

WISCONSIN LEGISLATIVE COUNCIL STAFF

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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 00-111

AN ORDER to repeal NR 726.05 (8) (am); to renumber NR 716.15 (2) (j); to amend NR 726.05 (2) (b) 3. and 4. and (c), Table 1 in chapter NR 749, 811.16 (4) (d) 6. and (5) (d), 812.03, 812.10 (2) and (5), 812.12 (3) and (15) and 812.42 (1) (b); and to create NR 716.15 (2) (d) 7., 716.15 (2) (j) Appendix B in chapter NR 716 and 726.05 (2) (am) and (d) and (3) (a) 4., relating to implementation of a geographic information system registry of closed remediation sites for properties with groundwater contamination exceeding NR 140 enforcement standards at the time of case closure.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07-05-00 RECEIVED BY LEGISLATIVE COUNCIL.

07-21-00 REPORT SENT TO AGENCY.

RS:MCP:jal;rv

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 00-111

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. The phrase "needs to be" in s. NR 716.15 (2) (d) 7. appears to express a requirement of the rule. The two occurrences of the phrase should be replaced by "shall be."

b. Section NR 716.15 (2) (d) 7. contains a reference to Appendix B, which is created in the rule. Appendix B establishes four requirements for geographic position information. It appears that Appendix B is referenced only in this provision of the rule. Ordinarily, an appendix is used for provisions that apply to an entire chapter or to a number of provisions in a rule. Is there any reason why the requirements of Appendix B cannot be incorporated into s. NR 716.15 (2) (d) 7.?

c. SECTION 4 creates Appendix B in ch. NR 716. If this appendix is maintained as a separate provision of the rule, it would be useful to have additional information explaining the purpose for the provisions of the appendix. Also, it does not appear that there is an Appendix A in ch. NR 716.

d. Indefinite references, such as "herein" in s. NR 726.05 (3) (a) 4. (intro.), should be replaced by specific references. In this case, "in this subdivision" should be substituted.

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

a. Section NR 716.15 (2) (d) 7. requires a certain identifiable location to be at least 40 feet inside of the property boundary. Will this requirement work effectively if a parcel is less than 80 feet wide?

b. In ch. NR 716 Appendix B, the first paragraph refers to a property that is less than 200 feet wide or long and to property that is greater than 200 feet wide or long. In order to include a property that is 200 feet wide or long, either the phrase "not more than 200 feet" or "200 feet or greater" should be used. In par. (3), the word "a" should be inserted before each occurrence of the phrase "global positioning system."

c. Section NR 726.05 (3) (a) 4. f. refers to "attached legal descriptions." What are these legal descriptions and where are they attached?

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

**REPEALING, RENUMBERING, AMENDING AND
CREATING RULES**

The Wisconsin Natural Resources Board proposes to repeal NR 726.05(8)(am); to renumber NR 716.15(2)(j); to amend NR 726.05(2)(b)3., 4. and (2)(c), Table 1 in ch. NR 749, 811.16 (4)(d)6. and (5)(d), 812.03, 812.10(2) and (5), 812.12(3) and (15), and 812.42(1)(b); and to create NR 716.15(2)(d)7., 716.15(2)(j), Appendix B in ch. NR 716, 726.05(2)(am) and (d), 726.05(3)(a)4., relating to implementation of a geographic information system registry of closed remediation sites, for properties with groundwater contamination exceeding NR 140 enforcement standards at the time of case closure.

RR-31-00

Analysis prepared by the Department of Natural Resources

Statutory authority: Sections 227.11(2)(a) and 280.11 (1), Stats.

Statutes interpreted: Chapters 160, 280, 281 and 292, Stats.

The rule revisions that are contained in this order are intended to: (1) Require well drillers to consult the GIS Registry of Closed Remediation Sites and to contact the Department of Natural Resources to determine if any special well construction or location requirements apply to properties that are shown on one or both of these databases, and (2) require municipalities to consult the GIS Registry of Closed Remediation Sites and the Bureau for Remediation and Redevelopment Tracking System (BRRTS) for hazardous substance discharge sites in locating new community water supply systems, and (3) To increase access to information on sites with residual groundwater contamination for well drillers, municipalities and the general public.

SECTION 1. NR 716.15 (2)(d) 7. is created to read: *site investigation report*

NR 716.15(2)(d)7. The geographic position of all properties within and partially within the contaminated site boundaries, using a global positioning system or on-screen digitizing. The location where a geographic position reading is taken needs to be at least 40 feet inside the property boundary for each property affected, and the geographic position data need to be in accordance with the procedures and requirements in Appendix B.

SECTION 2. NR 716.15(2)(j) is renumbered NR 716.15(2)(k).

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SECTION 3. NR 716.15 (2)(j) is created to read:

NR 716.15 (2)(j) *Legal descriptions and parcel identification numbers.* All of the following information shall be included for all properties within the contaminated site boundaries:

1. A copy of the most recent deed, which includes the legal description.
2. A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed refers to a certified survey map or a recorded plat map.
3. The parcel identification number for each property if the county in which the property is located uses parcel identification numbers.

SECTION 4. NR 716 Appendix B is created to read:

Appendix B Geographic Position

no app A
explain what this is
←

1. Format: A single point geographic position shall be obtained for each property within or partially within the boundaries of the site contamination if the property is less than 200 feet wide or long. The polygon-based geographic position shall be obtained for properties within or partially within the boundaries of the contamination site if the property is greater than 200 feet wide or long.
2. Coordinate System: Geographic position data shall be originally collected in Wisconsin Transverse Mercator 91 or projected onto Wisconsin Transverse Mercator 91.
3. Acceptable methods for obtaining geographic position data include on-screen digitizing and global positioning system. Address matching may not be used as a sole method to obtain a geographic position, but it may be used in conjunction with either or both on-screen digitizing or global positioning system.
4. The following information is required for all properties: county, collection method, scale or resolution of original source of geographic position for on-screen digitizing.

SECTION 5. NR 726.05(2)(am) is created to read:

NR 726.05(2)(am) All requests for case closure shall include the following information for each property within or partially within the boundaries of the contaminated site:

1. A copy of the most recent deed, which includes the legal description.
2. A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed refers to a certified survey map or a recorded plat map.
3. The parcel identification number for each property, if the county in which the property is located uses parcel identification numbers.

SECTION 6. 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~~ that fall into one of the following categories:

- a. Properties for which a preventive action limit exemption has been granted.
- b. Properties that have been identified as having existing groundwater contamination that exceeds ch. NR 140 enforcement standards and that will be included on the department's geographic information system registry of closed remediation sites.

SECTION 7. 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~~ each property with ch. NR 140 enforcement standard exceedances shall be included on the department's geographic information system registry of closed remediation sites.

SECTION 8. NR 726.05(2)(c) is amended to read:

NR 726.05(2)(c) For cases that have been closed conditioned upon the recording of a groundwater use restriction ~~pursuant to par. (b),~~ the responsible party may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, apply for unconditional case closure and may request that the department ~~record~~ issue an affidavit that can be recorded at the county register of deeds office ~~which gives to give~~ notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for an exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140 28 are met. Once an exemption is granted under s. NR 140.28, the responsible party may apply for unconditional case closure and may request that the department ~~record~~ issue an affidavit that can be recorded at the county register of deeds

office ~~which gives~~ to give notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.

SECTION 9. NR 726.05(2)(d) is created to read:

NR 726.05(2)(d) For cases that have been closed conditioned upon the inclusion of the site on the department's geographic information system registry of closed remediation sites, pursuant to par. (b)4., the information contained in subs. (2)(am) and (3)(a)4. and the fee required in ch. NR 749 shall be submitted with the closeout form when a request for case closeout is submitted.

SECTION 10. NR 726.05(3)(a)4. is created to read:

NR 726.05(3)(a)4. All of the following information shall be included in the case closure application for sites where groundwater exceeds any ch. NR 140 enforcement standard, in the order and format provided herein, following the information required in sub. (2)(am), for inclusion in the geographic information system registry of closed remediation sites:

a. A location map which outlines all properties within the contaminated site boundaries in sufficient detail to permit the parcels to be located easily. This map shall be to scale and may not be any larger than 8.5 by 14 inches.

b. A map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells and potable wells. This map shall be to scale and may not be any larger than 8.5 by 14 inches.

c. A table of the most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified.

d. If available, an isoconcentration map of the contaminated properties within the contaminated site boundaries, showing the areal extent of groundwater contamination exceeding ch. NR 140 preventive action limits, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. This map shall be to scale and may not be any larger than 8.5 by 14 inches.

e. If available, a geologic cross-section showing the vertical extent of contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination exceeding ch. NR 140 preventive action limits, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any. This map shall be to scale and may not be any larger than 8.5 by 14 inches.

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f. A statement signed by the responsible party that certifies that the attached legal descriptions are complete and accurate for all of the properties within or partially within the contaminated site boundaries where groundwater contaminant concentrations exceed ch. NR 140 enforcement standards. The responsible person shall also provide to the department a copy of a letter sent by certified return mail receipt requested, to all property owners within the contaminated site boundaries whose property has groundwater contamination that exceeds ch. NR 140 enforcement standards, which notifies them that the property with the attached legal description will be listed on the department's geographic information system registry of closed remediation sites, as a property with residual contamination that exceeds ch. NR 140 enforcement standards, and which asks them to contact the responsible person if they believe that the legal description is incorrect.

SECTION 11. NR 726.05 (8)(am) is repealed.

SECTION 12. Table 1 in ch. NR 749 is amended to read:

TABLE 1 – FEE SCHEDULE

Type of Letter or Assistance	Statutory Citation	Fee
Tax Cancellation Agreement	ss. 75.105 (2) (d) and 292.55	\$ 500
Negotiated Agreements	s. 292.11 (7) (d) 2.	1000
Off-site Letters	s. 292.13 (3)	500
Lender Assessments	s. 292.21 (1) (c) 1. d.	500
Negotiation and Cost Recovery	s. 292.35 (13)	(a)
General Liability Clarification Letters	s. 292.55	500
Lease Letters – Single Properties	s. 292.55	500
Lease Letters – Multiple Properties	s. 292.55	1000
Case Close-out Actions Under ch. NR 726 ^(b)	s.292.55	750
- Cases with no groundwater contamination exceeding ESSs		750
- Cases with groundwater contamination exceeding ESSs		1000
Addition to the GIS Registry	s. 292.55	
- cases submitted for closure with groundwater exceeding ESSs to agencies other than the department		250
Site Investigation Workplan	s. 292.55	500
Site Investigation Report	s. 292.55	750
Site Specific Soil Cleanup Standards; NR 720.19 Reports	s. 292.55	750
Remedial Action Options Report	s. 292.55	750
Remedial Design Reports	s. 292.55	750
Operation and Maintenance Reports	s. 292.55	300
Construction Documentation Report	s. 292.55	250
Long-term Monitoring Plans	s. 292.55	300
No Further Action Letters under ch. NR 708 ^(c)	s. 292.55	250
Other Technical Assistance	s. 292.55	500

(a) Local governmental units in the negotiation and cost recovery process in s. 292.35, Stats., shall pay fees for each service requested.
(b) All requests for case closure need to be accompanied by the review fee in order to be considered complete.
(c) Immediate actions associated with spill cleanup activities, including department signoff on the spill reporting form, do not require a review fee.
Note: The department will not review Phase I or Phase II Environmental Assessments, unless they are part of the Voluntary Party Liability Exemption process in s. 292.15, Stats., or as part of a lender requesting this review in accordance with s. 292.21 (1) (c) 1. d., Stats.

SECTION 13. NR 811.16 (4)(d)6. is amended to read:

NR 811.16 (4)(d)6. Twelve hundred feet between a well and any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility; sanitary landfill; any property with residual groundwater contamination that exceeds ch. NR 140 enforcement standards that is shown on the department's geographic information system registry of closed remediation sites; coal storage area; salt or deicing material storage area; gasoline or fuel oil storage tanks that have not received written approval from the department of commerce or its designated agent under s. Comm 10.10; bulk fuel storage facilities; and pesticide or fertilizer handling or storage facilities.

Note: Sites that have been closed with groundwater enforcement standard exceedances can be found on the Department of Natural Resource's GIS Registry of Closed Remediation Sites, at <http://www.dnr.state.wi.us/org/aw/rr> on the DNR's internet site. Information that appears on the GIS Registry of Closed Remediation Sites can also be accessed by calling the nearest regional DNR office.

SECTION 14. NR 811.16(5)(d) is amended to read:

NR 811.16(5)(d) An inventory of existing potential contamination sources within a ½ mile radius of the proposed well and an assessment of existing potential contamination sources within the recharge area of the well, including information obtained by checking the department's geographic information system registry of closed remediation sites and the bureau for remediation and redevelopment's tracking system ("BRRTS").

Note: A listing of hazardous substance discharge sites, open and closed, can be found on the Bureau for Remediation and Redevelopment's Tracking System ("BRRTS") on the DNR's internet site at <http://www.dnr.state.wi.us/org/aw/rr>. Sites that have been closed with groundwater enforcement standard exceedances can also be found on the Department of Natural Resource's GIS Registry of Closed Remediation Sites, at <http://www.dnr.state.wi.us/org/aw/rr>. Information that appears on BRRTS and the GIS Registry of Closed Remediation Sites can also be accessed by calling the nearest regional DNR office.

SECTION 15. NR 812.03 is amended to read:

NR 812.03 **Cooperation with the department.** (1) Well drillers, pump installers and well constructors shall, when requested by the department;

(1) Give give notice to the department at least on the department work day prior to the day upon which any well construction or reconstruction or any part thereof, any

well abandonment or the installation of any pumping equipment, will commence or be completed.

(2) Well drillers, pump installers and well constructors shall determine if the property where a well is proposed to be constructed or reconstructed, or pumping equipment is proposed to be installed, is on the department's geographic information system registry of closed remediation sites prior to well installation or construction or installation of pumping equipment.

(2)(3) ~~Contact~~ Well drillers, pump installers and well constructors shall, when requested by the department, contact the department to determine if any special construction is required if the well driller is engaged to construct a new well or reconstruct an existing well because the existing well is known to contain contaminants in excess of the drinking water standards in ch. NR 809.

(4) Well drillers, pump installers and well constructors shall contact the department to determine if any special construction is required if the well driller is engaged to construct a new well or reconstruct an existing well because the well is or will be located on a property which is on the department's geographic information system registry of closed remediation sites.

Note: The Department of Natural Resource's GIS Registry of Closed Remediation Sites can be found at <http://www.dnr.state.wi.us/org/aw/rr> on the DNR's internet site. Information that appears on the GIS Registry of Closed Remediation Sites can also be accessed by calling the nearest regional DNR office.

SECTION 16. NR 812.10(2) is amended to read:

NR 812.10(2) LOCATION. Well drillers and well constructors shall be responsible for proper location of a well. Wells shall be located in sanitary locations and meet the separation requirements specified in s. NR 812.08. Separation distance requirements to possible sources of contamination will not be waived because of property lines. Wells may not be constructed within 1,200 feet of a landfill site without a variance. Variances from location requirements require approval. Well drillers, pump installers and well constructors shall determine if the property on which the well is or will be located is shown on the department's geographic information system registry of closed remediation sites before constructing or reconstructing a well or installing pumping equipment.

Note: The Department of Natural Resource's GIS Registry of Closed Remediation Sites can be found at <http://www.dnr.state.wi.us/org/aw/rr> on the DNR's internet site. Information that appears on the GIS Registry of Closed Remediation Sites can also be accessed by calling the nearest regional DNR office.

SECTION 17. NR 812.10(5) is amended to read:

NR 812.10(5) SPECIAL CASING AREAS. Well drillers and well constructors shall comply with the well casing pipe depth requirements in special well casing pipe depth areas established by the department where aquifers have been contaminated or in other special areas. A list of the special well casing pipe depth areas and the special casing pipe depth requirements may be obtained from the department.

Note: In some of these special areas wells are approved by the department on a case by case basis. There are other areas where special well construction specifications may be necessary. These may include sites on the department's geographic information system registry of closed remediation sites, as identified in s. NR 812.12(15).

SECTION 18. NR 812.12(3) is amended to read:

NR 812.12(3) A greater depth of well casing pipe shall be provided in special well casing pipe depth areas designated by the department where well histories show contamination extends to a greater depth. In some of these areas department approval shall be obtained for each well prior to construction.

Note: A list of special well casing pipe depth areas and the required depths may be obtained from the department upon request. Greater depth of well casing pipe is recommended for wells constructed on high density tiered lots where possible contamination sources exist on neighboring up-slope lots. Additional requirements for more stringent well construction specifications are found in sub. (15) regarding sites listed on the GIS Registry of Closed Remediation Sites.

SECTION 19. NR 812.12 (15) is amended to read:

NR 812.12 (15) More stringent well construction methods including but not limited to deeper well casing pipe depth settings are required by the department for wells constructed through formations where contaminant levels exceed the drinking water standards in s. NR 812.06, and may be required when there is groundwater contamination exceeding ch. NR 140 enforcement standards on a property that is shown on the department's geographic information system registry of closed remediation sites. When drilling in areas where there are contaminated formations, and on properties that are shown on the department's geographic information system registry of closed remediation sites, consultation with the department is ~~strongly recommended~~ required. If required by the department, special well construction methods shall be utilized when constructing or reconstructing wells located on properties that are shown on the department's geographic information system registry of closed remediation sites.

Note: The Department of Natural Resource's GIS Registry of Closed Remediation Sites can be found at <http://www.dnr.state.wi.us/org/aw/rr> on the DNR's internet site. Information that appears on the GIS Registry of Closed Remediation Sites can also be accessed by calling the nearest regional DNR office.

SECTION 20. NR 812.42(1)(b) is amended to read:

NR 812.42(1)(b) *Well construction*. The well construction shall be in compliance with the construction requirements in effect at the time the well was constructed, except if the well was constructed prior to April 10, 1953, in which case the well construction shall be in compliance with the standards adopted on that date. A well constructed to meet the requirements in effect at the time of construction, but not meeting the construction requirements of ss. NR 812.11 to 812.15 may only be reconstructed with approval. Special well construction methods required by the department shall be followed when reconstructing wells located on properties shown on the department's geographic information system registry of closed remediation sites.

Note: The Department of Natural Resource's GIS Registry of Closed Remediation Sites can be found at <http://www.dnr.state.wi.us/org/aw/rr> on the DNR's internet site. Information that appears on the GIS Registry of Closed Remediation Sites can also be accessed by calling the nearest regional DNR office.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules shall take 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)