

Report to
Legislative Council Rules Clearinghouse
NR 700 to 758, Wis. Adm. Code
Natural Resources Board Order No. RR-10-17

Wisconsin Statutory Authority

Wis. Stat. ss. 227.11 (2), 292.12 (2) (c), 292.15 (5), 292.31 (2), and 292.94

Federal Authority

N/A.

Comparison of Adjacent States

Many of the proposed rule revisions are clarifications or updates that are specific to Wisconsin's remediation process and are not readily comparable to other state approaches; however, available comparisons are provided below.

Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.

There are no regulations at this time within Michigan, Minnesota, Illinois, or Iowa that address the specific activities to be regulated by the proposed rules; however, there are related requirements in certain states:

- The state of Michigan, under Part 201 of Natural Resources and Environmental Protection Act (Act 451) of 1994, requires financial assurance as part of proposed post-closure agreements that are submitted as part of a "no further action report" following a remedial action. The financial assurance covers the costs of monitoring, operation and maintenance, oversight, and other costs determined by the Michigan Department of Environment, Great Lakes, and Energy to be necessary to assure the effectiveness and integrity of the remedial action (Mich. Stat. s. 324.20114d).
- The state of Iowa, under Iowa Code Chapter 455H, the Iowa Land Recycling and Environmental Remediation Standards Act, may require financial assurance from those participating in its voluntary Iowa Land Recycling Program. The director of the Iowa Department of Natural Resources may require reasonable proof of financial assurance for a technological control to ensure that it remains effective. The requirement is in statute (Iowa Stats. s. 455H.206 and Iowa Administrative Code s. 137.7(1)).

Minnesota, Illinois, Iowa, and Michigan all have adopted statutes or rules governing financial responsibility requirements for solid waste facility, hazardous waste facility, or corrective action sites or facilities as part of their respective delegations of authority to implement RCRA at the state level.

Soil standards (direct contact residual contaminant levels)

The revision under s. NR 720.12 (1) to increase the direct contact residual contaminant level for

PAHs will result in a standard that is less restrictive than the current Wisconsin standard, and more within the range of what surrounding states have established. For example, the standard imposed by Wisconsin for benzo(a)pyrene, a PAH compound, is currently more restrictive than all surrounding states. Following the rule change, the Wisconsin standard imposed for benzo(a)pyrene will be less restrictive than the standards for non-metropolitan Illinois and Minnesota, but more restrictive than the standards for metropolitan Illinois, Iowa, and Michigan.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

The Remediation and Redevelopment program is proposing revisions to chs. NR 700 to NR 754, Wis. Adm. Code, as well as the creation of chs. NR 756 and 758. The purpose of these revisions is to provide procedures for new requirements and statutory changes under 2015 Wisconsin Act 204, to provide consistency with 2017 Wisconsin Act 70, to ensure adequate direction is available in code for the investigation and remediation of contaminated sediment, and to make other targeted changes that are needed to update, clarify, and promote consistency within the NR 700 rule series.

Proposed revisions include the following:

a. Implementation of 2015 Wis. Act 204 changes regarding definitions, continuing obligations, and interim actions.

2015 Wisconsin Act 204 (“Act 204”) established that the department can require continuing obligations for interim remedial actions. The act established access requirements and the responsibilities of owners of properties with continuing obligations, especially those with contaminated sediment, and clarified conditions under which persons are not liable for off-site contamination. Act 204 modified requirements regarding information to be included in the public database established in Wis. Stat. s. 292.12 (3).

The proposed revisions achieve consistency with Act 204 and provide sufficient clarifications, guidance, and procedures for those seeking to comply with new requirements. Revisions include revising and relocating the definition of the term “continuing obligations,” creating s. NR 708.16 to provide direction for documentation of continuing obligations imposed following an interim action, creating s. NR 708.165 to clarify the department’s response to interim action plans and reports, and revising ch. NR 725 to clarify that notification requirements apply to sites with continuing obligations imposed following an interim action.

b. Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.

Act 204 amended Wis. Stat. ch. 292 by establishing new requirements regarding the way contaminated sediments are assessed, managed, and remediated. Act 204 created requirements relating to sites where a person is using an engineering control to address contaminated sediment. At these sites, the department may require submission of a plan and compliance schedule and proof of financial responsibility for the maintenance of an engineering control and/or

the investigation and remediation of residual contamination following the removal of a structural impediment. The act created the opportunity for persons to obtain the Voluntary Party Liability Exemption (VPLE) for sites with contaminated sediments and imposed insurance and financial assurance requirements on contaminated sediment sites enrolled in the VPLE program. It also outlined special conditions for partial cleanup approvals at VPLE properties with contaminated sediment.

Proposed revisions create consistency with statutory changes and include the addition of ch. NR 756 to provide clarity, guidance, forms, and procedures for changes relating to financial responsibility for engineering controls and for addressing contamination if a structural impediment is removed; and the addition of ch. NR 758 to provide clarity, guidance, forms, and procedures for changes relating to environmental insurance and financial assurance requirements for contaminated sediment sites in the VPLE program, including those that receive partial certificates of completion.

c. Adequate direction for contaminated sediment sites.

The proposed rule revisions clarify the application of several code processes and requirements to contaminated sediment and provide sediment-specific direction within provisions of code that apply directly to various other media (e.g., soil, groundwater).

d. Implementation of 2017 Wis. Act 70 changes to the Voluntary Party Liability Exemption program.

2017 Wisconsin Act 70 revised Wis. Stat. s. 292.15 to clarify which properties are eligible for the VPLE program and created a new process for property boundary changes that may occur following application. Revisions to code provide consistency and direction regarding these additions to statute, including a new definition of "property" as used in the VPLE program, and new requirements and procedures for property boundary changes in the VPLE program.

e. Clarifications and updates to geolocation, documentation, applicable standards for emerging contaminants.

Rule revisions include updated terminology and clarified submittal methods and requirements, unified geolocation specifications, and clarified application of legal standards for emerging contaminants throughout chs. NR 700 to 754, Wis. Adm. Code. Changes include elimination of required paper copy submittals in favor of an electronic submittal method approved by the department and the reorganization of geolocation requirements throughout code into a single section within ch. NR 700 to promote consistency. Changes also include revisions to include applicable references to other Wisconsin laws and standards for various contaminated media, to provide adequate direction for addressing hazardous substances and environmental pollution, as those terms are defined under Wis. Stat. ch. 292, across all media.

f. Updates to professional qualifications and fees.

Rule revisions include clarification of the applicability of professional standards under ch. NR 712 to closure submittals and the revision of ch. NR 749 to account for inflation and to provide clarity and flexibility regarding payment of fees, including fees for enforcement-related submittals, contracts under Wis. Stat. s. 292.31, and database entries.

g. Clarifications and updates to timelines and notification and closure requirements.

Rule revisions include additions throughout code to clarify requirements and procedures so that responsible parties make reasonable progress towards completing their cleanup, and revisions within ch. NR 726 to clarify and update the methods and requirements for submitting closure requests and forms, and to clarify case closure response action goals. These revisions include the addition of content-related requirements for semi-annual reports required under s. NR 700.11, and clarification of the department's response to site investigation reports under ch. NR 716. Changes also include clarification of the disposition of fees for incomplete closure requests and their application to other submittals required by code, and an articulated list of the submittals that are currently required under code within the closure chapter (ch. NR 726) to clarify the extent of the department's ability to grant case closure.

h. Clarifications and updates to soil standards and soil management.

Rule revisions include streamlining of certain soil management procedures under ch. NR 718, cross-references between portions of code regarding documentation of soil management, creating consistency with federal soil direct exposure assumptions, and revisions to cumulative approach and background considerations for polycyclic aromatic hydrocarbon (PAH) contaminants.

Agency Procedures for Promulgation

The department will hold a hearing online on October 16, 2020. The hearing will be followed by board adoption during winter 2020-21 followed by a request for the governor's signature and legislative review.

Description of any Forms (attach copies if available)

Forms referenced in revised or created rule language are included in this list.

1. New form: s. NR 700.11 (1) (a) requires use of a site progress reporting form. This form will be used by responsible parties to report completed work and additional work scheduled, as well as any imminent threats related to the hazardous substance discharge and environmental pollution at a site or facility within the reporting period. The form is not yet created.

2. Existing form: s. NR 716.09 (2) (i) directs the use of either a form supplied by the applicant or the use of the department's soil boring log information form, Form 4400-122, for the purpose of sediment core logging. The form is available online at https://dnr.wi.gov/topic/Groundwater/documents/forms/4400_122.pdf and is attached.



2 - LCRC report -
Form 4400_122.pdf

3. Existing form: s. NR 727.05 (6) (b) 3. directs the use of an inspection form supplied by the department for the use of recording continuing obligation inspections. The form, Form 4400-305, is available online at <https://dnr.wi.gov/files/PDF/forms/4400/4400-305.pdf> and is attached.



3 - LCRC report -
Form 4400-305.pdf

4. New forms: s. NR 756.06 (1) (a) directs persons establishing performance or forfeiture bonds under that subsection to use forms supplied by the department. These forms are not yet created.

5. New forms: s. NR 756.06 (3) (b) requires the department to supply escrow account forms for accounts created for the purposes of that subsection. These forms are not yet created.

6. New forms: s. NR 756.06 (4) (b) requires the department to supply trust forms for trusts created for the purposes of that subsection. These forms are not yet created.

7. New forms: s. NR 756.06 (5) (a) requires the department to supply forms for an irrevocable letter of credit created for the purposes of that subsection. These forms are not yet created.

8. New forms: s. NR 756.06 (6) (a) directs persons establishing insurance policies for the purposes of that subsection to submit a certificate of insurance on a form supplied by the department. This form is not yet created.

9. New form: s. NR 756.10 (1) directs a person that is submitting verification of an adjustment to the amount of funds secured by a method of proof of financial responsibility on a form that is supplied by the department. This form is not yet created.

10. Existing form: s. NR 758.07 (1) (a) 2. directs applicants to submit an application form to the department for entry into the Voluntary Party Liability Exemption program. This form, Form 4400-178, is available online at <https://dnr.wi.gov/files/PDF/forms/4400/4400-178.pdf> and is attached.



10 - LCRC report -
Form 4400-178.pdf

Name and Telephone Number of Agency Contacts

Processing: Emma Esch, (608) 266-1959

Technical: Molly Schmidt, (608) 267-7500