (i) 2, Stats., with a summary of all monitoring data that has been collected, the status of remediation that has been conducted to date and an estimate of the additional costs that must be incurred to achieve site closure.

Comm 46.08 Classification and transfer of sites. (1) GENERAL. The classification of a site as high-risk, or medium or low risk shall be determined by applying the definitions in s. 101.144 (1)(aq), Stats., and ss. Comm 46.03 (7), (9) and (10), to the data that has been collected during the site investigation. Until this determination is made, DNR has administrative authority for the site.

(2) SUBMITTAL OF SITE INVESTIGATION REPORTS TO THE APPROPRIATE AGENCY. Site investigation reports submitted after the effective date of this rule shall include a statement as to whether a site is believed to be high-risk, or medium or low risk and shall be submitted directly to the agency with administrative authority for the site under s. Comm 46.04 (1). If a site falls under the authority of Commerce, the responsible person shall provide DNR with a copy of the letter that transmits the site investigation report to Commerce. The DNR shall transfer the site file to Commerce within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of Commerce.

(3) SUBMITTAL OF CLOSURE REPORTS TO THE APPROPRIATE AGENCY. If the submittal of a site investigation report is not required or the site investigation report was submitted without a determination of whether the site is believed to be high-risk, or medium or low risk, the closure report shall be submitted directly to the agency that is believed to have administrative authority for the site under s. Comm 46.04 (1). If a site falls under the authority of Commerce, the responsible person shall provide DNR with a copy of the letter that transmits the closure report to Commerce. The DNR shall transfer the site file to Commerce within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of Commerce.

(4) CHANGES IN CLASSIFICATION. If a site is classified as high-risk, or medium or low risk, and the agency receiving the site investigation report or closure report determines that the classification is incorrect and the site, as reclassified, falls under the other agency's administrative authority, the agency making the determination shall transfer the site file and all related data to the other agency within 14 days after making the determination that the site was incorrectly classified.

Comm 46.09 Interagency staff training. In order to ensure that employees understand the requirements of this chapter and the NR 700 rule series, and to ensure that the agencies will issue approvals when the requirements of this chapter and the NR 700 rule series are satisfied, Commerce and DNR shall:

(1) Identify interagency staff training needs at least once each year. Each agency shall list interagency staff training needs that have been identified in order of priority and shall provide that list to the other agency by May 1 of each year.

(2) Agree by July 1 of each year on the staff training that is to be jointly conducted before July 1 of the following year. This agreement is to include the subject of the training, the approximate date on which it will be conducted, the preferred training provider, and the estimated cost of training.

(3) Develop procedures to receive recommendations on interagency staff training needs from interested parties outside the agencies before finalizing training plans.

Comm 46.10 Dispute resolution. Any disputes between Commerce and DNR under this chapter shall be subject to the following dispute resolution process:

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

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

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

(4) If the dispute still remains unresolved at the division administrator level, the department secretaries shall make the final decision.

Appendix A

Nonparametric Statistical Tests for Determining the Effectiveness of Natural Attenuation

Two nonparametric statistical tests are described here: the Mann-Kendall (S) and Mann-Whitney (U) statistical tests. These tests can be used to show whether groundwater contaminant concentrations in a monitoring well are increasing, stable or decreasing. However, neither test is

able to determine the rate in which the concentrations are changing over time. The Mann-Kendall Test can be used with a minimum of four (4) rounds of sampling results; however, the Mann-Kendall Test is not valid for data that exhibit seasonal behavior. The Mann-Whitney U Test is applicable to data that may or may not exhibit seasonal behavior, but the test requires eight (8) consecutive rounds of quarterly or semi-annual sampling results. To demonstrate that natural attenuation is effective, the chosen statistical test must show decreasing contaminant concentrations at an appropriate confidence level, given in the test methodologies that follow.

Mann-Kendall Test

1. Assemble well data for at least four (4) sampling events for each contaminant in the order in which the data was collected. Include all contaminants that have exceeded the ES at one or more monitoring wells. Include data from:
 - a. One or more contaminated monitoring wells near the downgradient plume margin, which may include piezometers,
 - b. A monitoring well near the source zone, and
 - c. At least one monitoring well along a flow line between the source zone well and plume margin well.
2. For purposes of the Mann-Kendall test, all non-detect data values should be assigned a single value that is less than the detection limit, even if the detection limit varies over time.
3. Tests for Seasonality in Data. For seasonally affected data, either remove the seasonality in the data (e.g., by only testing data from the seasons with the highest contaminant concentrations) or use a statistical test that is unaffected by seasonality, such as the Mann-Whitney U Test. To test for data seasonality:
 - a. Determine if groundwater flow direction changes with season by comparing a water table map from each season that the contaminant concentrations are measured. If the flow direction changes from one sampling period to another and shifts the plume away from the wells being used in the statistical test, then data from those season(s) that are shifted away from the centerline monitoring wells can not be used in the Mann-Kendall Test.
 - b. Determine if groundwater elevation and contaminant concentration change seasonally. Plot contaminant concentration versus groundwater level for each well to be assessed by the Mann-Kendall Test. If groundwater concentrations change as water level changes, then the data is seasonally affected. The seasons with the highest contaminant concentrations should be included in the Mann-Kendall Test.

4. Calculate the Mann-Kendall Statistic (S) using a manual method or a DNR supplied spreadsheet. Assess all contaminants in the plume for the selected wells being assessed with the Mann-Kendall Test. Enter data for each contaminant in the order it was collected.

- a. Manual Method to Calculate Mann-Kendall Statistic. Compare data sequentially, comparing sampling event 1 to sampling events 2 through n, then sampling event 2 to sampling events 3 through n, etc. Each row is filled in with a 1, 0 or -1, as follows:

Along row 2, if:

- Concentration of event $x_i >$ event 1: Enter +1
- Concentration of event $x_i =$ event 1: Enter 0
- Concentration of event $x_i <$ event 1: Enter -1

Where: n = total number of sampling events
 x_i = value of given sample event, with $i = 2$ to n

Continue for the remaining rows. Sum each row and enter result at the end of the row. Add the sum of each row down to obtain the Mann-Kendall Statistic (S). See Table A as an example.

Table A
Mann-Kendall Statistic

	Sampling Event 1	Sampling Event 2	Sampling Event 3	Sampling Event 4	Sampling Event 5	Sum Rows
Contaminant concentration →	100	50	85	75	50	
Compare to Event 1 →		-1	-1	-1	-1	-4
Compare to Event 2 →			+1	+1	0	+2
Compare to Event 3 →				-1	-1	-2
Compare to Event 4 →					-1	-1
						Mann Kendall Statistic (Total) = -5

- b. Manual Mann-Kendall Statistic Look up Table. Table B gives the maximum S statistic (S_{max}) to accept a declining trend alternative at an α level of significance. If the computed S is greater than S_{max} (or S is a smaller negative number than S_{max}), then there is either a no-trend or an increasing trend in the data.

Table B
Mann-Kendall Statistic Look Up Table

N	Range of S	S_{\max} $\alpha = 0.2^*$
4	- 6 to + 6	- 4
5	- 10 to + 10	- 5
6	- 15 to + 15	- 6
7	- 21 to + 21	- 7
8	- 28 to + 28	- 8
9	- 36 to + 36	-10
10	- 45 to +45	-11

* The probability that the computed Mann-Kendall statistic $S \leq S_{\max}$ is at most α .

5. Test for a declining trend. Evaluate data trends for each contaminant identified in the plume. Evaluate the null hypothesis of no trend against the alternative of a decreasing trend. The null hypothesis can be rejected in favor of a decreasing trend if both of the following conditions are met:
 - a. S is a large negative number (see Table B for magnitude of S)
 - b. The probability value, given n (number of data) and the absolute value of S, is LESS than the a priori significance level, α , of the test. An $\alpha \leq 0.2$ is acceptable.

6. Test for an increasing trend. An increasing trend alternative (i.e., an advancing plume) is shown if both of the following conditions are met:
 - a. S is positive.
 - b. $S \geq |S_{\max}|$ at a given α level of significance (see Table B). If the computed S is equal to or greater than the absolute value of S_{\max} , then it can be concluded the plume is advancing at an α level of significance. An $\alpha \leq 0.2$ is acceptable for this test.

7. Test for Plume Stability. If the Mann-Kendall Test indicates no-trend is present, perform the coefficient of variation test. As a non-parametric test, the Mann-Kendall Test does not take into account the magnitude of scatter in the data. A data set with a great deal of scatter may return a Mann-Kendall test indicating there is no trend, when, in fact, no conclusion can be drawn regarding trend because of data variability. In this case, additional data collection may be necessary to determine that the plume is stable, declining or advancing. As a simple test, the coefficient of variation can assess the scatter in the data:

$$CV = \frac{\text{standard deviation}}{\text{arithmetic mean}}$$

Where: CV = coefficient of variation

CV should be ≤ 1 to say that the no-trend hypothesis also indicates a stable plume configuration.

Mann-Whitney U Test. This test is equivalent to the Wilcoxon Rank Sum Test.

1. Assemble well data for the most recent eight (8) consecutive quarterly or semi-annual sampling events for each contaminant that has exceeded the ES at one or more monitoring wells. Include data from:
 - a. One or more contaminated monitoring wells near the downgradient plume margin, which may include piezometers,
 - b. A monitoring well near the source zone, and
 - c. At least one monitoring well along a flow line between the source zone well and plume margin well.
2. Enter the data into a DNR supplied spreadsheet or manually assemble the data into a table (e.g., Table C) in the order the data was collected. Assign a rank to each sample value, with the smallest value ranked #1 and the largest value ranked #8.
3. For purposes of the Mann-Whitney U test, all non-detect values should be assigned a data value of zero (0).

Table C
Example Data Set for the Mann-Whitney U Statistical Test

Year/Date	Benzene Concentration (ug/l)	Rank	Rank Sum of 1 st Year (Wrs)
1 st Year, 1 st Quarter	160	8	} 25
1 st Year, 2 nd Quarter	130	7	
1 st Year, 3 rd Quarter	80	4	
1 st Year, 4 th Quarter	100	6	
2 nd Year, 1 st Quarter	89	5	
2 nd Year, 2 nd Quarter	0	1	
2 nd Year, 3 rd Quarter	53	3	
2 nd Year, 4 th Quarter	24	2	
U = 26 - Wrs = 1			

4. Sum the ranks for the data in the 1st year. Denote this sum as Wrs (or the Wilcoxon rank sum).
5. Calculate the U Statistic. $U = 26 - Wrs$
6. Interpreting U Statistic. For 2 groups of 4 samples, at $U \leq 3$, the probability that year 2 data show a decrease relative to year 1 data is at least 90%, and so $U \leq 3$ will be acceptable to show that contaminant concentration is declining.
7. If there are ties in sample data, calculate an average rank value for the tied data and assign this average rank to the tied sample data. See example in Table D.

Table D
Example of Rank Sum Value for Tied Data

Year/Date	Benzene Concentration (ug/l)	Check for Ties	Rank	Rank Sum of 1 st Year (Wrs)
1 st Year, 1 st Quarter	300		8	} 24.5
1 st Year, 2 nd Quarter	280		7	
1 st Year, 3 rd Quarter	105		4	
1 st Year, 4 th Quarter	110	*	5.5	
2 nd Year, 1 st Quarter	83		3	
2 nd Year, 2 nd Quarter	50	√	1.5	
2 nd Year, 3 rd Quarter	110	*	5.5	
2 nd Year, 4 th Quarter	50	√	1.5	
			U = 26 - Wrs = 1.5	

8. Probability and the U Statistic. Table E shows the α value and the confidence level for values of U calculated for 2 groups of 4 samples each.

Table E
Probability and U Statistic
(For 2 Groups of 4 samples each)

U Statistic	Level of significance (α)	Confidence Level (%)
0	0.014	98.6
1	0.029	97.1
2	0.057	94.3
3	0.100	90.0

9. If more than 8 consecutive rounds of data are available, a Mann-Whitney U statistic can be calculated similar to the method presented here. Each set of data to be compared should

represent the same span of time (e.g. 1 year) and the same time interval between samples (e.g., quarterly). The test must be conducted at a level of significance (α) of ≤ 0.10 .

References:

Conover, W.J., Practical Nonparametric Statistics, 2nd Ed., John Wiley & Sons, 1971, pp. 216-223.

Gilbert, R.O., Statistical Methods for Environmental Pollution Monitoring, Van Nostrand Reinhold, 1987, pp. 204 – 240 and 272.

Pursuant to section 227.24 (1)(c), Stats., this rule shall take effect on the first day following publication in the official state newspaper.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

By _____
Brenda J. Blanchard, Secretary

(SEAL)

References:

Conover, W.J., Practical Nonparametric Statistics, 2nd Ed., John Wiley & Sons, 1971, pp. 216
223.

Gilbert, R.O., Statistical Methods for Environmental Pollution Monitoring, Van Nostrand
Reinhold, 1987, pp. 204 – 240 and 272.

The foregoing rule was approved and adopted by the State of Wisconsin Natural
Resources Board on _____, 2000.

This rule takes effect on the first day following publication in the official state newspaper
as provided in s. 227.24 (1) (c), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

**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:

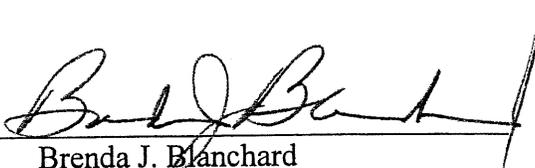
1. A system of joint decision-making for the selection of remedial bids and the setting of remediation targets for sites which are competitively bid or bundled with another site or sites.
2. An agreed-upon methodology for determining if there is evidence of an expanding plume and the actions to take 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

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 1×10^{-5} centimeters per second as determined by a method specified in s. Comm 46.05.