

Report From Agency

REPORT TO LEGISLATURE

NR 169, 700, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728,
734, 736, 738, 746, 749, and 750, Wis. Adm. Code

Board Order No. RR-04-11
Clearinghouse Rule No. 12-023

This rule is not subject s. 227.185, Wis. Stats. The statement of scope for this rule, published in Register 660 on December 14, 2010, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

Basis and Purpose of the Proposed Rule

The NR 700 series rules 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.

The proposed rule changes have been developed and modified over the last 4 years in cooperation with a number of external stakeholders, in particular the Brownfields Study Group and the Technical Focus Group. Revisions are being proposed in order to update the rules listed above by incorporating a number of statutory, policy, and technical changes that have occurred since they were originally promulgated.

The major issues addressed by the proposed rules include:

- 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 NR 710 because the statutory provision to inventory sites was repealed and use of the existing hazard ranking system is no longer needed to evaluate sites,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.

Summary of Public Comments

The Department received comments from individuals representing a variety of interests. The comments received and the Departments responses are included in Attachment 1.

Modifications Made

Modifications to the proposed rules resulting from public comments are provided in Attachment 1.

Appearances at the Public Hearing

The Department held five public hearings in May, 2012. The hearings were in Madison, Waukesha, Green Bay, Rhinelander and Eau Claire. The following is a list of those persons that attended the hearings, who they were representing and their position identified on the appearance slip:

1. Michele Pluta	Alliant Energy Corporation	As interest may appear
2. Jill Stevens	WI Power and Light	As interest may appear
3. Mark Wadium	Outagamie County	As interest may appear
4. Nathan Houdek	Senator Shillings Office	No position noted
5. Maria Powell	Midwest Environ. Justice	No position noted
6. Paul Junio	Northern Lake Service	As interest may appear
7. Shelley Hildebrandt	Midwest Engineering	As interest may appear
8. Michelle Peed	Himalayan Consultants	No position noted
9. Monica Weis	Safety and Prof. Services	As interest may appear
10. Linda Michalets	Safety and Prof. Services	As interest may appear
11. Sharlene TeBeest	Dept. of Transportation	As interest may appear
12. Frank Dombrowski	We Energies	No position noted
13. Dennis Stadler	Kimberly Clark Corp.	No position noted
14. Kathie VanPrice	Dept. of Transportation	No position noted
15. Albert Cole	AECOM	In support
16. Roger Miller	GEI Consultants, Inc.	In support
17. Andrew Delforge	REI Engineering, Inc.	No position noted
18. Matthew Rahn	REI Engineering, Inc.	No position noted
19. Kevin Nestingen	Braun Intertec	As interest may appear

Changes to Rule Analysis and Fiscal Estimate

The statutory authority section was revised to include s. 292.68(11), Stats. No changes were made to the fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse report provided comments on Statutory Authority; Form, Style and Placement in Administrative Code; and Clarity, Grammar, Punctuation, and Use of Plain Language. The Department accepted a majority of the comments. Those comments that were not able to be fully incorporated include: Section IV - 2.r., 5.g., 5.k., 5.l., and 5.o. The responses to each of the comments received are contained in Section IV of Attachment 1.

Final Regulatory Flexibility Analysis

The major purpose of this rule making effort is to incorporate requirements set forth by statutes and to address policy changes that have been implemented over the years. Another major change is to streamline and consolidate the rule language so that out-of-date provisions are removed and the current regulatory requirements are easier to understand and comply with.

The one area of these rule revisions that have the potential to impact some small businesses is the proposal to increase the fees set out in ch. NR 749. These fees have not been increased since they were originally promulgated in 1998 and the average increase typically ranges from \$200 to \$300 depending on the type of submittal. The fee increases should not affect most small businesses for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who causes the discharge must take action to restore the environment. Second, the NR 700 rule series is largely self-implementing. This means that the Responsible Party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing a cleanup.

No public comments were received on the proposed fee increases.

