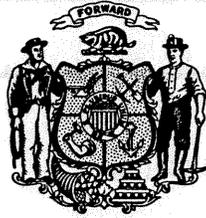


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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-090

AN ORDER to amend NR 700.11 (1) (b) and (2) (b), 716.05 (1), 716.11 (5) (a), 716.15 (1), 720.02 (1) (intro.), 720.05 (1) (intro.), 722.02 (1), (2), (2m) and (3), 726.05 (1), (2) (a) and (b) 1. f., 2. and 3. and (6), 726.07 (1) and 726.09 (2) (b); and to create NR 700.03 (66m), 700.11 (2) (e), 716.07 (12), 716.11 (3) (c), 716.15 (2) (g) 9., Appendix A in chapter NR 716, 720.02 (1m) and 722.02 (3m) and chapter NR 746, relating to sites contaminated with petroleum products discharged from petroleum storage tanks.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-09-00 RECEIVED BY LEGISLATIVE COUNCIL.

06-05-00 REPORT SENT TO AGENCY.

RNS:MCP:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 00-090

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In Appendix A to ch. NR 716, sub. (2) (d) 2., "groundwater water" is redundant. Can "groundwater" be deleted?
- b. The use of "Commerce" to denote a state agency is awkward drafting style. It is suggested that the definition of "Commerce" be deleted and that the term be replaced by "the department of commerce" throughout the rule.
- c. The definition of "utility corridor" in s. NR 746.03 is unnecessary. The rule defines that term in s. 700.03 (66m), and that definition applies to chs. 700 to 750.
- d. Section NR 746.05 (4) refers to a responsible person or an agent of the responsible person. If an agent is to be authorized generally to act on behalf of a responsible person, that should be established in a provision that applies to the entire chapter or in the definition of "responsible person." (Also, the phrase should be "responsible person or his or her agent" rather than "their agent.")
- e. The cross-references in s. NR 746.08 (1) are surplusage and should be deleted. *Who* makes the determination under this subsection as to how the site is classified? How does this provision relate to s. NR 746.04?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The note after s. NR 726.05 (2) (b) 3. refers to a “preventive action limit exception.” This phrase is used at several other places in the rule. Does this refer to the procedure in s. NR 140.28?

b. The title of ch. NR 746 describes only a portion of the contents of the chapter. The majority of the chapter relates to site investigation, risk screening and site closure, which do not relate to “interagency” responsibilities.

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

d. Section NR 746.05 (4) (b). A release of petroleum product is referred to in s. 746.03 (18) as being “more than 10 years old.” The term “release” is defined as the “original discharge to the environment.” The phrase in s. NR 746.05 (4) (b) would fit better with this definition by rephrasing it as “the release . . . occurred more than 10 years ago.” This phrase occurs at several other places in the rule. Also, “decision making” should be hyphenated.

e. Section NR 746.06 (1). The rule provides that risk criteria “shall be used to determine” the need for remedial action. Who makes this determination? “The second shall be” should be replaced by “is.” “Could” should be replaced by “may” and “but is not limited to” should be deleted. It is not clear how the examples in the second half of this subsection relate to determining whether a remedial action is required.

f. Section NR 746.06 (2) (intro.). This provision relates to “decisions . . . for identifying sites that are eligible for closure.” However, sub. (1) relates to determining whether remedial action is required. Also, the connection between this provision and the cross-referenced provision of s. NR 746.07 is unclear.

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

h. Section NR 746.06 (2) (d). “Approved” should be replaced by “identified.”

i. Section NR 746.07. This section contains too much material. At a minimum, the subsections should be drafted as sections of the rule. The title includes “approval,” but there is little if anything in this section regarding approval of remedial actions.

j. Section NR 746.07 (1) (intro.). This provision relates to site closure decisions and sets forth certain criteria for making those decisions. However, the term “site closure” is defined in s. NR 746.03 (23) as a determination made pursuant to ch. NR 726. The relationship between ch. NR 726 and s. NR 746.07 should be clarified.

k. Section NR 746.07 (1) (a) (intro.). This provision uses site conditions to determine closure eligibility, and also raises a question regarding the relationship of this provision to ch.

NR 726. Most of ch. NR 726 relates to actions required by the department and the owner, rather than to site conditions.

l. Section NR 746.07 (1) (a) 1. "Have been satisfied" suggests that the owner must do something to satisfy risk screening criteria. If risk screening criteria relate to the site condition, it should be redrafted as "the site meets all of the risk screening criteria in s. NR 746.06 (2)." This comment also applies to s. NR 746.07 (1) (b) 1., (c) 1. and (d) 1.

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

n. Section NR 746.07 (1) (b) (intro.). The sentence should begin: "A site that has" This comment applies to sub. (2) (b) (intro.) also.

o. Section NR 746.07 (1) (b) 2. The material after "including" appears to create a variation on the corresponding requirement of ch. NR 726. If so, this can be stated more clearly.

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

q. Section NR 746.07 (5). The title refers to remediation funding, but only par. (c) relates to funding. A more descriptive title should be used.

r. Section NR 746.07 (5) (a). It is very difficult to understand the purpose of this paragraph. The context of sub. (5) suggests that these provisions apply to sites where the owner does not record deed restrictions or deed notices. If this is the purpose of this subsection, or if the subsection has any other purpose, it should be more clearly stated.

s. Section NR 746.07 (5) (b). This relates to the same subject as a number of other provisions of the rule and of current rules. For example, s. NR 746.07 (1) establishes when a site may be closed without remedial action and s. NR 726.09 allows closed cases to be reopened. The connections between these provisions should be clearly established. Also, this paragraph should be clarified to state when the department may make a decision to require additional remedial action. The word "such" should be replaced by a reference to par. (a), if that is the intent.

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

u. In s. NR 746.08 (2), if the site investigation report identifies a site as medium- or low-risk site and, pursuant to this provision, the report is submitted directly to the Department of

Commerce, how can the Department of Natural Resources "transfer the site file" to the Department of Commerce? See also s. NR 746.08 (3).

The Department of Natural Resources (DNR) is currently responsible for the site file. To transfer the site file to the Department of Commerce, the following steps should be taken:

1. The DNR should identify the specific site files to be transferred.

2. The DNR should prepare a list of the site files to be transferred.

3. The DNR should provide the list to the Department of Commerce.

4. The Department of Commerce should review the list and determine which site files to accept.

5. The Department of Commerce should request the DNR to transfer the site files.

6. The DNR should transfer the site files to the Department of Commerce.

7. The Department of Commerce should update its records to reflect the transfer of the site files.

8. The Department of Commerce should notify the DNR of the transfer of the site files.

9. The DNR should provide any necessary documentation to the Department of Commerce.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 700.11 (1)(b) and (2)(b), 716.05 (1), 716.11 (5)(a), 716.15 (1), 720.02 (1)(intro.), 720.05 (1)(intro.), 722.02 (1), (2), (2m) and (3), 726.05 (1), (2)(a), (2)(b) 1.f., 2. and 3., and (6), 726.07 (1) and 726.09 (2)(b); to create NR 700.03 (66m), 700.11 (2)(e), 716.07 (12), 716.11 (3)(c), 716.15 (2)(g) 9., Appendix A in ch. NR 716, 720.02 (1m), 722.02 (3m) and ch. NR 746, relating to sites contaminated with petroleum products discharged from petroleum storage tanks.

RR-23-00

Analysis prepared by the Department of Natural Resources

Statutory authority: s. 227.11 (2)(a), Stats.

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

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

Chapter NR 746 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 NR 746 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.

The amendments and new provisions that are proposed to be added to chs. NR 700, 716, 720, 722 and 726, as part of this rule package, consist of cross-references to ch. NR 746 that are proposed to be inserted in chs. NR 700, 716 and 726, and exemptions from the requirements in chs. NR 720 and 722 that would conflict with the requirements in ch. NR 746: that is, an exemption from the soil cleanup standards in ch. NR 720 and the remedial action option

evaluation requirements in ch. NR 722 for those sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy the risk criteria in s. NR 746.06 and are eligible for closure under s. NR 746.07.

applic. of 700.03 to 746

SECTION 1. NR 700.03 (66m) is created to read:

NR 700.03 (66m) "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.

*Q
716.11
OK*

SECTION 2. NR 700.11 (1)(b) is amended to read:

NR 700.11 (1)(b) Responsible parties shall submit a final report for the response action at the site or facility which includes the information required by chs. NR 700 to ~~726~~ 746, as applicable, and a letter of compliance documenting that the response action has complied with the requirements of chs. NR 700 to ~~726~~ 746, as applicable, and any other applicable environmental regulations, so that no further action is necessary for the site or facility.

SECTION 3. NR 700.11(2)(b) is amended to read:

NR 700.11 (2)(b) Responsible parties shall submit a site investigation report, pursuant to ch. NR 716 within 30 days after completion of the report, and a draft remedial options report meeting the requirements of ch. NR 722 within 30 days after completion of both reports the report unless the site is exempt from this requirement under par. (e).

SECTION 4. NR 700.11(2)(e) is created to read:

NR 700.11 (2)(e) Sites that are eligible for closure under s. NR 746.07 are not required to submit a remedial action options report.

SECTION 5. NR 716.05 (1) is amended to read:

NR 716.05 (1) Responsible parties shall conduct a site investigation that meets the requirements of this chapter and s. NR 746.05, for discharges of petroleum products from petroleum storage tanks, when site-specific or facility-specific information indicates that soil, sediment, groundwater, surface water, air or other environmental media at a site or facility may have become contaminated. Unless sub. (2) is applicable, responsible parties shall use the factors in s. NR 708.09 (1) (a) through (n) and (2) (a) through (d) to determine whether or not a site investigation is necessary.

SECTION 6. NR 716.07 (12) is created to read:

NR 716.07(12) For sites with petroleum-product contamination discharged from petroleum storage tanks, the need to gather data to determine the hydraulic conductivity of materials where contaminated groundwater is found utilizing a method described in Appendix A, and to determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 (1).

SECTION 7. NR 716.11 (3)(c) is created to read:

NR 716.11 (3)(c) For sites with petroleum-product contamination discharged from petroleum storage tanks, provide sufficient information to determine the hydraulic conductivity of materials where contaminated groundwater is found utilizing a method described in Appendix A, and to determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 (1).

SECTION 8. NR 716.11 (5)(a) is amended to read:

NR 716.11 (5)(a) Potential pathways for migration of the contamination, including buried utilities and drainage improvements, utility corridors, and permeable material or soil along which vapors, free product or contaminated water may flow.

SECTION 9. NR 716.15 (1) is amended to read:

NR 716.15 (1) **REPORT REQUIREMENT.** Unless otherwise directed by the department, responsible parties shall include the site investigation report information with the final report and accompanying compliance letter for the response action in accordance with s. NR 700.11 (1)(b), if the site or facility meets the criteria for a simple site classification, in s. NR 700.09(1). If, however, the site or facility is classified as a complex site in accordance with s. NR 700.09 (2) or if the responsible party chooses to proceed with the complex site process, responsible parties shall submit the site investigation report to the department within 30 days of completion of the report and the draft remedial options report meeting the requirements of ch. NR 722 within 30 days of completion of the report unless the site is eligible for closure under s. NR 746.07, in which case the submittal of a remedial action options report is not required.

SECTION 10. NR 716.15 (2)(g) 9. is created to read:

NR 716.15 (2)(g) 9. For sites with petroleum-product contamination discharged from petroleum storage tanks, the hydraulic conductivity of materials where contaminated groundwater is found utilizing a method described in Appendix A, and interpretations of data

necessary to determine whether the site satisfies all of the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 (1).

SECTION 11. NR 716 Appendix A is created to read:

Appendix A

STANDARD METHODS FOR DETERMINING HYDRAULIC CONDUCTIVITY

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

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

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

1. If using a pump, set the pump intake in the lower half of the screen and allow sufficient time for the water level in the well to equilibrate.
2. Measure and record the initial depth to water and well depth. Subtract the difference to determine the saturated interval of the well, in feet.
3. Pump or bail 2 gallons of groundwater from the well within 2 to 3 minutes.
4. Record the start time and finish time to remove 2 gallons from the well.
5. Measure and record the water level in the well immediately after 2 gallons is removed from the well.
6. After the applicable time listed in Table A has elapsed, measure and record the water level in the well.
7. Calculate hydraulic conductivity utilizing Formula A.

TABLE A

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

FORMULA A

Step 1: Calculate

$$T = q / 4 \pi s t$$

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

$q =$ volume of groundwater removed (2 gallons)
 $s =$ measured residual drawdown, in feet (water level at time in Table A minus initial depth to water in par. (c) 2.)
 $t =$ time, in days, from Table A. (convert minutes to days by dividing by 1440)

Step 2: Convert T in gpd/ft to T in ft²/sec by dividing by 646272.

Step 3: Calculate $K = T/b$

Where: $K =$ hydraulic conductivity, in ft/sec
 $b =$ saturated interval of well, in feet, as measured in par. (c) 2.

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

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

Note: Copies of ASTM Standards D 4044-96 and D 5912-96 may be obtained from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428, and are available for inspection at the offices of the Department of Natural Resources, the Secretary of State and the Revisor of Statutes.

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

(b) For both the rising and falling head tests, groundwater may not be removed from the well 12 hours prior to the test, the well shall have at least 5 feet of water within the well screen or well casing, or both, prior to each test, and the borehole diameter of the well shall be at least 6 inches.

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

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

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

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

SECTION 12. NR 720.02 (1)(intro.) is amended to read:

NR 720.02 (1) ~~This~~ Except as provided in sub. (1m), this chapter applies to all remedial actions taken by responsible parties to address soil contamination after an investigation has been conducted at a site, facility or portion of a site or facility that is subject to regulation under s. ~~144.442~~ 292.11 or ~~144.76~~ 292.31, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to soil contamination at all of the following:

SECTION 13. NR 720.02 (1m) is created to read:

NR 720.02 (1m) This chapter is not applicable to sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07.

Note: If sites and facilities that are contaminated with petroleum products discharged from petroleum storage tanks do not satisfy the risk screening criteria in s. NR 746.06 (2) or the closure requirements of s. NR 746.07, the site or facility would be still be subject to this chapter.

SECTION 14. NR 722.02 (1), (2), (2m) and (3) are amended to read:

NR 722.02 (1) ~~This~~ Except as provided in sub. (3m), this chapter applies to all remedial actions taken by the department under the authority of s. 292.11 or 292.31, Stats. This chapter does not apply to immediate actions or interim actions, unless specifically noted in ch. NR 708. In this chapter, where the term "responsible parties" appears, it shall be read to include the department, where a department- funded remedial action is being taken.

(2) ~~This~~ Except as provided in sub. (3m), this chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., regardless of whether there is direct involvement or oversight by the department.

(2m) ~~This~~ Except as provided in sub. (3m), this chapter applies to all remedial actions taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term "responsible party" appears, it shall be read to include the "~~purchaser~~ voluntary party" where an action is being undertaken to comply with s. 292.15, Stats.

(3) In addition to being applicable to sites or facilities that are subject to regulation under s. 292.11 or 292.31, Stats., ~~ch. NR 722~~ this chapter applies to the evaluation of proposed remedial action options for solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20 (11), except as provided in sub. (3m).

SECTION 15. NR 722.02 (3m) is created to read:

NR 722.02 (3m) This chapter are not applicable to sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07.

Note: If sites and facilities that are contaminated with petroleum products discharged from petroleum storage tanks do not satisfy the risk screening criteria in s. NR 746.06 (2) or the closure requirements of s. NR 746.07, the site or facility would be still be subject to this chapter.

SECTION 16. NR 726.05 (1) is amended to read:

NR 726.05 (1) For a site or facility at which a response action other than an immediate action has been conducted and which is classified as complex under s. NR 700.09 (2) or for which the responsible party has chosen to proceed with the complex site process under s. NR 700.11 (2), responsible parties or other interested persons may request that the department close the case under this chapter after compliance with all applicable federal and state public health and environmental laws, including chs. NR 700 to ~~726~~ 746 where applicable, has been achieved.

SECTION 17. NR 726.05 (2) (a) is amended to read:

NR 726.05 (2) (a) A request for case closure shall be submitted in writing on a close out form supplied by the department and shall be accompanied by a report documenting that the applicable public health and environmental laws, including chs. NR 700 to ~~724-746~~ where applicable, have been complied with, or, where ch. NR 140 enforcement standards or preventive action limits are exceeded, that the criteria in par. (b) are satisfied.

SECTION 18. NR 726.05 (2) (b) 1.f. is amended to read:

NR 726.05 (2) (b) 1.f. The concentration ~~or and mass, or both,~~ of a substance and its breakdown-products ~~existing in soil or groundwater, or both, have been reduced if the actions are deemed in groundwater have been reduced due to naturally occurring physical, chemical and biological processes as necessary to restore groundwater within a reasonable period of time, to~~ adequately protect public health and the environment, ~~or to and prevent groundwater~~ contamination from migrating beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded, except that sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07 (1) (b) or (2) (b) shall be considered to have satisfied the criterion in this subdivision paragraph without having to provide supporting documentation.

SECTION 19. NR 726.05 (2) (b) 2. is amended to read:

NR 726.05 (2) (b) 2. Natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time, considering the criteria in s. NR 722.07, except that sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07 (1) (b) or (d) or (2) (b) or (d), shall be considered to have satisfied the criterion in this subdivision without having to provide supporting documentation.

SECTION 20. NR 726.05 (2) (b) 3. is amended to read:

NR 726.05 (2) (b) 3. Groundwater contamination exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded after the site or facility is closed.

Note: If there are no enforcement standard exceedances beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded, a case may still be closed under s. NR 726.05 (2) (b) even though there are ch. NR 140 preventive action limit exceedances beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded if the

groundwater contaminant plume is stable or receding and a preventive action limit exemption is granted for the property or properties for which groundwater use restrictions have not been recorded.

Handwritten notes:
NR 726.05
NR 726.07
NR 726.09

SECTION 21. NR 726.05 (2)(b) 4. is amended to read:

NR 726.05 (2)(b) 4. If there are ch. NR 140 enforcement standard exceedances on the property or properties, a groundwater use restriction which satisfies the requirements of sub. (8) (am) has been recorded at the county register of deeds office for each property, except that a groundwater use restriction is not required for a public street or highway right-of-way where there are ch. NR 140 enforcement standard exceedances in a stable or receding plume provided that the municipal clerk, and the municipal department or state agency that is responsible for maintaining the street or highway have been given written notification of the presence of residual soil and groundwater contamination within the right-of-way.

SECTION 22. NR 726.05 (6) is amended to read:

NR 726.05 (6) Following receipt of a request for case closure under this section, the department shall review the information provided under sub. (3) to determine whether the applicable public health and environmental laws, including chs. NR 700 to ~~724~~ 746 where applicable, have been complied with and whether any further threat to public health, safety or welfare or the environment exists at the site or facility. Based on this review, the department shall approve the case closure, or conclude that additional response actions, such as additional remedial action or long-term monitoring, are needed at the site or facility, or conclude that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with.

SECTION 23. NR 726.07 (1) is amended to read:

NR 726.07 (1) For sites or facilities classified as simple under s. NR 700.09 (1) and for which the responsible party has not chosen to proceed with the complex site process under s. NR 700.11 (2), the responsible party shall submit a final report of the response action taken at the site or facility which includes the information required by chs. NR 700 to ~~724~~ 746, as applicable, s. NR 726.05 (8). The final report shall be accompanied by a letter of compliance documenting that the response action taken complies with the requirements of chs. NR 700 to ~~726~~ 746, as applicable, and all other applicable environmental laws, so that no further action is necessary for the site or facility.

SECTION 24. NR 726.09 (2)(b) is amended to read:

NR 726.09 (2)(b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. NR 700 to ~~724~~ 746 where applicable, within a time period established by the department.

SECTION 25. NR 746 is created to read:

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CHAPTER NR 746
PETROLEUM ENVIRONMENTAL CLEANUP FUND INTERAGENCY
RESPONSIBILITIES

NR 746.01 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. NR 746.06 and the closure criteria in s. NR 746.07 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 ch. 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. Comm 46.

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

NR 746.03 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. NR 746.05.

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 into 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."

NR 746.04 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.

NR 746.05 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 assessment screening and decision-making under this section and ss. Comm 47.337 and 47.339, ss. NR 746.06 and 746.07, 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 ch. 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 May 18, 2000, 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. NR 746.06 (2) (a), (f), (g) and (h) have been identified at the site.

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(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.

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ago - see def of release this late from

what does this?

NR 746.06 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. NR 746.07, at the completion of the site investigation or after remedial action.

what does this relate to?
risk criteria
remedial action

(2) RISK CRITERIA FOR SCREENING SITES. In making decisions under sub. (1), Commerce and DNR shall utilize, as provided in s. NR 746.07, the following criteria for identifying sites that are eligible for closure:

in case

what does this mean?

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

summary?
not in?

1. Documented expansion of plume margin.

how does issue of time fit - (a) seems to be a constraint

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 one meter of bedrock.

This is all very confusing.

1. Risk screening criteria, but end result is not a decision on rule 17
2. In (1) - decision if remedial action req. but (2) is to determine if remedial action not req.
3. But a (1) not clearly related to anything

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

identified in a scope (see del)

(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.

see 294 (23)

this section too big - made it up

NR 746.07 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:

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not clear what this means - in 726 who does this - see in the

(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. NR 746.06 (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.

all meet with standards the return

(a) 2 is not a condition of the site - 726 is just a check - search

unnecessary - 726

cannot do what is in 2 here at all - if it's approved with other

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. NR 746.06 (2) have been satisfied.
2. The requirements of ch. NR 726, other than s. 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. (d) 3. 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. NR 746.06 (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.

Same

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deed restriction
or
deed notice

the data have to be free of seasonal variation, so can S.V. be removed or adjusted using app.?

(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:

The site meets

1. All of the risk screening criteria in s. NR 746.06 (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.

The info complies with the results of

3. One of the following tests has been satisfied:

is that OK see app A

a. There is a minimum of 4 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. NR 746.06 (2) and the closure requirements in s. NR 746.07.

(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:

those in NR 146.06(2)?

(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. NR 746.06 (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. NR 746.06 (2) have been satisfied.
3. The requirements of ch. NR 726, other than s. 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.

(2) (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

1/2/17
this could
also be
considered

iii. The requirements of one of the tests listed in par. (d) 4. 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: See 1) / C

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. NR 746.06 (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: See 1) / d

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. NR 746.06 (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 4 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 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.

This would be a separate section

note on separate section

only (c) relates to funding

very ambiguous - are restrictions mandatory?

see (c) & (1)

unless after closure

which?

mandatory - does it relate to anything else? No, side note.

under remediation ?
not just
in return
natural
alternativ
?

(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.

summary
NR 746.03
diff
NR 746.08 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 s. NR-746.03 (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.
and 746.04 ?
by whom?
used to determine
H. M. C. rule

document
NR 746.04
diff
(2) SUBMITTAL OF SITE INVESTIGATION REPORTS TO THE APPROPRIATE AGENCY. Site investigation reports submitted after May 18, 2000 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 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. NR 746.04 (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.
y d
has the
file?

(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.

NR 746.09 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.

NR 746.10 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 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 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 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 seasons 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 .

4. 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.
5. 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.
 6. 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	

$U = 26 - Wrs = 1$

- Sum the ranks for the data in the 1st year. Denote this sum as Wrs (or the Wilcoxon rank sum).
- Calculate the U Statistic. $U = 26 - Wrs$
- 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.
- 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.

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 of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
 DEPARTMENT OF NATURAL RESOURCES

By _____
 George E. Meyer, Secretary

(SEAL)

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. RR-23-00

Legislative Council Rules Clearinghouse Number 00-090

Subject of Rules Sites Contaminated with petroleum products discharged from petroleum storage tanks.

Date of Transmittal to Presiding Officers October 4, 2000

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 700, 716, 720, 722, 726 and 746, Wis. Adm. Code

Sites contaminated with petroleum products discharged from petroleum storage tanks

Board Order No. RR-23-00

Clearinghouse Rule No. 00-090

Statement of Need

The 1999-2001 biennial budget required the Department of Natural Resources and the Department of Commerce to promulgate joint rules on methods for determining the risk to public health, safety and welfare and to the environment posed by petroleum discharges. The two agencies have developed an agreed upon methodology, which is contained in the proposed rule. The rule also codifies the budget provisions that the Department of Natural Resources has authority for "high-risk sites" and the Department of Commerce has authority for "low- and medium-risk sites".

The rule includes provisions for selecting and setting remediation targets for sites that are competitively bid or bundled, determining when sites may close, determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site, tracking remediation progress, reporting program activities, staff training and dispute resolution. The rule contains:

1. A table of soil contaminant concentrations that are indicators of residual petroleum product in soil pores.
2. A table of direct-contact soil contaminant concentrations.
3. Site closure requirements to require that monitoring establish decreasing groundwater concentrations in permeable material, using one of two statistical tests.
4. Data collection requirements during the site investigation to determine whether the groundwater plume margin is expanding.
5. Criteria for closing clay-type sites after site investigation if groundwater contamination is not expanding and no other risk factors exist.
6. Interagency staff training provisions.

The rule also contains criteria for determining which agency has jurisdiction for individual sites. The Department of Natural Resources has jurisdiction for sites that meet the statutory definition of "high-risk" sites or that are contaminated by one or more hazardous substances other than petroleum product discharged from a petroleum storage tank. The Department of Natural Resources also has jurisdiction for sites that do not have enough information to be classified. The Department of Commerce has jurisdiction for all low and medium risk sites.

Modifications as a Result of Public Hearings

The major issues modified as a result of public hearing include:

Hydraulic conductivity testing – The proposed rule included an Appendix A to ch. NR 716 detailing procedures for conducting hydraulic conductivity testing. In response to comments, this appendix has been removed from the final rule. There are standards for conducting hydraulic conductivity tests and the agencies believe that it is not necessary to specify a limited set of methods in this

rule. The rule language has been revised to make it clear that site investigations are expected to include a determination of hydraulic conductivity.

Groundwater use restrictions for contaminated right-of-ways – The rule provides that groundwater use restrictions in public street or highway right-of-ways are not required if notification is given to the municipal department or state agency responsible for maintenance of the street or highway. This provision has been revised to specify that the person responsible for the contamination must give this notice.

Application of deed notices and restrictions on contaminated properties – There were requests that the agencies clarify the type of deed instruments used for closure of contaminated properties and the situations that will require the use of deed instruments. The issue of deed instruments (i.e., deed notices, deed restrictions, etc.) is critical to the proper administration of ch. NR 746 because many contaminated petroleum sites closing under this rule will require a deed instrument. DNR has guidance governing the use of deed instruments. However, to ensure consistency in the use of deed instruments, the agencies will be developing proposed rule revisions to clarify the types of deed instruments and conditions under which they will be used. The Board will be asked at its meeting in December 2000 to authorize hearings on the proposed rule language for deed instruments.

The use of natural attenuation to achieve groundwater standards – There is concern about whether natural attenuation processes are effective in achieving groundwater standards within a reasonable period of time. Since November 1996, contaminated sites in Wisconsin have been eligible for closure with contamination above groundwater enforcement standards if it is shown that natural processes will restore the groundwater within a reasonable period of time and public health and the environment are protected. Evidence has been collected nationally as well as statewide that petroleum products do degrade in the subsurface. The rule package provides specific approaches to demonstrating the effectiveness of natural attenuation processes. The rule package also sets out risk criteria to identify contaminated petroleum sites that may need active remedial action.

Public input to cleanup decision-making – There is a need to ensure that affected members of the public know about contaminated properties and have the opportunity to share their concerns with the agency with jurisdiction for the contaminated site. Currently, ch. NR 714, Public Information and Participation, provides for notification of the public directly affected by a contaminated site and the department can hold meetings to obtain comments on proposed cleanup remedies. However, ch. NR 714 does not specify who is required to provide notification or when the notification is required. Proposed changes will be submitted to the Natural Resources Board for further modifications to require the responsible person to provide written notification of contaminant migration to all landowners whose property has been contaminated, informing them of the contamination within 60 days of discovering the contamination has migrated off the responsible person's property.

Appearances at the Public Hearing and Their Position

June 15, 2000 – Madison

In support:

Craig O. Bartholomew, RMT, 744 Heartland Tr., Madison, WI 53717

Pat Osborne, 10 E. Doty, Madison, WI 53703

In opposition – none

As interest may appear:

Amy Wren, ECCI, P.O. Box 6438, Madison, WI 53716
Cliff Wright, Gannett Fleming, 8025 Excelsior Drive, Madison, WI 53717
Jolene Plantz, Kwik Trip [no address given]

July 10, 2000 – Milwaukee

In support – none
In opposition – none

As interest may appear:

Mark Malander, Exxon Mobil, 3225 Gallows Road, Fairfax, VA 22037
Bryan Bergmann, STS Consultants, Ltd., 11425 W. Lake Park Drive, Milwaukee, WI 53224
Lynette Caine, Northern Environmental, 954 Circle Drive, Green Bay, WI 54304
Gary Henningsen, Northern Environmental, 1214 W. Venture Ct., Mequon, WI 53092

July 12, 2000 – Wausau

In support:

Boyd Possin, ECCI, 710 Montreal Place, DePere, WI 54115

In opposition:

Chris Nehrbass, John Muir Chapter of Sierra Club, 903 Fulton Street, Wausau, WI 54403

As interest may appear:

Glenn Mueller, Wis. Environmental Health Assoc., 8770 Hwy. J, Woodruff, WI 54568
John Robinson, Wisconsin Water Well Assoc., 4080 N. 20th Avenue, Wausau, WI 54401
Allen O'Leary, Northland Cranberries, Inc., P.O. Box 8020, Wis. Rapids, WI 54495

Response to Legislative Council Rules Clearinghouse Report

See attached response.

Final Regulatory Flexibility Analysis

The Department does not expect any negative impact on small businesses as a result of this action. It is anticipated that this action will save money for many responsible parties, including small businesses, which conduct remediation of groundwater.

September 7, 2000

Response to
Legislative Council Rules Clearinghouse
Comments

Clearinghouse Rule 00-090: NR 746 and NR 700 Rule Series Changes

Comments on Form, Style and Placement in Administrative Code:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD**

REPEALING AND RECREATING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal and recreate NR 716.15 (1); to amend NR 700.11 (1)(b) and (2)(b), 716.05 (1), 716.11 (5)(a), 720.02 (1)(intro.), 720.11 (4) and (5), 722.02 (1), (2), (2m) and (3), 722.13 (1), 726.05 (1), (2)(a), (2)(b) 1.f., 2., 3. and 4., and (6), 726.07 (1) and 726.09 (2)(b); to create NR 700.03 (66m), 700.11 (2)(e) and (f), 716.07 (12), 716.11 (3)(c), 716.15 (2)(g) 9., 720.02 (1m), 722.02 (3m) and ch. NR 746, relating to sites contaminated with petroleum products discharged from petroleum storage tanks.

RR-23-00

Analysis prepared by the Department of Natural Resources

Statutory authority: Section 227.11 (2)(a), Stats.

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

Chapter NR 746 is identical to ch. Comm 46 that is being promulgated by the Department of Commerce.

Chapter NR 746 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 NR 746 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.

The amendments and new provisions that are proposed to be added to chs. NR 700, 716, 720, 722 and 726, as part of this rule package, consist of cross-references to ch. NR 746 that are proposed to be inserted in chs. NR 700, 716 and 726, and exemptions from the requirements in chs. NR 720 and 722 that would conflict with the requirements in ch. NR 746: that is, an exemption from the soil cleanup standards in ch. NR 720 and the remedial action option evaluation requirements in ch. NR 722 for those sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy the risk criteria in s. NR 746.06 and are eligible for closure under s. NR 746.07 or 746.08.

SECTION 1. NR 700.03 (66m) is created to read:

NR 700.03 (66m) "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.

SECTION 2. NR 700.11 (1)(b) is amended to read:

NR 700.11 (1)(b) Responsible parties shall submit a final report for the response action at the site or facility which includes the information required by chs. NR 700 to ~~726~~ 746, as applicable, and a letter of compliance documenting that the response action has complied with the requirements of chs. NR 700 to ~~726~~ 746, as applicable, and any other applicable environmental regulations, so that no further action is necessary for the site or facility.

SECTION 3. NR 700.11(2)(b) is amended to read:

NR 700.11 (2)(b) Responsible parties shall submit a site investigation report, pursuant to ch. NR 716 within 30 days after completion of the report unless the site is exempt from this requirement under par. (e), and a draft remedial options report meeting the requirements of ch. NR 722 within 30 days after completion of both reports the report unless the site is exempt from this requirement under par. (f).

SECTION 4. NR 700.11 (2)(e) is created to read:

NR 700.11 (2) (e) Responsible persons for sites where the only contamination is from the discharge of petroleum products from petroleum storage tanks are not required to submit a site investigation report within 30 days after completion of the report if the responsible person

estimates that the cost of completing a site investigation, remedial action plan and remedial action will not exceed \$60,000, and the agency with administrative authority over the site determines that competitive public bidding is not required under s. 101.143 (3)(cq) 1, Stats. For these sites, site investigation data are required to be submitted with the site closure request.

SECTION 5. NR 700.11 (2)(f) is created to read:

NR 700.11 (2) (f) Responsible persons for sites where the only contamination is from the discharge of petroleum products from petroleum storage tanks are not required to submit a remedial action options report unless the agency with administrative authority over the site under ch. NR 746 requests a remedial action options report.

SECTION 6. NR 716.05 (1) is amended to read:

NR 716.05 (1) Responsible parties shall conduct a site investigation that meets the requirements of this chapter and s. NR 746.05, for discharges of petroleum products from petroleum storage tanks, when site-specific or facility-specific information indicates that soil, sediment, groundwater, surface water, air or other environmental media at a site or facility may have become contaminated. Unless sub. (2) is applicable, responsible parties shall use the factors in s. NR 708.09 (1) (a) through (n) and (2) (a) through (d) to determine whether or not a site investigation is necessary.

SECTION 7. NR 716.07 (12) is created to read:

NR 716.07 (12) The need to gather data to determine the hydraulic conductivity of materials where contaminated groundwater is found and, for sites with petroleum-product contamination discharged from a petroleum storage tank, to determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08.

SECTION 8. NR 716.11 (3)(c) is created to read:

NR 716.11 (3)(c) Provide sufficient information to determine the hydraulic conductivity of materials where contaminated groundwater is found and, for sites with petroleum-product contamination discharged from a petroleum storage tank, determine whether the site satisfies the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08.

SECTION 9. NR 716.11 (5)(a) is amended to read:

NR 716.11 (5)(a) Potential pathways for migration of the contamination, including buried utilities and drainage improvements, utility corridors, bedrock and permeable material or soil along which vapors, free product or contaminated water may flow.

SECTION 10. NR 716.15 (1) is repealed and recreated to read:

NR 716.15 (1) REPORT REQUIREMENT. (a) *Simple site.* Unless otherwise directed by the department, responsible parties shall include the site investigation report information with the final report and accompanying compliance letter for the response action in accordance with s. NR 700.11 (1)(b), if the site or facility meets the criteria for a simple site classification, in s. NR 700.09(1).

(b) *Complex site.* If, however, the site or facility is classified as a complex site in accordance with s. NR 700.09 (2) or if the responsible party chooses to proceed with the complex site process, responsible parties shall submit:

1. A site investigation report to the department within 30 days after completion of the report unless the site is exempt under s. NR 700.11 (2)(e), in which case site investigation data are required to be submitted with the site closure request.

2. A draft remedial options report meeting the requirements of ch. NR 722 within 30 days after completion of the report unless the site is exempt under s. NR 700.11 (2)(f), in which case the submittal of a remedial action options report is not required unless requested.

SECTION 11. NR 716.15 (2)(g) 9. is created to read:

NR 716.15 (2)(g) 9. The hydraulic conductivity of materials where contaminated groundwater is found and, for sites with petroleum-product contamination discharged from a petroleum storage tank, interpretations of data necessary to determine whether the site satisfies all of the risk screening criteria in s. NR 746.06 and the closure criteria in s. NR 746.07 or 746.08.

SECTION 12. NR 720.02 (1)(intro.) is amended to read:

NR 720.02 (1)(intro.) ~~This~~ Except as provided in sub. (1m), this chapter applies to all remedial actions taken by responsible parties to address soil contamination after an investigation has been conducted at a site, facility or portion of a site or facility that is subject to regulation under s. ~~144.442~~ 292.11 or ~~144.76~~ 292.31, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to soil contamination at all of the following:

SECTION 13. NR 720.02 (1m) is created to read:

NR 720.02 (1m) This chapter is not applicable to sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07 or 746.08.

Note: If sites and facilities that are contaminated with petroleum products discharged from petroleum storage tanks do not satisfy the risk screening criteria in s. NR 746.06 (2) or the closure requirements of s. NR 746.07 or 746.08, the site or facility would be still be subject to this chapter.

SECTION 13A. NR 720.11 (4) is amended to read:

NR 720.11 (4) **SITE-SPECIFIC PROCESS.** ~~If any~~ Except as provided in sub. (5), if one or more of the criteria in sub. (2) are not met, responsible parties shall use the procedure in s. NR 720.19 to determine soil cleanup standards specific to a site or facility based on protection from direct contact.

SECTION 13B. NR 720.11 (5) is amended to read:

NR 720.11 (5) **EXCEPTIONS.** (a) For sites contaminated with petroleum products discharged from petroleum storage tanks:

1. If residual concentrations of benzene and 1,2 - dichlorethane are below the soil contaminant concentrations in Table 2 in s. NR 746.06 (2) and residual concentrations of ethylbenzene, toluene, xylene, 1,2, 4 - trimethylbenzene, 1,3, 5 - trimethylbenzene and naphthalene are below the soil screening levels in Table 1 in s. NR 746.06 (2), responsible parties are not required to satisfy the requirements in s. NR 720.19 and are not required to determine a site-specific direct contact residual contaminant level or site-specific soil cleanup standard for these substances for the purpose of complying with the provisions in s. NR 720.07 (1)(a) and (b).

2. If the site does not meet the requirements of subd. 1 but meets the risk screening criteria in s. NR 746.06 (2)(b) and (c), the responsible party shall obtain prior approval from the agency with administrative authority for the site before taking any action to address a direct contact threat other than the use of a performance standard under s. NR 720.19 (2).

(b) If the background concentration for a substance in soil at a site or facility is higher than the residual contaminant level for that substance listed in Table 2 or determined using the procedure in s. NR 720.19 (3), the background concentration in soil may be used as the residual

contaminant level for that substance. The background concentration for a substance in soil shall be determined using a department-approved and appropriate method.

SECTION 14. NR 722.02 (1), (2), (2m) and (3) are amended to read:

NR 722.02 (1) ~~This~~ Except as provided in sub. (3m), this chapter applies to all remedial actions taken by the department under the authority of s. 292.11 or 292.31, Stats. This chapter does not apply to immediate actions or interim actions, unless specifically noted in ch. NR 708. In this chapter, where the term "responsible parties" appears, it shall be read to include the department, where a department-funded remedial action is being taken.

(2) ~~This~~ Except as provided in sub. (3m), this chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., regardless of whether there is direct involvement or oversight by the department.

(2m) ~~This~~ Except as provided in sub. (3m), this chapter applies to all remedial actions taken by persons seeking the liability exemption under s. 292.15, Stats. In this chapter, where the term "responsible party" appears, it shall be read to include the "~~purchaser~~ voluntary party" where an action is being undertaken to comply with s. 292.15, Stats.

(3) In addition to being applicable to sites or facilities that are subject to regulation under s. 292.11 or 292.31, Stats., ~~ch. NR 722~~ this chapter applies to the evaluation of proposed remedial action options for solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20 (11), except as provided in sub. (3m).

SECTION 15. NR 722.02 (3m) is created to read:

NR 722.02 (3m) This chapter is not applicable to sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07 or 746.08.

Note: If sites and facilities that are contaminated with petroleum products discharged from petroleum storage tanks do not satisfy the risk screening criteria in s. NR 746.06 (2) or the closure requirements of s. NR 746.07 or 746.08, the site or facility would be still be subject to this chapter.

SECTION 16. NR 722.13 (1) is amended to read:

NR 722.13 (1) GENERAL. Based on the evaluation and selection of remedial action options required in ss. NR 722.07 and 722.09, responsible parties shall document the evaluation