

Report to
Legislative Council Rules Clearinghouse
NR 700 to 754, Wis. Adm. Codes
Natural Resources Board Order No. RR-04-11

Wisconsin Statutory Authority

Sections 227.11(2)(a), 281.19(1), 287.03, 289.05, 289.06, 291.05(6)(f), 292.11(5), 292.11(7)(d), 292.12(2)(c), 292.13(3), 292.15(2)(a), 292.15(2)(ae), 292.15(5), 292.31(2), 292.41, 292.65, 292.68(11), and 292.94, Wis. Stats.

Federal Authority

Not Applicable

Comparison of Adjacent States

Since the NR 700 rule series has been in-place for over 15 years and since most of the rule provisions are not being changed, the analysis prepared by the Department as part of the Natural Resources Board Order focused on assessing how the adjacent states address the 4 most important issues being covered by the proposed rule changes. This included: 1) the process for establishing soil cleanup standards, 2) requirements for addressing the vapor intrusion pathway, 3) fees for review of cleanup related documents, and 4) regulatory closure of contamination cases. A detailed assessment of each issue can be found under item number 7 at: http://dnr.wi.gov/topic/Brownfields/documents/regs/NR_700_Rule_Order.pdf.

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

The NR 700 rule series provide a comprehensive, consistent and uniform set of requirements related to the investigation and cleanup of contaminated property. The rules also provide direction on addressing spill situations, carrying out public participation and notification, undertaking enforcement and cost recovery, selecting environmental consultants for state-funded actions, and awarding environmental construction contracts. Revisions are being proposed in order to update the existing rule series by incorporating a number of statutory, policy and technical changes that have occurred since the rule was originally promulgated over 15 years ago.

The major issues being addressed by this rule making are summarized below:

- Modifying many of the rules by removing the references to deed restrictions which were replaced with passage of Wisconsin Act 418 in June 2006,
- Removal of the simple site process which was originally included to provide responsible parties with the ability to self certify closure as this option has not been used in many years,
- Eliminating ch. NR 710 because the statutory provision to inventory sites was repealed and use of the existing hazard ranking system is no longer needed to evaluate sites,

- Consolidating the sections in ch. NR 718 on management of contaminated soil in order to make the requirements consistent and more readily understandable,
- Revising NR 720 to account for updated methodology developed by U.S. EPA for calculating site specific soil cleanup standards,
- Revising NR 722 to require an evaluation of sustainability for the selected remedy,
- Simplifying the case closure requirements by splitting NR 726 into 3 separate rules as the current rule is lengthy and complicated,
- Adding provisions to NR 726 and several other rules clarifying that the vapor intrusion pathway needs to be assessed and adequately addressed, if necessary,
- Removing many of the provisions in NR 746 dealing with the cleanup of petroleum contaminated sites as they are either technically unsound or are seldom used, and
- Increasing the fees in NR 749 to account for increased costs since the rule was originally promulgated in 1998.

In addition to these changes, the Department is also using this opportunity to fix a number of editorial problems, typographical errors and other minor problems that have been identified over the years.

Agency Procedures for Promulgation

The process includes holding 5 public hearings, final adoption by the Natural Resources Board, Legislative Review and then final promulgation.

Description of any Forms (attach copies if available)

None

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