

Chapter NR 726

CASE CLOSURE

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Note: Chapter NR 726 as it existed on April 30, 1995 was repealed and a new chapter NR 726 was created effective May 1, 1995. Chapter NR 726 was repealed and recreated, Register October 2013 No. 694, eff. 11–1–13.

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 discharge of hazardous substances or environmental pollution at a specific site or facility may be closed. 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 726.02 Applicability. (1) This chapter applies to the closure of all cases where a response action, other than an immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under ch. 292, 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 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 all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to ch. NR 508.

(b) Sites or facilities where remedial action has been taken by a person who is seeking a liability exemption under s. 292.15, Stats.

(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 and the appropriate fee under ch. NR 749 from the 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 ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, 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.

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NR 726.03 Definitions. The definitions in s. NR 700.03 apply to this chapter.

Note: “Agency with administrative authority” or “agency” is used in several sections of ch. NR 726 to distinguish between the actions for which the department is responsible, in contrast to those actions where the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to review and approve closure requests, ensure that comment periods prior to closure approvals are followed, and to review information on the department database regarding compliance with conditions of closure.

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

NR 726.05 General requirements for case closure. (1) COMPLIANCE. The responsible party or other person requesting closure shall ensure compliance with all applicable federal,

state, and local public health and environmental laws, including chs. NR 140, 141, and 700 to 754, as applicable, prior to requesting case closure.

(2) NOTIFICATION. Where written notification is required under ch. NR 725, the notification requirements shall be satisfied prior to submitting a request for case closure to the agency. When a site-specific condition of closure is required for a site or facility under s. NR 726.13 (1) (c), notification shall be in accordance with the requirements of s. NR 725.07.

(3) FEES. (a) For sites or facilities where the department has administrative authority to oversee the remediation of the site, the case closure fee and, if entry on the department database is required under s. NR 726.07, the fee or fees listed in ch. NR 749 for adding a site to the department database, shall be submitted to the department with each case closure request.

Note: Under s. 292.12 (3) (b), Stats., the department has authority to charge a fee for placement on a department database.

(b) [For sites or facilities contaminated with petroleum products discharged from a petroleum storage tank for which the department of safety and professional services has administrative authority under s. 101.144, Stats., and] Sites or facilities for which department of agriculture, trade and consumer protection has administrative authority under s. 94.73, Stats., that are required by s. NR 726.07 to be entered onto the department database, the fee or fees listed in ch. NR 749 for adding a site to the department database shall be submitted to the department before a case closure request is submitted to the appropriate agency. For these sites or facilities, a case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department’s bureau for remediation and redevelopment tracking system, which is available on the department’s internet site.

Note: The department’s bureau for remediation and redevelopment tracking system can be found on the internet at <http://dnr.wi.gov/topic/Brownfields/rsm.html>.

Note: The language in brackets no longer applies as a result of the repeal of s. 101.144, Stats., by 2013 Wis. Act 20. This provision is subject to future rulemaking.

(4) RESPONSE ACTION GOALS. For sites or facilities considering closure under this chapter, the closure request shall document that the remaining level of contamination is not 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 or the criteria under s. NR 726.05 (6) are met.

(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.

(e) Cause a vapor action level in indoor air to be attained or exceeded.

Note: Vapor action level is defined in s. NR 700.03 (66p) as “the concentration of vapors from volatile compounds is at or above the 1–in–100,000 (1x10⁻⁵) excess lifetime cancer risk or is at or above a hazard index of 1 for non-carcinogens.”

(5) COMPLETENESS. A case closure request shall be complete and meet the documentation requirements of ss. NR 726.09 and 726.11 if applicable.

Note: Incomplete closure requests may be denied. The review fee may be applied to review of the site investigation for grossly incomplete closure requests, on a case-by-case basis. A closure review fee would be required when a complete closure request is then submitted.

(6) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH GROUNDWATER CONTAMINATION. For sites or facilities with groundwater contamination that attains or exceeds ch. NR 140 enforcement standards at the time that case closure is requested, including sites or facilities contaminated with petroleum products discharged from a petroleum storage tank that are eligible for closure under ch. NR 726, the responsible party or other person requesting closure shall submit a case closure request to the agency for the site that documents that all of the following criteria are satisfied, if applicable:

(a) Adequate source control measures have been taken which include all of the following:

1. Whether regulated or registered under ch. ATPC 93 or not, all existing underground storage tanks have been removed, permanently closed or upgraded to prevent new discharges of hazardous substances to the groundwater that would violate ch. NR 140. The same requirement applies to all new and replacement underground storage tanks not regulated under ch. ATPC 93.

Note: The intent of this requirement is to ensure that source control measures are taken which prevent new or continuing releases, regardless of whether or not the tank is regulated under ch. ATPC 93.

2. All new and replacement underground storage tanks regulated under ch. ATPC 93 have been constructed and are being monitored in accordance with ch. ATPC 93.

3. All other existing tanks, pipes, barrels or other containers which may discharge a hazardous substance have been removed, contained or controlled to prevent, to the maximum extent practicable, new discharges of hazardous substances to the groundwater that would violate ch. NR 140.

4. Where applicable, immediate and interim actions have been taken in accordance with ch. NR 708 to protect public health, safety, or welfare or the environment.

5. Free product has been removed in accordance with the criteria in s. NR 708.13.

6. The concentration and mass of a substance and its breakdown products in groundwater have been reduced due to naturally occurring physical, chemical and biological processes as necessary to adequately protect public health and the environment, and prevent groundwater contamination from migrating beyond the boundaries of the property or properties which are required to be entered onto the department database.

(b) Natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time, considering the criteria in s. NR 722.07.

(c) The groundwater plume margin is stable or receding, and after case closure, groundwater contamination attaining or exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property that falls into either one of the following categories:

1. Properties for which a preventive action limit exemption has been granted.

2. Properties that have been identified as having existing groundwater contamination that attains or exceeds ch. NR 140 enforcement standards and that will be included on the department database.

(d) There is no existing or anticipated threat to public health, safety, or welfare or the environment.

(e) Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 141 and 700 to 754, have been complied with.

(7) GENERAL CLOSURE CRITERIA. The following shall be required for case closure at all sites or facilities:

(a) All monitoring wells and boreholes installed during any response action taken for the site or facility shall be abandoned and documented as abandoned in accordance with s. NR 141.25, except

for specific wells that the agency approves of retaining until sampling is no longer required.

(b) For sites or facilities where waste or contaminated media was generated during the response action and was stored or treated on-site, all the waste or contaminated media shall be handled and disposed of in accordance with applicable state and federal laws before a case closure request is submitted or approved.

(c) Groundwater samples used to determine compliance with ch. NR 140 shall be taken from monitoring wells constructed in accordance with ch. NR 141. The agency may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

(8) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH VAPOR CONTAMINATION. A site or facility is not eligible for closure until the following criteria have been met:

(a) The vapor exposure pathway has been investigated in accordance with s. NR 716.11 (5) (g); and

(b) Where vapors were present above the vapor risk screening level:

1. A remedial action has been conducted and reduced the mass and concentration of volatile compounds to the extent practicable; and

Note: Vapor mitigation systems are not considered remedial actions, as they do not reduce the mass or concentrations of the contaminants. Vapor mitigation systems are used to interrupt the vapor migration pathway.

2. The vapor exposure pathway has been interrupted or mitigated.

(9) OTHER. Any other condition for case closure that is necessary to protect public health, safety, or welfare or the environment may be required.

History: CR 12-023: cr. Register October 2013 No. 694, eff. 11-1-13; corrections in (6) (a) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.

NR 726.07 Department database requirements.

(1) All sites or facilities meeting any of the criteria in s. NR 725.05 (2) or 726.13 (1) (c), upon approval of the closure request under ch. NR 726, shall be entered onto the department database. All properties within or partially within the contaminated site or facility boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be included.

(2) The site or facility closure approval letter, and the information required under s. NR 726.11 shall be associated with the site or facility record in the department database.

Note: A continuing obligation can be imposed within a general liability clarification letter for a local governmental unit directed to take an action under s. NR 708.17, in a remedial action plan approval under s. NR 722.15, or in a closure approval under ch. NR 726.

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

NR 726.09 Closure documentation requirements.

(1) CASE CLOSURE REQUEST FORM. A request for case closure shall be submitted on a form supplied by the agency and shall be accompanied by documentation that the criteria in s. NR 726.05 (1) to (8) are satisfied. One paper copy and one electronic copy of the complete closure request shall be submitted to the department, unless otherwise directed by the department. All information submitted shall be legible. Providing illegible information may result in a submittal being considered incomplete until corrected.

Note: Copies of the WDNR case closure request form (form 4400-202) and the associated impacted property notification information form (4400-246) for sites or facilities over which the department has administrative authority may be accessed at: <http://dnr.wi.gov/files/PDF/forms/4400/4400-202.pdf>,

or may be obtained 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.

Note: Electronic copies should be submitted in the Adobe portable document format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at <http://dnr.wi.gov/files/PDF/pubs/rtr/RR690.pdf>.

(2) GENERAL REQUIREMENTS. In order to demonstrate that applicable federal, state and local public health and environmental laws have been complied with, and to provide information on the location and nature of any residual contamination at the site or

facility, the person who is requesting case closure shall submit all of the following information, that is applicable, as attachments to the case closure request, in the format that is specified in this subsection, and in the order that is specified in the form.

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

(b) A description of the interim and remedial actions taken at the site or facility. For sites or facilities where residual soil contamination exceeds ch. NR 720 soil standards at the time that case closure is requested, include 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) Maps and cross sections shall be to scale, and use a graphic scale. The north arrow shall be pointing to the top of the map.

(d) For sites or facilities where soil excavation or active soil remediation occurred:

1. A table of soil analytical results with collection dates identified. Soil analytical data tables shall clearly indicate depth of sample, soil type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation occurred, the soil analytical data tables shall indicate whether the soil data point represents soil that was removed or soil that remains in place.

2. A map that shows the locations of all soil samples collected.

Note: Where a soil performance standard cover is the only action taken, that is not considered active soil remediation. This requirement applies to all sites where soil excavation or active soil remediation occurred, not just those to be included on the department database under s. NR 726.07.

(e) Where the agency has required groundwater quality sampling to be conducted, results from a minimum of 8 successive quarterly rounds of sampling to demonstrate compliance with either the applicable requirements of ch. NR 140 or the requirements of s. NR 726.05 (6), unless otherwise directed or approved by the agency.

Note: Under ch. NR 722, alternate sampling schedules may be proposed, based on site geology, contaminants of concern, remedial action applied and redevelopment plans. The department expects that more monitoring may be necessary at complex sites, or where statistical analysis will be used for data evaluation. Conversely, less post-remediation monitoring may be appropriate for certain sites with significant source removal, readily degradable compounds or other well-established site conditions.

(f) For sites or facilities with sediment contamination, or soil vapor contamination, 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.

(g) Submit to the department documentation that all other closure conditions have been satisfied, within 120 days after the department provides a conditional closure response.

Note: This requirement is meant to cover well abandonment and any other minor condition identified in a conditional closure letter. It does not apply to the continuing obligations specified in the final closure letter. Ch. NR 141 requires the documentation of well abandonment on a form supplied by the department. The well abandonment form, 3300-005, can be accessed at <http://dnr.wi.gov/topic/DrinkingWater/documents/forms/3300005.pdf>.

(h) Where attempts to locate monitoring wells for abandonment are unsuccessful, submit documentation of the efforts made, to the department.

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

(3) NOTIFICATIONS. Responsible parties or other persons requesting closure shall submit a copy of all the notifications required under ch. NR 725 or under s. NR 726.13 (1) (c) with written proof of the date on which the letters were received.

Note: These notifications will be in the case file, but will no longer be included as part of the PDF on the department database. A list of addresses of all affected properties and a cover letter detailing the continuing obligations per property will be included as part of the PDF on the department database.

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

NR 726.11 Department database documentation requirements. (1) GENERAL REQUIREMENTS. Responsible parties or other persons requesting closure for any site or facility meeting the criteria in s. NR 725.05 (2) or as required under s. NR 726.13 (1) (c), shall submit the applicable information in the case closure request. The information shall be in the order specified in the closure request form.

(a) For sites or facilities meeting the criteria of s. NR 726.07 (1), the information required in subs. (2) to (7) shall be submitted, as applicable.

(b) Information shall be submitted in accordance with s. NR 700.11 (3g), unless otherwise directed by the department. Providing illegible information may result in a submittal being considered incomplete until corrected unless otherwise directed by the department.

Note: Under s. NR 700.11 (3g), "one paper copy and one electronic copy of each plan or report shall be submitted to the department, unless otherwise directed by the department. The electronic copy shall be submitted on optical disk media and may not be submitted as electronic mail attachments unless specifically approved in advance by the department. Electronic copy files shall have a minimum resolution of 300 dots per inch, and may not be locked or password protected. The department may request that the electronic copy of sampling results be submitted in a format that can be managed in software. An electronic copy of certain types of voluminous attachments or appendices may be substituted for the paper copy, if specifically approved in advance by the department. All documents shall be digital format versions rather than scanned versions except documents that are only available as scanned versions. Deeds and legal descriptions may be scanned versions. All information submitted shall be legible."

(2) MAINTENANCE PLANS. Responsible parties or other persons requesting closure shall submit a copy of a maintenance plan for any condition listed in s. NR 725.05 (2) (d) to (L) or 726.13 (1) (c), as applicable, or as otherwise required by the department. The maintenance plan shall include the following information:

(a) A location map which shows the location and extent of the structure or feature to be maintained, in relation to other structures or features on the site. The map shall also include the extent and type of residual contamination, and include property boundaries.

(b) A brief description of the type, depth and location of residual contamination.

(c) A description of the maintenance actions required for maximizing effectiveness of the engineered control, feature, or other action for which maintenance is required.

(d) An inspection log, to be maintained on site, or at a location specified in the maintenance plan or approval letter.

(e) A contact name, address, and phone number of the individual or facility who will be conducting the maintenance.

Note: The closure approval letter will specify whether the inspection log is to be submitted to the department and the frequency of submittal, or simply maintained on site or at the location identified in the maintenance plan. The inspection log is reviewed by the department during audits conducted of sites with continuing obligations.

(3) PHOTOGRAPHS. For sites or facilities with a cover or other performance standard, a structural impediment or a vapor mitigation system, include one or more photographs documenting the condition and extent of the feature at the time of the closure request. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.

(4) DEED AND PARCEL INFORMATION. Responsible parties or other persons requesting closure shall submit all of the following items, for each property within or partially within the contaminated site boundaries other than public street or highway rights-of-way or railroad rights-of-way:

(a) A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public street or highway rights-of-way or railroad rights-of-way. Information on residual groundwater or soil contamination that has migrated onto a right-of-way will be found in the documents that are submitted as part of the case closure request for the source property. It is only in the situa-

tion where the source of the contamination is in the right-of-way, that a right-of-way will be listed on the department database as a separate property. In those situations, the maps that are required to be submitted, as an attachment to the case closure request for the site, will show where contaminated groundwater or soil samples were collected and will provide points of reference for locating residual contamination in the right-of-way.

(b) A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

(c) A statement signed by the responsible party or other person requesting closure affirming that he or she believes that legal descriptions for all of the properties within or partially within the contaminated site's or facility's boundaries where inclusion on a department database is required under s. NR 726.07, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency as part of a department database attachment to the case closure request.

(d) A list of addresses of all properties affected by residual contamination or a continuing obligation.

Note: There is a section in the closure request form on which this information is to be entered.

(e) The parcel identification number for each property.

(f) Geographic position data for each property in compliance with the requirements of s. NR 716.15 (5) (d), unless the agency has directed that the responsible party or other person requesting closure does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department database that is available on the internet at <http://dnr.wi.gov/topic/Brownfields/rsm.html>.

(5) MAPS AND CROSS SECTIONS. All the following information shall be included in a department database attachment to the case closure request:

(a) A site location map that outlines all properties within the contaminated site boundaries on a United States Geological Survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. If there is only one parcel, this map may be combined with the map required in par. (b).

(b) A detailed site map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells, and potable wells. This map shall also show the location of all contaminated public street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of contamination exceeding applicable standards.

(c) For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested:

1. A map that shows the location where all soil samples were collected and identifies, with a single contour, the horizontal extent of each area of contiguous residual soil contamination that exceeds residual contaminant levels, as determined under ch. NR 720, within the contaminated site boundaries.

2. A geologic cross section showing the vertical extent of residual soil contamination that exceeds residual contaminant levels as determined under ch. NR 720, if one was required as a part of the site investigation report. If there is groundwater contamination on the site that attains or exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, one geologic cross section may be submitted to show the vertical extent of both soil and groundwater contamination.

(d) For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested:

1. A geologic cross section, if one was required under ch. NR 716, that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any.

2. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map was required under ch. NR 716. An isoconcentration map shall show the areal extent of groundwater contamination attaining or exceeding ch. NR 140 preventive action limits and the areal extent of groundwater contamination attaining or exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. If an isoconcentration map was not required under ch. NR 716, submit a map showing the horizontal extent of contamination exceeding applicable standards based on the most recent data; or where standards have not been promulgated, the horizontal extent of contamination remaining after the remedial action.

3. A groundwater flow map, representative of groundwater movement at the site. If groundwater flow direction varies by more than 20 degrees over the history of water level measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.

(e) For sites or facilities where samples were collected other than soil or groundwater, include a map showing the sampling locations and results, with type of sample and collection date identified.

(6) DATA SUMMARY TABLES. For information submitted for sites or facilities where inclusion on a department database is required under s. NR 726.07, shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department. All the following information shall be included in a department database attachment to the case closure request:

(a) *Soil.* For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that case closure is requested include a table of the analytical results showing results for the most recent samples, for all contaminants found in pre-remedial sampling, with sample collection dates identified.

(b) *Groundwater.* For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested, include:

1. A separate table of only the 8 most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified.

2. A table including, at a minimum, the previous 8 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table.

3. A completed groundwater monitoring well information form.

Note: The Groundwater Monitoring Well Information Form is required in s. NR 716.15. It can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_89.pdf.

(c) *Other.* For sites or facilities where samples other than soil or groundwater were collected, include a table specifying the sample type, sample number or location, sample results, and collection date.

(7) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities where a monitoring well has not been abandoned in accordance with the requirements of ch. NR 141 at the time of case

closure, the following information shall be included in a department database attachment to the case closure request.

(a) A site location map with the surveyed locations identified on the map for those groundwater monitoring wells that have not yet been abandoned;

(b) The well construction report for each monitoring well that needs to be abandoned; and

(c) The deed with legal description for each property on which a monitoring well is located.

Note: This would include wells that have not been located for abandonment, wells that the property owner has requested to keep and not abandon at this time, and those wells required by the agency under s. NR 726.05 (7) (a) for continued monitoring after closure. Proper abandonment is required once the wells are no longer used. The well construction report, form 4400–113A can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_113_1_2.pdf.

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

NR 726.13 Authority and approvals for case closure. (1) CLOSURE APPROVAL. (a) The agency may grant case closure under this section, if all the following conditions are met:

1. The fees required by ch. NR 749 have been paid to the department.

2. It has been documented, in the case closure request that is submitted to the agency in compliance with the requirements of s. NR 726.09, that all applicable public health and environmental laws, including chs. NR 700 to 754, have been complied with, or where ch. NR 140 enforcement standards are the only standards that are attained or exceeded, that the criteria in s. NR 726.05 (6) are satisfied.

3. A complete case closure request is submitted to the agency in accordance with ch. NR 726.

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

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

2. Cause a violation of a ch. NR 140 groundwater quality enforcement standard 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 or the criteria under s. NR 726.05 (6) are met.

3. Cause a violation of surface water quality standards in chs. NR 102 to 106.

4. Cause a violation of air quality standards contained in chs. NR 400 to 499.

5. Cause a vapor action level in indoor air to be attained or exceeded.

Note: Vapor action level is defined in s. NR 700.03 (66p) as “the concentration of vapors from volatile compounds is at or above the 1-in–100,000 (1×10^{-5}) excess lifetime cancer risk or is at or above a hazard index of 1 for non–carcinogens.”

(c) The agency may require any other condition for case closure that is necessary to protect public health, safety, or welfare or the environment. The agency may require a site–specific condition of closure, and notification of any parties affected by that condition, including situations where contamination remains in media other than soil, groundwater, or vapors, or exposure or migration pathways are not otherwise addressed, that make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment.

(d) The agency may not conduct a final closure review until all the following criteria are met:

1. Documentation has been received that all required notifications under ch. NR 725 have been provided.

2. At least 30 days has elapsed since the date of receipt of the notification required under s. NR 725.05 or 726.13 (1) (c), unless all of the affected property owners waive their right to comment within 30 days on the proposed case closure and copies of the waivers are submitted to the agency.

(e) The agency may extend the 30 day period upon request by any party receiving a notification.

Note: In this chapter, the “agency” refers to the “agency with administrative authority,” which is either DNR or DATCP. “Agency” is specified in subsection (1) for actions involving granting closure approval, with or without conditions, and for ensuring comment time periods between notification and closure approval. Subsections (2) and (3) describe DNR responsibilities.

(2) DEPARTMENT REVIEW RESPONSES. (a) Within 60 days after receipt of a complete request for case closure under s. NR 726.09, the department shall either determine whether the case qualifies for closure in accordance with par. (b) or acknowledge in writing the request for case closure has been received, and provide an estimated date by which the department intends to determine whether the case can be closed.

(b) Following receipt of a request for case closure under this section, the department shall review the information provided under s. NR 726.09 to determine whether the applicable public health and environmental laws, including chs. NR 700 to 754 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, or 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.

(c) If the department approves the request for case closure, the department shall mail written notice of the closure approval 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 714.05 (5).

(d) If the department determines that the applicable public health and environmental laws have not been complied with, the department shall notify the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.05 (5). The notification shall indicate what conditions must be met in order for the case to receive further consideration by the department for closure.

Note: In cases where minimal information or changes are needed, this notification is most often provided by phone or email.

(e) 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 714.05 (5). The notice shall indicate what additional information the department needs in order to determine whether the case can be closed.

(f) The department shall also mail written notice of the department’s response to a request for case closure to the owners of any property required to receive notification under s. NR 725.05 or 726.13 (1) (c), in addition to those parties identified under par. (c), and (d) of this subsection.

(g) Closure letters shall be associated with the site or facility record in the department database.

History: CR 12–023: cr. Register October 2013 No. 694, eff. 11–1–13; **correction in (1) (b) 2, made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.**

NR 726.15 Closure letters and continuing obligations. (1) For sites or facilities meeting the criteria of s. NR 725.05 (2) or 726.13 (1) (c), the closure letter shall include the following:

(a) A statement that the site will be included in the department database, and that if the property owner intends to construct or reconstruct a well, prior department approval is required, in accordance with s. NR 812.09 (4) (w).

(b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the closure letter that apply to the property. The closure letter may

also require the property owner to notify affected occupants of the need for specific continuing obligations.

(c) For conditions of closure that restrict site conditions, occupancy or property use from what is conditioned or identified in the final closure letter, a requirement that the property owner at the time that the condition changes shall notify the agency of the change in site condition, occupancy or land use, so that the agency can determine if further actions are necessary to maintain protection of public health, safety, or welfare or the environment.

(d) For conditions of closure that require maintenance, a requirement that the property owner operate and maintain the applicable system, cover or containment system in accordance with the operation and maintenance plan developed under ch. NR 724. The closure letter shall also include conditions regarding inspections, documentation, availability, and submittal of an inspection log, at a frequency determined by the agency.

(2) For specific continuing obligations, the closure letters shall contain the following:

(a) *Residual groundwater contamination.* If there is residual groundwater contamination at the time of case closure, the final closure letter shall include a description of the extent of groundwater contamination.

(b) *Residual soil contamination.* If there is residual soil contamination at the time of case closure, the final closure letter shall include a description of the extent of soil contamination, and shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled, and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) *Monitoring well abandonment.* 1. Where there is a monitoring well that has not been abandoned as required under ch. NR 141 at the time of case closure, the closure letter shall include a description of which wells still need to be abandoned, the surveyed location, and state that the property owner at the time the well is located shall properly abandon the well in accordance with the requirements of ch. NR 141.

2. Where either a request for retaining a monitoring well for continued monitoring has been approved, or continued monitoring is required by an agency with administrative authority, the closure letter shall also require the property owner to verify the integrity of the well at least annually until use of the well is discontinued and the well is properly abandoned. The closure letter shall require that an inspection log be maintained on-site, unless otherwise directed by the agency, and require that the responsible party or property owner make the inspection log available for review by agency staff upon request.

3. Where responsibility for continued monitoring of a well is being transferred to another responsible party, the closure letter shall also require that the responsible party or property owner not abandon the specified well at that time.

Note: Typically, when responsibility for a monitoring well is shifted to another responsible party, that party also becomes responsible for well abandonment in the future.

(d) *Building, cover or containment structure for protection of groundwater.* For sites or facilities where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cover, 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, the closure letter shall include a description of the residual contamination and the location of the building, cover or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cover, or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency

prior to replacing the building, cover, or containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect the groundwater, as determined under ch. NR 720.

(e) *Building, soil cover, cover or containment structure for prevention of direct contact with soils.* For sites or facilities where a building, or an engineering control, such as a soil cover, cover, or engineered containment structure is required to 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, the closure letter shall include conditions which require the property owner to ensure that the building, soil cover, or cover such as concrete or asphalt pavement, or a composite cover, or engineered containment structure will be repaired and maintained until it is no longer needed. The closure letter shall include a description of the residual contamination and the location of the building, soil cover, cover, or engineered containment structure, and shall restrict the use of the land where the building, soil cover, cover, or engineered containment structure is located to ensure that the building, soil cover, or cover, will function as intended, to prevent direct contact, as required by the applicable performance standard. The closure letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, soil cover, cover, or engineered containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect human health from direct contact, as determined under ch. NR 720.

(f) *Structural impediment.* For sites or facilities where a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, or the completion of a remedial action, the closure letter shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency and then conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible.

(g) *Industrial residual contaminant levels.* For sites or facilities where industrial residual contaminant levels under ch. NR 720 have been applied for closure, the closure letter shall include a condition that restricts the use of that property to an industrial land use until non-industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation.

(h) *Vapor mitigation system for sites where sub-slab levels attain or exceed the vapor risk screening level.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where sub-slab levels attain or exceed the vapor risk screening level. The closure letter shall include conditions which require the property owner to maintain the system until it is no longer needed. The closure letter may include conditions which require maintenance of certain structural features of existing buildings. The closure letter shall include conditions which require the immediate repair and replacement of system components that fail.

(i) *Vapor mitigation system where compounds of concern are in use.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where the site is using the compounds of concern in their daily operations, in accordance with par. (h). The agency may require restrictions on the use or occupancy of the property to ensure that closure will be protective. The closure letter shall require notification of the agency and evaluation of the vapor intrusion pathway prior to changing use to a residential setting. The closure letter shall include a description of the type and location of the residual contamination.

Note: This would include sites or facilities where closure was based on worker exposure conditions, which then change to a different use, with different exposure assumptions.

(j) *Vapor mitigation system for sites where vapor intrusion is of concern due to hydrogeologic conditions.* The agency may require installation and operation of a vapor mitigation system and any other systems necessary for the proper operation of the vapor mitigation system, for sites or facilities which present a vapor risk, based on site-specific hydrogeologic circumstances. The closure letter shall identify the specific hydrogeologic conditions and a description of any other system necessary for the proper operation of the vapor mitigation system.

Note: This may include sites where contaminated groundwater enters the structure, or sites where the moisture content of soils below the slab is high or sub-slab samples are difficult to obtain, but where other conditions indicate the potential for vapor intrusion.

(k) *Site-specific exposure conditions.* The agency may restrict the use or occupancy of the property for sites or facilities based on specific exposure assumptions for vapor intrusion, to ensure that closure will be protective. The closure letter shall include the specific exposure assumptions on which the closure decision was based.

Note: This may include non-residential settings; sites or facilities where certain commercial or industrial exposures were applied at the time of closure, which later change to a residential setting, such as single or multiple family residences, or educational, child, or senior care facilities, where a residential exposure would apply.

(L) *Potential for future exposure to vapors.* For sites or facilities where residual soil or groundwater contamination from volatile compounds exists, but where no building is present, the agency may require protective measures to eliminate or control vapor intrusion into a future building. The closure letter may include conditions requiring that the agency be notified prior to any building construc-

tion, and a requirement that appropriate vapor control technologies be used in the construction of any building, unless an assessment is conducted which shows that the residual contaminant levels are protective of the new use.

Note: The potential for vapor migration into a future building is dependant on the type of building and the planned use of the building. Building control technologies may include but are not limited to passive barriers, passive venting, sub-slab depressurization, sub-membrane depressurization, sub-slab pressurization, building pressurization, and indoor air treatment.

(m) *Site-specific conditions.* For sites or facilities where closure is requested, and where the agency determines that there are site-specific circumstances that warrant site-specific closure conditions, the closure letter shall specify the exposure assumptions, use or occupancy restrictions, and necessary maintenance and notification of the agency if conditions change such that the exposure assumptions used no longer apply to the site, facility or property. Site-specific circumstances may include but are not limited to situations where contamination remains in media other than soil, groundwater, or vapors; or exposure and migration pathways not otherwise addressed make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment. If there is contamination remaining in media other than soil, groundwater, or vapor, the final closure letter shall also state that any sediments or other solids excavated in the future from an area that had residual contamination at the time of closure shall be sampled, analyzed, handled, and disposed of in compliance with applicable state and federal laws.

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