

Chapter NR 746

AGENCY ROLES AND RESPONSIBILITIES FOR PETROLEUM CONTAMINATED SITES

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Note: Chapter NR 746 was created as an emergency rule eff. 5-18-00. Chapter 746 was repealed and recreated, Register October 2013 No. 694, eff. 11-1-13.

Note: This rule, including the Appendix, was originally adopted jointly by the Department of Commerce and the Department of Natural Resources and appeared in the Wisconsin Administrative Code as ch. Comm 46 (subsequently transferred to the Department of Safety and Professional Services by 2011 Wis. Act 32, section 9110 (3) (f) and renumbered ch. SPS 346) and ch. NR 746. Effective July 2, 2013, pursuant to 2013 Wis. Act 20, section 9138 (7) (f), the authority of the Department of Safety and Professional Services over the jointly adopted rule was transferred to the Department of Natural Resources. As a result, ch. SPS 346 was removed from the Administrative Code and the rule is published only as ch. NR 746. The department of natural resources intends to initiate future rulemaking to repeal this chapter. See also the note following s. NR 746.01.

NR 746.01 Purpose. The purpose of this chapter is to identify the roles, processes and procedures that guide the departments of safety and professional services and natural resources in the administration of their respective responsibilities under ss. 101.144, 292.11, 292.31, and 292.63, Stats., 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. 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 safety and professional services to apply ch. NR 747.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13; corrections made under s. 13.92 (4) (b) 7, Stats., Register October 2013 No. 694.

Note: As part of 2013 Wis. Act 20, s. 101.144, Stats., was repealed and Department of Safety and Professional Services authority for the PECFA Program was transferred to the Department of Natural Resources, which makes this rule largely unnecessary. The department of natural resources intends to initiate a future rulemaking to repeal this chapter.

NR 746.02 Applicability. This chapter only applies to sites where petroleum products have discharged from petroleum storage tanks.

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.03 Definitions. The definitions in ch. NR 700 apply to this chapter. In addition, in this chapter:

Note: The definition in s. NR 700.03 (11) defines "Department" to mean "the department of natural resources."

(1) "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."

(2) "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."

(3) "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."

(4) "High-risk site" has the meaning specified in s. 101.144 (1) (aq), Stats.

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), Stats.

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), Stats., or within 100 feet of any other well used to provide water for human consumption.

1. An enforcement standard is exceeded in fractured bedrock."

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." In the absence of evidence to the contrary, the agencies consider all bedrock in Wisconsin to be fractured.

(5) "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.

(6) "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.

(7) "Petroleum product" has the meaning specified in s. 292.63 (1) (f), Stats.

Note: Section 292.63 (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.

(8) "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.

(9) "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."

(10) "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, or welfare or the environment.

(11) "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."

(12) "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, including areas not on the source property. The term "site" and "source property" are not synonymous. A "site" can be larger or smaller than a "source property." The term "site" is synonymous with the term "occurrence" as that term is used in ch. NR 747. The term "site" is used here in order to establish common terminology that will be used by both the department of safety and professional services and the department of natural resources in the implementation of ch. NR 746.

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 rests on bedrock other than foundry sand, debris and any industrial waste."

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register October 2014 No. 694.

NR 746.04 Site authority. (1) ADMINISTRATIVE AUTHORITY. The administrative authority of the department of safety and professional services and the department of natural resources for a site includes enforcement, remediation supervision and direction, and decision-making regarding the granting or denying case closure and deciding whether or not further remedial action is required. The department of natural resources 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. The department of safety and professional services 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 the department of safety and professional services 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) The department of natural resources 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) The department of safety and professional services 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.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.05 Tracking of remediation progress. By no later than January 1, 2014, and annually thereafter, responsible persons shall submit an annual report to the agency with administrative authority for the site, as required by s. 292.63 (2) (i) 2., Stats., with a summary of all monitoring data that have 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 case closure.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 746.06 Classification and transfer of sites. (1) GENERAL. (a) The responsible person shall make a preliminary determination as to the classification of a site as high-risk, or medium or low risk based on the definitions in s. 101.144 (1)

(aq), Stats., and s. NR 746.03 (4), (5), and (6), and the data that have been collected during the site investigation.

(b) Until a classification determination is made by the agency that receives a submittal under sub. (2) or (3), the department has administrative authority for the site.

(2) SUBMITTAL OF SITE INVESTIGATION REPORTS TO THE APPROPRIATE AGENCY. Site investigation reports submitted after September 1, 2013, 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. NR 746.04 (1). If a site falls under the authority of the department of safety and professional services, the responsible person shall provide the department with a copy of the letter that transmits the site investigation report to the department of safety and professional services, which includes the Wisconsin Transverse Mercator coordinates for the site and supporting information, as required under s. NR 716.15 (2) (c) 4. The department shall transfer the site file to the department of safety and professional services within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of the department of safety and professional services.

(3) SUBMITTAL OF CASE CLOSURE REQUESTS TO THE APPROPRIATE AGENCY. If 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 request shall be submitted directly to the agency that is believed to have administrative authority for the site under s. NR 746.04 (1). If a site falls under the authority of the department of safety and professional services, the responsible person shall provide the department with a copy of the letter that transmits the closure request to the department of safety and professional services. The department shall transfer the site file to the department of safety and professional services within 14 days after receipt of a copy of the transmittal letter that indicates that the site falls under the authority of the department of safety and professional services.

(4) CHANGES IN CLASSIFICATION. If a site has been classified as high-risk, or medium or low risk, and the agency receiving the site investigation report or case closure request 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. The agency making the determination shall provide written notice to inform the responsible person that the site has been reclassified, which can be done by sending to the responsible person a copy of the reclassification letter that is addressed to the other agency. The written notice shall state the reasons for the reclassification.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.07 Interagency staff training. In order to ensure that employees understand the requirements of this chapter and chs. NR 700 to 754, and to ensure that the agencies will issue approvals when the requirements of chs. NR 700 to 754 are satisfied, interagency staff training shall be held when necessary, as jointly determined by the departments of safety and professional services and natural resources.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 746.08 Dispute resolution. Any disputes between the department of safety and professional services and the department 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 department petroleum team leader and the safety and professional services advanced hydrogeologist.

(3) If the dispute is not resolved by the petroleum team leader and the safety and professional services advanced hydrogeologist, the decision shall be referred to the appropriate department regional team

supervisor and safety and professional services site review section chief.

(4) If the dispute is not resolved by the appropriate department regional team supervisor and safety and professional services site review section chief, the decision shall be referred to the division administrators or deputy administrators.

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

History: CR 12-023; cr. Register October 2013 No. 694, eff. 11-1-13.