

## Chapter NR 708

## IMMEDIATE AND INTERIM ACTIONS

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**NR 708.01 Purpose.** This chapter establishes criteria for emergency and non-emergency immediate actions and interim actions to be taken by responsible parties to protect public health, safety and welfare and the environment; and establishes the documentation requirements associated with these response actions. This chapter is adopted pursuant to ss. 144.431 (1) (a) and (b), 144.442, 144.76, 159.03 (1) (a) and 227.11 (2), Stats.

**Note:** The following portions of 40 CFR part 280 have been included in the text of this chapter: portions of s. 280.34 (a) (3); s. 280.61 (b) and (c); s. 280.62 (a) (1) to (3) and (6); s. 280.62 (b); portions of s. 280.63 (a) and (b); s. 280.64 (a) to (d); s. 280.65 (a); and portions of s. 280.66 (a), (b) and (d). Additional portions of s. 280.34 (a) (3) are included in chs. NR 705, 716 and 724. Additional portions of s. 280.63 (a) and (b) are included in chs. NR 705 and 716. Additional portions of 40 CFR s. 280.66 (a) to (d) are included in ch. NR 724.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 708.02 Applicability.** (1) This chapter applies to emergency and non-emergency immediate actions and interim actions taken by the department under the authority of s. 144.442, 144.76 or 144.77, Stats. In this chapter, where the term "responsible parties" appears, it should be read to include the department in situations where a department-funded response action is being taken.

**Note:** The department has the authority under s. 144.76 (10), Stats., to waive the requirements of s. 144.76, Stats., to prevent an emergency condition threatening public health, safety or welfare or the environment.

(2) This chapter applies to immediate actions and interim actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., regardless of whether there is direct involvement or oversight by the department.

**Note:** Persons who wish to conduct response actions that will meet the requirements of CERCLA and the NCP may request that the department enter into a contract with them pursuant to s. 144.442, Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 724 in order to satisfy CERCLA and the NCP.

(3) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to the site or facility.

**Note:** Sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., may also be subject to regulation under the solid waste statutes in ss. 144.43 to 144.47, Stats., or the hazardous waste management act, ss. 144.60 to 144.74, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 708.03 Definitions.** The definitions in s. NR 700.03 apply to this chapter.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 708.05 Immediate actions.** (1) **GENERAL.** Unless otherwise directed by the department, responsible parties shall immediately take action to halt a hazardous substance discharge or environmental pollution and to minimize the harmful effects of the discharge or environmental pollution to the air, lands or waters of the state.

**Note:** Section 144.76 (2) (a), Stats., requires that the department be notified immediately of hazardous substance discharges. Hazardous substance discharges from a UST must be immediately reported in accordance with s. NR 705.05. All other hazardous substance discharges must be immediately reported in accordance with s. NR 158.05.

(2) **EMERGENCIES.** For hazardous substance discharges that pose an imminent threat to public health, safety or welfare or the environment, responsible parties shall conduct all necessary emergency immediate actions. Once the emergency situation is responded to, responsible parties shall conduct any further response actions needed to restore the environment to the extent practicable, unless the department determines that no further response is necessary in accordance with s. NR 708.09.

**Note:** Responsible parties are also required by s. 166.22 (2), Stats., to immediately conduct emergency action to protect public health and safety and to prevent damage to property in cooperation with local police and fire departments, county sheriffs, regional teams established by the state emergency response board under s. 166.20 (2) (g), Stats., and county offices of emergency government.

(3) **NON-EMERGENCIES.** (a) Responsible parties shall take all necessary, non-emergency immediate actions to halt the discharge of a hazardous substance and to contain, treat or remove discharged hazardous substances, environmental media or both, in order to minimize the harmful effects of the discharge to the air, lands and waters of the state and to restore the environment to the extent practicable.

(b) A response to a hazardous substance discharge and any related contaminated media shall be considered by the department as a non-emergency immediate action when all of the following criteria are met:

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1. The discharge does not pose an imminent threat to public health, safety and welfare and the environment.

2. The response does not result in the excavation and disposal, treatment or storage of more than 100 cubic yards of contaminated soil, debris, sediment or a combination of these media from a single site or facility.

3. The discharge is responded to immediately after the hazardous substance discharge occurs or is responded to immediately after discovery.

**Note:** Responsible parties are required to notify the department immediately of a hazardous substance discharge, in accordance with s. NR 705.05 for discharges from underground storage tanks and in accordance with s. NR 158.05 for all other types of hazardous substance discharges.

4. At the completion of the response action, no further action is required by the department under s. NR 708.09.

**Note:** If further action is required after a non-emergency response action is taken, that action meets the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non-emergency, immediate action and an interim action is that a site investigation will be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

(c) Responsible parties shall conduct sampling at the completion of an immediate action, in accordance with the requirements of ss. NR 712.05 and 716.13, when any of the following conditions are met:

1. The hazardous substance discharge or environmental pollution is in contact with groundwater.

2. The amount, identity or duration of the hazardous substance discharge or environmental pollution is unknown.

3. Where other site or facility conditions indicate that sampling is necessary to confirm the adequacy of the immediate action.

(4) **SPECIFIC ACTIONS.** Immediate actions may include any of the following:

(a) Limiting public access to the site or facility.

(b) Identifying, monitoring and mitigating fire, explosion and vapor hazards, which may include free product removal. Free product removal shall be conducted in accordance with the requirements of s. NR 708.13 and documented in accordance with s. NR 708.15.

(c) Visually inspecting the site or facility and installing physical containment barriers such as berms, booms, dikes or trenches.

(d) Preventing the flushing of hazardous substances to sewer systems, state waters or environmental media or habitats.

(e) Plugging or overpacking leaking containers which contain or are suspected to contain hazardous substances.

(f) Providing alternate water supplies to persons whose water supply has been or is likely to be affected by the migration of contamination.

(g) Removing hazardous substances from leaking underground storage tank systems.

(h) Removing the contaminated soil, debris or the hazardous substance that was discharged, in compliance with s. NR 708.11 (3) (e).

(i) Measuring for the presence of free product, visually or through field samples or other appropriate methods.

(5) **EXEMPTIONS.** (a) The provisions of chs. NR 712, 716 and 724 do not apply to immediate actions conducted by responsible parties, unless compliance with a portion of these chapters is specifically required in this chapter.

(b) Contaminated soils, as defined in s. NR 718.03 (4), that are excavated as part of an immediate action are exempt from the storage requirements of s. NR 718.05 and the solid waste regulatory requirements of ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, for a period of 72 hours after the initial excavation of the contaminated soils.

(6) **DOCUMENTATION.** (a) Unless par. (b) is applicable or unless otherwise directed by the department, responsible parties shall prepare and submit written documentation to the department describing the immediate actions taken at their site or facility and the outcome of those actions, within 45 days after the initial hazardous substance discharge notification is given to the department in accordance with the requirements of s. NR 158.05.

(b) Where a discharge from a UST has occurred, responsible parties shall prepare and submit written documentation to the department within 20 days after notifying the department of a hazardous substance discharge in accordance with the requirements of s. NR 705.05.

(c) The written documentation required of the responsible parties pursuant to par. (a) or (b) shall include all of the following:

1. A statement expressing the purpose of the submittal and the desired department action or response.

2. Name, address and telephone number of the responsible parties.

3. Location of the site or facility, or discharge incident, including street address; quarter-quarter section; and legal description of lot, if located in platted area.

4. Any information required under s. NR 158.05 for hazardous substance discharges from sources other than a UST or s. NR 705.05 for USTs, that has not been provided to the department previously.

5. The type of engineering controls, treatment or both and the effluent quality of any permitted or licensed discharge.

6. The type, total volume and final disposition of the discharged hazardous substance and contaminated materials generated as part of the immediate action, including legible copies of manifests, receipts and other relevant documents.

(d) Responsible parties may include the information required in par. (c) with a final report and letter of compliance required in s. NR 708.09 which documents that the immediate response action is complete and no further action is necessary to respond to a hazardous substance discharge or environmental pollution, provided that the information required in par. (c) is submitted within 45

days after the initial hazardous substance discharge notification is given to the department.

**Note:** It is the intent of the department to encourage submittal of the notification information required in s. NR 708.05 (6) with the no further action information required in s. NR 708.09, provided that the notification information is submitted within 45 days. If the 45 day limit cannot be met, then 2 separate submittals will be needed, if no further action is being documented for the immediate response action.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (6) (d), Register, March, 1995, No. 471, eff. 4-1-95.

**NR 708.07 Additional response actions.** Unless s. NR 708.09 is applicable, responsible parties shall conduct all necessary additional response actions at the completion of an immediate action including, but not limited to, the actions listed in subs. (1) to (4), either at the direction of the department or where the responsible party has determined that site or facility conditions warrant an additional response action:

(1) Additional immediate action in accordance with this chapter.

(2) Interim action, in accordance with this chapter and, as applicable, ch. NR 724.

(3) A site investigation, in accordance with the requirements of ch. NR 716.

(4) Implementation of a preventive measures plan to minimize or prevent any further hazardous substance discharges.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (intro.), Register, March, 1995, No. 471, eff. 4-1-95.

**NR 708.09 No further response action.** (1) **GENERAL.** Unless sub. (2) is applicable, responsible parties shall submit a final report for completed immediate action at the site or facility which addresses the following criteria, where applicable, and a letter of compliance documenting that the immediate response action is complete and no further action is necessary to respond to a hazardous substance discharge or environmental pollution:

(a) The type of hazardous substance discharged or the type of environmental pollution, including the toxicity, mobility and volume of the contamination.

(b) The duration of the discharge.

(c) Time until the discharge or environmental pollution was responded to and properly contained or eliminated.

(d) Any mitigation efforts that may have accelerated the migration of the environmental pollution or hazardous substances, such as any fire mitigation methods.

(e) Weather conditions at the site or facility, such as any precipitation that may have accelerated the migration of the contamination, from the time of the discharge until the response was completed.

(f) Migration potential of the contamination, including soil conditions, proximity to surface water bodies, location of drains or storm sewers, depth to groundwater and the integrity of any containment area.

(g) The nature and scope of any immediate action conducted.

(h) The results of any sampling conducted to confirm the adequacy of the response, taken in accordance with s. NR 708.05 (3) (c).

(i) Visual and olfactory evidence of contamination.

(j) Actual or potential environmental impacts.

(k) Proximity of contamination to receptors.

(l) Present and anticipated future land use.

(m) Whether or not routes of exposure are protective and the environment has been restored to the extent practicable.

(n) Any other information that the department considers relevant.

(2) **SITE INVESTIGATION.** The department shall require responsible parties to conduct a site investigation in accordance with the requirements of ch. NR 716 if a hazardous substance discharge from a UST meets any of the following conditions:

(a) There is evidence that groundwater wells have been affected by a discharge of a hazardous substance, including any evidence found during the release confirmation procedures in ch. NR 705.

(b) Free product is found and removal is required under s. NR 708.13.

(c) There is evidence that contaminated soils may be in contact with groundwater.

(3) **REOPENING A CASE.** The department may require that additional response actions be conducted by responsible parties in compliance with the requirements of chs. NR 700 to 726 if additional information indicates that residual contamination at a site or facility poses a threat to public health, safety or welfare or the environment.

**Note:** Although the department may determine at this time that no further response action is necessary pursuant to chs. NR 700 to 726, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. (1) (intro.), Register, March, 1995, No. 471, eff. 4-1-95.

**NR 708.11 Interim actions.** (1) **GENERAL.** Responsible parties shall evaluate the need for interim action prior to initiating a site investigation and during a site investigation. Interim action shall be taken where it is necessary to contain or stabilize a discharge of a hazardous substance or environmental pollution, in order to minimize any threat to public health, safety or welfare or the environment. When an interim action is warranted, responsible parties shall implement an interim action as soon as facility or site-related information makes it possible to do so, in compliance with the requirements of this chapter.

**Note:** The principal distinction between a non-emergency, immediate action and an interim action is that a site investigation will be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09.

(2) **SPECIFIC ACTIONS.** Interim actions may include any of the following:

(a) Restricting public access to the site or facility.

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(b) Conducting source removal, such as excavation and treatment of highly contaminated soils, to prevent or limit further movement of the contamination.

(c) Extracting free product, leachate or groundwater to restrict migration of a contaminant plume.

(d) Constructing a temporary engineering control, such as a low permeability cover.

(e) Actions listed in s. NR 708.05 (4) (c), (g) or (i).

(3) **SELECTION OF INTERIM ACTIONS.** Unless otherwise directed by the department, responsible parties shall select and implement necessary interim action without prior department approval. The interim action selected by responsible parties shall comply with all of the following requirements:

(a) Be protective of public health, safety and welfare and the environment for the exposure pathways being addressed and any solid or hazardous waste or the hazardous substances and contaminated environmental media being generated.

(b) Comply with all state and federal public health and environmental laws, whichever are more stringent, that apply to the type of interim action being taken and any solid or hazardous waste and contaminated environmental media that is being generated, treated, stored or disposed as part of the interim action.

(c) Use recycling or treatment to the extent practicable.

(d) Be consistent with the final remedial action that is likely to be selected for that pathway of exposure or contaminated environmental media that is being addressed by the interim action.

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

(a) On-site treatment system, including a groundwater extraction and treatment system.

(b) On-site engineering control or barrier, including a landfill cover or groundwater barrier system.

(c) Any other type of interim action option when the department notifies responsible parties, on a case-by-case basis, that a design report is required prior to implementation of the interim action.

(5) **ADDITIONAL RESPONSE ACTION.** Unless otherwise directed by the department, responsible parties shall initiate and complete a site investigation in accordance with ch. NR 716 during the implementation of the interim action or as soon as it is feasible to do so after the completion of the interim action.

*History:* Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 708.13 Free product removal.** Responsible parties shall conduct free product removal whenever it is necessary to halt or contain the discharge of a hazardous substance or to minimize the harmful effects of the discharge

to the air, lands or waters of the state. When required, free product removal shall be conducted, to the maximum extent practicable, in compliance with all of the following requirements:

(1) Free product removal shall be conducted in a manner that minimizes the spread of contamination into previously uncontaminated zones using recovery and disposal techniques appropriate to the hydrologic conditions at the site or facility, and that properly reuses or treats discharges of recovery byproducts in compliance with applicable state and federal laws.

(2) Free product removal systems shall be designed to abate free product migration.

(3) Any flammable products shall be handled in a safe and competent manner to prevent fires or explosions.

*History:* Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 708.15 Interim action reports.** (1) **GENERAL.** Responsible parties shall prepare and submit to the department an interim action report, in accordance with this section, describing each interim action taken. The interim action report shall be submitted as part of the remedial action report or the site investigation report, unless otherwise directed by the department or unless sub. (2) is applicable.

(2) **FREE PRODUCT REMOVAL.** For interim actions conducted to remove free product that was discharged from a UST, responsible parties shall prepare and submit a written interim action report to the department within 45 days after confirming a discharge in accordance with the requirements of s. NR 705.05, unless otherwise directed by the department.

(3) **REPORT CONTENTS.** The report required in sub. (1) or (2) shall include all of the following:

(a) Name, address and telephone number of the responsible party.

(b) Location of the site or facility, including street address; quarter-quarter section; and legal description of lot, if located in platted area.

(c) The department-issued site or facility identification number.

(d) The name of the consultant or person who has implemented the measures.

(e) A description of the interim action implemented.

(f) The estimated quantity and type of contamination, including the thickness of free product observed or measured in wells, bore holes and excavations when applicable.

(g) The location and effluent quality of any permitted discharge, such as a wastewater discharge.

(h) The steps that have been or are being taken to obtain necessary permits for any discharge.

(i) The type, total volume and final disposition of any recovered hazardous substance discharged and contaminated environmental media generated, treated, stored or disposed of, including legible copies of manifests, receipts and other relevant documents.

*History:* Cr. Register, April, 1994, No. 460, eff. 5-1-94.