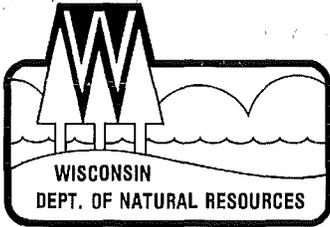


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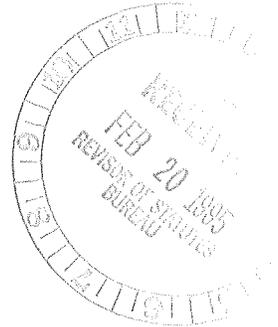


George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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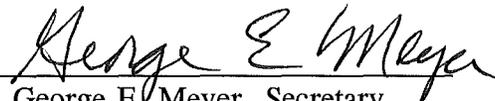
STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-16-94b was duly approved and adopted by this Department on July 21, 1994 and January 26, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 16 day of February, 1995

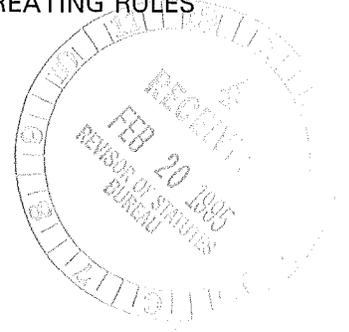

George E. Meyer, Secretary

(SEAL)

5-1-95



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES



The Wisconsin Natural Resources Board adopts an order to repeal NR 716.09(3)(e) and 716.15(2); to renumber NR 716.15(3); to amend NR 158.07(4), 508.20(11), 700.01(2)(note), 700.03(49), 705.01(note), 708.01(note), 708.05(5)(a), 712.07(2) and (3), 714.05(1)(c) and 714.07(3)(a)2, 716.09(3)(title), 716.11(3)(b), 716.17(2) and (3) and 718.13 (title); to repeal and recreate NR 700.09, 704.11, 716.09(1), 716.15(1) and 718.13(7), Appendix A to ch. NR 700 and chs. NR 724 and 726; and to create NR 700.02(4), 700.11, 708.11(3)(e), 718.14 and ch. NR 722 relating to department review and oversight, and the establishment of minimum standards for identifying, evaluating and selecting remedial action options, for environmental contamination sites or facilities subject to the environmental repair statute, the hazardous substance discharge statute or the abandoned container statute, and at certain solid waste facilities

SW-16-94b

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.025(2)(c), 144.431(1)(a), 144.435(1), 144.44(4)(f)6, 144.44(7)(g), 144.442(4)(c), (5)(intro.) and (8)(b) and (c)3, 144.62(8), 144.76(5)(a), 144.77(3), 159.03(1)(a) and 227.11(2), Stats.

Statutes interpreted: ss. 144.431(1)(b), 144.435(1), 144.439, 144.44(7)(g), 144.442, 144.64, 144.735, 144.76, 144.77 and 159.05, Stats.

Section NR 700.09 is repealed and recreated to define "simple" and "complex" sites. The importance of this classification is twofold: first, it determines the level of Department oversight in the response process for a particular site or facility; second, it establishes how many plans and reports must be prepared and submitted to the Department. Section NR 700.11 is created to provide that parties who are responsible for "simple" sites will have the option to proceed with the simple site process, involving minimal Department oversight, or to utilize the complex site process. "Complex" sites will generally require more Department oversight than a "simple" site. Parties who are responsible for "complex" sites will be required to prepare and file more frequent submittals than parties who are able to use the simple site process.

Chapter NR 722 is created to establish minimum standards for identifying, evaluating and selecting remedial action options. This chapter requires responsible parties to conduct an initial screening of remedial technologies, to identify remedial action options that are reasonably likely to be feasible for a site or facility and likely to comply with all applicable environmental laws and standards, before conducting a more detailed evaluation of the technical feasibility and economic feasibility of the identified remedial action options. Responsible parties are required to evaluate recycling and treatment technologies that destroy or detoxify contaminants prior to selecting a remedial action option. A detailed evaluation of a range of remedial action options is not required in two situations: (1) When landfill disposal of less than 250 cubic yards of untreated contaminated unconsolidated material, as measured in situ, is proposed; and (2) When reuse, recycling, destruction, detoxification or other treatment of the hazardous substances present at the site or facility is proposed. Section NR 722.09 establishes the criteria that are to be used to select a remedy, and

includes use and volume limitations applicable to the landfill disposal of untreated contaminated soil, sediment and other granular material, such as fill.

Changes to several existing administrative rules are also proposed as part of this rules package in order to add cross-references to the amended portions of ch. NR 700 and the newly created ch. NR 722. The administrative rule changes that fall into this category are amendments to ss. NR 158.07, 508.20(11), 700.01(2)(note), 700.03(49), 705.01(note), 708.01(note), 708.05(5)(a), 712.07(2) and (3), 714.05(1)(c), 714.07(3)(a)2, 716.11(3)(b), 716.17(2) and 716.17(3); the creation of s. NR 700.02(4); and the repeal and recreation of ss. NR 716.09(1) and 716.15(1) and chs. NR 724 and 726.

SECTION 1. NR 158.07(4) is amended to read:

NR 158.07(4) Remedial action, in accordance with the requirements of ~~ch.~~ chs. NR 722 and 724.

SECTION 2. NR 508.20(11) is amended to read:

NR 508.20(11) PROPOSED REMEDIAL ACTIONS. Based on an evaluation of the data generated, the types of remedial actions necessary to return the facility to compliance with the requirements of s. NR 504.04(4) shall be proposed and shall be evaluated utilizing the process in ch. NR 722, including a practicability determination in accordance with s. NR 722.07(5). Sections NR 140.24(4) and 140.26(2) outline the required set of remedial actions to address groundwater impacts depending on what parameters are affected and whether or not a preventive action limit or enforcement standard has been exceeded. Any soil contamination shall be addressed in compliance with the requirements of ch. NR 720. A long-term environmental monitoring program shall be proposed so the performance of the facility and the effects of any remedial action can be evaluated. The department may issue a determination that no further remedial action is necessary at the facility pursuant to ch. NR 726.

SECTION 3. NR 700.01(2)(note) is amended to read:

Note: A flow chart showing how a site or facility moves from discovery to case closure under chs. NR 700 to 726 is included in Appendix A. The flow chart outlines a process that begins with the discovery of a hazardous substance discharge or environmental pollution. A discharge of a hazardous substance is required to be reported to the department pursuant to s. NR 158.05 or 705.05. If there is a need for immediate action, procedures identified in ch. NR 708 are required to be followed. If immediate action is not required, or if immediate action has been completed, a site investigation may be required which complies with the requirements of ch. NR 716. An interim action may be required to be conducted pursuant to ch. NR 708. Following completion of the site investigation, responsible parties generally are required to select ~~a remedial action~~ and implement a remedial action consistent with the requirements of ~~ch.~~ chs. NR 722 and 724. Following completion of the remedial action, or in some cases at the completion of the ch. NR 716 site investigation, application for case closure may be made to the department pursuant to ch. NR 726.

SECTION 4. NR 700.02(4) is created to read:

NR 700.02(4) In addition to being applicable to sites or facilities that are subject to regulation under s. 144.442 or 144.76, Stats., ch. NR 722 applies to the evaluation of proposed remedial action for solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11).

SECTION 5. NR 700.03(49) is amended to read:

NR 700.03(49) "Remedial action options report" means a report which identifies and evaluates various remedial action options with the goal of selecting an option in compliance with the requirements of s. NR 722.11.

SECTION 6. NR 700.09 is repealed and recreated to read:

NR 700.09 SITE OR FACILITY CLASSIFICATION. (1) SIMPLE SITES. If a site or facility meets all of the following criteria, the site or facility may be classified as simple and responsible parties may use the simple site process in s. NR 700.11(1) for that site or facility:

(a) All the contaminants of concern present at the site or facility are listed in Table 1 or Table 2 in ch. NR 720, unless gasoline range organics or diesel range organics, or both are the only other contaminants of concern;

Note: For example, if polynuclear aromatic hydrocarbon (PAH) compounds are present, they would be considered contaminants of concern. With the exception of naphthalene, PAH compounds are generally only of concern for direct contact due to their relatively low migration potential. PAH compounds include, but are not limited to: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(ghi)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, 1-methyl naphthalene, 2-methyl naphthalene, naphthalene, phenanthrene and pyrene.

(b) No residual soil contamination at the site or facility will adversely affect surface water;

(c) No residual soil contamination at the site or facility will adversely affect a sensitive environment; and

(d) No residual soil contamination at the site or facility will concentrate through plant uptake.

(2) COMPLEX SITES. If any of the criteria for simple sites in sub. (1) are not met, or if the responsible party decides to follow the complex site process, the site or facility shall be classified as complex and responsible parties shall use the complex site process in s. NR 700.11(2) for that site or facility.

Note: The use of the procedures in s. NR 700.11(3) may be used to respond to environmental contamination even when the site or facility meets the criteria for a simple site.

SECTION 7. NR 700.11 is created to read:

NR 700.11 SUBMITTALS. (1) SIMPLE SITE PROCESS. If the site or facility meets the criteria specified in s. NR 700.09(1) and the responsible party chooses to proceed with the simple site process, all of the following shall apply:

- (a) Responsible parties shall submit site progress reports that summarize the completed work and additional work planned to adequately complete the response action at the site or facility to the department at 6 month intervals until a letter of compliance is submitted as required by par.
- (b). The first site progress report shall be submitted to the department no later than 6 months after the responsible party notifies the department of the discharge in accordance with s. NR 158.06 or 705.05.

Note: Approvals, permits or licenses required by department rules other than ch. NR 700 to 799 are still required when using the simple site process.

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

Note: Other applicable environmental regulations include, but are not limited to regaining and maintaining the preventive action limits (PALs) in ch. NR 140 for groundwater.

- (c) Except as provided in par. (f) and sub. (3), the department may not approve or disapprove of submittals for simple sites. However, the department may review site progress reports and other submittals for simple sites in order to determine whether or not the department should take enforcement action against the parties who are responsible for a site or facility.

Note: The department's enforcement authorities are set forth in ch. NR 728.

- (d) The department shall provide written acknowledgement of receipt of the letter of compliance and final report within 30 days and shall file these materials in the public record file.

(e) Notwithstanding par. (c), the department may audit files for sites or facilities on an ad hoc basis. Based on the findings of an audit, the department may:

1. Concur with the final report and letter of compliance and require no further action.
2. Determine that the final report or letter of compliance are not complete and require the responsible party to submit additional information.
3. Determine that the response action was inadequate and require the responsible party to take additional response actions as necessary.

Note: The department will generally only audit cases within 3 years of submittal of the final report and letter of compliance.

(f) Responsible parties shall submit a remedial action options report that complies with the requirements of s. NR 722.13 for department approval, prior to implementing a selected remedy, if the selected remedy includes landfill disposal of more than 2000 cubic yards of untreated contaminated unconsolidated material.

(2) COMPLEX SITE PROCESS. Except as provided in sub. (3), if a site or facility is classified as complex under s. NR 700.09(2) or if the responsible party chooses to proceed with the complex site process, all of the following shall apply:

(a) Responsible parties shall comply with sub. (1)(b), unless otherwise directed by the department.

(b) Responsible parties shall submit a site investigation report, pursuant to ch. NR 716, and a draft remedial options report meeting the requirements of ch. NR 722 within 30 days after completion of both reports.

(c) The department shall provide written acknowledgement of receipt of the site investigation report and draft remedial options report within 30 days and specify the estimated date for completion of department review.

(d) The department may audit submittals for complex sites in accordance with sub. (1)(e) where the determination has been made that limited department review will be provided to a complex site.

(3) ADDITIONAL SUBMITTALS OR MORE EXTENSIVE REVIEW. The department may require additional submittals or more extensive department review than is provided for in sub. (1) or (2) in the following circumstances:

(a) Where the owners or operators of a site or facility are eligible for reimbursement under s. 101.143, Stats.

Note: Section 101.143, Stats., is the petroleum storage remedial action statute, under which the department of industry, labor and human relations administers the petroleum environmental cleanup fund act, known as PECFA. Section NR 700.11(3)(a) applies to the owners or operators of sites who are eligible under the PECFA program to receive reimbursement for response actions from the PECFA. Department of natural resources' review and approval is required for these sites by ILHR 47, DNR review of PECFA-eligible sites will be more frequent than that described in the simple site review process under s. NR 700.11(1).

(b) Where an application for review and certification is submitted to the department by an entity seeking a liability exemption as a purchaser under s. 144.765, stats.

Note: Section 144.765, Stats., as created by 1993 Wisconsin Act 453, is the Remediated Property/Purchaser Liability statute, also known as the Contaminated Lands Recycling Program, which applies to persons purchasing contaminated property. Department certification and review which is more frequent than that described in the simple site review process under s. NR 700.11(1) is required to determine if a thorough investigation has been conducted and the property has been satisfactorily restored.

(c) Where environmental standards are not achieved and additional response action is needed before a no-further-action determination is appropriate.

Note: Groundwater contaminated at levels attaining or exceeding a Preventive Action Limit (PAL) in ch. NR 140 is an example of where environmental standards have not been achieved and additional response action is needed. If no additional remedial action is practicable at the site or facility, then a site or facility specific exemption must be issued in accordance with s. NR 140.28(3). In either case, Department review will be required more frequently than that described in the simple site review process under s. NR 700.11(1).

(d) Where information is available that would affect the site or facility classification, relative priority, eligibility under s. 101.143, Stats., or the availability of department staff to serve as project managers, the department may change the required level of department review and oversight for a site or facility or take enforcement action under ch. NR 728.

(4) DUE DATES. A submittal shall be considered to be filed in a timely manner if it is mailed or delivered to the department on the due date. If the last day of a specified time period falls on a Saturday, Sunday or holiday listed in s. 230.35(4)(a), Stats., the submittal may be mailed or delivered to the department on the next business day.

Note: The holidays listed in s. 230.35(4)(a), Stats., are: January 1; the 3rd Monday in January; after 12 noon on Good Friday; the last Monday in May; July 4; the first Monday in September; the 4th Thursday in November; December 24; December 25; December 31; and the day following January 1, July 4 or December 25 if those holidays fall on a Sunday.

SECTION 8. Appendix A to ch. NR 700 is repealed and recreated to read:

SECTION 9. NR 704.11 is repealed and recreated to read:

NR 704.11 EVALUATION OF HAZARDOUS SUBSTANCE MANAGEMENT OPTIONS. The contingency plan developed pursuant to s. NR 704.05 shall contain the following criteria for evaluating options for managing hazardous substances found in abandoned containers:

(1) Hazardous substances from abandoned containers shall be managed using technologies that minimize the amount of untreated waste, through the use of recycling or treatment, to the extent feasible.

(2) The following methods for addressing specific hazardous substances shall be considered and analyzed, in order of descending preference:

(a) Reuse or recycling of any hazardous substance in-state or out-of-state at a facility in compliance with state and federal laws;

(b) Treatment on-site or in-state in compliance with applicable state and federal laws;

(c) Treatment at an out-of-state facility in compliance with state and federal laws;

(d) Disposal on-site or in-state in an engineered unit designed to minimize future releases and in compliance with applicable state and federal laws; and

(e) Disposal out-of-state at a facility in compliance with state and federal laws;

(3) Before selecting a hazardous substance management option, the department shall evaluate the facility or site selected for management of the hazardous substance, in order to determine, on the basis of available information, if the facility or site complies with current state and federal environmental regulations governing the recycling, treatment, storage or disposal of hazardous substances.

SECTION 10. NR 705.01(note) is amended to read:

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: s. 280.34(a)(2); portions of s. 280.34(a)(3); s. 280.34(b)(5); ss. 280.50(a) to (c)(1); s.

280.51; s. 280.52; s. 280.53; s. 280.61(1); s. 280.62(a)(5); portions of s. 280.63(a)(1) to (3); portions of s. 280.63(b); portions of s. 280.72(a); s. 280.72(b); and s. 280.73. Additional portions of s. 280.34(a)(3) are included in chs. NR 708, 716, 722 and 724. Additional portions of s. 280.63(a)(1) to (3), and 280.63(b) are included in chs. NR 708 and 716. Additional portions of s. 280.72(a) are included in ch. ILHR 10.

SECTION 11. NR 708.01(note) is amended to read:

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: portions of s. 280.34(a)(3); s. 280.61(b) and (c); s. 280.62(a)(1) to (3) and (6); s. 280.62(b); portions of s. 280.63 (a) and (b); s. 280.64(a) to (d); s. 280.65(a); and portions of s. 280.66(a), (b) and (d). Additional portions of s. 280.34(a)(3) are included in chs. NR 705, 716, 722 and 724. Additional portions of s. 280.63(a) and (b) are included in chs. NR 705 and 716. Additional portions of 40 CFR s. 280.66(a) to (d) are included in ch. NR 724.

SECTION 12. NR 708.05(5)(a) is amended to read:

NR 708.05(5)(a) The provisions of chs. NR 712, 716, 720, 722 and 724 do not apply to immediate actions conducted by responsible parties, unless compliance with a portion of these chapters is specifically required in this chapter.

SECTION 13. NR 708.11(3)(e) is created to read:

NR 708.11(3)(e) Comply with one of the following requirements when disposal of contaminated soil, sediment or other granular material such as fill, not including debris, is proposed:

1. The volume of untreated contaminated soil, sediment or other granular material such as fill, not including debris, from a single site or facility that is proposed for off-site disposal does not exceed 100 cubic yards and is accepted by a landfill for daily cover that does not exceed on an

annual basis the landfill's net daily cover needs or 12.5% of the annual volume of waste received by the landfill.

2. Volumes of contaminated soil, sediment or other granular material, not including debris, that exceed 100 cubic yards may be disposed of in a licensed landfill with a department-approved composite liner, or a liner that is equivalent to a composite liner in terms of environmental protection, as determined by the department, in compliance with the landfill's approved plan of operation.

SECTION 14. NR 712.07(2) and (3) are amended to read:

NR 712.07(2) Submittals prepared to satisfy the requirements of ch. NR 722 or 724 or s. NR 708.11(4), including free product removal conducted in accordance with s. NR 708.13, for response actions taken to address groundwater contamination shall be jointly prepared by, or under the supervision of, a professional engineer and a hydrogeologist.

(3) Submittals prepared to satisfy the requirements of ch. NR 722 or 724 or s. NR 708.11(4) for response actions that address any media other than groundwater shall be prepared by, or under the supervision of, a professional engineer.

SECTION 15. NR 714.05(1)(c) is amended to read:

NR 714.05(1)(c) Proposed remedial action options. The department shall publish a public notice as a class 1 notice under ch. 985, Stats., upon selection of a proposed remedial action in accordance with ch. NR 722, for sites or facilities where a department-funded remedial action is proposed pursuant to ~~ss.~~ s. 144.442 or 144.76, Stats., or both. The availability of the department's proposed remedial action for public review shall be included in the public notice, including the identification of a department contact person, and his or her phone number and mailing address.

SECTION 16. NR 714.07(3)(a)2. is amended to read:

NR 714.07(3)(a)2. The specific locations at the facility or site where ~~surface soil or contaminated sediments~~ contaminated media present a direct contact or ~~inhalation~~ threat to humans.

SECTION 17. NR 716.09(1) is repealed and recreated to read:

NR 716.09 (1) GENERAL. Unless otherwise directed by the department, in cases where a site investigation is required under s. NR 716.05, responsible parties shall submit a work plan to the department describing the intended scope and conduct of a field investigation if the site or facility is classified as complex under s. NR 700.09(2) or if the responsible party chooses to proceed with the complex site process under s. NR 700.11(2).

SECTION 18. NR 716.09(3) (title) is amended to read:

NR 716.09(3) (title) DEPARTMENT REVIEW OF SUBMITTED WORK PLANS.

SECTION 19. NR 716.09(3)(e) is repealed.

SECTION 20. NR 716.11(3)(b) is amended to read:

NR 716.11(3)(b) Provide sufficient information to permit evaluation of interim options pursuant to ch. NR 708, and remedial action options pursuant to ch. NR 722, and to permit a determination to be made regarding whether any of the interim or remedial action options require a treatability study or other pilot-scale study.

SECTION 21. NR 716.15(1) is repealed and recreated to read:

NR 716.15(1) REPORT REQUIREMENT. Unless otherwise directed by the department, responsible parties shall include the site investigation report information with the final report and accompanying compliance letter for the response action in accordance with s. NR 700.11(1)(b), if

the site or facility meets the criteria for a simple site classification, in s. NR 700.09(1). If, however, the site or facility is classified as a complex site in accordance with s. NR 700.09(2) or if the responsible party chooses to proceed with the complex site process, responsible parties shall submit the site investigation report to the department within 30 days of completion of the report and the draft remedial options report meeting the requirements of ch. NR 722.

SECTION 22. NR 716.15(2) is repealed.

SECTION 23. NR 716.15(3) is renumbered NR 716.15(2).

SECTION 24. NR 716.17(2) is amended to read:

NR 716.17(2) The department may require that treatability studies be conducted as part of the site investigation, where appropriate for the purpose of demonstrating that an interim action or remedial option will meet the remedy selection criteria in ch. NR 708 or 722.

SECTION 25. NR 716.17(3) is amended to read:

NR 716.17(3) When a site investigation conducted under this chapter indicates that an immediate, interim or remedial action is necessary, the responsible parties shall identify, evaluate and select an immediate or interim action in accordance with ch. NR 708 or a remedial action in accordance with ch. NR 722.

SECTION 26. NR 718.13 (title) is amended to read:

NR 718.13 OFF-SITE DISPOSAL OF CONTAMINATED SOIL AT A RESPONSE ACTION SITE.

SECTION 27. NR 718.13(7) is repealed and recreated to read:

NR 718.13(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.

SECTION 28. NR 718.14 is created to read:

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.

SECTION 29. Chapter NR 722 is created to read:

CHAPTER NR 722

STANDARDS FOR SELECTING REMEDIAL ACTIONS

NR 722.01 PURPOSE. The purpose of this chapter is to establish minimum standards for identifying and evaluating remedial action options and selecting remedial actions. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 159.03(1)(a), 159.05 and 227.11(2), Stats.

Note: The following portions of 40 CFR 280 have been included in the text of this chapter: portions of 280.34(a)(3); portions of 280.66(a) and(b); and 280.66(c). Additional portions of 280.34(a)(3) are included in chs. NR 705, 708, 716 and 724. Additional portions of 280.66(a) and (b) are included in chs. NR 708 and 724.

NR 722.02 APPLICABILITY. (1) This chapter applies to all remedial actions taken by the department under the authority of s. 144.442 or 144.76, Stats. This chapter does not apply to immediate actions or interim actions, unless specifically noted in ch. NR 708. In this chapter, where the term "responsible parties" appears, it shall be read to include the department, where a department-funded remedial action is being taken.

(2) This chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., regardless of whether there is direct involvement or oversight by the department.

(3) In addition to being applicable to sites or facilities that are subject to regulation under s. 144.442 or 144.76, Stats., ch. NR 722 applies to the evaluation of proposed remedial action

options for solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11).

Note: Persons who wish to conduct response actions that will meet the requirements of CERCLA and the NCP may request that the department enter into a contract with them pursuant to s. 144.442, Stats. However, a CERCLA-quality response action may require compliance with additional requirements beyond those contained in chs. NR 700 to 736 in order to satisfy CERCLA and the NCP.

(4) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements apply, the more restrictive control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., may also be subject to regulation under other statutes, including solid waste statutes, ss. 144.43 to 144.47, Stats., or the hazardous waste management act, ss. 144.60 to 144.74, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility. When necessary, the department will, to the best of its ability, facilitate coordination between the regulatory programs involved.

NR 722.03 DEFINITIONS. In this chapter:

(1) "Sensitive receptor" means a receptor that is affected by slight differences or changes in environmental conditions.

(2) "Unconsolidated material" means soil, sediment or other granular material, such as fill, not including debris.

Note: Section NR 700.03(58) defines "soil" as unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste. Section NR 700.03(54) defines "sediment" as particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water. Section NR 700.03(10) defines "debris" as material resulting from the construction, demolition or razing of buildings, roads and other structures and materials that have been discarded at a site or facility.

NR 722.05 GENERAL. (1) Responsible parties shall select an appropriate remedial action or combination of remedial actions for implementation under this chapter, unless the department makes the selection under sub. (2).

(2) The department shall select the remedial action for the following types of sites or facilities:

(a) State-lead national priority list sites.

(b) Sites or facilities being addressed under a contract with the department under s. 144.442, Stats.

(c) Department-funded response actions.

(d) Sites or facilities being addressed under an administrative order issued under s. 144.76, Stats.

(3) The department shall document the remedial action selected for those sites or facilities listed in sub. (2) following the requirements of s. NR 722.07, at a minimum, and conduct the applicable public participation and notification activities as required in ch. NR 714.

(4) To select a remedy or combination of remedies, responsible parties shall identify, evaluate and document an appropriate range of remedial action options to address each contaminated medium in accordance with the requirements of this chapter, when one of the following is completed:

(a) A site investigation report developed in accordance with ch. NR 716.

(b) A in-field conditions report prepared in accordance with ch. NR 508.

(5) The identification, evaluation and documentation of an appropriate set of remedial action options, to address each medium and migration or exposure pathway shall be based on the complexity of the site or facility and the legal requirements applicable to the response action and the site or facility.

Note: Each remedial action option identified may be utilized to address more than one contaminated medium or migration or exposure pathway if that remedial action option would be protective of public health, safety and welfare and the environment for each media and migration or exposure pathway that it is proposed to address.

(6) The evaluation and documentation of an appropriate set of remedial action options shall be conducted by a qualified person or persons pursuant to s. NR 712.07 and shall be signed and sealed by the qualified person or persons in accordance with s. NR 712.09.

NR 722.07 IDENTIFICATION AND EVALUATION OF REMEDIAL ACTION OPTIONS. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall identify and evaluate an appropriate range of remedial action options in accordance with the requirements of this section.

(2) IDENTIFICATION OF LIKELY REMEDIAL ACTION OPTIONS. An initial screening of remedial technologies shall be conducted to identify remedial action options for further evaluation which are reasonably likely to be feasible for a site or facility, based on the hazardous substances present, media contaminated and site characteristics, and to comply with the requirements of s. NR 722.09.

(3) EVALUATION OF REMEDIAL ACTION OPTIONS. (a) Except as provided in par. (b), responsible parties shall use all of the criteria in sub. (4) to further evaluate appropriate remedial action options that have been identified for further evaluation under sub. (2), for each contaminated medium or migration or exposure pathway. This evaluation process shall be used to determine

which remedial action option constitutes the most appropriate technology or combination of technologies to restore the environment, to the extent practicable, within a reasonable period of time and to minimize the harmful effects of the contamination to the air, land or waters of the state. Responsible parties shall document their evaluation of a remedial option or combination of options which would utilize recycling or treatment technologies that destroy or detoxify contaminants, rather than transfer the contaminants to another media.

Note: The purpose of the technical and economic feasibility evaluation is to evaluate a range of remedial action options suitable for a particular site or facility to determine the practicability of implementing those options. If a particular option is not suitable for a particular site or facility, such as *in situ* air sparging in dense clay soils, it should not be evaluated. The department would consider such an evaluation as simply an attempt to give the false impression that a wide range of options were considered. Emphasis must be placed on remedial action options suitable for a particular site or facility.

(b) A detailed evaluation based on the criteria in sub (4) is not required in those cases where a remedial action option identified during the initial screening meets one or both of the following requirements:

1. Landfill disposal of less than 250 cubic yards of untreated contaminated unconsolidated material, as measured *in situ*, is proposed.

2. The proposed remedial action option results in the reuse, recycling, destruction, detoxification, treatment or any combination thereof of the hazardous substances present at the site and this proposed option:

a. Is proven to be effective in remediating the types of hazardous substances present at the site, based on experience gained at other sites with similar site characteristics and conditions;

b. Can be implemented in a manner that will not pose a significant risk of harm to human health, safety and welfare or the environment; and

c. Is likely to result in the reduction or control, or both, of the hazardous substances present at the site to a degree and in a manner that is in compliance with the requirements of ss. NR 722.09(2) and (3).

Note: Section NR 722.07(3)(b) is intended to provide a streamlined evaluation process for certain remedial actions that are presumed to meet the evaluation and selection criteria in ss. NR 722.07 and 722.09. A remedial action that results in landfill disposal of volumes of untreated contaminated soil or other unconsolidated material of 250 cubic yards or less can be reasonably expected to meet the technical feasibility and economic feasibility criteria in s. NR 722.07(4) and further detailed evaluation of alternatives would not be warranted. Remedial actions meeting the requirements of s. NR 722.07(3)(b)2 can be reasonably expected to be appropriate and further detailed evaluation of alternatives would not be necessary as such remedial actions could be considered "presumptive remedies" as described in U.S. EPA OSWER Directive 9355.0-47FS.

(4) EVALUATION CRITERIA. Except as provided in s. NR 722.07(3)(b), the remedial action options identified by the initial screening shall be evaluated based on the following requirements and in compliance with the requirements of s. NR 722.09.

(a) Technical feasibility. The technical feasibility of appropriate remedial action options shall be evaluated using the following criteria:

1. 'Long-term effectiveness.' The long-term effectiveness of appropriate remedial action options, taking into account all of the following:

a. The degree to which the toxicity, mobility and volume of the contamination is expected to be reduced.

b. The degree to which a remedial action option, if implemented, will protect public health, safety and welfare and the environment over time.

2. 'Short-term effectiveness.' The short-term effectiveness of appropriate remedial action options, taking into account any adverse impacts on public health, safety and welfare and the

environment that may be posed during the construction and implementation period until case closure under ch. NR 726.

3. 'Implementability.' The implementability of appropriate remedial action options, taking into account all of the following:

a. The technical feasibility of constructing and implementing the remedial action option at the site or facility.

b. The availability of materials, equipment, technologies and services needed to conduct the remedial action option.

c. The potential difficulties and constraints associated with on-site construction or off-site disposal and treatment.

d. The difficulties associated with monitoring the effectiveness of the remedial action option.

e. The administrative feasibility of the remedial action option, including activities and time needed to obtain any necessary licenses, permits or approvals.

f. The presence of any federal or state, threatened or endangered species.

g. The technical feasibility of recycling, treatment, engineering controls or disposal.

h. The technical feasibility of naturally occurring biodegradation at the site or facility, if responsible parties evaluate this option.

4. 'Restoration time frame.' The expected time frame needed to achieve the necessary restoration, taking into account all of the following qualitative criteria:

a. Proximity of contamination to receptors.

b. Presence of sensitive receptors.

c. Presence of threatened or endangered species or habitats, as defined by state and federal law.

d. Current and potential use of the aquifer, including proximity to private and public water supplies.

- e. Magnitude, mobility and toxicity of the contamination.
- f. Geologic and hydrogeologic conditions.
- g. Effectiveness, reliability and enforceability of institutional controls.
- h. Naturally occurring biodegradation processes at the site or facility which are expected to reduce the total mass of contamination in an effective and timely manner and which have been demonstrated to be occurring at the site or facility, to the satisfaction of the department in the site investigation report.

Note: A longer restoration time frame may be appropriate to achieve the environmental laws and standards referenced in s. NR 722.07(2)(a) and (b), if on-site treatment or recycling is selected or if engineering controls are selected for an industrial property to allow urban redevelopment. The purpose of s. NR 722.07(5)(b)4 is to provide criteria to determine how quickly environmental laws and standards must be achieved, due to the site-specific hazards that the contamination poses. It is not intended to authorize risk assessments, nor is it the intent of this provision to establish a generic time period that would be applied at all sites or facilities.

(b) Economic feasibility. The economic feasibility of each appropriate remedial action option shall be evaluated, using the following criteria:

1. The following types of costs associated with the remedial action option:
 - a. Capital costs, including both direct and indirect costs;
 - b. Initial costs, including design and testing costs;
 - c. Annual operation and maintenance costs;
 - d. Total present worth of the costs for all national priority list sites or facilities; sites or facilities where the department has entered into a contract pursuant to s. 144.442, Stats.; and sites or facilities where state environmental fund monies or federal LUST trust funds are being expended; and
 - e. Costs associated with potential future liability.

2. The economic feasibility of a remedial action option shall be determined by comparing the costs listed in subd. 1 to what is expected to be technically achieved by that option, taking into account long-term effectiveness, short-term effectiveness, implementability and the time until restoration is achieved for each option.

(5) ADDITIONAL REQUIREMENTS. (a) Engineering controls. If engineering controls are considered, responsible parties shall, at a minimum, evaluate an on-site engineering control to address all hazardous substances, contaminated media and migration or exposure pathways.

Note: Engineering controls include on-site or off-site containment methods, such as solid or hazardous waste landfill covers, liners, gas collection systems, armoring of sediments, erosion controls and groundwater slurry walls. Restricting access to a site or facility, such as constructing a fence, is considered an institutional control, not an engineering control.

(b) Institutional controls. Responsible parties shall consider the appropriateness of utilizing institutional controls, including land-use and access restrictions, to supplement engineering controls and treatment remedial actions, as necessary to ensure that adequate protection of public health, safety and welfare and the environment is maintained over time.

(c) Additional requirements. Responsible parties shall comply with additional site-specific remedial action evaluation or documentation requirements that may be specified by the department due to the complexity of the site or facility, or the severity of the potential or actual public health or environmental impacts.

NR 722.09 SELECTION OF A REMEDIAL ACTION. (1) GENERAL. An option from the range of technically feasible options shall be selected based on the results of the evaluation conducted pursuant to s. NR 722.07, in compliance with this section. If an option's cost, including all the costs listed in s. NR 722.07(4)(b), is excessive with respect to what is being technically achieved by the option relative to other available options, responsible parties may choose not to select it.

(2) ENVIRONMENTAL LAWS AND STANDARDS. Responsible parties shall select a remedial action or combination of remedial actions that achieve restoration of the environment to the extent practicable, minimize the harmful effects from the contamination on the air, lands and waters of the state and comply with all applicable state and federal public health and environmental laws and environmental standards. Environmental laws and standards include:

(a) Soils. 1. Contaminated soil shall be restored in compliance with the requirements of ch. NR 720.

2. Where a performance standard will be selected in accordance with s. NR 720.19(2) for a soil remedial action, the responsible parties shall conduct public participation activities in compliance with s. NR 714.07(5).

Note: Chapter NR 720 provides for generic residual contaminant levels and for site-specific residual contaminant levels or performance standards. An on-site remedial action or combination of on-site actions that does not meet applicable residual contaminant levels in Tables 1 and 2 in ch. NR 720 may be selected, alone or in combination with off-site remedial actions, if site-specific residual contaminant levels or a performance standard are developed. A performance standard maintains a condition that is protective of human health, safety and welfare and the environment. Use of a performance standard will involve land use restrictions, maintenance agreements, long-term monitoring or a combination of these.

(b) Groundwater. Contaminated groundwater shall be restored in accordance with all of the following requirements:

1. For substances that are listed in ch. NR 140, preventive action limits shall be achieved to the extent technically and economically feasible, pursuant to ss. NR 140.24 and 140.26.

Note: In accordance with ss. NR 140.24 and 140.26, both the source control and groundwater restoration components of a response shall be designed to minimize the concentration of the hazardous substances or environmental pollution in groundwater at the point of standards application where technically and economically feasible; and to regain and maintain compliance with

the preventive action limit. If the department determines that compliance with the preventive action limit is not technically or economically feasible, compliance with the lowest possible concentration which is technically and economically feasible shall be achieved. The enforcement standard may not be attained or exceeded at the point of standards application.

2. For substances which do not have an established standard in ch. NR 140, the department may take or require the responsible parties to conduct any necessary actions, such as developing site-specific environmental standards in cooperation with the department of health and social services, to protect public health, safety and welfare or to prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or non-consumptive uses.

(c) Surface water and wetlands. 1. Discharges to surface waters or wetlands may not result in a surface water quality standard contained in chs. NR 102 to 106 being exceeded and may not exceed effluent limitations established by the department based on "best available control technology currently available" or, where appropriate, "best available control technology economically achievable," in accordance with ch. NR 220.

2. For substances that do not have established criteria in ss. NR 102.14 and 105.05 to 105.09, discharges to surface waters or wetlands may not exceed site-specific water quality criteria established by the department pursuant to the general standards of ss. NR 102.04(1)(d) and 103.03(2)(d).

Note: The water quality standards contained in chs. NR 102 to 106 are comprised of water quality criteria for the prevention of adverse tastes and odors in fish and drinking water (s. NR 102.14), acute and chronic toxicity to aquatic life (ss. NR 105.05 and 105.06, respectively), adverse effects to wild and domestic animals (s. NR 105.07), human threshold and cancer effects (ss. NR 105.08 and 105.09, respectively) and designated uses of the surface waters based on their classification and water quality standards and criteria for wetlands. Chapter NR 220 provides that for those point sources identified in s. NR 220.21(1), the department shall establish effluent

limitations that are achievable by the application of the "best practicable control technology currently available" or, where appropriate, the "best available control technology economically achievable", as required in s. NR 220.21(2).

3. At sites or facilities in, or in close proximity to, surface water bodies or wetlands, active remedial actions shall be taken to prevent or minimize, to the extent practicable, potential and actual hazardous substance discharges and environmental pollution that may attain or exceed surface water or wetland criteria established in accordance with chs. NR 102 to 106.

(d) Discharges to the air. All emissions to the air shall comply with applicable requirements in ss. 144.30 to 144.426, Stats., chs. NR 400 to 499, and any other applicable federal or state environmental laws.

(e) Hazardous and solid waste. 1. Any waste, debris or waste stream generated by the remedial action shall be managed in compliance with all applicable state and federal laws and regulations. Contaminated debris, at a minimum, shall be addressed to minimize the harmful effects to protect health, welfare and safety and the environment.

2. Management of materials contaminated with polychlorinated biphenyls (PCBs) shall comply with the requirements of ch. NR 157.

(3) ADDITIONAL STANDARDS OF PERFORMANCE. Each remedial action or combinations of actions shall protect public health, safety and welfare and the environment from all contaminated media, routes of exposure and contamination at the site or facility. Responsible parties shall presume that a remedial action option or combination of options is protective if it meets the criteria in sub. (2), unless the responsible party or the department determines that compliance with applicable public health and environmental laws, including environmental standards, is not protective of public health, safety and welfare and the environment due to multiple pathways of exposure or synergistic effects of contamination. At sites or facilities where there may be synergistic effects of contamination, multiple pathways of exposure or both that pose an unacceptable threat to public health, safety or welfare or the environment, responsible parties shall

attain more stringent, facility or site-specific numeric standards to ensure that public health, safety and welfare and the environment are protected. In such a situation, the department may require that the responsible parties develop a site-specific numeric or performance standard, or both, that is protective of public health, safety and welfare and the environment for the specific media, migration or exposure pathways and contamination.

(4) LANDFILL DISPOSAL OF UNTREATED CONTAMINATED UNCONSOLIDATED MATERIAL.

Responsible parties may only select landfill disposal for untreated contaminated unconsolidated material if such disposal is in compliance with chs. NR 500 to 536, the landfill's approved plan of operation and both of the following requirements:

(a) Use of untreated contaminated unconsolidated material. 1. Except as provided in subd. 2, untreated contaminated unconsolidated material may only be accepted by the landfill operator for use as daily cover in accordance with s. NR 514.04(5), if the volume of untreated contaminated unconsolidated material that is proposed to be used as daily cover does not exceed the landfill's net daily cover needs nor 12.5% of the annual volume of waste received by the landfill, or for use in the construction of soil structures within the fill area when approved for that specific use by the department, unless otherwise specifically provided in the landfill's individual license and approved plan of operation.

2. Untreated contaminated unconsolidated material that is not usable as daily cover or for soil structures and for which there is no technically and economically feasible treatment alternative may be disposed of in a landfill only with prior written approval from the department, unless otherwise specifically provided in the landfill's individual license and approved plan of operation.

(b) Volume limitations. 1. Except as provided in subd. 2 or 3, the volume of untreated contaminated unconsolidated material from a single site or facility that is proposed for landfill disposal may not exceed 250 cubic yards as measured *in situ*.

2. Except as provided in subd. 3, volumes of untreated contaminated unconsolidated material that exceed 250 cubic yards may be disposed of in a licensed landfill with a department-

approved composite liner, or a liner that is equivalent to a composite liner in terms of environmental protection as determined by the department.

3. Volumes of untreated contaminated unconsolidated material that exceed 2000 cubic yards may be disposed of in a landfill only if prior written approval is obtained from the department after the department has reviewed a remedial action options report.

Note: Material contaminated with polychlorinated biphenyls (PCBs) must be managed in accordance with the requirements of ch. NR 157.

(5) INSTITUTIONAL CONTROLS. (a) Institutional controls may not substitute for recycling, treatment or engineering controls.

(b) Institutional controls may not be selected as the sole remedial action at a site or facility, unless recycling, treatment or engineering controls are not practicable, based on an evaluation conducted in compliance with s. NR 722.07(3)(a) and written approval is obtained from the department after review of the detailed evaluation in the remedial action options report.

Note: Section NR 726.05(8) requires that land use restrictions be recorded if certain levels of residual soil contamination will remain on-site after completion of the remedial action at a site or facility classified as industrial. The department may also require that institutional controls be put in place, on a case-by-case basis, either during remedy selection or case closure pursuant to ch. NR 726.

NR 722.11 RISK ASSESSMENTS. (1) The responsible party may request, and the department may consider granting, approval to prepare and submit a risk assessment for the purpose of developing environmental standards only if the responsible parties demonstrate to the satisfaction of the department that:

(a) Compliance with the applicable environmental standards listed in s. NR 722.09(2) will not be protective of public health, safety and welfare and the environment; or

(b) Attaining compliance with the applicable residual contaminant levels in ch. NR 720 is not practicable.

(2) If the department authorizes the use of a risk assessment to develop environmental standards, the responsible parties shall utilize standard exposure assumptions approved by the department. The department may approve, modify or disapprove of the risk assessment prepared by the responsible parties and shall provide a written explanation of the department's action to the responsible parties.

(3) When the department enters into a contract pursuant to s. 144.442, Stats., the department shall determine whether or not a risk assessment should be prepared and by whom.

NR 722.13 REMEDIAL ACTION OPTIONS REPORT. (1) GENERAL. Based on the evaluation and selection of remedial action options required in ss. NR 722.07 and 722.09, responsible parties shall document the evaluation and selection in a remedial action options report in compliance with the requirements of this section. Responsible parties shall submit the remedial action options report to the department, unless the responsible parties are not required to submit it under s. NR 700.11 (1) or are notified by the department that the report is not required to be submitted.

(2) CONTENTS OF REPORT. The remedial action options report shall include the following:

(a) Cover letter. 1. The department's identification number for the site or facility.

2. The purpose of the submittal and the desired department action or response.

3. Month, day and year of the submittal.

(b) Executive summary. A brief narrative summarizing the contents of the report.

(c) Background information. 1. Project title, name of the site or facility, its location, the mailing address and telephone number of the responsible parties, and the name, address and telephone number of the person who prepared the report.

2. The regulatory status of the site or facility.

3. A summary of the nature and extent of contamination at the site or facility, based on the data gathered during the site investigation.

4. A summary of the geologic and hydrogeologic characteristics at the site or facility, based on data gathered during the site investigation.

Note: If a site investigation report required under ch. NR 716 and a remedial action options report required under this chapter are prepared as a single submittal, the site investigation information does not need to be restated in the remedial action options portion of the combined submittal.

(d) Remedial action options. A brief description of each remedial action option that has been evaluated under s. NR 722.07, including all of the following information:

1. A physical and operational description of each remedial action option.
2. The degree to which each evaluated remedial action option is expected to comply with the environmental laws and standards under s. NR 722.09(2).
3. The physical location at the site or facility where the environmental standards applicable to the site or facility and the remedial action option are to be complied with.
4. Any local, state or federal licenses, permits or approvals that are required for each remedial action option.
5. A comparison of the expected performance of each remedial action option in relation to the technical and economic feasibility criteria in s. NR 722.07(4).
6. A statement on whether or not treatment was considered and why a treatment option or combination of treatment options were rejected, if rejected.

(e) Selected remedial action. Responsible parties shall document the selected remedial action in compliance with this section, except where the department is selecting the remedial action option under s. NR 722.05(2). The remedial action options report shall identify the selected remedial action and shall include:

1. A brief summary of the rationale for choosing the remedial action, based on the evaluation required under s. NR 722.07. If appropriate, this summary shall include a brief description of why landfill disposal of more than 250 cubic yards of contaminated media has been selected.
2. A proposed schedule for implementing the selected remedial action option.

3. An estimate of the approximate total cost of implementing the selected remedial action option, including the costs listed in s. NR 722.07(4)(b)1.

4. An estimate of the time frame needed for the selected remedial action option to comply with the applicable federal or state environmental laws and standards, whichever are more stringent.

5. A description of how the performance of the selected remedial action option will be measured.

6. A description of how treatment residuals generated in connection with the selected remedial action option will be managed on-site and, if applicable, off-site.

NR 722.15 DEPARTMENT RESPONSE. (1) GENERAL. The department may respond to the submission of a remedial action options report required by this chapter using one of the following methods:

(a) The department may, in writing, direct responsible parties to submit all of the reports required under this chapter and to proceed to implement the selected remedial action without department approval, review or acknowledgement.

(b) The department may, in writing, direct responsible parties that review and approval of a remedial action options report is necessary prior to proceeding to implement the selected remedial action pursuant to ch. NR 724. The department shall provide written acknowledgement of receipt of each report submitted pursuant to this chapter within 30 days. Department acknowledgement shall include an estimated date for completion of department review.

(2) DEPARTMENT REVIEW. In cases where the department is reviewing a remedial action options report under this chapter prior to the implementation of the selected remedial action, the department:

(a) May exercise discretion on a case-by-case basis and request additional information, require revisions, approve, conditionally approve or disapprove of the report.

(b) Shall provide a written explanation of the reasons for any disapproval to the responsible parties.

(c) May establish a schedule for the responsible parties to provide additional information and revisions to the department.

(d) May approve the remedial action options report only after ensuring that implementation of the selected remedial action will adequately protect human health, safety, and the environment. In making this determination, the department shall consider the following factors as appropriate:

1. The physical and chemical characteristics of each contaminant including its toxicity, persistence and potential for migration;

2. The hydrogeologic characteristics of the site or facility and the surrounding area;

3. The proximity, quality and current and future uses of nearby surface water and groundwater;

4. The potential effects of residual contamination on nearby surface water and groundwater;

5. All other relevant assessments prepared and submitted in compliance with the requirements of s. NR 722.11; and

6. All other relevant information contained in the remedial options report.

(3) AUTHORIZATION TO PROCEED. Unless otherwise directed, responsible parties shall proceed to implement the selected remedial action in accordance with the following requirements:

(a) At sites or facilities where the department approves or conditionally approves of a remedial action report, the responsible parties shall initiate the design and construction of the selected remedial action within 90 days after department approval or conditional approval.

(b) At sites or facilities that meet the simple site criteria referenced in s. NR 700.09(1), responsible parties shall initiate the design and construction of the selected remedial action within 90 days after completing the evaluation and selection of remedial action options in accordance with ss. NR 722.07 and 722.09.

SECTION 30. Chapters NR 724 and 726 are repealed and recreated to read:

CHAPTER NR 724

REMEDIAL AND INTERIM ACTION DESIGN, IMPLEMENTATION,
OPERATION, MAINTENANCE AND MONITORING REQUIREMENTS

NR 724.01 PURPOSE. The purpose of this chapter is to specify the requirements for the design, implementation, operation, maintenance and monitoring of remedial actions and certain types of interim actions. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 159.03(1)(a) and 227.11(2), Stats.

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: portions of s. 280.34(a)(3); and portions of s. 280.66(a) and (b). Additional portions of s. 280.34(a)(3) are included in chs. NR 705, 708, 716 and 722. Additional portions of s. 280.66(a) and (b) are included in chs. NR 708 and 722.

NR 724.02 APPLICABILITY. (1) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., regardless of whether there is direct involvement or oversight by the department:

- (a) On-site treatment systems, including groundwater extraction and treatment systems.
- (b) On-site engineering controls or barriers, including engineered landfill covers or groundwater barrier systems.
- (c) Any other type of interim action when the department determines, on a case-by-case basis, that a design report required under s. NR 724.09 is necessary prior to implementation.

Note: This chapter does not apply to emergency or non-emergency immediate actions or to those types of interim actions that are not listed in s. NR 724.02(1).

(2) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or

requirements apply, the more restrictive requirements shall control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., may also be subject to regulation under the solid waste statutes in ss. 144.43 to 144.47, Stats., or the hazardous waste management act, ss. 144.60 to 144.74, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility. Persons who wish to conduct response actions that will meet the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 144.442, Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 728 in order to satisfy CERCLA and the NCP.

(3) This chapter applies to all remedial actions and to those types of interim actions that are specified in sub. (1) taken by the department under the authority of s. 144.442 or 144.76, Stats. In this chapter, where the term "responsible parties" appears, it is to be read to include the department in situations where a department-funded response action is being taken.

NR 724.03 DEFINITIONS. The definitions in s. NR 700.03 apply to this chapter.

NR 724.05 GENERAL SUBMITTAL REQUIREMENTS. (1) SIMPLE SITES. (a) Unless otherwise directed by the department, for response actions at sites or facilities classified as simple under s. NR 700.09(1), responsible parties shall include the information that is required to be submitted under this chapter in the final report that accompanies the compliance letter that is required to be submitted to the department at the completion of the response action under s. NR 700.11(1)(b), instead of submitting the plans and reports separately.

(b) Responsible parties who comply with the requirements in par. (a) shall include summaries of the design information required in s. NR 724.09, the operation and maintenance plan

required in s. NR 724.13(2), and the long-term monitoring plan required in s. NR 724.17(2), where applicable, with the appropriate site progress reports submitted in accordance with the requirements of s. NR 700.11(1)(a).

(c) Responsible parties who comply with the requirements in pars. (a) and (b) are exempt from the submittal time frames in sub. (2) and ss. NR 724.13 to 724.17, except for the requirements of s. NR 724.17(3)(c) relating to submittals of monitoring results from private and public wells.

(2) COMPLEX SITES. Unless otherwise directed by the department, for sites or facilities classified as complex under s. NR 700.09(2) and for sites and facilities where a responsible party chooses to proceed with the complex site process, responsible parties shall submit the plans and reports required by this chapter in compliance with all of the following requirements:

(a) The plans, reports and specifications required by ss. NR 724.07, 724.09, 724.13(2) and 724.15(2) shall be submitted simultaneously and may be combined in a single report.

(b) Two copies of each plan or report shall be submitted to the department.

(c) The department may require by the issuance of an administrative order or consent order that these plans and reports be prepared in accordance with a site-specific schedule.

(d) At sites or facilities where multiple remedial or interim actions are taken, all of the following requirements apply:

1. All submittals required by this chapter shall include a brief discussion of the interrelationship between the actions.

2. The design report required by s. NR 724.09 and the design plans and specifications required by s. NR 724.11 that are prepared for subsequent remedial or interim actions may include the design details for the subsequent action without repeating design work that was included in previous submittals to the department for other remedial or interim actions.

(e) Each submittal under this chapter shall include all of the following:

1. A brief cover letter that includes:

- a. The month, day and year of the submittal.
 - b. The department-issued identification number for the site or facility.
 - c. The purpose of the submittal and the desired department action or response.
 - d. A brief narrative summarizing the contents of the submittal.
 - e. The regulatory status of the site or facility.
2. A report or plan that includes following general information:
- a. Project title and purpose, including the department-issued identification number for the site or facility.
 - b. Name, address and telephone number of the property owner, lessee, operator or any individual or company responsible for the discharge of hazardous substances or environmental pollution on the site or facility.
 - c. Name, address and telephone number of any consultants or contractors involved with the response action at the site or facility.
 - d. Site name, address and location by, at a minimum, quarter-quarter section, township, range and county. The location of the site or facility shall be given in sufficient detail to allow department personnel to locate and inspect the site or facility.
 - e. A location map that meets the requirements of s. NR 716.15(2)(h)1.
 - f. Month, day and year of the submittal.
 - g. A summary of the nature and extent of contamination at the site or facility.
- (3) LEVEL OF DETAIL. (a) Nothing in this chapter shall be construed to require plans or reports that are more detailed or complex than is justified by the known scope of contamination or the complexity of the site or facility.
- (b) The department may require additional information in the plans and report beyond what is specifically required under this chapter if necessary because of the complexity of the site or facility, or the degree and extent of the contamination.

NR 724.07 DEPARTMENT RESPONSE. (1) The department may direct responsible parties in writing that department approval of a plan or report is necessary prior to proceeding to the next step in the design, implementation or operation of a remedial action or interim action under this chapter. In such cases, the department shall provide a written acknowledgement of receipt of any report or plan submitted pursuant to this chapter within 30 days. The department acknowledgement shall include an estimated date for completion of department review.

(2) In cases where department approval is required for the reports or plans submitted under this chapter, the department may request additional information, require revisions, approve, conditionally approve or disapprove of the plans or reports. The department shall provide to the responsible parties, in writing, the reasons for any disapproval and the department may establish a deadline for providing revisions.

Note: Persons who prepare the plans and reports required by this chapter should be aware that other department programs may also require the submittal, review and approval of plans and reports.

NR 724.09 DESIGN REPORT. Unless otherwise directed by the department, responsible parties shall submit to the department a design report for all remedial actions and those interim actions specified in s. NR 724.02(1), containing all of the following information:

(1) The information required in s. NR 724.05(2)(e).

(2) A brief description of the site or facility.

(3) A complete and detailed description of the remedial or interim action being designed.

(4) All engineering criteria, concepts, assumptions and calculations used in preparing the design, including adequate justification for their use.

(5) Any treatability study information, pilot test results, aquifer pumping test results or other test results utilized in the design, unless this information was previously submitted to the department.

Note: Treatability studies should be conducted as early in the response process as possible.

(6) A listing of all local, state and federal permits, licenses and approvals required to construct and implement the remedial or interim action.

(7) A brief description of the public health and environmental laws and standards applicable to the contamination and the interim or remedial action being implemented, including the physical location where the environmental standards shall be complied with for each medium of concern.

(8) A preliminary discussion of the types of, frequency of and schedule for monitoring of the remedial or interim action. This discussion shall address any water, soil, soil gas, air or other monitoring required for each component of the remedial or interim action.

(9) A preliminary discussion of planned operation and maintenance provisions.

Note: An operation and maintenance plan prepared in accordance with s. NR 724.13(2) will satisfy the requirements of s. NR 724.09(8) and (9), if submitted with the design report. In this case, the operation and maintenance plan should provide a complete, rather than a preliminary, discussion of the topics described in s. NR 724.09(8) and (9).

(10) A proposed schedule for implementation of the remedial or interim action, which identifies timing for initiation and completion of all tasks. The proposed dates for completion of the remedial or interim action and major milestones shall be specified. The schedule shall include deadlines for all reports, plans and submittals required by the department.

(11) Discussion of any other relevant technical factors.

NR 724.11 DESIGN PLANS AND SPECIFICATIONS. Unless otherwise directed by the department, responsible parties shall submit to the department design plans and specifications for each remedial action and any of the interim actions specified in s. NR 724.02(1). Plans and specifications shall:

(1) Be consistent with the concepts presented in the design report prepared under s. NR 724.09.

(2) Provide a general correlation between drawings and technical specifications.

(3) Include technical specifications and requirements necessary for all the components of the remedial or interim action.

(4) Include detailed drawings of the proposed design, including general component arrangements, equipment layout, process flow diagram, piping and instrumentation diagrams, cross sections, sampling locations and instrumentation locations.

(5) Show sufficient detail for construction, according to customary industrial and professional standards.

(6) Unless otherwise directed by the department, include legible visual aids, including maps, plan sheets, drawings, isometrics, cross sections and aerial photographs, which:

(a) Are no larger than 24 inches by 36 inches and no smaller than 8 1/2 inches by 11 inches.

(b) Are of appropriate scale to show all required details in sufficient clarity.

(c) Are numbered, titled, have a legend of all symbols used, contain horizontal and vertical scales where applicable, and specify drafting or origination dates and current drawing revision or issue status.

(d) Use uniform scales.

(e) Contain a north arrow, where appropriate.

(f) Use national geodetic survey data as the basis for all elevations.

(g) Show dimensions for location and placement of features or units and elevations that are based on permanent, retrievable surveying control monuments or stations.

(h) Additionally, for solid or hazardous waste disposal facilities or, when directed by the department, for other land-based features being constructed at the site or facility as part of the response action:

1. Display a survey grid based on monuments established in the field which are referenced to state plane coordinates.

2. Show the survey grid location and reference major plan sheets on all cross sections.

Note: Examples of land-based features include covers, waste or soil piles, soil treatment piles, liners, landfills and features created by earth moving and regrading.

3. Include a reduced plan-view map on all sheets with cross sections indicating the location of the cross section.

(7) Include descriptions, specifications and performance criteria necessary for procurement, construction and start up of all features and units, including key components and all instrumentation. Performance curves or criteria published by equipment suppliers or manufacturers may be utilized if they provide sufficient information.

NR 724.13 OPERATION AND MAINTENANCE. (1) GENERAL. (a) Unless otherwise directed by the department, responsible parties shall conduct all necessary operation and maintenance activities in accordance with this section and in compliance with all applicable state or federal public health and environmental laws, whichever are more stringent, until all applicable public health and environmental laws are complied with as required in chs. NR 700 to 726.

(b) Unless otherwise directed by the department, responsible parties shall operate and maintain any final covers, liners, physical hydraulic containment systems, leachate collection systems and gas collection, extraction and management systems at sites or facilities for which they are responsible, for at least 30 years.

(2) OPERATION AND MAINTENANCE PLAN. Unless otherwise directed by the department, responsible parties shall submit to the department an operation and maintenance plan when on-site maintenance activities are necessary to implement, monitor or ensure the effectiveness of a remedial or interim action. The plan shall outline all operation, monitoring and maintenance activities, from design through case closure under ch. NR 726, including all of the following information:

(a) The information specified under s. NR 724.05(2)(e).

(b) A description of normal operation and maintenance, including a schedule showing the frequency of each operation and maintenance task.

(c) A contingency plan for any anticipated or potential operation and maintenance problems, including a description of techniques or activities to be conducted by the responsible parties to resolve operation and maintenance problems.

(d) A description of routine monitoring and analysis, including:

1. Long-term monitoring required under s. NR 724.17;
2. Laboratory or field tests, test methods and sampling methods; and
3. A schedule of monitoring frequency and dates.

(e) A description of any site-specific or facility-specific record-keeping and reporting requirements to document operation and maintenance activities, including:

1. Mechanisms for reporting system failures, discharges of hazardous substances, environmental pollution and other emergencies; and

2. Reports to be submitted to the department, including the results of system and environmental monitoring and the results of the monitoring well inspections meeting the requirements of s. NR 716.13(7).

(3) PROGRESS REPORTS. Unless otherwise directed by the department, for sites or facilities classified as complex under s. NR 700.09(2) and for sites or facilities where a responsible party chooses to proceed with the complex site process, responsible parties shall submit quarterly progress reports to the department in accordance with this subsection. Progress reports shall be sequentially numbered, starting with the first report which is due no later than 3 months after the remediation system begins operation, and shall include all of the following:

(a) A brief discussion of the progress of the remediation system, including:

1. As applicable to the site or facility, total contaminant extraction and destruction to date in pounds of contaminant removed;

2. A discussion of any system operational problems, periods of shutdown, equipment malfunctions and any other potential problems;

3. An overall evaluation of the effectiveness of the system; and

4. Recommendations for future activities, if appropriate.

(b) A site map that indicates the location of pertinent equipment and sampling points at the site or facility.

(c) Sufficient tables, graphs and figures to efficiently and concisely summarize and portray relevant data and pertinent field measurements.

(d) Laboratory reports and chain-of-custody for any laboratory data, unless otherwise directed by the department.

(e) Any other pertinent information or data.

(4) PLAN REVISIONS. When warranted by changes in the design, operation or maintenance of the interim or remedial action, or when requested by the department, responsible parties shall revise the appropriate section of the operation and maintenance plan. Plan revisions shall be submitted to the department and shall:

1. Include the information required in s. NR 724.05(2)(e).

2. Be numbered with a revision number.

3. Document any changes in the time of anticipated case closure and any conditions the department may place on case closure under ch. NR 726.

4. Document any changes in the design, operation, maintenance or monitoring of the interim or remedial action.

NR 724.15 DOCUMENTATION OF CONSTRUCTION AND COMPLETION. (1) Unless otherwise directed by the department, responsible parties shall submit to the department a construction documentation or as-built report within 60 days after the date that construction of a remedial action or any interim action specified in s. NR 724.02(1) is completed or determined to be essentially complete by the department.

(2) The report shall document that the completed final remedial or interim action meets or exceeds all design criteria and the plans and specifications developed in accordance with all of the requirements of this chapter.

(3) Unless otherwise directed by the department, the construction documentation report shall include all of the following information:

(a) The information specified under s. NR 724.05(2)(e).

(b) As-built maps, plan sheets, drawings, isometric drawings and cross sections.

(c) A synopsis of the remedial or interim action and a certification that the design and construction was carried out in accordance with the plans and specifications.

(d) An explanation of any minor changes to the plans and why these were necessary for the project.

(e) Results of all pilot and field tests or studies and site monitoring conducted during construction.

(f) A brief description of the public health and environmental laws applicable to the contamination and the interim or remedial action selected, including the physical location where the environmental laws shall be complied with for all media of concern.

(g) The information required in ch. NR 516 for documenting the construction at the site or facility of any final covers, liners, leachate collection systems and gas collection, extraction and management systems.

(h) A revised operations and maintenance plan in accordance with s. NR 724.13(4), unless the cover letter indicates that there are no revisions to the operations and maintenance plan.

NR 724.17 LONG-TERM MONITORING. (1) GENERAL. Responsible parties shall conduct all necessary and appropriate long-term monitoring at a site or facility in accordance with all of the requirements of this section and any other applicable public health and environmental laws.

(2) LONG-TERM MONITORING PLAN. Unless otherwise directed by the department, the responsible parties shall submit a long-term monitoring plan to the department that specifies:

(a) The parameters to be monitored;

(b) The sampling and analytical methods to be used, consistent with the sampling and analysis requirements in s. NR 716.13;

(c) The interval at which monitoring is to be performed; and

(d) The public health and environmental laws, including standards, to be complied with.

(3) LONG-TERM MONITORING RESULTS. (a) Unless otherwise directed by the department, responsible parties shall submit a written monitoring results report to the department after any sampling. The report shall include all of the following information:

1. The information specified under s. NR 724.05(2)(e).

2. Sampling results on forms provided by the department or in an alternate format approved in advance by the department. The department recommends that groundwater monitoring results be submitted to the department in an electronic (i.e., computer disk) format. However, hard copy (i.e., paper) forms may be used for the submittal of groundwater monitoring results.

Note: Hard copy forms may be obtained from any district office of the department, or by writing the Department of Natural Resources, Bureau of Solid and Hazardous Waste Management, P.O. Box 7921, Madison, WI 53707.

3. Monitoring results in tabular and graph form, including the current monitoring results and all previous results, so as to provide a concise summary of the monitoring program.

4. Laboratory analytical reports and sample chain-of-custody forms, unless otherwise directed by the department.

5. Identification of any specific environmental standards that have been attained or exceeded and an indication on a site or facility map of the location where the standards have been attained or exceeded.

6. A preliminary analysis of the cause and significance of any concentrations that attain or exceed specific environmental standards and any increases in concentrations of substances that previously attained or exceeded specific environmental standards, including the factors specified in s. NR 140.24(1)(c)1. to 9. for groundwater.

(b) Responsible parties shall submit the monitoring results report to the department within 60 days of the date any sampling is completed, except as provided in par. (c).

(c) Monitoring results from private and public wells shall be submitted to the department in accordance with s. NR 716.13(9).

Note: Section 144.76(2)(a), Stats., requires that the department be notified immediately of any hazardous substance discharge. The immediate notification requirements of s. NR 158.05 shall be followed by the responsible parties, unless the discharge is from an underground storage tank (UST). Where an UST discharge is discovered, responsible parties shall immediately follow the notification requirements in s. NR 705.05.

(4) DEPARTMENT REVIEW. (a) The department shall review the results of long-term monitoring every 5 years, if requested to do so by the responsible parties, to evaluate the effectiveness of the remedial action in achieving the environmental and public health laws.

(b) The department may review long-term monitoring results at other times at its discretion.

(c) The department may require additional remedial action, pursuant to s. 144.76, Stats., or a contract under s. 144.442, Stats., based on the evaluation of monitoring results.

NR 724.19 APPLICATION OF NEW SOIL OR GROUNDWATER QUALITY STANDARDS. (1)

If, after a remedial action selected in accordance with the requirements of ch. NR 722 is implemented, the soil cleanup standards in ch. NR 720 or the groundwater quality standards in ch. NR 140 are modified by the department to be more stringent, or if soil or groundwater quality standards are promulgated for additional substances, the department shall require responsible parties to comply with the new or modified soil or groundwater quality standards if the department determines that, for a specific site or facility, compliance with the more stringent standards is necessary to ensure that the interim action or remedial action will be protective of public health, safety and welfare and the environment.

(2) If, after a remedial action selected in accordance with ch. NR 722 is implemented, the soil cleanup standards in ch. NR 720 or the groundwater quality standards in ch. NR 140 are modified by the department to be less stringent, the department shall approve of case closure if requested by responsible parties once the new, less stringent standards are achieved, if the

department determines that the new, less stringent standards will be protective of public health, safety and welfare and the environment at a specific site or facility that is the subject of a case closure request under ch. NR 726.

CHAPTER NR 726

CASE CLOSURE

NR 726.01 PURPOSE. The purpose of this chapter is to specify the minimum requirements and conditions that shall be met before the department may determine that a case related to a specific site or facility may be closed. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 159.03(1)(a) and 227.11(2), Stats.

NR 726.02 APPLICABILITY. (1) This chapter applies to the closure of all cases where response action, other than immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under s. 144.442 or 144.76, Stats., regardless of whether there is direct involvement or oversight by the department, except that this chapter does not apply where the department determines under ch. NR 158, 705 or 708 that no further action is necessary.

(2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter applies to the proposed closure of solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11).

(3) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where there are overlapping restrictions or requirements, the more restrictive requirements shall control. The department shall, after receipt of a request from responsible parties, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under s. 144.442 or 144.76, Stats., may also be subject to regulation under other statutes, including the

solid waste statutes in ss. 144.43 to 144.441 and 144.443 to 144.47, Stats., or the hazardous waste management act, ss. 144.60 to 144.74, Stats., and the administrative rules adopted pursuant to those statutes. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

NR 726.03 DEFINITIONS. In this chapter:

(1) "Case closure" means a determination by the department, based on information available at the time of the department's review, that no further action is necessary.

(2) "Responsible parties" means:

(a) Persons who are liable for hazardous substance discharges or environmental pollution under s. 144.442 or 144.76, Stats; and

(b) Owners and operators of solid waste facilities that are subject to regulation under ch. NR 508.

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

(2) A request for case closure shall be in writing accompanied by a report demonstrating that the applicable public health and environmental laws, including chs. NR 700 to 724 where applicable, have been complied with. The department may require that the case closure report be summarized in a format supplied by the department.

(3) In order to demonstrate that the applicable public health and environmental laws have been complied with, the person who is requesting case closure shall provide the department with all of the following information:

(a) For groundwater:

1. Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the in-field condition requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24(1)(b), or both.

2. A description of the interim and remedial actions taken at the site or facility.

3. Where the department has required groundwater quality sampling to be conducted, results from 4 successive quarterly rounds of sampling demonstrating compliance with the applicable requirements of ch. NR 140. The samples shall be taken from monitoring wells constructed in accordance with ch. NR 141. The department may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

(b) For soil:

1. Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the in-field condition requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24(1)(b), or both.

2. A description of the interim and remedial actions taken at the site or facility.

3. A demonstration that the remedial action taken, and any interim action that was taken that constituted the final response action for soil contamination, satisfies the requirements of chs. NR 720 and 722, where applicable.

(c) For sediments:

1. Documentation showing that the site investigation requirements in ch. NR 716 have been met.

2. A description of the interim and remedial actions taken at the site or facility.

3. Sampling data demonstrating that the remedial action selected in accordance with ch. NR 722 has restored the environment to the extent practicable and minimized the harmful effects of the hazardous substances on the air, lands and waters of the state.

(d) Any other information that the department specifically requests.

(4) The department may not close a case under this chapter if, at any time in the future, the remaining level of contamination is likely to:

(a) Pose a threat to public health, safety or welfare or the environment.

(b) Cause a violation of ch. NR 140 groundwater quality enforcement standards at any applicable point of standards application, except where the department has granted an exemption under s. NR 140.28 for a specific hazardous substance.

(c) Cause a violation of surface water quality standards in chs. NR 102 to 106.

(d) Cause a violation of air quality standards contained in chs. NR 400 to 499 to be attained or exceeded.

(5) Within 30 days after receipt of a request for case closure under s. NR 726.05, the department shall either close the case under sub. (6) or acknowledge in writing the request for case closure and provide an estimated date by which the department intends to determine whether the case can be closed.

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

(7)(a) If the department approves the request for case closure, the department shall mail written notice of the approval to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under to s. NR 714.07(4).

(b) If the department determines that the applicable public health and environmental laws have not been complied with, the department shall mail written notice to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.07(4). The notice shall indicate what conditions must be met in order for the case to receive further consideration by the department for closure.

(c) If the department determines that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with, the department shall mail written notice to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.07(4). The notice shall indicate what additional information the department needs in order to determine whether the case can be closed.

(8) The department may, as a condition of case closure, require one or more of the following:

(a) That the property owner record a deed restriction for the site or facility at the office of the register of deeds for the county in which the property is located, specifying the legal description of the property, the location of residual contamination on the property, and the existence of on-site engineering controls, if any, in order to prevent exposures to contamination, where a restriction, such as a limitation on land use, is necessary to protect public health, safety or welfare or the environment.

(b) That the property owner record an affidavit at the office of the register of deeds for the county in which the property is located which specifies the legal description of the property and the location of residual contamination on the property, and gives notice to any prospective purchaser of residual contamination.

Note: The restrictions imposed on a property by a deed restriction required under s. NR 726.05(8)(a) may be modified with the approval of the department if circumstances change. In this case, an affidavit may be recorded at the register of deeds for the county in which the property is

located to update or modify a restriction required under s. NR 726.05(8)(a) or an affidavit required under s. NR 726.05(8)(b).

(c) That all monitoring wells and boreholes installed during any response action be abandoned and documented as abandoned in accordance with s. NR 141.25.

(d) That all wastes generated during the response action be treated or disposed of in accordance with applicable state and federal laws.

(e) Any other conditions necessary to protect public health, safety or welfare or the environment.

Note: For leaking underground storage tank cases, 40 CFR 280.67 requires the department to give public notice, by means designed to reach those members of the public directly affected by the release, if implementation of an approved corrective action plan does not comply with the public health and environmental laws applicable to the selected remedial action and the department is considering case closure. See s. NR 714.05(2)(d) for further reference.

(9) Responsible parties shall comply with the following requirements when a site or facility's pathway-specific numeric standard based on direct contact with soil is selected using an industrial land use classification in accordance with s. NR 720.11:

(a) Responsible parties shall ensure that a deed restriction is recorded which meets the requirements of par. (c) at the register of deeds's office in the county where the property is located.

(b) Responsible parties shall submit to the department a certified copy of the deed restriction as part of the report required under s. NR 726.05(2).

(c) Deed restrictions required under this subsection shall include all of the following:

1. The signature of the property owner.
2. The property's legal description.

3. A statement that the use of the property shall be restricted to industrial uses unless soil cleanup standards applicable to non-industrial sites or facilities are met as determined by the department.

(d) Responsible parties shall comply with all applicable requirements of this subsection when an interim action, but no subsequent remedial action, is taken at the site or facility to address soil contamination.

NR 726.07 SUBMITTALS FOR CASE CLOSURE AT SIMPLE SITES. (1) For sites or facilities classified as simple under s. NR 700.09(1) and for which the responsible party has not chosen to proceed with the complex site process under s. NR 700.11(2), the responsible party shall submit a final report of the response action taken at the site or facility which includes the information required by chs. NR 700 to 724, as applicable, and the information specified in s. NR 726.05(3) and, if applicable, s. NR 726.05(8). The final report shall be accompanied by a letter of compliance documenting that the response action taken complies with the requirements of chs. NR 700 to 726, as applicable, and all other applicable environmental laws, so that no further action is necessary for the site or facility.

(2) The department shall provide written acknowledgement of receipt of a letter of compliance and final report within 30 days after receipt and shall retain these documents in public files for a minimum of 5 years.

NR 726.09 REOPENING CLOSED CASES. (1) The department may require additional response actions, including monitoring, for any case which has previously been closed by the department, if information regarding site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety or welfare or the environment.

(2) If additional response action is required for a previously closed case, the department:

(a) Shall indicate in writing to the responsible parties that additional response action is needed at the site or facility and provide the responsible parties with information regarding the nature of the problem and category of response action that is needed.

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

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on July 21, 1994 and January 26, 1995.

The rule 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 2/16/95

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E Meyer
George E. Meyer, Secretary

(SEAL)

