

Chapter NR 725

NOTIFICATION REQUIREMENTS FOR RESIDUAL CONTAMINATION AND CONTINUING OBLIGATIONS

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NR 725.01 Purpose. The purpose of this chapter is to specify the minimum notification requirements that shall be met before the agency with administrative authority may determine that a specific site or facility may be closed under ch. NR 726 with a continuing obligation or residual contamination, or to approve a remedial action plan which includes a continuing obligation, and to identify which sites shall be included on a department database. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13.

NR 725.02 Applicability. (1) This chapter applies to persons seeking closure for a case that includes a property with residual contamination or where a continuing obligation may be applied on a property that is not owned by that person, regardless of whether there is direct involvement or oversight by the department. This chapter also applies to local governmental units or economic development corporations that are required to take action under ch. NR 708 or persons receiving approval of a remedial action plan under ch. NR 722, when the department determines that notification is necessary.

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

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NR 725.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

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NR 725.05 Situations where notification is required. (1) PERSONS REQUIRING NOTIFICATION. Written notification shall be provided by the responsible party, or other party required to provide notification by the department, to the following parties if the property meets any of the criteria in sub. (2):

(a) The owner of each property within or partially within the contamination site or facility boundaries, other than properties owned by the responsible party.

Note: Notification of property owners includes notification of the source property owner when the responsible party conducting the investigation and cleanup does not own the source property.

(b) Occupants of those properties listed in par. (a), as appropriate.

Note: Notification of occupants may be done by providing copies of the notification to occupants or to the property owner to distribute, by posting the notification at the property, or by other means, as long as written notification is included.

(c) The clerk of the county, and town, village, or city where a public street or highway right-of-way is located, and to the municipal department or state agency that is responsible for maintaining the public street or highway.

(d) The railroad that maintains the railroad right-of-way.

Note: In cases where an owner of record cannot be located, responsible parties are encouraged to work with the agency project manager regarding notification.

(e) The owner of each property where a monitoring well was constructed, but where the monitoring well was unable to be located for abandonment, or where continued monitoring will be required.

Note: Monitoring wells need to be located before a closure request is prepared, so that all necessary notifications are completed in a timely manner.

Note: In some cases, continued monitoring of a well may be required of another responsible party, in which case responsibility for the abandonment of the well will be a condition for closure for that responsible party.

(2) SITUATIONS REQUIRING NOTIFICATION. Written notification shall be provided in the following situations:

(a) Groundwater contamination which attains or exceeds ch. NR 140 enforcement standards remains after completion of the remedial action.

(b) Soil contamination which attains or exceeds ch. NR 720 residual contaminant levels remains after completion of the remedial action.

(c) A monitoring well will not be abandoned upon completion of the remedial action because of any of the following:

1. The well was unable to be located.

2. A property owner requested the responsible party not to abandon the well, to allow for continued monitoring by the property owner and the agency with administrative authority has approved the request.

3. Continued monitoring of the well is required by the agency with administrative authority.

(d) Where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cap, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, which would pose a threat to groundwater if the building, cover or containment structure were removed.

(e) A building, soil cover, cover or engineered containment structure must be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720.

(f) A building or other structural impediment at a site or facility has prevented either the completion of an investigation to determine the degree and extent of contamination, or the completion of the remedial action.

(g) A property has been classified as industrial under ch. NR 720 and soil contamination on the property has only been remediated to the industrial residual contaminant levels.

(h) Sub-slab vapor risk screening levels have been exceeded following source removal and remedial actions taken to address contamination.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owners when sub-slab vapor risk screening levels are exceeded, and the operation and maintenance of a vapor mitigation system is necessary in order to limit or prevent vapor intrusion.

(i) Compounds of concern will continue to be used at the site after closure.

Note: Notification is provided to the current owner of the source property when that person is not the responsible party conducting the cleanup, because the compound of concern is still in use, complete investigation of the vapor pathway may be impracticable, and cleanup may be limited in effectiveness as well.

(j) Site-specific hydrogeology controls the vapor exposure pathway into a building and a vapor mitigation system designed for the site must be operated and maintained in order to limit or prevent vapor intrusion.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where a vapor mitigation system is necessary, and a dewatering system is necessary to enable the vapor mitigation system to operate effectively, due to the hydrogeology.

(k) Vapor inhalation exposure assumptions for a non-residential setting will be applied for closure.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where residential vapor action levels are exceeded, including at commercial or industrial use properties.

(L) Contamination in soil or groundwater from volatile compounds remains after completion of the remedial action, in an area that does not have buildings subject to human occupancy at the time of closure.

Note: Notification is provided to the current property owner when that person is not the responsible party conducting the cleanup, and to any other property owner where vapors may pose a health issue if buildings are to be constructed in the future, or if other land use changes or actions could result in a completed vapor pathway. Chapter NR 726 specifies closure conditions regarding the option of using vapor control technologies to limit or prevent future exposures.

Note: The department may also require notification for site-specific reasons upon review of a closure request, in accordance with s. NR 726.13 or upon review of a remedial action plan in accordance with s. NR 722.15 (2) (e). Responsible parties are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

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NR 725.07 General notification requirements. (1) NOTIFICATION FORM. The responsible party, or other party required to provide notification by the department, shall provide the notification of contamination and continuing obligations on a form provided by the department, that contains the standard provisions in the form. All notifications shall also include the provisions about the applicable continuing obligations on the affected properties or rights-of-way. The closure-related paragraphs shall be altered to fit the situation, as applicable.

Note: The notification form, "Notification of Continuing Obligations and Residual Contamination," 4400-286, may be found at <http://dnr.wi.gov/topic/Brownfields/Pubs.html>.

Note: For local governmental units or economic development corporations that

are directed to take an action, or for sites receiving a remedial action plan approval, the language regarding closure needs to be changed to reflect the applicable situation.

(2) NOTIFICATION METHOD. Unless otherwise directed by the department, notifications shall be sent via certified mail, return receipt requested, or priority mail with signature confirmation. If the notifications are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the owner of the property or other applicable party may refuse to sign for the notification.

Note: The department will not conduct a closure review until at least 30 days after the date on which the notification was received, in accordance with s. NR 726.13. Parties receiving the notification may notify the department within the 30 days to request additional time to finalize an agreement on continuing obligations, if needed.

(3) NOTIFICATION OF THE DEPARTMENT OF TRANSPORTATION. Notifications for department of transportation rights-of-way shall be sent either electronically, or via certified mail, return receipt requested, or standard mail with use of a complete mailing address.

Note: Send notifications for DOT rights-of-way electronically to: DOTHazmatUnit@dot.wi.gov, or by mail to: Wis. DOT Bureau of Equity and Environmental Services, 4802 Sheboygan Ave. Room 451, PO Box 7965, Madison, WI 53707-7965. Include "Notification of Contamination" in the subject line of the e-mail. The Department of Transportation (DOT) sends a receipt electronically (e-mail).

(4) FACTSHEETS. (a) *Groundwater.* A department fact sheet that describes the use of natural attenuation as a final remedy, shall be enclosed with all notifications that are sent to parties listed under s. NR 725.05 (1) with ch. NR 140 groundwater standard exceedances, where natural attenuation is to be used as a final remedy.

(b) *Liability and responsibilities of property owners.* A department fact sheet that describes the responsibilities and limits of liability of a property owner under ss. 292.12 and 292.13, Stats., shall be enclosed with all notifications that are sent to owners of properties, sites or facilities meeting one or more of the conditions of s. NR 725.05 (2), except for any property owned by the responsible party.

Note: Copies of department fact sheets may be obtained by accessing the following web site: <http://dnr.wi.gov/topic/Brownfields/Pubs.html> or from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P. O. Box 7921, Madison, Wisconsin 53707. The referenced fact sheets are RR 671 — "What Landowners Should Know: Information About Using Natural Attenuation To Clean Up Contaminated Groundwater", RR 589 — "When Contamination Crosses a Property Line — Rights and Responsibilities of Property Owners", and RR 892 — "Vapor Intrusion; what to expect if vapor intrusion from soil and groundwater contamination exists on my property."

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