

**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); renumber NR 716.15 (2)(j); to amend NR 726.05 (2)(b) 3., 4., and (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. and (j), Appendix B in ch. NR 716, 726.05(2)(am) and (d), 726.05 (3)(a) 4., and 812.09 (4)(w), 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: ss. 227.11 (2)(a) and 280.11 (1), Stats.

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

The rule revisions that are contained in this order are intended to: (1) Require well drillers and well constructors to contact the Diggers Hotline when installing a well outside the service area of a municipally owned water system, and to contact the Department of Natural Resources when installing a well within the service area of a municipally owned water system so that it can be determined if any special well construction or location requirements apply to properties that are shown on the GIS Registry of Closed Remediation Sites and the Bureau for Remediation and Redevelopment Tracking System (BRRTS); (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 municipal water systems; and (3) Increase access to information on sites with residual groundwater contamination for well drillers, well constructors, municipalities and the general public.

SECTION 1. NR 716.15 (2)(d) 7. is created to read:

NR 716.15 (2)(d) 7. The geographic positions of all properties within and partially within the contaminated site boundaries, which have been directly located or interpolated from other features on a base map of 1:24000 scale or finer, or which were obtained using differentially corrected global positioning system data or another method of similar or superior accuracy that have been approved by the department. The geographic position data shall be obtained and submitted to the department in accordance with the requirements in par. (k).

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

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 each property within or partially 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 716.15 (2)(k) is created to read:

NR 716.15 (2)(k) *Geographic position.* All geographic position data shall be obtained and submitted to the department in accordance with the following requirements:

1. Format. For properties that are not more than 200 feet wide or long, a single point geographic position shall be obtained at least 40 feet within the boundaries of the property, or as close to the center of the property as possible if the property is less than 80 feet wide or long. For properties that are more than 200 feet wide or long, coordinates describing the approximate location of the property's boundaries, forming a polygon, shall be obtained.

2. Coordinate system. Geographic position data shall be originally collected in Wisconsin Transverse Mercator '91 or projected onto Wisconsin Transverse Mercator '91.

Note: Information about the Wisconsin Transverse Mercator '91 projection is available at the Enterprise Data Management and GIS Analysis and Mapping Services sections' website found on the internet at www.dnr.state.wi.us/org/at/et/geo.

3. Acceptable methods. Acceptable methods for obtaining geographic position data include direct location or interpolation from other features on a base map of 1:24000 scale or finer, differentially corrected global positioning system data, or other methods capable of similar or superior accuracy that have been approved by the department.

4. Required information. The following information is required for all properties: the name of the county where the property is located, the collection method used, and the 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~~ After case closure, groundwater contamination exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property ~~or properties for which groundwater use restrictions have been recorded after the site or facility is closed~~ that falls 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 any property within or partially within the contamination site boundaries, 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~~ each property with ch. NR 140 enforcement standard exceedances will be included on the department's geographic information system registry of closed remediation sites, and 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 responsible ~~person gives party has given~~ written notification of the presence of the residual soil and groundwater contamination from the responsible ~~person's party's~~ source property that remains within the right-of-way to the clerk of the town and county, or village or city where the right-of-way is located, and the municipal department or state agency that is responsible for maintaining the street or highway.

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 will require the inclusion of the site on the department's geographic information system registry of closed remediation sites, pursuant to par. (b) 4., the information listed in par. (am) and sub. (3)(a) 4. and the fee required in ch. NR 749 shall be submitted to the department 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 required in this subdivision, 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. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map has been generated as part of the site investigation report. An isoconcentration map should include 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. A geologic cross-section, if one was generated as part of the site investigation report. A geologic cross-section should include 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.

f. A statement signed by the responsible party that certifies that the legal descriptions that are attached to the statement are complete and accurate for all of the properties within or partially within the contaminated site's boundaries that have groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that closure is requested.

g. A copy of the letters sent by the responsible party to all landowners within or partially within the contaminated site's boundaries whose property has groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that closure is requested. All letters that are sent to satisfy the requirements of this subdivision paragraph shall include the department's fact sheet describing the use of natural attenuation as a final remedy, and shall contain, at a minimum, the standard provisions in Appendix A, and written documentation shall be submitted to the department to prove that the letters were delivered via certified mail, return receipt requested, or priority mail with signature confirmation. If letters are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the landowner may refuse to sign for the letter.

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

SECTION 12. NR 726 Appendix A is created to read:

Appendix A

All letters sent to landowners whose property has groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that closure is requested shall contain the following provisions, at a minimum, in order to satisfy the requirements of s. NR 726.05 (3)(a)4.g.:

“Groundwater contamination that appears to have originated on the property located at [insert source property address] has migrated onto your property at [insert off-site property address]. The levels of [insert names of substances] contamination in the groundwater on your property are above the state groundwater enforcement standards found in chapter NR 140, Wisconsin Administrative Code. However, the environmental consultants who have investigated this contamination have informed me that this groundwater contaminant plume is stable or receding and will naturally degrade over time. I believe that allowing natural attenuation to complete the cleanup at this site will meet the requirements for case closure that are found in chapter NR 726 [insert “and chapter NR 746” or “and chapter Comm 46” if this site is eligible for closure under ch. NR 746 or Comm 46], Wisconsin Administrative Code, and I will be requesting that the Department of [insert either “Natural Resources” or “Commerce”] accept natural attenuation as the final remedy for this site and grant case closure. Closure means that the Department will not be requiring any further investigation or cleanup action to be taken, other than the reliance on natural attenuation.”

“Since the source of the groundwater contamination is not on your property, neither you nor any subsequent owner of your property will be held responsible for investigation or cleanup of this groundwater contamination, as long as you and any subsequent owners comply with the requirements of section 292.13, Wisconsin Statutes, including allowing access to your property for environmental investigation or cleanup if access is required. For further information on the requirements of section 292.13, Wisconsin Statutes, you may call 1-800-367-6076 for calls originating in Wisconsin, or 608-264-6020 if you are calling from out of state or within the Madison area, to obtain a copy of the Department of Natural Resources’ publication #RR-589, Fact Sheet 10: Guidance for Dealing with Properties Affected by Off-Site Contamination.”

“The Department of [insert “Natural Resources” or “Commerce”] will not review my closure request for at least 30 days after the date of this letter. As an affected property owner, you have a right to contact the Department to provide any technical information that you may have that indicates that closure should not be granted for this site. If you would like to submit any information to the Department of [insert “Natural Resources” or “Commerce”] that is relevant to this closure request, you should mail that information to: [insert name and address of agency contact for the site].”

“If this case is closed, all properties within the site boundaries where groundwater contamination exceeds chapter NR 140 groundwater enforcement standards will be listed on the Department of Natural Resources’ geographic information system (GIS) Registry of Closed Remediation Sites. The information on the GIS Registry includes maps showing the location of properties in Wisconsin where groundwater contamination above chapter NR 140 enforcement standards was found at the time that the case was closed. This GIS Registry will be available to the general public on the Department of Natural Resources’ internet web site. Please review the enclosed legal description of your property, and notify me within the next 30 days if the legal description is incorrect.”

“Should you or any subsequent property owner wish to construct or reconstruct a well on your property, special well construction standards may be necessary to protect the well from the residual groundwater contamination. Any well driller who proposes to construct a well on your property in the future will first need to call the Diggers Hotline (1-800-242-8511) if your property is located outside of the service area of a municipally owned water system, or contact the Drinking Water program within the Department of Natural Resources if your property is located within the designated service area of a municipally owned water system, to determine if there is a need for special well construction standards.”

“Once the Department makes a decision on my closure request, it will be documented in a letter. If the Department grants closure, you may obtain a copy of this letter by requesting a copy from me, by writing to the agency address given above or by accessing the DNR GIS Registry of Closed Remediation Sites on the internet at www.dnr.state.wi.us/org/at/et/geo/gwur. A copy of the closure letter is included as part of the site file on the GIS Registry of Closed Remediation Sites.”

“If you need more information, you may contact me at [insert address and phone number] or you may contact [insert the name of the agency contact] at [insert address and phone number].”

SECTION 13 . 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
<u>- Cases with no groundwater contamination exceeding ESs</u>		<u>750</u>
<u>- Cases with groundwater contamination exceeding ESs</u>		<u>1000</u>
<u>Addition to the GIS Registry</u>	<u>s. 292.55</u>	
- <u>cases submitted for closure with groundwater exceeding ESs to agencies other than the department</u>		<u>250</u>
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 14. 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 15. 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.

Note: A listing of hazardous substance discharge sites, open and closed, can be found on the Bureau for Remediation and Redevelopment's Tracking System, also referred to as "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 16. 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 and well constructors shall contact the Diggers Hotline not less than 3 business days prior to constructing or reconstructing a well on a property that is not within the service area of a municipally owned water system, so that Diggers Hotline may determine if the property where a well is proposed to be constructed or reconstructed is on the department's geographic information system registry of closed remediation sites and may notify the department if it is on the registry.

(3) Well drillers and well constructors shall contact the department to determine if any special construction is required if the well driller or well constructor proposes to construct or reconstruct a well on a property that is located within the service area of a municipally owned water system.

~~(2)(4) Contact~~ Well drillers and well constructors shall, when requested by the department, contact the department to determine if any special construction is required if the well driller or well constructor 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.

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 812.09 (4)(w) is created to read:

NR 812.09 (4)(w) The construction or reconstruction of a well on a property that is listed 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 18. 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 and well constructors shall contact the diggers hotline not less than 3 business days prior to constructing or reconstructing a well on a property. If the property is located within the service area of a municipally owned water system, the well driller or well constructor shall contact the department before constructing or reconstructing a well, to determine if the property on which the well is or will be located is listed 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 19. NR 812.10(5)(Note) is amended to read:

NR 812.10 (5) **Note:** In some of these special casing areas, wells are approved by the department on a case by case basis. There are other areas where special well construction requirements are necessary. These areas include sites on the department's geographic information system registry of closed remediation sites, as identified in s. NR 812.12 (15).

SECTION 20. NR 812.12 (3)(Note) is amended to read:

NR 812.12 (3) **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 methods are found in sub. (15), regarding sites listed on the GIS Registry of Closed Remediation Sites.

SECTION 21. 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 listed on the department's geographic information system registry of closed remediation sites. When drilling in areas where there are contaminated formations, and on properties where the well driller or well constructor has been notified that the property is listed 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 listed 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 22. 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 constructing or reconstructing wells located on properties listed 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 May 23, 2001.

The rules shall take effect on the first day of the month following the 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 _____
Darrell Bazzell, Secretary

(SEAL)