

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: RR-14-23

Relating to: Revisions to chs. NR 700, 708, 714, 722, 724, 725, 726, 727, and 749 related to definitions, notifications, fees, agreements, reports, and procedures for interim action and remedial action continuing obligations for environmental contamination

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

2. Detailed description of the objective of the proposed rule:

Chapters NR 700 to 799, Wis. Adm. Code, establish standards and procedures for the identification, investigation, and cleanup of hazardous substance discharges and environmental pollution under chs. 289 and 292, Wis. Stats. Several administrative code chapters address the limitations and requirements that the Department of Natural Resources (department) may impose at contaminated properties under s. 292.12, Wis. Stats., to protect public health and the environment. These requirements, called “continuing obligations,” continue to apply after a property title is transferred. 2005 Wis. Act 418 added continuing obligations language to ch. 292, Wis. Stats., as a replacement for the institutional controls previously used in Wisconsin. In 2013, the department promulgated a rule to implement these changes in code.

2015 Wis. Act 204 (Act 204) revised ch. 292, Wis. Stats., in several ways affecting continuing obligations. Act 204 authorized the department to require continuing obligations during interim action approvals. It created an option to transfer continuing obligation responsibilities via legal agreement, and it required certain continuing obligation information to be entered into the department’s database, the Bureau of Remediation and Redevelopment Tracking System (BRRTS).

The proposed rule would revise administrative code to implement changes made to statute by Act 204 and to provide sufficient procedures and requirements for continuing obligations imposed prior to case closure under ch. NR 726, Wis. Adm. Code, specifically at the time of interim or remedial action approval.

The rule would affect chs. NR 700, 708, 714, 722, 724, 725, 726, 727, and 749, Wis. Adm. Code, and relates to definitions, notifications, fees, agreements, reports, and procedures for continuing obligations that are imposed by the department at the time of approving an interim action or remedial action. The rule would implement sections of Act 204 pertaining to continuing obligations. The rule would clarify continuing obligation requirements during interim action and remedial action approvals, including clarification of procedures, timelines, required reports, department report review and response, database entry, fees, and continuing obligation compliance and modifications. The rule would also clarify requirements for notifying affected parties of continuing obligations imposed prior to closure. These chapters were last revised in 2013 or earlier.

Rule revisions related to continuing obligations for interim and remedial actions may include:

- Incorporation of procedures and timelines for reports that are submitted during or after interim actions and remedial actions;
- Procedures and clarification of when ch. NR 749, Wis. Adm. Code, fees are required for department review of related reports;
- Required database information relating to continuing obligations and clarification of when ch. NR 749, Wis. Adm. Code, recording fees relating to continuing obligations are required;
- Requirements relating to responsibility for and compliance with continuing obligations;
- Requirements and procedures relating to the modification of continuing obligations, including database modifications or removals and clarification of when ch. NR 749, Wis. Adm. Code, fees are required; and
- Required notifications to affected landowners and occupants regarding continuing obligations and clarification of public notification and participation requirements.

Rule revisions related to continuing obligations at all stages of site cleanup, including interim actions, remedial actions, and case closure, may include:

- Updates to and relocation of the term “continuing obligations” and other related terms;
- Procedures and database requirements for transferring continuing obligation responsibilities through legal agreement;
- Requirements and procedures for long-term management of continuing obligations; and
- Requirements and procedures for continuing obligation database listings and modifications, including clarification of when ch. NR 749 fees are required.

Additional rule changes or clarifications may be pursued which are reasonably related to those discussed here, including related administrative codes.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Many of the proposed rule revisions reflect existing policies and practices for continuing obligations. The proposed rule would provide additional clarification, including procedures for continuing obligations imposed prior to case closure, and would implement recent statutory updates. The proposed rule would provide clear, streamlined procedures, and clarify regulatory expectations with the goal of creating efficiencies for regulated parties. The proposed rule would update chapters which have not been updated since 2013 or earlier.

The department evaluated the option of not pursuing rule revisions at this time. While this option allows for continued regulation of the investigation and remediation of contaminated sites, it limits the department’s ability to create more efficient regulatory processes. Without this rule, the department would continue to evaluate and communicate continuing obligation requirements at the interim and remedial action stages on a more time consuming, site-specific basis.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 292.31(2), Wis. Stats., requires the department to promulgate rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution. Section 292.12(2), Wis. Stats., authorizes the department to require continuing obligations during interim and remedial action approvals. Section 292.12(2)(c), Wis. Stats., requires the department to promulgate rules to identify limitations or other conditions related to property, to ensure that conditions at the site remain protective of public health, safety, and welfare and the environment, and, as applicable, to promote economic development. Section 227.11(2), Wis. Stats., also confers rulemaking authority to the department to promulgate rules that are necessary to perpetuate the purpose of ch. 292, Wis. Stats.

The proposed rule includes revisions to chs. NR 700, 708, 714, 724, 725, 726, 727, and 749, Wis. Adm. Code, which were promulgated under these statutory authorities.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates that approximately 2,000 hours of staff time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule :

The proposed rule will primarily affect persons that are performing investigation and cleanup of contaminated sites, and those affected by contaminated sites, in Wisconsin. These persons include “responsible parties” that are liable for the cleanup of a hazardous substance discharge or environmental pollution under statute, as well as voluntary or exempt persons conducting cleanup under state law and affected off-site parties. Proposed changes, including procedures and reports, database requirements, and clarifications regarding ch. NR 749, Wis. Adm. Code, fees may affect landowners and persons cleaning up contamination. The proposed rule will not increase fee amounts, rather, it will clarify when the existing ch. NR 749, Wis. Adm. Code, fees are required. Environmental consultants and businesses that assist with cleanup may be indirectly impacted by changes to procedures and report requirements. All state residents and businesses may benefit from human health and environmental protections provided by improved continuing obligations and notification requirements.

As of June 30, 2023, there were 2,620 sites with active cleanups in Wisconsin. During 2022, continuing obligations were applied at 99 sites statewide.

Residents and businesses are affected by continuing obligation regulations and the cleanup of hazardous substance discharges and environmental pollution, because they rely on state cleanup laws to provide protection from risks to public health and the environment.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

Many of the proposed rule revisions are clarifications or updates that are specific to Wisconsin’s system of imposing continuing obligations and which are comparable to federal approaches; available comparisons are provided below.

The U.S. Environmental Protection Agency (U.S. EPA) uses “institutional controls,” which are administrative and legal controls that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedy. Like Wisconsin’s continuing obligations, federal institutional controls are used before cleanup is complete, and after cleanup is complete at sites where residual contamination remains at a level that does not allow for unlimited use of the property and to limit exposure after cleanup. Unlike Wisconsin, the U.S. EPA uses a broad suite of institutional controls, such as proprietary land controls (*e.g.*, restrictive covenants) and local government land use controls. Unlike Wisconsin, the U.S. EPA may incorporate institutional controls into administrative orders and permits.

The U.S. EPA implements institutional controls under federal law, whereas the department implements continuing obligations under state law. While these systems have similar goals, the different methods of implementation do not allow for comparisons at the level of state procedures, reports, database requirements, and notification requirements.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The proposed rule is expected to result in both economic benefits and costs due to changes to requirements. Overall, the rule is expected to have a moderate cost impact (\$50,000 to \$5 million) on responsible parties and others conducting cleanup of contaminated sites, as well as the environmental consulting industry, including costs relating to actions tied to compliance with procedures, timelines, reporting, and modifications to continuing obligations, as well as fees.

Portions of the rule may have a positive economic impact on responsible parties and environmental consulting firms due to increased clarity in procedures or other efficiencies. The benefits will likely vary for each site based on size, complexity, and contaminants. Increased costs are not expected to be significant and may be offset by benefits realized from other changes within the proposed rule. The benefits and impacts will be evaluated in more detail during the economic impact analysis based on the requirements in the draft rule. These impacts will be evaluated based on site size, complexity, and contaminants.

An unknown number of responsible parties may meet the definition of a small business that would be subject to changes in plan review and licensing fees. It is projected that the economic impact of this rule would be minimal or moderate for small businesses. Additional information will be collected during the economic impact solicitation period.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding one public hearing in the month of March 2025. The hearing will be held in Madison, WI.

The department will hold the hearing in-person as well as virtually to allow for as many people to attend as possible. Comments may be provided by mail, phone and email as well as in-person.

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