Chapter NR 700

GENERAL REQUIREMENTS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 700.01 Purpose. (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to 754, to incorporate by reference specified regulations or materials, and to grant confidential status for records, reports and other information furnished to or obtained by the department for use in the administration of chs. NR 700 to 754.

(2) The purpose of chs. NR 700 to 754 is to establish consistent, uniform standards and procedures that allow for site−specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under chs. 289 and 292, Stats. The department intends that responsible parties and other interested persons should be able to efficiently move through the process set forth in chs. NR 700 to 754 with minimal department oversight, except where the department has specified that more in−depth oversight is needed such as under s. 292.15 or s. 292.65, Stats., or through an enforceable order or agreement. These rules are adopted pursuant to ch. 160, Stats., ss. 227.11 (2), 281.19 (1), 287.03 (1) (a), 289.05 (1), 289.06, 289.31 (7), 289.43 (8), 291.05 (6), Stats., and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5−1−94; am. Register, February, 1996, No. 482, eff. 3−1−96; CR 12−023: am. (1), (2) Register October 2013 No. 694, eff. 11−1−13.

NR 700.02 Applicability. (1) This chapter and chs. NR 702, 704, and 708 to 754 apply to actions taken by the department under the authority of chs. 289 and 292, Stats.

(2) This chapter and chs. NR 706 to 754 apply to actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under chs. 289 and 292, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: The department of agriculture, trade and consumer protection has the authority under s. 94.73, Stats., to issue corrective action orders to parties who are responsible for the discharge of an agricultural chemical, to require that the responsible parties take action that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. The department of agriculture, trade and consumer protection has confirmed their intention to require that this chapter and chs. NR 708 to 727 and 749 be applied to actions taken by responsible parties as directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats. For actions directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats., submittals under chs. NR 708 to 727 and 749 shall be sent to the department of agriculture, trade and consumer protection, and approvals required by these chapters shall be obtained from the department of agriculture, trade and consumer protection.

Note: Persons who are not responsible parties and who voluntarily take a response action at a site or facility that is subject to regulation under ch. 289, Stats., or s. 292.31 or 292.11, Stats., are not required to comply with the standards and procedures in chs. NR 700 to 754 unless the person is seeking the liability exemption under s. 292.15, Stats. However, the department may not consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to 754 have been complied with, and a person who did not originally fall within the definition of a responsible party may become a responsible party if the actions taken by that person cause or worsen the discharge of a hazardous substance or if the person takes possession or control of the site or facility.

Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 292.31 or a negotiated agreement under s. 292.11 (7) (d), Stats. However, a CERCLA−quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 754 in order to be consistent with CERCLA and the NCP.

(2m) This chapter and chs. NR 706 to 728, 750, and 754 apply to actions taken by persons who are seeking a liability exemption under s. 292.15, Stats.

(3m) 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 are applicable, the more restrictive shall control. The department shall, after receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or 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 these statutes. In addition, federal laws such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5−1−94; renum. (3) and (4) to be (5) and (6), cr. (3), Register, March, 1995, No. 471, eff. 4−1−95; cr. (4), Register, April, 1995, No. 472, eff. 5−1−95; am. (1), (3) (intro.), (a) and (b), (4), (5), cr. (2m), (3) (d), (4) (b), (5) (b), Register, February, 1996, No. 482, eff. 3−1−96; am. (2), Register, February, 1997, No. 494, eff. 3−1−97; correction in (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; correction in (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; CR 12−023: am. (1), (2), (2m), r. (3) to (5), renum. (6) to (3m) and am. Register October 2013 No. 694, eff. 11−1−13.

NR 700.03 Definitions. The following definitions apply to chs. NR 700 to 754:

(1e) "Agency with administrative authority" or "agency" has the meaning specified in s. 292.12 (1) (a), Stats.

Note: Section 292.12 (1) (a), Stats., reads: "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2) or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

(1m) "Approve" or "approval" means a written acceptance by the department of a plan, report or other document that has been submitted to the department for review.

(1s) "Attenuation factor" means the ratio of the indoor air concentration arising from vapor intrusion to the subsurface vapor concentration at a point or depth of interest in the vapor intrusion pathway.

Note: Under ch. NR 720, the department allows the use of default attenuation factors from US EPA guidance, or the responsible party may collect enough information to develop a site−specific attenuation factor.

(2) "Background soil quality" means:

(a) Soil quality that is attributable to the parent material from which the soil was derived and the natural processes which produce soil, or from contamination attributable to atmospheric deposition including the following constituents; lead, polynuclear aromatic hydrocarbons, or polychlorinated biphenyls, but not attributable to hazardous substance discharges or the discharge of pollutants, as that phrase is defined in s. 283.01, Stats.

(b) Soil quality that is found at or within reasonable proximity to the site or facility, at a depth comparable to that of the area to

be remediated, in the same soil layer and in an area unaffected by hazardous substances discharges or the discharge of pollutants.

(3) "Business days" means Monday through Friday excluding the holidays listed in s. 230.35 (4) (a), Stats.

(3m) "Case closure" has the meaning specified in s. 292.12 (1) (b), Stats.

Note: Under s. 292.12 (1) (b), Stats., "case closure" means "a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site."

(4) "CERCLA" means the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 USC 9601 to 9675.

(4m) "CERCLIS" means the comprehensive environmental response, compensation and liability information system, as compiled by the U.S. EPA.

Note: The federal CERCLIS list is available from the U. S. EPA, by writing to: WI Freedom of Information Act Officer, U.S. EPA Region V, 77 W. Jackson Blvd, Chicago, IL 60604.

(5) "CFR" means the code of federal regulations.

(6) "Consultant" means a person or business under contract to perform a response action taken under, or subject to regulation under, chs. NR 702 to 754.

(6m) "Contaminated site boundary" or "contaminated site boundaries" means any area within which a hazardous substance has been discharged such that the air, land, or waters have been affected by a discharge or where environmental pollution exists.

Note: Both the source property and other properties affected by the discharge may be included within the "contaminated site boundary." Sub. (59m) defines "source property" as "the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred." Other properties may be affected by migration of the hazardous substance through soil or groundwater.

(7) "Contamination" or "contaminated" means:

(a) Where the air, land or waters of the state have been affected by the discharge of a hazardous substance; or

(b) Where environmental pollution exists.

(8) "Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a hazardous substance discharge or imminent threat of a hazardous substance discharge.

(9) "Day" means calendar day, except where the phrase "business day" is used.

(10) "Debris" means 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.

(11) "Department" means the department of natural resources.

(11m) "Department database" means the publicly accessible database available on the internet as required by ss. 292.12, 292.31, and 292.57, Stats.

Note: The Remediation and Redevelopment Program maintains a database called the "Bureau for Remediation and Redevelopment Tracking System" or "BRRTS". The program also maintains an internet accessible version of this database, called "BRRTS on the Web", or "BOTW". "BOTW" includes information on properties where a hazardous substance discharge has or may have taken place. The program also maintains a web−based mapping system called "Remediation and Redevelopment Sites Map" or "RRSM", that allows users to view information from the BRRTS database using a geographic information system (GIS) application. Both these applications may be found at http://dnr.wi.gov/topic/Brownfields/clean.html.

(12) "Department−funded response action" means a response action undertaken by the department using the authority of s. 292.11, 292.31 or 292.41, Stats., which is funded in whole or in part by appropriations in s. 20.370 (2) or 20.866 (2), Stats.

(13) "Discharge" has the meaning specified in s. 292.01 (3), Stats.

Note: Under s. 292.01 (3), Stats., "discharge" means, but is not limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."

(14) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water in a manner which may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(15) "Emergency" means a situation which requires an immediate response to address an imminent threat to public health, safety, or welfare or the environment.

(16) "Enforcement standard" has the meaning specified in s. NR 140.05 (7).

Note: Section NR 140.05 (7) defines "enforcement standard" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12."

(17) "Engineering control" has the meaning specified in s. 292.01 (3m), Stats.

Note: Under s. 292.01 (3m), Stats., "engineering control" means an "action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap, soil cover, or in−place stabilization, but not including a sediment cover."

(18) "Environment" means any plant, animal, natural resource, surface water (including underlying sediments and wetlands), groundwater, drinking water supply, land surface and subsurface strata, and ambient air within the state of Wisconsin or under the jurisdiction of the state of Wisconsin.

(19) "Environmental pollution" has the meaning specified in s. 291.01 (4), Stats.

Note: Section 291.01 (4), Stats., defines "environmental pollution" to mean "the contamination or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

(20) "Environmental standards" mean those cleanup standards, performance standards, standards of control and other substantive and procedural requirements, criteria or limitations promulgated as a regulation or rule under or pursuant to federal environmental or state environmental or facility citing laws that specifically address a hazardous substance, pollutant, remedial action, location or other circumstances found at a site or facility.

(21) "Facility" means "approved facility" as defined in s. 289.01 (3), Stats., "approved mining facility" as defined in s. 292.01 (1m), Stats., and "nonapproved facility" as defined in s. 289.01 (24), Stats.

Note: Under s. 289.01 (3), Stats., "approved facility" means "a solid or hazardous waste disposal facility with an approved plan of operation under s. 289.30 or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 289.30." Under s. 292.01 (1m), Stats., "approved mining facility" is defined by reference to the definition of approved mining facility in s. 289.01 (4), Stats., and also includes a mining waste site as defined in s. 295.41 (31), Stats. "Approved mining facility" as defined in s. 289.01 (4) means "an approved facility which is part of a mining site, as defined under s. 293.01 (12), used for the disposal of solid waste resulting from mining, as defined under s. 293.01 (9), or prospecting, as defined under s. 293.01 (18)." Chapter 293, Stats., applies to nonferrous metallic mining. "Mining waste site" as defined under s. 295.41 (31), Stats., means any land or appurtenances thereto used for the storage or disposal of ferrous mining waste. Subch. III of ch. 295, Stats., applies to ferrous metallic mining. "Nonapproved facility" as defined in s. 289.01 (24), Stats., means "a licensed solid or hazardous waste disposal facility which is not an approved facility."

(22) "Free product" means a discharged hazardous substance or environmental pollution that is present in the environment as a floating or sinking non−aqueous phase liquid.

(23) "Groundwater" has the meaning specified in s. 160.01 (4), Stats.

Note: Section 160.01 (4), Stats., defines "groundwater" to mean "any waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil." See "waters of the state" definition in sub. (67).

(24) "Groundwater quality standards" mean site−specific standards developed pursuant to ch. NR 140 and groundwater quality standards adopted by the department in ch. NR 140, including enforcement standards, preventive action limits, indicator parameters and alternative concentration levels.

(25) "Hazardous substance" has the meaning specified in s. 299.01 (6), Stats.

Note: Section 299.01 (6), Stats., defines "hazardous substance" to mean "any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive,

flammable, irritants, strong sensitizers or explosives as determined by the department."

(26) "Hazardous waste" has the meaning specified in s. 291.01 (7), Stats.

Note: Section 291.01 (7), Stats., defines "hazardous waste" to mean any "solid waste identified by the department as hazardous under s. 291.05" Federal laws and rules may have broader or different definitions than the state does. If so, federal hazardous waste laws must be complied with, in addition to state laws.

(27) "High groundwater level" means the higher of the elevation to which the soil is saturated and observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile.

(28) "Immediate action" means a response action that is taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution, to halt the discharge, contain or remove discharged hazardous substances or remove contaminated environmental media, in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety, or welfare that may exist. This term includes both emergency and non−emergency immediate actions.

Note: Examples of immediate actions may be found in s. NR 708.05 (4). If further action will be required after a non−emergency response action is taken, that action would meet the definition of "interim action" in s. NR 700.03 (29). The principal distinction between a non−emergency, immediate action and an interim action is that a site investigation will generally be required in conjunction with an interim action, but not with a non−emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the "no further action" criteria in s. NR 708.09 which apply at the completion of an immediate action.

(28m) "Industrial land use" means the utilization of a parcel of real estate for manufacturing operations that use machinery and mechanical power to produce products or services, including electrical power, or for a service business that provides storage facilities, product distribution or maintenance or repair services for machinery.

Note: Examples of industrial land uses include manufacturing and assembly plants; warehouses; scrap salvage operations; foundries and forging plants; metal pressing, stamping and spinning plants; electroplating facilities; tanneries; chemical processing facilities; electrical generating plants and electrical substations; slaughter houses and meat processing plants; fertilizer and pesticide packaging plants; bottling plants; wholesale bulk fuel storage and distribution facilities; railroad yards; and businesses that sell and repair motor vehicles, recreational vehicles, transportation containers or construction machinery and equipment.

(29) "Interim action" means a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety, or welfare or the environment, while other response actions are being taken or planned for the site or facility.

Note: Examples of interim actions may be found in s. NR 708.11. "Interim action"does not include emergency or non−emergency immediate actions. An interim action is followed by subsequent response actions at the site or facility, unless the department determines in compliance with the requirements of ch. NR 726, that no further response action is necessary after a site investigation has been conducted.

(30) "Interim action options report" means a report which identifies and evaluates various interim action options with the goal of selecting an option which meets the environmental standards for the interim action being undertaken.

(30g) "Limit of detection" has the meaning specified in s. NR 149.03 (41).

Note: Section NR 149.03 (41) defines "limit of detection" or "LOD" to mean "the lowest concentration or amount of analyte that can be identified, measured, and reported with confidence that the concentration is not a false positive value." For department purposes, the LOD approximates the method detection limit (MDL) and is determined by the method cited in s. NR 149.03 (46) (MDL). See sub. (33m) for MDL.

(30r) "Limit of quantitation" has the meaning specified in s. NR 149.03 (42).

Note: Section NR 149.03 (42) defines "limit of quantitation" or "LOQ" to mean "the lowest concentration or amount of an analyte for which quantitative results can be obtained."

(31) "Long−term monitoring" means systematic evaluation of the selected remedial or interim action option through collection and inspection of soil data, groundwater data, surface water data, sediment data, and other relevant data.

(32) "Management of a hazardous substance" means the treatment, storage or disposal, including recycling, of a hazardous substance.

(33) "Media" means air, surface water, groundwater, sediments and land surface and subsurface strata, including soil.

(33m) "Method detection limit" or "MDL" has the meaning specified in s. NR 149.03 (46).

Note: Section NR 149.03 (46) defines the "method detection limit" to mean "the minimum concentration of an analyte that can be measured and reported with 99% confidence that the stated concentration is greater than zero, determined from analyses of a set of samples containing the analyte in a given matrix. The method detection limit is generated according to the protocol specified in 40 CFR 136, Appendix B."

(34) "Migration pathway" means natural geologic features or cultural features, including but not limited to water mains, sewage laterals, drain tiles and road beds, which allow the movement of a hazardous substance or environmental pollution in liquid, solid, dissolved or vapor phase.

(34m) "Minority business" means a business certified by the department of safety and professional services pursuant to s. 16.287 (2), Stats.

(35) "Municipal population" means the number of people residing in the municipality according to the most recent department of administration estimates.

(36) "Municipality" has the meaning specified in s. 292.01 (11), Stats.

Note: Section 292.01 (11), Stats., defines "municipality" to mean, "any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewage district."

(37) "National priorities list" means the list, compiled by the U.S. environmental protection agency (EPA) pursuant to section 105 (8) (b) of CERCLA, of hazardous substance releases in the United States that are priorities for investigation and remedial action.

(38) "National contingency plan" or "NCP" means 40 CFR part 300.

(38m) "Natural attenuation'' means the reduction in the concentration and mass of a substance and its breakdown products in groundwater, due to naturally occurring physical, chemical, and biological processes without human intervention or enhancement. These processes include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(39) "Naturally occurring background" means the quality of individual media in the vicinity of a discharge of a hazardous substance or environmental pollution that has not been affected by a hazardous substance discharge or environmental pollution.

(39m) "Non−residential setting" means a setting other than a residential setting, used for commercial or industrial purposes.

(40) "Operation and maintenance" means measures designed to monitor, operate and maintain the effectiveness of response actions.

(41) "Operator" has the meaning specified in s. 292.31 (8) (a) 1., Stats.

Note: Section 292.31 (8) (a) 1., Stats., defines "operator" to mean "any person who operates a site or facility or who permits the disposal of solid waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits the disposal of solid waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation."

(42) "Owner" has the meaning specified in s. 292.31 (8) (a) 2., Stats.

Note: Section 292.31 (8) (a) 2., Stats., defines "owner" to mean "any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation."

(42m) "Pathway" means the route a substance takes in traveling to a receptor or potential receptor or the specific portal of entry,

such as lungs, skin or digestive tract, that the substance takes to potentially express its toxic effect, or both.

Note: The food chain pathway for cadmium, for example, refers to cadmium being taken up in plant tissue and the plant tissue being ingested by an organism.

(43) "Person" has the meaning specified in s. 292.01 (13), Stats.

Note: Section 292.01 (13), Stats., defines "person" to mean "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, or federal agency."

(43g) "Phase I environmental site assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include reviewing records, interviewing persons, and conducting physical inspections of the site.

(43r) "Phase II environmental site assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase I environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

Note: The department recommends that at a minimum, the current ASTM standards be followed when conducting Phase I and Phase II environmental assessments. When a person is seeking liability protections under CERCLA the person should follow EPA's requirements. See EPA's web page at: www.epa.gov for more information.

(44) "Point of standards application" has the meaning specified in s. NR 140.05 (15).

Note: Section NR 140.05 (15) defines "point of standards application" to mean "the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded."

(45) "Practicable" means capable of being implemented, taking into account:

(a) The technical feasibility of a remedial action option, considering its long−term effectiveness, short−term effectiveness, implementability and the time it will take until restoration is achieved; and

(b) The economic feasibility of a remedial action option, considering the cost of the remedial action option compared to its technical feasibility.

(45e) "Property" means a contiguous area of land the entire legal description of which is found in one deed.

(45m) "Property boundary" means the boundary of the property owned or leased by a common owner or lessor, regardless of whether public or private roads run through the property.

(46) "Preventive action limit" has the meaning specified in s. NR 140.05 (17).

Note: Section NR 140.05 (17) defines "preventive action limit" to mean "a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15, Stats., and s. NR 140.10, 140.12 or 140.20."

(46m) "RCRA" means the resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

(47) "Receptor" means environmental resources, including but not limited to, plant and animal species and humans, sensitive environments and habitats, water supply wells, and buildings or locations that have the potential to be, or have actually been, exposed to contamination.

(48) "Remedial action" or "remedy" means those response actions, other than immediate or interim actions, taken to control, minimize, restore, or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety, or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize, or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling, or reuse, and any monitoring required to assure that such actions protect public health, safety, and welfare and the environment.

(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.

(49g) "Residential setting" means any dwelling designed or used for human habitation, and includes educational, childcare, and elder care settings.

(49r) "Residual contamination" means that some contamination remains after a cleanup is completed and approved. Residual contamination includes all phases of remaining contamination including vapor, dissolved, adsorbed, and free−phase.

Note: The term "residual contamination" does not have the same meaning as the terms "residual phase", "residual concentration" or "residual contaminant level." The terms "residual phase" and "residual (phase) concentration" are used in some publications and are used when referring to the free−phase or separate non−aqueous phase liquid in soil or groundwater. The term "residual contaminant level" is used in ch. NR 720 to refer to soil standards developed under that chapter.

(50) "Response" or "response action" means any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non−emergency immediate actions, investigations, interim actions and remedial actions.

(51) "Responsible party" or "responsible parties" means any of the following:

(a) Any person who is required to conduct a response action under ch. 292, Stats.

(b) Persons liable to reimburse the department for the costs incurred by the department to take response action under chs. 289 and 292, Stats.

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

(52) "Restore" or "restoration" means those actions necessary to return the environment to its original condition before the hazardous substance discharge or environmental pollution occurred. Such actions may include, but are not limited to, the replacement or removal of injured plant and animal life and treatment of contaminated soils.

Note: This definition was formerly found in s. NR 158.04 (5).

(52m) "Right–of–way" means the strip of land over which railroad tracks run, or within which a public street or highway has been constructed, regardless of whether the strip of land is owned by the railroad or the entity that maintains the public street or highway; and corridors created by dedication, by the granting of an easement and by the acquisition of fee title.

(53) "Risk assessment" means a site−specific characterization of the current or potential threats that may be posed to public health, safety, or welfare or the environment by contamination migrating to or in groundwater or surface water, discharging to the air, leaching through or remaining in soil, bioaccumulating in the food chain, or other exposure pathways.

(54) "Sediment" means 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.

(55) "Sensitive environment" means an area of exceptional environmental value, where a discharge could pose a greater threat than a discharge to other areas, including but not limited to: wetlands; habitat used by state or federally designated endangered or threatened species; national or state fish and wildlife refuges and fish and wildlife management areas; state and federal designated wild and scenic rivers, designated state riverways and state designated scenic urban waterways; riparian areas; rookeries; cold water communities as defined in s. NR 102.04 (3) (b), Lakes Superior and Michigan and the Mississippi river, environmentally sensitive areas and environmental corridors identified in area−wide water quality management plans, special area management plans, special wetland inventory studies, advanced delineation and identification studies and areas designated by the U.S. EPA under section 404 (c) 33 USC 1344 (c); calcareous fens; state forests, parks, trails and recreational areas; state and federal desig-

nated wilderness areas; designated or dedicated state natural areas established under ss. 23.27 to 23.29, Stats.; wild rice waters as listed in s. NR 19.09; and any other waters identified as outstanding or exceptional resource waters in ch. NR 102.

(55m) "Sensitive receptor" means a receptor that is affected by slight differences or changes in environmental conditions.

(56) "Site" means:

(a) Any waste site as defined in s. 292.01 (21), Stats.; or

(b) Any area where a hazardous substance has been discharged.

Note: Section 292.01 (21), Stats., defines "waste site" to mean "any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978."

(57) "Site investigation" means an investigation undertaken in conformance with ch. NR 716.

(58) "Soil" means 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.

(59) "Solid waste" has the meaning specified in s. 289.01 (33), Stats.

Note: Section 289.01 (33), Stats., defines "solid waste" to mean "any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source [material, as defined in s. 254.31 (10)], special nuclear [material, as defined in s. 254.31 (11),] or by−product material, as defined [in] s. 140.52 [s. 254.31 (1)]." The material in brackets is effective 1−1−97.

(59m) "Source property" means the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred.

(60) "Submittal" means any document, report, plan, set of specifications, engineering design, or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR 700 to 754.

(60m) "Sub−slab" means beneath the lowermost building foundation slab.

(61) "Surface water" has the meaning specified in s. NR 103.02 (3).

Note: "Surface water" means "all natural and artificial, named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters."

(62) "Superfund" means the federal environmental cleanup fund and program created by CERCLA.

(62m) "Sustainable remedial action" means achieving protection of human health, safety, and the environment, while incorporating and balancing certain practices, processes, and technologies throughout all phases of the remedial action to deliberately generate a net positive impact on the environment, economy, and society.

(63) "Treatment" means any method, technique or process, including thermal destruction, which changes the physical, chemical or biological character or composition of a hazardous substance or environmental pollution so as to render the contamination less hazardous.

(64) "Treatability study" means the testing and documentation activities to evaluate the effectiveness of an interim or remedial action prior to full scale design and implementation. Treatability study includes, but is not limited to, bench scale studies and pilot scale studies.

Note: Treatability studies provide additional data for the detailed analysis of treatment alternatives and the engineering design of remedial alternatives under ch. NR 724.

(64g) "TSCA" means the toxic substance control act, 15 USC 2601 to 2692.

(64r) "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."

(65) "U.S. EPA" or "EPA" means the United States environmental protection agency.

(66) "Underground storage tank" or "UST" means any one or a combination of tanks, including connected pipes, that is used to contain an accumulation of hazardous substances, and the volume of which, including the volume of connected underground pipes, is 10 percent or more beneath the surface of the ground. The term does not include any of the following or pipes connected to any of the following:

(a) Septic tanks.

(b) Pipeline facilities, including gathering lines, regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.).

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.).

3. State laws comparable to the provisions of the law referred to in subd. 1. or 2. for intrastate pipeline facilities.

(c) Surface impoundments, pits, ponds or lagoons.

(d) Storm water or waste water collection systems.

(e) Flow−through process tanks.

(f) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(g) Storage tanks situated in an underground area, such as, but not limited to, a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

Note: This definition of "underground storage tank" is based on the definition found in s. ATCP 93.050 (122).

(66m) "Utility corridor" means any utility line that runs underground and any backfilled trench that was constructed to install a water main or lateral, a sewer main or lateral or other utility line.

(66p) "Vapor action level" means 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.

Note: Generic tables of risk based concentrations for air in residential and industrial land use scenarios can be found at: http://www.epa.gov/reg3hwmd/risk/human/rb−concentration_table/Generic_Tables/index.htm.

(66s) "Vapor mitigation system" means a system that prevents or reduces the migration of contaminant vapors into a building and does not have the primary purpose of remediating vapor contaminant sources.

(66w) "Vapor risk screening level" means the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level multiplied [divided] by an appropriate attenuation factor.

Note: The correct word is shown in brackets. The scientific process for determining a vapor risk screening level is to divide, not multiply, the vapor action level by an appropriate attenuation factor. This error will be corrected in future rulemaking.

Note: Vapor risk screening levels are applied to sub−slab, soil gas, and groundwater samples.

(66y) "Vapors" mean chemicals that are sufficiently volatile and toxic to pose an inhalation risk to human health via vapor intrusion from a soil or groundwater source.

(67) "Waters of the state" has the meaning specified in s. 281.01 (18), Stats.

Note: Section 281.01 (18), Stats., defines "waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction."

(68) "Wetlands" has the meaning specified in s. 23.32, Stats.

Note: Section 23.32, Stats., defines "wetland" to mean "those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions."

(69) "Work plan" means a plan which outlines the intended scope of a response action, or any phase of a response action, including but not limited to intended methods, procedures and techniques to be used during the response action.

History: Cr. Register, April, 1994, No. 460, eff. 5–1–94; cr. (42m), Register, March, 1995, No. 471, eff. 4–1–95; am. (49), Register, April, 1995, No. 472, eff. 5–1–95; am. (intro.), Register, October, 1995, No. 478, eff. 11–1–95; am (intro.), (60), Register, February, 1996, No. 482, eff. 3–1–96; cr. (38m) and (45m), Register, October, 1996, No. 490, eff. 11–1–96; emerg. cr. (66m), eff. 5–18–00; cr. (66m), Register, January, 2001, No. 541, eff. 2–1–01; CR 01–129: cr. (28m), Register July 2002 No. 559, eff. 8–1–02; CR 12–023: am. (intro.), renum. (1) to (1m), cr. (1e), (1s), am. (2) (a), cr. (3m), (4m), am. (6), cr. (6m), (11m), am. (17), (27), cr. (30g), (30r), (33m), (34m), am. (36), cr. (39m), am. (43), cr. (43g), (43r), (45e), am. (45m), cr. (46m), am. (48), cr. (49g), (49r), renum. (51) to (intro.) and am., cr. (51) (a) to (c), (52m), (55m), (59m), am. (60), cr. (60m), (62m), (64g), (64r), (66p), (66s), (66w), (66y) Register October 2013 No. 694, eff. 11–1–13; CR 13–057: am. (21) Register July 2015 No. 715, eff. 8–1–15; **correction in (17) made under s. 13.92 (4) (b) 7., Stats., Register February 2017 No. 734**.

NR 700.05 Confidentiality of information. (1) Except as provided under sub. (2), any record, report or other information furnished to, or obtained by, the department in the administration of chs. NR 700 to 754 is a public record subject to the provisions of ss. 19.21, 19.31 to 19.39, Stats., and s. NR 2.195.

(2) If confidential status is sought for any record, report or other information furnished to or obtained by the department under chs. NR 700 to 754, the standards and procedures in s. NR 2.19 are applicable to all sites and facilities, and the standards and procedures in s. 289.09 (2), Stats., are applicable to the owners and operators of solid waste facilities.

Note: Under s. NR 2.19, the department may grant confidential status if: (1) the standards for granting confidential status found in s. 289.09 or 291.15, Stats., are met; (2) confidential treatment is in the public interest using the balancing test in *State ex rel. Youmanns v. Owens*, 28 Wis. 2d 672 (1965); or (3) a specific statutory or common law right to confidential treatment is applicable.

(3) Records, reports and other information for which the department has granted confidential status may be:

(a) Used by the department in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific person or responsible party and the analyses or summaries do not reveal records or other information granted confidential status;

(b) Released by the department to the U.S. EPA or its authorized representative, if the U.S. EPA or its authorized representative agrees to protect the confidentiality of the records, reports or other information;

(c) Released for general distribution if the person who provided the information to the department expressly agrees to the release; and

(d) Released on a limited basis if the department is directed to take this action by a judge or administrative law judge under an order which protects the confidentiality of the record, report or other information.

Note: Sections 292.11 (8), 292.31 (1) (d) and (3) (e), and 292.41 (5), Stats., provide the department with authority to gain access to property for the purpose of conducting response actions, and access to records relating to abandoned containers, discharged hazardous substances and solid waste disposed of at a site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5–1–94; am. (1), (2), Register, February, 1996, No. 482, eff. 3–1–96; CR 12–023: am. (1), (2) Register October 2013 No. 694, eff. 11–1–13.

NR 700.07 Incorporation by reference. The material listed in this section is incorporated by reference at the paragraph noted: "SW–846, Test Methods for Evaluating Solid Waste", by the U.S. Environmental Protection Agency, Office of Solid Waste, loose–leaf manual, "The Third Edition of SW 846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB and IV", referenced in s. NR 716.13 (12).

Note: These materials are available for inspection in the offices of the department of natural resources, 101 S. Webster Street, Madison, Wisconsin, or may be accessed at the following web site: http://www.epa.gov/epaoswer/hazwaste/test/main.htm or may be purchased for personal use from:

National Technical Information Service
U.S. Department of Commerce
Springfield, VA 22161

History: Cr. Register, April, 1994, No. 460, eff. 5–1–94; CR 12–023: am. Register October 2013 No. 694, eff. 11–1–13.

NR 700.08 Superfund site assessment. A site or facility may be evaluated by the department to determine eligibility for the federal superfund program, under CERCLA and the NCP. The department also may conduct federal site assessment activities, in cooperation with the U.S. EPA. Assessment activities may include, but are not limited to:

(1) Identifying sites for addition to CERCLIS;

(2) Reviewing files by department staff in the form of preliminary assessments;

(3) Collecting data both on–and–off–site by conducting field sampling;

(4) Preparing or reviewing federally prepared hazard ranking system scores, using the federal hazard ranking system; and

(5) Nominating sites or facilities to the national priorities list.

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

NR 700.10 Identification of responsible parties. The department may attempt to identify potentially responsible parties during any phase of response action by any of the following methods:

(1) Interviewing local officials, neighboring residents, persons involved with the operations of the site or facility, and past and present site or facility owners or operators.

(2) Reviewing operational records of the site or facility.

(3) Reviewing department records.

(4) Determining current and past ownership of the site or facility.

(5) Collecting and analyzing samples.

(6) Other appropriate means.

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

NR 700.11 Submittals. (1) GENERAL. Unless otherwise directed by the department, responsible parties shall comply with the following:

(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 case closure is granted by the department. 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 706.05. Progress reports shall be provided on a reporting form supplied by the department. The department may require progress reports be submitted at a different frequency than semi–annually.

Note: Copies of site progress report forms may be obtained at: http://dnr.wi.gov/topic/Brownfields/Pubs.html.

(bm) Unless otherwise directed by the department, responsible parties shall submit a site investigation work plan meeting the requirements of s. NR 716.09 to the department within 60 days of receiving notification that a site investigation is required.

(cm) Responsible parties shall submit a site investigation report meeting the requirements of s. NR 716.15 to the department within 60 days after completion of the field investigation and receipt of the laboratory data.

(dm) Responsible parties shall submit a remedial action options report meeting the requirements of s. NR 722.13 to the department within 60 days after submittal of the site investigation report.

(em) The department shall provide written acknowledgement of receipt of the reports listed in par. (bm) to (dm) within 30 days.

(3) MORE EXTENSIVE REVIEW. The department may perform more extensive review where an application is submitted to the department by a person seeking a liability exemption under s.

292.15, Stats., or where a person is participating in the dry cleaner environmental response program under s. 292.65, Stats.

Note: Section 292.15, Stats., applies to persons who conduct remediation of contaminated property to obtain an exemption from liability.

(3g) NUMBER OF SUBMITTALS. 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.

Note: Guidance for GIS Registry submittals outlines how electronic copies should be submitted in the Adobe Portable Document Format (PDF) on optical disk media. This guidance can be accessed at http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf.

Note: The department strongly recommends the use of 2−sided copies for the paper copy of the report, and the use of accordion folders for larger reports instead of 3−ring binders, to help address file space issues.

Note: An example of a voluminous attachment is a laboratory quality assurance and control report.

Note: Examples of formats that can be managed in software are spreadsheets, plain text tabular files, hypertext markup language files (HTML) and extensible markup language files (XML).

Note: The department intends to implement an electronic document management system in the future that may require the submittal of all plans or reports in electronic format that can be managed in software.

(3r) TECHNICAL ASSISTANCE. When requesting technical assistance or liability clarification from the department, the request shall be submitted on a form supplied by the department.

Note: The Technical Assistance and Environmental Liability Clarification Request form may be accessed at http://dnr.wi.gov/topic/Brownfields/Pubs.html. Other forms are used for the following requests: off−site liability exemption or liability clarification requests, lender liability exemption requests, exemption to develop on a historic fill site, closure requests, or operation and maintenance requests. These forms may be accessed at http://dnr.wi.gov/topic/Brownfields/Pubs.html.

History: Cr. Register, April, 1995, No. 472, eff. 5−1−95; am. (3) (b), Register, February, 1996, No. 482, eff. 3−1−96; emerg. am. (1) (b) and (2) (b), cr. (2) (e), eff. 5−18−00; am. (1) (b) and (2) (b), cr. (2) (e) and (f), Register, January, 2001, No. 541, eff. 2−1−01; correction in (2) (e) was made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; CR 12−023: r. and recr. (1) (title), (intro.), am. (1) (a), r. (1) (b) to (f), cr. (1) (bm) to (em), r. (2), am. (3) (title), renum. (3) (intro.) to (3), r. (3) (a) to (d), cr. (3g), (3r), r. (4) Register October 2013 No. 694, eff. 11−1−13.

NR 700.13 Sample preservation and analysis. **(1)** GENERAL REQUIREMENTS. All sampling, preservation, extraction, and analytical methods used for compliance with chs. NR 700 to 754 shall be according to the requirements in s. NR 716.13.

(1m) USE OF GASOLINE RANGE ORGANICS/DIESEL RANGE ORGANICS ANALYSIS. Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for screening purposes shall be completed in accordance with the "Modified GRO, Method for Determining Gasoline Range Organics" and the "Modified DRO, Method for Determining Diesel Range Organics." For purposes of this section, the term "screening purposes" means sampling conducted during site investigations, environmental assessments or other activities in compliance with chs. NR 700 to NR 754 for purposes of determining whether a discharge has occurred or to estimate the degree and extent of contamination.

Note: The "Modified GRO, Method for Determining Gasoline Range Organics: (WI−PUBL−SW−141) and "Modified Diesel Range Organics" (WI−PUBL−SW−14) are available online at http://dnr.wi.gov/regulations/labcert/documents/methods/drosep95.pdf and http://dnr.wi.gov/regulations/labcert/documents/methods/grosep95.pdf. These methods are referenced in s. NR 149, Appendix III, List of Authoritative Sources.

Note: The "Modified GRO, Method for Determining Gasoline Range Organics" (WI−PUBL−SW−141) and "Modified DRO, Method for Determining Diesel Range Organics" (WI−PUBL−SW−140) are available from the Department of Natural Resources, Emergency and Remedial Response Section, 101 S. Webster St., Madison, WI 53707.

History: Cr. Register, February, 1996, No. 482, eff. 3−1−96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12−023: am. (1), cr. (1m), r. (2), (3) Register October 2013 No. 694, eff. 11−1−13; correction in (1m) made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.