

Chapter NR 718

MANAGEMENT OF SOLID WASTES EXCAVATED DURING RESPONSE ACTIONS

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NR 718.01 Purpose. This chapter establishes minimum standards for the storage, transportation, treatment and disposal of contaminated soil and certain other solid wastes excavated during response actions conducted in accordance with the requirements of chs. NR 700 to 726. Where responsible parties have chosen to comply with the requirements of this chapter, the responsible parties are exempt from the storage, transportation, treatment and disposal requirements in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this chapter. This chapter is adopted pursuant to ss. 144.431 (1) (a) and (b), 144.435, 144.44 (7) (g), 144.442, 144.76, 159.03 (1) (a) and 227.11 (2), Stats.

Note: This chapter exempts responsible parties who conduct specific types of response actions from obtaining site-specific approvals from the state's solid waste program, when the response actions are conducted in accordance with this chapter. The exemptions that responsible parties may be eligible for under this chapter are from any one of the following solid waste program requirements:

1. Licensing of on-site and off-site contaminated soil storage piles.
2. Licensing of on-site and off-site contaminated soil treatment.
3. Licensing of transportation in vehicles containing contaminated soil when the vehicles are owned by the responsible parties.
4. Approval for disposal of contaminated soil and other solid wastes on the same property from which it was excavated.
5. Approval for disposal of specified types of contaminated soil on property other than that from which it was excavated.

Note: The following portion of 40 CFR part 280 has been included in the text of this chapter: 40 CFR 280.62 (a) (4).

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

NR 718.02 Applicability. (1) This chapter applies to the storage, transportation, treatment and disposal of all the following:

(a) Contaminated soil which:

1. Is excavated as part of a response action conducted pursuant to chs. NR 700 to 726, at sites or facilities subject to regulation under s. 144.442 or 144.76, Stats.; and
2. Is not a hazardous waste as defined in s. NR 600.03 (87) or 42 USC 6901-6991, as amended.

(b) Solid waste which:

1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to 726, at sites or facilities subject to regulation under s. 144.442 or 144.76, Stats.;

2. Is not a hazardous waste as defined in s. NR 600.03 (87) or 42 USC 6901-6991 as amended; and

3. Is replaced at the same site or facility from which it was excavated.

(2) This chapter does not apply to landspreading facilities regulated under ch. NR 518 (solid waste), NR 204 (wastewater), or ATCP 40 (fertilizer waste).

Note: Responsible parties may also be subject to local requirements governing contaminated materials management.

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

NR 718.03 Definitions. In this chapter:

(1) "Berm" means a ridge of clean, compacted cohesive soil or impervious material constructed to withstand and control the movement of liquids.

(2) "Bioremediation" means degradation of contaminants by microbes.

(3) "Commercial treatment unit or facility" means a unit or facility that is operated for a profit by entities that are paid for providing the service. The term does not apply to a unit or facility operated by several responsible parties who pay a share of jointly incurred expenses, including consultant fees.

Note: The use of leased vehicles or other equipment does not make a treatment unit commercial.

(4) "Contaminated soil" means soil which contains one or more hazardous substances or environmental pollution and which is not a hazardous waste as defined in s. NR 600.03 (87) or 42 USC 6901-6991, as amended.

(5) "Floodplain" has the meaning specified in s. NR 116.03 (16).

Note: Section NR 116.03 (16) defines "floodplain" to mean "that land which has been or may be covered by floodwaters during the regional flood. The floodplain includes the floodway, floodfringe, shallow depth flooding, flood storage and coastal floodplain areas."

(6) "Leachate" has the meaning specified in s. NR 500.03 (75).

Note: Section NR 500.03 (75) defines "leachate" to mean "water or other liquid that has been contaminated by dissolved or suspended materials due to contact with solid waste or with gases generated by solid waste."

(7) "Monitoring" means a systematic method of collecting and reporting chemical and other data from contaminated media.

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(8) "Storage" means placement of solid waste on a temporary basis in a manner that does not constitute disposal of solid waste.

(9) "Volatilization" means removal of contaminants from soil or other media by evaporation.

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

NR 718.05 Storage of excavated contaminated soil. (1) EXEMPTION FROM SOLID WASTE PROGRAM REQUIREMENTS. Sites or facilities where less than 2,500 cubic yards of excavated contaminated soil are stored by responsible parties for a period not to exceed 6 months, in accordance with all of the requirements of this section, are exempt from the solid waste program requirements for the storage of contaminated soil in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536.

Note: This section does not apply to sites or facilities where more than 2,500 cubic yards of excavated contaminated soil are stored or where storage of contaminated soil exceeds 6 months. This section also does not apply to the storage by responsible parties of excavated contaminated soil at sites or facilities that are licensed solid waste storage facilities.

(2) **GENERAL STORAGE REQUIREMENTS.** Except as provided in sub. (3) or (4), the requirements in this subsection apply to the storage by responsible parties of excavated contaminated soil at sites or facilities that are not licensed solid waste storage facilities.

(a) **Location standards.** Responsible parties may store contaminated soil at a site or facility in accordance with the requirements of this section, except if the storage area will be located in one of the areas specified in subds. 1. through 4., or if an exemption is issued by the department pursuant to par. (b).

1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.
3. Within 300 feet of any navigable river, stream, lake, pond or flowage.
4. Within 100 feet of any water supply well for on-site storage or within 300 feet of any water supply well for off-site storage.

(b) **Exemptions from location standards.** Responsible parties may store contaminated soil in a location listed in par. (a) if the department has granted a written exemption from that location standard, after considering all of the following:

1. Waste characteristics and quantities.
2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
3. The unavailability of other environmentally suitable alternatives.
4. Compliance with other state and federal regulations.
5. The threat to public health, safety and welfare and the environment.

(c) **Impervious base.** Responsible parties shall place contaminated soil on base material impervious to the contaminant and to water, such as concrete, asphalt, plastic sheeting or an impervious construction fabric.

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(d) **Cover and anchoring.** Responsible parties shall ensure that all contaminated soil in a storage area is sloped and graded to eliminate depressions in the surface and is covered. The cover shall be in place at all times when the soil is not being transferred. The cover shall be constructed and maintained in accordance with all of the following requirements:

1. The cover shall be constructed of an impervious material, such as plastic sheeting, impervious construction fabric, or another flexible impervious material. The cover shall be formulated to resist degradation by ultraviolet light.
2. The cover material shall be anchored in place, by means such as weights, ropes, cables, cords, chains or stakes to prevent the contaminated soil from being exposed.

(e) **Surface water control.** Responsible parties shall construct a storage area to prevent surface water contact with the soil, including the construction of berms if necessary. Any water which has been in contact with contaminated soil shall be contained and may be replaced in the storage pile, or shall be collected and treated as leachate as required by chs. NR 500 to 536.

(f) **Signs.** Responsible parties shall post signs as required by s. NR 714.07 (3).

(g) **Inspections.** Unless otherwise directed by the department, responsible parties shall ensure that contaminated soil storage piles are inspected at least once every 30 days, and shall immediately repair or replace any base, cover, anchoring and berm materials that do not meet the requirements of this subsection. Responsible parties shall also ensure that a written log is maintained which includes the inspection dates, name of the inspector, the condition of the storage pile at the time of the inspection and any repairs that were made.

(h) **Notification that soil is being transported to another property.** Responsible parties shall notify the department in writing if excavated contaminated soil is transported for storage to a property other than that from which it was excavated. Notification shall be made within 3 days after the first day that contaminated soil is transported to another property and shall include all of the following:

1. The name, address and telephone number of the person who owns the site or facility from which the soil originated.
2. The volume of soil being transported.
3. The hazardous substances and environmental pollution present in the soil.
4. The containment measures utilized to attain compliance with pars. (c), (d) and (e).
5. The address and location by quarter-quarter section, township, range and county of the property from which the soil was excavated.
6. The name, address and telephone number of the person who owns the property where the soil is stored.
7. The address and location by quarter-quarter section, township, range and county of the property where the soil is stored.

(i) *Notification of storage for 90 days or more.* Responsible parties shall notify the department in writing if contaminated soil is stored for 90 days or more either on-site or off-site, within 3 business days after the ninetieth day. Notification shall include all of the following:

1. The name, address and telephone number of responsible parties.
2. The volume of soil being stored.
3. The hazardous substances or environmental pollution present in the soil.
4. The containment measures utilized to attain compliance with pars. (c), (d) and (e).
5. The address and location by quarter-quarter section, township, range and county of the property where the soil is stored.
6. A brief proposal for treatment and final placement of the soil.

(3) **REQUIREMENTS FOR TEMPORARY STOCKPILES.** Sites or facilities where responsible parties temporarily store up to 2,500 cubic yards of excavated contaminated soil for 15 days or less, for the purpose of loading the soil into transfer vehicles or treatment units, are exempt from regulation under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536 and are not subject to the general storage requirements in sub. (2) if the soil is stored in accordance with all of the following requirements:

(a) The entire soil pile shall be located within 500 feet of the excavation from which the contaminated soil was removed, or within 1,000 feet of the excavation from which the contaminated soil was removed if the soil is stored on the same property from which it was excavated.

(b) The same contaminated soil shall not be stored for more than 15 days.

(c) All contaminated soil shall be placed on base material impervious to contaminants in the soil and to water, such as concrete, asphalt, plastic sheeting or impervious construction fabrics.

(d) Surface water contact with the contaminated soil shall be prevented, including the construction of berms if necessary, to control surface water movement.

(e) The contaminated soil shall be covered when it is not being moved, with a cover material sufficient to prevent infiltration of precipitation and to inhibit volatilization of soil contaminants.

(4) **REQUIREMENTS FOR CONTAINERIZED STORAGE.** Sites or facilities where responsible parties store up to 2,500 cubic yards of excavated contaminated soil for 6 months or less in containers or in buildings are exempt from regulation under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, and are not subject to the general storage requirements in sub. (2), if the contaminated soil is stored in accordance with all of the following requirements:

(a) Containers and buildings shall be designed, constructed and maintained to prevent leakage, infiltration of

precipitation and volatilization of soil contaminants to the ambient atmosphere.

(b) Containers shall be labeled and buildings shall have a sign posted in accordance with the requirements of s. NR 714.07 (3).

(c) Contaminated soil may not be stored in containers or buildings for more than 6 months, without the prior written approval of the department.

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

NR 718.07 Transportation of excavated contaminated soil. (1) Except where sub. (2) is applicable, a solid waste collection and transportation service operating license is required under s. NR 502.06 whenever excavated contaminated soils are transported.

(2) Responsible parties may transport excavated contaminated soil in vehicles that they own without a solid waste collection and transportation service operating license regardless of the number and size of loads, if the excavated contaminated soil is hauled to a site or facility in compliance with the requirements of this chapter or to a licensed solid waste storage, treatment or disposal facility. Responsible parties shall cover contaminated soil, as necessary, to prevent the loss of any material during transport.

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

NR 718.09 Treatment of excavated contaminated soil. (1) **GENERAL.** If excavated contaminated soil is treated at a non-commercial treatment unit or facility and the treatment unit or facility is operated by the responsible parties in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this section. If contaminated soil is incorporated into hot-mix asphalt in accordance with sub. (5), the asphalt plant is exempt from solid waste program requirements for treatment of contaminated soil found in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this section. Commercial treatment units or facilities, hot-mix asphalt plants where contaminated soil is treated by means other than incorporation into the asphalt mix, and thermal treatment units or facilities are required to be licensed under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, and are not exempt under this section.

Note: Treatment of contaminated soil that has not been excavated is not regulated as solid waste treatment under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536. Design, operation and maintenance requirements for the treatment of unexcavated contaminated soil are established in ch. NR 724.

(2) **LOCATION STANDARDS.** (a) Unless approved under chs. NR 400 to 499, chs. NR 500 to 536 where applicable, or par. (b), responsible parties may not treat excavated contaminated soil in any of the following locations:

1. Within a floodplain.
2. Within 100 feet of any wetland or critical habitat area.

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3. Within 300 feet of any navigable river, stream, lake, pond or flowage.

4. Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well.

(b) Responsible parties may treat contaminated soil in a location listed in par. (a) if the department has granted a written exemption from that location standard, after considering all of the following:

1. Waste characteristics and quantities.

2. The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.

3. The unavailability of other environmentally suitable alternatives.

4. Compliance with other state and federal regulations.

5. The threat to public health, safety and welfare and the environment.

(3) **NON-COMMERCIAL TREATMENT OF SOIL FROM MORE THAN ONE SITE.** Non-commercial treatment units or facilities operated by responsible parties, where less than 2,500 cubic yards of excavated contaminated soil from 5 or fewer contamination sites are treated, are exempt from solid waste program requirements for the treatment of contaminated soil in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, if the treatment is conducted in compliance with the requirements of this section. Excavated contaminated soil from more than 5 properties may not be treated at the same site or facility unless the treatment site or facility is a licensed solid waste treatment facility. Responsible parties may not mix excavated contaminated soil from one property with soil from another property unless the same party owns all of the mixed soil or an approval has been granted under ch. NR 502. Contaminated soil which is stored prior to treatment shall be stored in compliance with the provisions of s. NR 718.05.

(4) **NOTIFICATION.** (a) Responsible parties shall notify the department in writing within 30 days after any of the following:

1. Start up of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).

2. Shutdown of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).

3. Substantial change in operations of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).

4. Completion of any type of treatment of excavated contaminated soil that is subject to the requirements of sub. (7), (8) or (9).

(b) Notification shall include all of the following:

1. The name, address and telephone number of all responsible parties.

2. All locations of sites from which contaminated soil was excavated by address and location by quarter-quarter section, township, range and county.

3. The volume of soil being treated.

4. The hazardous substances or environmental pollution in the soil.

5. The address and location by quarter-quarter section, township, range and county of the treatment site.

6. The name, address and telephone numbers of all consultants and contractors involved in response actions at the sites or facilities.

7. A brief description of the treatment system.

8. The reasons for any unscheduled shutdowns or changes in operation.

9. A brief proposal for the disposal of the contaminated soils after treatment.

(5) **TREATMENT OF EXCAVATED CONTAMINATED SOIL AT HOT-MIX ASPHALT OR STRUCTURAL CONCRETE PLANTS.** (a) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a hot-mix asphalt plant which incorporates contaminated soil into the asphalt mix unless the hot-mix asphalt plant has a current operating air permit under chs. NR 400 to 499 and is in compliance with chs. NR 400 to 499. Where the operator of a hot-mix asphalt plant who is in compliance with chs. NR 400 to 499 and has a current operating air permit under chs. NR 400 to 499 becomes a responsible party as a result of a hazardous substance discharge, that responsible party may remediate the resultant contaminated soil in accordance with this chapter by placing the soil directly into hot-mix asphalt. When a hazardous substance discharge occurs that a hot-mix plant operator is responsible for, the department shall be notified immediately of the discharge to the environment and of the response action taken by the asphalt plant operator.

(b) If excavated contaminated soil is incorporated into asphalt at a hot-mix asphalt plant operated in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this section.

(c) Storage of excavated contaminated soil at hot-mix asphalt plants which incorporate contaminated soil into the asphalt mix shall be in compliance with all of the following:

1. Storage shall comply with the requirements of s. NR 718.05 (2) (a), (b), (e), (f) and (g).

2. Storage shall be in an area constructed of an asphalt base and asphalt berms, or other materials approved by the department.

3. Up to 5,000 cubic yards of soil may be stored at one time.

4. Storage may take place for up to 9 months per year.

5. Plant operators shall take steps to control windblown dust, and to control the infiltration of precipitation, at contaminated soil storage areas.

(d) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a hot-mix asphalt plant for treatment other than incorporation into the asphalt mix unless the hot-mix asphalt plant has a current operating air permit under chs. NR 400 to 499, is in compliance with chs. NR 400 to 499 and has an approval for solid waste processing under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536. Hot-mix asphalt plants which do not incorporate contaminated soil into the asphalt mix and structural concrete plants which do not incorporate contaminated soil into concrete shall store excavated contaminated soil in compliance with ch. NR 502.

(e) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a structural concrete batch plant that does not have all required operating permits and approvals for incorporation of contaminated soils into the concrete mix.

Note: Placement of asphalt pavement which contains contaminated soil incorporated into asphalt at a hot-mix asphalt plant operated in compliance with the requirements of this chapter is not regulated as solid waste disposal.

(6) **THERMAL TREATMENT OF EXCAVATED CONTAMINATED SOIL.** (a) Responsible parties may not transport or hire another entity to transport excavated contaminated soil to a thermal treatment unit or facility unless that thermal treatment unit or facility has all required operating permits or licenses, including a current operating air permit under chs. NR 400 to 499, is in compliance with chs. NR 400 to 499, and has a current license or other approval under s. NR 502.08. Operators of soil treatment units shall take steps satisfactory to the department to minimize noise and dust, such as wetting treated soils and the work area to control dust.

(b) Storage of excavated contaminated soil at thermal treatment units or facilities is exempt from the storage requirements in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536 if it is in compliance with the following:

1. Storage shall comply with the requirements of s. NR 718.05 (2) (a) to (c) and (e) to (g).
2. Up to 5,000 cubic yards of soil may be stored at one time.
3. Storage may take place for up to 9 months per year.
4. Operators of soil treatment units shall take steps satisfactory to the department to control the infiltration of precipitation at contaminated soil storage areas.

(7) **BIOREMEDIATION AND TREATMENT BY VOLATILIZATION OF EXCAVATED CONTAMINATED SOIL.** All of the following requirements apply to the treatment of excavated contaminated soil by bioremediation, volatilization or both:

(a) Responsible parties who treat excavated contaminated soil by bioremediation or volatilization, or both, shall maintain the excavated contaminated soil in compliance with the requirements of s. NR 718.05 (2) (c), (e), (f) and (g), unless other methods are approved by the department.

(b) All excavated contaminated soil shall be covered, as necessary, to prevent volatilization of soil contaminants in excess of limits in chs. NR 400 to 499. If a cover is required by chs. NR 400 to 499, the cover material and anchoring system shall meet the requirements of s. NR 718.05 (2) (d), unless other methods are approved by the department.

(c) All treatment of excavated contaminated soil by bioremediation or volatilization shall be designed, operated and maintained in accordance with the requirements of ch. NR 724.

(8) **LANDSPREADING OF EXCAVATED CONTAMINATED SOIL.** Responsible parties may landspread excavated contaminated soil provided that all of the following requirements are met:

(a) All landspreading of contaminated soil shall be done in accordance with the requirements of ch. NR 518, unless the soil is contaminated only with fertilizers or pesticides, and shall be landspread in accordance with par. (b).

(b) Responsible parties who landspread soil contaminated with fertilizers or pesticides shall do so in accordance with a plan that has received prior written approval from either the department or the department of agriculture, trade and consumer protection, and shall comply with all applicable requirements in chs. NR 400 to 499. Responsible parties who landspread soil contaminated with fertilizers or pesticides in accordance with an approved landspreading plan are not subject to the requirements of ss. NR 718.11 and 718.13.

(9) **OTHER TYPES OF TREATMENT.** Responsible parties shall obtain approval from the department before implementing any type of treatment for excavated contaminated soil other than the types of treatment described in subs. (5) to (8). An application for approval shall include the information required in ch. NR 724 and any other information required by the department.

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

NR 718.11 On-site replacement of contaminated soil. (1) GENERAL. If excavated contaminated soil is replaced on the same property from which it was excavated in compliance with the requirements of this section, that site or facility is exempt from the solid waste program requirements for placement or disposal in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536.

(2) **REPLACEMENT OF CONTAMINATED SOIL WITHOUT PRIOR DEPARTMENT APPROVAL.** Responsible parties shall comply with all of the requirements of this subsection if they replace contaminated soil in the excavation from which it was removed without obtaining prior department approval.

(a) *Replacement of contaminated soil in the excavation from which it was removed for treatment.* Responsible parties may replace contaminated soil in the excavation from which it was removed for the purpose of treatment, such as passive biodegradation or soil venting, without prior department approval, if all of the following requirements are met:

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1. The response action shall be taken in accordance with all of the applicable requirements in chs. NR 700 to 726.

2. Excavated contaminated soil may not be replaced at a depth greater than the depth of the original excavation from which it was removed.

3. The soil shall be replaced at least one meter above the high groundwater level.

4. Subsurface treatment shall begin within 180 days after the soil is replaced in the excavation, unless the department approves of an extension. If subsurface treatment is not initiated within 180 days after soil is replaced in the excavation and the department has not approved an extension, the contaminated soil shall be re-excavated and shall be stored, treated or disposed of in compliance with the requirements of this chapter or ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536.

5. Until the time of treatment, soil that is replaced in the excavation shall be covered in compliance with the requirements of s. NR 718.05 (2) (d), unless other methods have been approved by the department.

6. Responsible parties may not replace excavated contaminated soil within a floodplain, within 100 feet of any wetland or critical habitat area, within 300 feet of any navigable river, stream, lake, pond or flowage, or within 300 feet of any water supply well, unless the department has granted a written exemption to these location standards, after considering all of the factors listed in s. NR 718.05 (2) (b).

7. Responsible parties shall provide the department with written notice, within 15 days after the soil replacement begins, when excavated contaminated soil has been replaced for treatment. This notice shall include all of the following:

a. Name, address and telephone number of responsible parties.

b. Volume of contaminated soil being replaced.

c. Concentrations of hazardous substances or environmental pollution present in the soil based on a sampling schedule no less stringent than that required in par. (b) 2.

d. Site or facility address and location, by quarter-quarter section, township, range and county.

e. Name, address and telephone number of any consultants or contractors who will design, install or operate a subsurface treatment system.

f. A preliminary schedule for installation and operation of the system.

8. Excavated contaminated soil may not be replaced for subsurface soil treatment if it would cause any significant adverse environmental impacts.

9. Where safety or other considerations require timely backfilling of an excavation and subsurface soil treatment is not planned, backfill materials not affected by a hazardous substance discharge or environmental pollution shall be used.

(b) *Replacement of contaminated soil on the property from which it was excavated for disposal.* Responsible

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parties may replace contaminated soil for the purpose of disposal in the excavation from which it was removed, or in another location on the property from which it was excavated, if all of the following requirements are met:

1. The response action shall be taken in accordance with the requirements in chs. NR 700 to 726.

2. Unless otherwise directed by the department, responsible parties shall sample and analyze all contaminated soil according to all of the following requirements:

a. If the contaminated soil is treated prior to replacement, responsible parties shall collect samples for analysis within 30 days after completion of the treatment process or prior to replacement, whichever occurs first.

b. A minimum of 2 samples shall be collected from the soil that is to be replaced at a site or facility, regardless of whether the contaminated soil was treated prior to replacement.

c. Samples shall be analyzed for all contaminants that were detected during a site investigation. In addition, the uses that have been made of the site or facility in the past shall be evaluated to determine what soil contaminants might have been discharged at the site or facility, and samples shall be analyzed for all contaminants whose presence is suspected as a result of the evaluation of past land use, consistent with the requirements in ch. NR 716.

d. For each site or facility, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 cubic yards. For volumes of contaminated soil that exceed 600 cubic yards, a minimum of one sample per 300 cubic yards shall be collected for analysis.

e. All soil samples shall be collected from areas most likely to contain residual soil contamination.

f. Responsible parties shall report the analytic results to the department in writing within 30 days after the completion of analysis.

3. Responsible parties may not replace excavated contaminated soil within a floodplain, within 100 feet of any wetland or critical habitat area, within 300 feet of any navigable river, stream, lake, pond or flowage, or within 300 feet of any water supply well, unless the department has granted a written exemption to these location standards, after considering all of the factors listed in s. NR 718.05 (2) (b).

4. Contaminated soil may be replaced on the property from which it was excavated if the contaminants and the replacement location meet the criteria in ss. NR 720.09 (1) and 720.11 (2) and the soil is treated to levels at or below those in ss. NR 720.09 (3) (a) and 720.11 (2) in accordance with s. NR 720.07 (1) (b) 1.

Note: Allowable residual contaminant levels at the replacement location may also be determined using the procedures in s. NR 720.19 (3) or another department approved method. However, this will require prior department approval. If contaminants of concern are not listed in table 1 or table 2 of ch. NR 720, the allowable residual contaminant levels can be determined using procedures in s. NR 720.19 (3) or other department approved method, with prior department approval. For example, for soil contamination with diesel fuel where polycyclic aromatic hydrocarbons (PAH) are contaminants of concern, allowable levels for PAH's can be determined site specifically, if the disposal location meets the criteria in s. NR 720.09 (1) and the soil is treated to levels at or below those required in ss. NR 720.09 and 720.11.

5. The contaminated soil shall be placed at least one meter above the high groundwater level.

6. Responsible parties shall notify the department of replacement of contaminated soil within 30 days after the replacement of the contaminated soil on the property from which it was excavated. The notification shall include all of the following:

- a. The name, address and telephone number of the responsible parties.
- b. The volume of contaminated soil that was replaced.
- c. The results of the analyses required in subd. 2.
- d. The address and location by quarter-quarter section, township, range and county of the site or facility where the soil was replaced.

(3) **REPLACEMENT REQUIRING PRIOR DEPARTMENT APPROVAL.** Responsible parties may apply to the department for prior written approval to replace excavated contaminated soil that does not meet the requirements of sub. (2) on the property from which it was excavated. To apply for prior approval, responsible parties shall submit a written application to the department which contains all of the following information:

- (a) The name, address and telephone number of the responsible parties.
- (b) The volume of contaminated soil that is to be replaced.
- (c) The address and location, by quarter-quarter section, township, range and county, of the site or facility where the soil is to be replaced.
- (d) The results of analyses performed on the contaminated soil.
- (e) Additional remedial action to be conducted, if any.
- (f) Location at the site or facility where the contaminated soil shall be replaced.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (2) (b) (intro.), 2, f., 4., 5. and (3) (e), Register, March, 1995, No. 471, eff. 4-1-95.

NR 718.13 Off-site disposal of contaminated soil at a response action site. (1) If responsible parties dispose of contaminated soil on a property other than the property from which it was excavated in compliance with the requirements of subs. (2) to (9), the disposal site or facility is exempt from solid waste program requirements in ss. 144.43 to 144.441, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this section.

Note: Contaminated soil which does not meet the requirements of this section may be approved for off-site disposal or disposal in a licensed solid waste disposal facility under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536. It may also be treated or disposed of on the property from which it was excavated under s. NR 718.11.

(2) The contaminated soil was generated as part of a response action conducted in accordance with the requirements of chs. NR 700 to 726.

(3) Unless otherwise directed by the department, responsible parties shall sample and analyze the contaminated soil according to all of the requirements in s. NR 718.11 (2) (b) 2.

(4) The site or facility where the contaminated soil shall be disposed of has, or had in the past, similar contaminants to those in the excavated contaminated soil that is being disposed of.

(5) The disposal location is not a landspreading facility as defined in s. NR 500.03 (74).

Note: The landspreading of contaminated soil is subject to the requirements of ch. NR 518.

(6) Responsible parties may not dispose of excavated contaminated soil within a floodplain, within 100 feet of any wetland or critical habitat area, within 300 feet of any navigable river, stream, lake, pond or flowage, or within 300 feet of any water supply well, unless the department has granted a written exemption to these location standards, after considering all of the following:

- (a) Waste characteristics and quantities.
- (b) The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
- (c) The unavailability of other environmentally suitable alternatives.
- (d) Compliance with other state and federal regulations.
- (e) The threat to public health, safety or welfare or the environment.

(7) Contaminated soil may be disposed of off-site without department approval if the contaminants and the disposal location meet the criteria in ss. NR 720.09 (1) and 720.11 (2) and if the soil is treated to levels at or below those in ss. NR 720.09 (3) (a) and 720.11 (2) in accordance with s. NR 720.07 (1) (b) 1.

Note: Allowable residual contaminant levels at the disposal site may also be determined using the procedures in s. NR 720.19 (3) or another department approved method. However, this will require prior department approval. If contaminants of concern are not listed in table 1 or table 2 of ch. NR 720, the allowable residual contaminant levels can be determined using procedures in s. NR 720.19 (3) or other department approved method, with prior department approval. For example, for soil contamination with diesel fuel where polycyclic aromatic hydrocarbons (PAHs) are contaminants of concern, allowable levels for PAHs can be determined site specifically.

(8) The contaminated soil shall be placed at least one meter above the high groundwater level.

(9) Responsible parties shall notify the department of the disposal of any contaminated soil off-site, in accordance with the requirements of this chapter, within 30 days after disposal. The notification shall include all of the following:

- (a) The name, address and telephone number of the person who owns the site from which the soil was excavated.
- (b) The name, address and telephone number of the person who owns the property where the soil was disposed of.
- (c) The results of the analyses required in sub. (2).
- (d) The volume of soil that was disposed of.

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(e) The address and location, by quarter-quarter section, township, range and county of the property where the soil was disposed of.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; renum. (6) 1. to 5. to be (6) (a) to (e), Register, March, 1995, No. 471, eff. 4-1-95; r. and recr. (7), Register, April, 1995, No. 472, eff. 5-1-95.

NR 718.14 Off-site disposal of contaminated soil at a location other than a response action site. (1) If responsible parties dispose of contaminated soil on a property other than the property from which it was excavated, and the disposal site or facility does not meet the requirements of s. NR 718.13 (4), the disposal site or facility is exempt from solid waste program requirements in ss. 144.43 to 144.441, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this section, if the disposal site or facility complies with the requirements of subs. (2) to (5).

Note: Contaminated soil which does not meet the requirements of this section may be approved for off-site disposal or disposal in a licensed solid waste disposal facility under ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536. It may also be treated or disposed of on the property from which it was excavated under s. NR 718.11.

(2) The contaminated soil was generated as part of a response action conducted in accordance with the requirements of chs. NR 700 to 726.

(3) The disposal facility is not a landspreading facility as defined in s. NR 500.03 (74).

Note: The landspreading of contaminated soil is subject to the requirements of ch. NR 518.

(4) The disposal location is not within a floodplain, within 100 feet of any wetland or critical habitat area, within 300 feet of any navigable river, stream, lake, pond or flowage, within 300 feet of any water supply well, within an area zoned as residential or open to public use, or where local zoning prohibits filling, unless the department has granted a written exemption to these location standards, after considering all of the following:

(a) Waste characteristics and quantities.

(b) The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.

(c) The unavailability of other environmentally suitable alternatives.

(d) Compliance with other state and federal regulations.

(e) The threat to public health, safety or welfare or the environment.

(f) The department may not grant exemption for areas where local zoning prohibits filling.

(5) The responsible party shall obtain written approval from the department prior to disposal. To obtain approval, the responsible party shall submit the following:

(a) A copy of the site investigation report prepared in accordance with s. NR 716.15.

(b) A description of the processes used to treat the contaminated soil.

(c) The results of all chemical and physical testing performed on the soil proposed for disposal, including prior to, during and after treatment.

(d) A description of the proposed disposal site, including: name and address of the owner of the site; site name, address, and location by quarter-quarter section, township, range and county, or a more precise location description if necessary to adequately define the location of the site or facility; location setbacks as identified in sub. (4); and site geology and hydrogeology.

(e) A description of the proposed operation and closure of the site.

(f) An evaluation of the proposal, supported by lab and field tests as necessary, to demonstrate that the treated contaminated soil would not release quantities of contaminants into the environment such that a potential hazard to public health or the environment would be created.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 718.15 Management of other solid wastes. If solid waste which contains waste other than contaminated soil is replaced at the site or facility from which it was excavated, as part of a response action conducted in compliance with all of the applicable requirements in chs. NR 700 to 726, and the department has granted prior written approval for the action, the replacement of that solid waste on the site or facility from which it was excavated is exempt from the requirements of ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536.

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

NR 718.17 Exemption for emergency immediate actions. For a period of 72 hours after an emergency immediate response is initiated in accordance with the requirements of ch. NR 708, the storage and transportation of contaminated soil that was excavated as part of the emergency immediate action are exempt from the requirements of ss. NR 718.05 and 718.07, and are exempt from meeting the solid waste storage and transportation requirements in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, provided that the department is immediately notified of the emergency immediate action being conducted in accordance with the requirements of ch. NR 708.

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