

The statement of scope for this rule, SS# 114-18, was approved by the Governor on November 9, 2018, published in Register No. 755A3 on November 19, 2018, and approved by the Natural Resources Board on January 23, 2019. This rule was approved by the Governor on [insert date].

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, CONSOLIDATING,  
RENUMBERING, AND AMENDING; AMENDING, REPEALING AND RECREATING AND  
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 700.03 (45e), 700.11 (1) (a) (Note), (3g) (Note 2), (Note 3) and (Note 4), 706.05 (1) (c) 3m. (Note), 708.17 (4) (Note), (4) (b) 1. (Note), 5. (Note), 6. and 7., 714.03 (2), 716.03 (4), (8) and (Note), 716.09 (2) (a) (Note), 716.14 (1) (Note 1), 716.15 (5) (a), (b), (c), and (d), 718.09 (8) (b) 1. c., 2. a., (c) 1. f. (Note), (d) 3. i. and 4., 718.12 (2) (b) 1., 3., 4., 5., and (c) 3. (Note), 722.07 (3) (a) (Note 2), 724.09 (9) (Note), 724.13 (2) (j) (Note), 726.09 (1) (Note 1), (Note 2), (2) (b), (c) and (3) (Note), 726.11 (1) (b) (Note), (4) (a) (Note), (d) (Note), (e), (f) and (Note) and (7) (c) (Note), 726.13 (2) (d) (Note), 727.05 (1) (a) (Note) and (2), 749.03 and 750.07 (1) (c); to **renumber** NR 720.03 (1), (1m) and 726.09 (2) (a); to **renumber and amend** NR 716.15 (5) (intro.), 726.09 (2) (d) (intro.), 1., 2., (e), and (f); to **consolidate, renumber, and amend** NR 714.03 (intro.) and (1); to **amend** NR 150.20 (2) (a) 7e. and 7m., 440.75 (1) (b), 670.079 (2) (e) and (3) (intro.), 700.01, 700.02 (1), (2), (Note 2), (Note 3), and (2m), 700.03 (intro.), (1e) (Note), (6), (11m) (Note), (17) (Note), (43g), (43r), (Note), (56) (intro.), (a) and (60), 700.05 (1) and (2), 700.11 (3g), (Note 1) and (3r), 700.13 (1) and (1m), 706.05 (1) (c) 3m. and (2), 706.07 (2) (b) 1., 708.02 (2) (Note), 708.05 (4) (h), (5) (b), and (6) (c) 3., 708.09 (1) (f), (3) and (Note), 708.11 (2) (b), (d), (4) (intro.) and (b), 708.15 (1) and (3) (b), 708.17 (1) (b), (2) (d), (4) (a), (4) (b) 1., 8. and 9., 712.02 (2) and (3), 712.05 (1), 712.07 (1), (2), (3), and (4), 712.09 (2), 712.11 (1) (f) and (2) (b), 714.01, 714.05 (1) and (5) (intro.), 714.07 (3) (intro.), (b), (c), (d), (i), (4) (a) (intro.), (b) 2., 5., (c), and (d), 716.02 (2) (Note 2), 716.07 (1), (8) (intro.), (a), and (12), 716.09 (1), (Note), (2) (a), (c), (e) (intro.), 1., 3., and 4., 716.11 (5) (b), 716.13 (1), (4), (5), (6) (c) 1. and (11), 716.15 (1) (b), (2) (c) 4. and 7., 718.01, 718.02 (1) (a) (intro.), 1., (b) (intro.), 1. and 2., 718.05 (2) (c), (d) (intro.), (h) 5., 7. and (i) 5., 718.09 (1), (4) (a) 1., 2., 3., 4., (b) 2., 5., (7) (intro.), (a), (b), (c), (8) (a), (b) 1. d. and (d) 1. (intro.), 718.12 (1) (title), (a), (b), (c) (intro.), (d) (intro.), (e) 1., (2) (title), (a), (b) (intro.), 8., (c) 2., (d) and (e), 718.15, 720.08 (1), (2) (a), and (3) (a), 720.10 (1), 720.12 (1) (intro.), (a), (b), (3) (a) 1. a., b., c., d., 2. a., b., c., d., (b) 1. a., b., c., d., 2. a., b., c., and d., 722.02 (2) and (3) (Note), 722.07 (3) (a), (b) (intro.), 1m., 2m. and 3., 722.09 (2) (intro.), (a), (b) 2., (c) 1., 2., (d) (intro.), 1., 2., (e) 1., 2. and (4) (b) 3. (Note), 722.11 (1), (2) and (3), 722.13 (2) (a) 1., 3., 4. and (e) 6., 722.17 (1), (3), and (4), 724.02 (2) (Note 2), 724.05 (2) (b), (Note) and (e) 2. d., 724.09 (3), (5), (6), (7), and (8), 724.13 (1) (a), (b), (2) (intro.), (d) 1., 2., (g) (Note) and (3) (Note 2), 724.17 (1), 725.02 (1) and (2), 725.05 (2) (a), (b), and (L) (Note 2), 725.07 (1) and (3) (Note), 726.02 (2) (a), 726.05 (1), (4) (b), (c), (d), (6) (intro.), (b), (c) (intro.), and (e), 726.07 (1), 726.09 (1), (2), (g), (Note) and (3), 726.11 (2) (a), (3), (4) (intro.), (c), (d), (5) (intro.), (b), (c) 1., 2., (d) (intro.), 1., 2., (e), (6) (intro.), (a), (b) (intro.), 1., (c), (7) (intro.) and (c), 726.13 (1) (a) 2., (b) 2., 3., 4., (2) (b) and (d), 726.15 (1) (b), (d), (2) (e), (f) and (m), 727.01, 727.02, 727.05 (1) (intro.), NR 727.07 (intro.), 727.09 (1), (2), (Note), (4) (intro.), (a), (b), (5) (intro.), (a), (b), and (6) (a) (intro.), 727.11 (1) and (2), 727.13 (3) (b), 728.01, 728.05, 749.04 (1) and (Note 1), 749.05, 750.03 (2m), 750.05 (1), (2) (a) 3., (c), and (5) and 750.07 (1) (a); to **repeal and recreate** NR 700.03 (54), 700.07, 700.11 (1) (a), (3r) (Note), 708.17 (4) (b) 5., 712.07 (1) (Note), 716.13 (12) and (Note), 716.14 (1), 718.05 (1) and (Note), 726.05 (5), 726.11 (4) (a) and (b) and 749.04 (Table 1); and to **create** NR 700.03 (1h), (Note), (3e), (Notes), (5g), (5r), (6e), (Note), (8m), (8s), (13m), (30d), (43g) (Note 1), (Note 2), (43r) (Note 2), (54) (Note), (54m), (Note), (56) (Note), (59s) and (Note), 700.11 (1) (ae), (am), (4), (5) and (Note), 700.15, 708.09 (2) (d), 708.11 (4) (bm) and (4m), 708.15 (4),

708.16, 708.165, 708.17 (2) (am), NR 714.05 (1) (Note 2), 714.07 (3) (im) and (4) (a) 6., 716.07 (7m), (8m), (13), (14), (15), (16), (17), and (18), 716.09 (2) (dm), (em), (i), (Note) and (j), 716.11 (3) (e), (5) (i), 716.13 (4m), (6) (am), (cm), (6m), (12m), (Note), (18), (Note) and (19), 716.15 (3) (j), (4) (gm) and (7), 718.02 (1) (a) 3., 4. and (Note), 718.03 (4m), (Note), (5m) and (5r), 718.05 (2) (d) 2. (Note), 718.12 (1) (f) and (2) (f), 720.03 (1b), (1e), (1h), (1p), (1r), (1u), (4b), (4e), (4h), (4k), (4n), (4q), (4t), (4w), (4y), (10d), (10h), (10p), (10t), (11m), (14e), (14m), and (14s), 720.12 (1) (am), (2m) and (Note), 722.07 (3) (b) 2s. and (4) (a) 3. gm., 722.09 (2) (c) 1m., (cm), (f), (5m) and (Note), 722.13 (2) (cm), (e) 8., 9., 10., and 11., 722.15 (2) (e) 1m., 722.17 (5), 724.02 (1) (br), 724.09 (12) and (13), 724.13 (2) (o) and (p), 724.15 (2m), 724.17 (3r), 724.18, 725.05 (2) (bm), (cm) and (m), 726.02 (2) (c), 726.05 (4) (f) and (8m), 726.07 (1) (Note), 726.09 (2) (ac), (ag), (an), (ar), (b) (intro.), 1., 2., 3. and 4., 726.11 (2m), (3m), (5) (em), (f) and (6) (bm), 726.13 (1) (b) 6. and (2) (h), 726.15 (1) (b) (Note), (dm), (2) (bm), (dm) and (em), 727.05 (5), (6) and (7), 749.04 (1m), (Note) and (2) (Note), 749.06, 749.07, 750.03 (2m) (Note 1), (Note 2), (3) and (Note), 750.09 (6), 754.05 (2m) and (Note), ch. NR 756 and ch. 758, relating to implementation of 2015 Wisconsin Act 204 and 2017 Wisconsin Act 70, contaminated sediment usability, and other changes needed to update, clarify, and promote consistency within chs. NR 700 through NR 799, and affecting small business.

## **RR-10-17**

### **Analysis Prepared by the Department of Natural Resources**

#### **1. Statute Interpreted:**

Wis. Stat. ch. 292

#### **2. Statutory Authority:**

Wis. Stat. ss. 227.11 (2), 292.12 (2) (c), 292.15 (5), 292.31 (2), and 292.94

#### **3. Explanation of Agency Authority:**

Wis. Stat. s. 227.11 (2) provides the department with authority to promulgate rules that are necessary to perpetuate the purpose of the statute. Wis. Stat. s. 292.12 (2) (c) requires the department to promulgate rules to identify limitations or other conditions related to property, to ensure that conditions at the site remain protective of public health, safety, and welfare and the environment, and, as applicable, to promote economic development. Wis. Stat. 292.15 (5) allows the department to assess and collect fees from a voluntary party to offset the cost of the department's activities in accordance with promulgated rules. Wis. Stat. s. 292.31 (2) requires the department to promulgate rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution. Wis. Stat. s. 292.94 requires the department to promulgate rules for the assessment and collection of fees from a person who is subject to an order or other enforcement action for a violation of Wis. Stat. ss. 292.11 or 292.31 to cover the costs incurred by the department to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct.

Additionally, Wis. Stat. ss. 292.12 (2) (d) (2) and 292.15 (2) (af) (3m) authorize the creation of rules regarding sediment financial responsibility. Nonstatutory language within Section 36 of 2015 Wis. Act 204 requires the department to promulgate these rules using the emergency rulemaking process. A portion of this permanent rule corresponds to the emergency rule that is being promulgated under Section 36 of

2015 Wis. Act 204 and Wis. Stat. ss. 292.12 (2) (d) (2) and 292.15 (2) (af) (3m).

#### **4. Related Statutes or Rules:**

Wis. Stat. chs. 289, 291, and 292

#### **5. Plain Language Analysis:**

The Remediation and Redevelopment program is proposing revisions to chs. NR 700 to NR 754, Wis. Adm. Code, as well as the creation of chs. NR 756 and 758. The purpose of these revisions is to provide procedures for new requirements and statutory changes under 2015 Wisconsin Act 204 (“Act 204”), to provide consistency with 2017 Wisconsin Act 70 (“Act 70”), to ensure adequate direction is available in code for the investigation and remediation of contaminated sediment, and to make other targeted changes that are needed to update, clarify, and promote consistency within the NR 700 rule series.

Proposed revisions include the following:

##### ***a. Implementation of 2015 Wis. Act 204 changes regarding definitions, continuing obligations, and interim actions.***

Act 204 established that the department can require continuing obligations for interim actions. Act 204 established access requirements and the responsibilities of owners of properties with continuing obligations, especially those with contaminated sediment, and clarified conditions under which persons are not liable for off-site contamination. Act 204 modified requirements regarding information to be included in the public database established in Wis. Stat. s. 292.12 (3).

The proposed revisions achieve consistency with Act 204 and provide sufficient clarifications, guidance, and procedures for those seeking to comply with new requirements. Revisions include repealing the definition of the term “continuing obligations” in ch. NR 714 and recreating it in ch. NR 700 to be consistent with Act 204 and apply to uses of the term throughout code; creating s. NR 708.16 to provide direction for documentation of continuing obligations imposed by the department as a condition of approving an interim action; creating s. NR 708.165 to clarify the department’s response to interim action plans and reports; and revising ch. NR 725 to clarify that notification requirements apply to sites with continuing obligations imposed following an interim action. Revisions also include:

- Revising or adding terms within s. NR 700.03 that were revised by 2015 Wis. Act 204.
- Revisions to ss. NR 725.02 and NR 727.02 to reflect Act 204 changes regarding the administrative authority of the department under ch. 292 for hazardous waste facilities.
- Updates to ss. NR 714.05, 722.17, 725.07, 726.07 and 726.11 to reflect Act 204 requirements relating to the recording of agreements regarding continuing obligations in the department database, and inclusion of a description of any engineering controls or sediment covers in notifications to property owners regarding sites or facilities with residual contamination.
- Revisions within s. NR 727.05 to include Act 204 requirements prohibiting owners and occupants of properties from interfering with continuing obligations imposed by the department at the property.

##### ***b. Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.***

Act 204 amended Wis. Stat. ch. 292 by establishing new requirements regarding the way contaminated sediments are assessed, managed, and remediated. The act created requirements relating to sites where a

person is using an engineering control to address contaminated sediment. At these sites, the department may require submission of a plan and compliance schedule and proof of financial responsibility for the maintenance of an engineering control and for the investigation and remediation of residual contamination following the removal of a structural impediment. Act 204 created the opportunity for persons to obtain the Voluntary Party Liability Exemption (VPLE) at sites with contaminated sediments, and imposed insurance or an alternative form of financial assurance requirements on contaminated sediment sites enrolled in the VPLE program. It also outlined special conditions for partial cleanup approvals at VPLE properties with contaminated sediment.

The proposed ch. NR 756 creates consistency with statutory changes and provides clarity, guidance, forms, and procedures for changes relating to financial responsibility for engineering controls at contaminated sediment sites and for addressing contamination when a structural impediment is removed. The proposed rule includes added language in chs. NR 708, 722, 724, and 726 to explain the applicability of ch. NR 756 requirements, and the creation of ch. NR 756, which includes:

- The purpose, applicability, and definitions for the chapter in ss. NR 756.01 to 756.03.
- The primary requirements for the plan and compliance schedule in s. NR 756.04 (2) (a), including a plan and compliance schedule that contains scheduled actions, an engineering analysis, and 5-year inspection criteria.
- Financial assurance requirements under s. NR 756.04 (2) (b) for actions listed within the plan and compliance schedule and for events that may occur and affect the completion of the goals of the plan and compliance schedule or the protectiveness of the engineering control remedy.
- Length of time requirements, submittal requirements, authorized department responses, fees, and inspections under s. NR 756.04 (3) to (6).
- Continuing obligation responsibilities and department access authority at affected sediment sites under s. NR 756.05.
- Allowable methods of providing proof of financial responsibility under s. NR 756.06
- Procedures for estimating financial assurance costs and calculating the financial assurance amount under ss. NR 756.07 and 756.08.
- Policies and procedures for changing financial assurance methods and submitting annual adjustments under ss. NR 756.09 and 756.10.
- Policies and procedures for default on commitments under the plan and compliance schedule, for bankruptcy, compliance, and the release of funds under ss. NR 756.11 to 756.14.

The proposed ch. NR 758 provides guidance, forms, and procedures for changes relating to environmental insurance and financial assurance requirements for contaminated sediment sites in the VPLE program, including those receiving partial certificates of completion. The chapter includes:

- Purpose and applicability provisions and definitions for the chapter in ss. NR 758.01 to 758.05.
- Insurance requirements for either the use of a state insurance contract or an individual policy under s. NR 758.07.
- Procedures and policies for calculating the amount of the insurance coverage, the length of insurance, the amount of the deductible, and proof of insurance under ss. NR 758.09 to 758.12.
- Options for using financial assurance methods other than insurance under s. NR 758.13.
- Procedures and criteria for waiver of the insurance requirement under s. NR 758.15.
- Conditions for the issuance of a VPLE certificate of completion under s. NR 758.19 and the policy for failure to satisfy the conditions under s. NR 758.21.
- Policies and procedures for parties seeking a certificate of completion for partial cleanup of a sediment site under ss. NR 758.23 and 758.24.

***c. Adequate direction for contaminated sediment sites.***

The proposed rule revisions clarify the application of several code processes and requirements to contaminated sediment and provide sediment-specific direction within provisions of code that apply directly to various other media (for example, soil or groundwater). These revisions include:

- Creation of terms related to contaminated sediment site investigations and remediations within NR 700.03.
- Revisions throughout chs. NR 700, 708, 716, 718, 722, 724, 726, and 727 to clarify the applicability of code to sediment, to incorporate sediment-specific language, and to provide adequate direction for meeting property description requirements for sediment sites; for example, the inclusion of “dredging” for sediment in addition to “excavating” for soil; revisions to distinguish between a sediment cover, soil cover, or cap; and revisions to provide for an exception from legal description requirements at sites with waterways, at which complete boundaries may not be available in the form of a legal description on a recorded deed.
- Revisions to s. NR 716.07 to provide adequate direction for sediment sites during the site investigation scoping process, including the creation of s. NR 716.07 (7m), which requires scoping data related to impacts to the food chain from persistent, bioaccumulating, or toxic substances; s. NR 716.07 (8m), which requires scoping information relating to the need for an ordinary high water mark determination, and ss. NR 716.07 (13) to (18), which require further scoping data related to sediment sites.
- Revisions to ss. NR 716.09 and 716.13 to provide adequate direction for sediment sites during the site investigation process, including the incorporation of a conceptual site model under s. NR 716.09 (2) and revised sampling analysis requirements and data validation methods under s. NR 716.13.
- Revisions to chs. NR 722 and 724 to provide adequate direction for sediment sites during the evaluation, selection and reporting of a remedial action, including new language to clarify the laws and standards applicable to remedial actions for contaminated sediment under s. NR 722.09 (2); additional language to clarify the required contents for a remedial action options report under s. NR 722.13 (2) and for a design report under s. NR 724.09; new provisions to clarify the contents of an operation and maintenance plan for sediment caps under s. NR 724.13 (2); and added language to clarify requirements for long-term monitoring for sediment under s. NR 724.17 (3r).
- Revisions to chs. NR 726 and 727 to provide adequate direction for sediment sites for continuing obligations and closure, including: closure criteria for sites with sediment contamination under s. NR 726.05 (8m); added closure documentation requirements for sediment sites under s. NR 726.09 (2); clarification of closure letter language under s. NR 726.15 for sediment sites with continuing obligations, including sediment sites with any structural impediments or engineering controls; and additional language to clarify the ongoing responsibilities for continuing obligations at sediment sites under s. NR 727.05 (5).

***d. Implementation of 2017 Wis. Act 70 changes to the Voluntary Party Liability Exemption program.***

2017 Wisconsin Act 70 revised Wis. Stat. s. 292.15 to clarify which properties are eligible for the VPLE program and created a new process for property boundary changes that may occur following application. Revisions to code within chs. NR 750 and 754 provide consistency and direction regarding these additions to statute, including a new definition of “property” as used in the VPLE program, and new requirements and procedures for property boundary changes in the VPLE program.

***e. Clarifications and updates to geolocation, documentation, and applicable standards for emerging contaminants.***

Rule revisions include updated terminology and clarified submittal methods and requirements, unified geolocation specifications, and clarified application of legal standards for emerging contaminants throughout chs. NR 700 to 754, Wis. Adm. Code. Changes include elimination of required paper copy submittals in favor of an electronic submittal method approved by the department and the reorganization of geolocation requirements throughout code into a single section within ch. NR 700 to promote consistency. Changes also include revisions to include applicable references to other Wisconsin laws and standards for various contaminated media, to provide adequate direction for addressing hazardous substances and environmental pollution, as those terms are defined under Wis. Stat. ch. 292, across all media. Specific revisions include:

- Clarifications to the terms “site” and “submittal” within s. NR 700.03 to provide consistency with statute.
- Repeal of property information requirements in chs. NR 706, 708, 716, 718, and 726 and creation of a unified set of deed, parcel, and geolocation information requirements at s. NR 700.15.
- Revisions to s. NR 714.07 to provide for modern methods of public notification and outreach.
- Clarification of applicable environmental laws and standards for remedial actions under s. NR 722.09, including references to state drinking water standards in chs. NR 809 and 812.
- Revisions to the definitions of “Phase I environmental sites assessment” and “Phase II environmental site assessment” in s. NR 700.03 to clarify that these reports, which are required under s. NR 750.05, shall include “hazardous substances” and “environmental pollution” as those terms are defined in statute and code, and to incorporate respective ASTM standard practices.
- Revisions to chs. NR 725, 726, and 727 to clarify the application of alternative standards and site-specific standards for certain media.

***f. Updates to professional qualifications and fees.***

Rule revisions include clarification of the applicability of professional standards under ch. NR 712 to closure submittals and the revision of ch. NR 749 to account for inflation and to provide clarity and flexibility regarding payment of fees, including fees for enforcement-related submittals, contracts under Wis. Stat. ch. 292.31, and database entries. Some specific revisions to ch. NR 749 include:

- The increase of existing fees listed within Table 1 by 2% upon the effective date of the rules.
- The increase of existing fees listed within Table 1 by 5% every third calendar year, beginning Jan. 1, 2025.
- The creation of new fees for review of the following items: an interim action plan, an interim action report, a plan and compliance schedule for a contaminated sediment site, and an inspection report for a contaminated sediment site.

***g. Clarifications and updates to timelines and notification and closure requirements.***

Rule revisions include additions throughout code to clarify the timing and steps of the investigation and cleanup process to encourage responsible parties to make reasonable progress towards completing cleanups. Revisions also include clarifications within ch. NR 726 regarding the process and requirements for submitting closure requests and forms, and clarification of case closure response action goals. These changes include:

- The addition of content-related requirements for semi-annual reports required under s. NR 700.11.
- Clarification of the department’s authority to approve or require further revisions or additional information following receipt of a site investigation report under ch. NR 716.

- Clarification of the disposition of fees for incomplete closure requests and their application to other submittals required by code.
- The addition of a compiled list of the submittals required throughout code within the case closure chapter, ch. NR 726, to clarify the requirements for a complete case closure request.
- Clarification of case closure submittal mapping and format requirements under s. NR 726.09.
- Clarification of the department's authority to require a schedule for completing unfinished closure requests under s. NR 726.13.

#### ***h. Clarifications and updates to soil standards and soil management.***

Rule revisions include streamlining certain soil management procedures under ch. NR 718, cross-references between portions of code regarding documentation of soil management, creating consistency with federal soil direct exposure assumptions, and revisions to cumulative approach and background considerations for polycyclic aromatic hydrocarbon (PAH) contaminants. Specific changes include:

- Removal of language regarding landspreading for petroleum contamination under s. NR 718.09 (8).
- Addition of language codifying current practice of allowing certain types of contaminated soil to be moved to a nonmetallic mine if reclamation plan allows under s. NR 718.12.
- Revisions to allow a self-implementing exemption from solid waste program requirements for stockpiling, depending upon time and volume parameters, under s. NR 718.05 (1).
- Clarification of the requirements for confirmation sampling during construction documentation and completion of the remedy under s. NR 724.15 (2m).
- Cross referencing soil management rules under criteria for evaluation of remedial action options at s. NR 722.07 (4).
- Defining and referencing the EPA's variables for exposure assumptions for direct contact with soil under ss. NR 720.03 and 720.12.
- Clarifying the threshold for carcinogenic PAHs under s. NR 720.12.

#### **6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

Many of the proposed rule revisions are clarifications or updates that are specific to Wisconsin's response action process and are not readily comparable to federal approaches; however, available comparisons are provided below.

##### *Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.*

There are no federal regulations that address the specific activities to be regulated by the proposed rules; however, there are related federal regulations that require financial assurance in some cases for sites that are being processed under federal laws.

- Sites being cleaned up under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Superfund process or sites using the Superfund alternatives process may be required to provide financial assurance in a settlement agreement or order. There are no federal regulations that apply to this specific subject; however, EPA has issued guidelines.
- The Resource Conservation and Recovery Act (RCRA) requires all hazardous waste treatment, storage and disposal facilities to demonstrate that they will have the financial resources to properly close the facility or unit when its operational life is over or provide the appropriate emergency response in the case of an accidental release. These financial assurance requirements are found at 40 C.F.R., Part 264, Subpart H, and Part 265, Subpart H.

- RCRA has rules that require financial assurance for Corrective Action sites that are found in 40 C.F.R., s. 264.101 (b) and (c).

*Adequate direction for remediation of contaminated sediments.*

The NR 700 rule series process and standards for the investigation and remediation of contaminated sites in Wisconsin is approved by U. S. EPA Region 5 as sufficient to meet federal requirements and the objectives of CERCLA. The proposed rule revisions codify the application of these processes to sediment, similar to the way that the code provides media-specific direction to groundwater, soil, and other media. The process for remediating contaminated sediment contains the same substantive elements as the federal process, including an investigation and risk-based selection of cleanup criteria, including the use of a conceptual site model and a risk assessment based on criteria for aquatic life with the evaluation of risk based on toxicity studies.

*Clarifications and updates to documentation.*

Proposed revisions throughout code would repeal paper submittal requirements and allow electronic submission alone. Certain federal regulations accomplish similar goals at the federal level, such as the Cross-Media Electronic Reporting Rule, 40 C.F.R. Part 3, which provides the framework for electronic reporting under all of EPA's environmental regulations.

*Soil standards (exposure assumptions).*

The revisions to s. NR 720.12 (3) to adopt current U.S. EPA exposure assumptions for direct contact with soil will result in a lower threshold for responsible parties to meet and will provide consistency with federal requirements.

**7. Comparison with Similar Rules in Adjacent States:**

Many of the proposed rule revisions are clarifications or updates that are specific to Wisconsin's remediation process and are not readily comparable to other state approaches; however, available comparisons are provided below.

*Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.*

There are no regulations at this time within Michigan, Minnesota, Illinois, or Iowa that address the specific activities to be regulated by the proposed rules; however, there are related requirements in certain states:

- The state of Michigan, under Part 201 of Natural Resources and Environmental Protection Act (Act 451) of 1994, requires financial assurance as part of proposed post-closure agreements that are submitted as part of a "no further action report" following a remedial action. The financial assurance covers the costs of monitoring, operation and maintenance, oversight, and other costs determined by the Michigan Department of Environment, Great Lakes, and Energy to be necessary to assure the effectiveness and integrity of the remedial action (Mich. Stat. s. 324.20114d).
- The state of Iowa, under Iowa Code Chapter 455H, the Iowa Land Recycling and Environmental Remediation Standards Act, may require financial assurance from those participating in its voluntary Iowa Land Recycling Program. The director of the Iowa Department of Natural Resources may require reasonable proof of financial assurance for a technological control to



ensure that it remains effective. The requirement is in statute (Iowa Stats. s. 455H.206 and Iowa Administrative Code s. 137.7(1)).

Minnesota, Illinois, Iowa, and Michigan all have adopted statutes or rules governing financial responsibility requirements for solid waste facility, hazardous waste facility, or corrective action sites or facilities as part of their respective delegations of authority to implement RCRA at the state level.

*Soil standards (direct contact residual contaminant levels)*

The revision under s. NR 720.12 (1) to increase the direct contact residual contaminant level for PAHs will result in a standard that is less restrictive than the current Wisconsin standard, and more within the range of what surrounding states have established. For example, the standard imposed by Wisconsin for benzo(a)pyrene, a PAH compound, is currently more restrictive than all surrounding states. Following the rule change, the Wisconsin standard imposed for benzo(a)pyrene will be less restrictive than the standards for non-metropolitan Illinois and Minnesota, but more restrictive than the standards for metropolitan Illinois, Iowa, and Michigan.

**8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

*Soil standards (direct contact residual contaminant levels).*

The revisions under s. NR 720.12 (1) to increase the direct contact residual contaminant level for PAHs is based on background concentrations found in areas of the state and are meant to provide attainable and protective cleanup goals. This rule change follows the collaborative reassessment of PAHs in the state of Wisconsin that was completed by the department and the Wisconsin Department of Health Services. The residual contaminant levels for seven PAHs commonly found in the environment will be affected by this proposed change. The residual contaminant level for naphthalene, a relatively volatile PAH compound that is more commonly associated with hazardous substance discharges, rather than background levels, will not change.

*Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.*

The policies, procedures, and methods for meeting financial assurance requirements under ch. NR 756, relating to financial assurance for sites with engineering controls, are based, in part, on the policies and procedures for financial assurance requirements for solid waste facilities under Wis. Stat. s. 289.41 and ch. NR 520, Wis. Adm. Code. These solid waste regulations are derived from federal requirements. During the public meetings that the department held to gather input during rule drafting, these regulations received positive evaluations from both internal department staff and external customers that have experience in administering and meeting these requirements.

**9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

The program requested estimates from various environmental consulting firms located in Wisconsin regarding the impact of rule revisions on the costs of consulting services needed to meet revised requirements under the NR 700 rule series. This data was supplemented with Bureau of Remediation and Redevelopment Tracking System (BRRTS) data and department staff expertise.

## **10. Effect on Small Business (initial regulatory flexibility analysis):**

Rule revisions are not anticipated to cause small businesses to incur new costs, except in cases where the small business is a responsible party. Small businesses that are responsible for a hazardous substance discharge or environmental pollution may be affected by revisions relating to interim action requirements, fees, and semi-annual reporting requirements. While the department does not have a defined data set for small business, staff conservatively estimates that 30% or fewer responsible parties are small businesses. In this case, the total annual statewide costs to small business may range from \$352,953 to \$624,386.

Small businesses that are responsible parties may benefit from rule revisions that reduce costs, including repealed paper submittal requirements, less prescriptive requirements for federal soil exposure assumptions and reduced PAH contaminant thresholds, and improved clarity and consistency across code. Additionally, current mechanisms that reduce costs for small businesses will apply to these rule revisions. These measures include performance standards in lieu of numeric cleanup standards, off-site liability exemptions, de minimus reporting standards, no further action determinations, brownfields team staff assistance, and investigation and cleanup funding programs.

## **11. Agency Contact Persons:**

Michael Prager – RR/5  
Land Recycling Team Leader  
Department of Natural Resources  
101 S. Webster Street  
Madison, WI 53703  
(608) 261-4927  
[Michael.Prager@wisconsin.gov](mailto:Michael.Prager@wisconsin.gov)

Molly Schmidt – RR/5  
Department of Natural Resources  
101 S. Webster Street  
Madison, WI 53703  
(608) 267-7500  
[MollyE.Schmidt@wisconsin.gov](mailto:MollyE.Schmidt@wisconsin.gov)

## **12. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, or by email to:

Molly Schmidt – RR/5  
Department of Natural Resources  
101 S. Webster Street  
Madison, WI 53703  
(608) 267-7500  
[MollyE.Schmidt@wisconsin.gov](mailto:MollyE.Schmidt@wisconsin.gov)

Written comments may also be submitted to the Department at  
[DNRAAdministrativeRulesComments@wisconsin.gov](mailto:DNRAAdministrativeRulesComments@wisconsin.gov).

A hearing will be held on October 16, 2020 at 9 a.m. via [Skype](#).

The deadline for submitting public comments is October 23, 2019.

The consent of the Attorney General will be requested for the incorporation by reference of certain EPA-approved test methods, methods for the review of analytical data, and exposure assumptions for direct contact with contaminated soil and certain ASTM International standard practices for environmental site assessments. These items and their respective locations in code are provided under s. NR 700.07.

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**SECTION 1. NR 150.20 (2) (a) 7e. and 7m. are amended to read:**

NR 150.20 (2) (a) 7e. Funding decisions made pursuant to ch. 292, Stats., and chs. NR 700 to ~~754~~ 799.

7m. Issuance of regulatory approvals, liability clarification letters, exemptions, and technical assistance under ch. 292, Stats., and chs. NR 700 to ~~754~~ 799.

**SECTION 2. NR 440.75 (1) (b) is amended to read:**

NR 440.75 (1) (b) Activities required by or conducted pursuant to a remedial action under the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 to 9675); the Resource, Conservation and Recovery Act (42 USC 6901 to 6992k) or chs. NR 700 to ~~750~~ 799 are not considered construction, reconstruction or modification for purposes of this section.

**SECTION 3. NR 670.079 (2) (e) and (3) (intro.) are amended to read:**

NR 670.079 (2) (e) May require that the person to whom a remediation variance is issued comply with any appropriate requirements of chs. NR 660 to 679, and chs. NR 700 to ~~750~~ 799, as a condition of issuance, in order to protect human health or the environment.

(3) PUBLIC PARTICIPATION. The department may not approve a remediation variance unless the applicant provides proof of public notice of the proposed project. Unless another person is approved by the department to carry out the public participation process, the responsible party shall issue a class I public notice that provides for a minimum 30-day comment period. A copy of the public notice along with a list of newspapers ~~which~~ that carried the notice shall be included as part of the remediation variance application. If the responsible party or the department determine that additional public participation is necessary the provisions ~~in s. NR~~

~~714.07 (6)~~ under s. NR 714.07 shall be followed. The department shall respond to the comments received. The class I public notice shall include all of the following information:

**SECTION 4. NR 700.01 is amended to read:**

**NR 700.01 Purpose.** (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to ~~754~~ 799, 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~~ 799.

(2) The purpose of chs. NR 700 to ~~754~~ 799 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~~ that 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~~ 799 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~~ under 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.

**SECTION 5. NR 700.02 (1), (2), (Note 2), (Note 3), and (2m) are amended to read:**

**NR 700.02 Applicability.** (1) This chapter and chs. NR 702, 704, and 708 to ~~754~~ 799 apply to actions taken by the department under the authority of chs. 289, 291, and 292, Stats.

(2) This chapter and chs. NR 706 to ~~754~~ 799 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: 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~~ under chs. NR 700 to ~~754~~ 799

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~~ under chs. NR 700 to ~~754~~ 799 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~~ under s. 292.31, Stats., 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~~ under chs. NR 700 to ~~754~~ 799 in order to be consistent with CERCLA and the NCP.

**(2m)** This chapter and chs. NR 706 to 728, 750, ~~and 754,~~ and 758 apply to actions taken by persons who are seeking a liability exemption under s. 292.15, Stats.

**SECTION 6. NR 700.03 (intro.) and (1e) (Note) are amended to read:**

**NR 700.03 Definitions.** The following definitions apply to chs. NR 700 to ~~754~~ 799:

**(1e)** Note: ~~Section 292.12 (1) (a), Stats., reads:~~ Under s. 292.12 (1) (a), Stats., “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), Stats., or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7) ch. 289, 291, or 292.”

**SECTION 7. NR 700.03 (1h) and (Note), (3e) and (Notes), (5g), and (5r) are created to read:**

NR 700.03 **(1h)** “Aliquot” means a subsample derived by a divisor that divides a thoroughly mixed whole sample into a number of equal parts and leaves no remainder; a subsample resulting from such a division.

Note: In analytical chemistry the term “aliquot” is generally used to define any representative portion of the sample.

**(3e)** “Cap” means a physical and chemical isolation barrier that disrupts a completed exposure or diffusion pathway. A sediment cover is not a “cap.”

Note: Under s. 292.01 (3m), Stats., “engineering control” means “an object or 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.”

Note: Under s. 292.01 (17m), Stats., “sediment cover” means “a layer of uncontaminated sand or similar material that is deposited on top of contaminated sediment.”

**(5g)** “Composite sample” means a sample that, in some situations, may provide a more representative sampling of heterogeneous matrices in which the concentration of the analytes of interest may vary over short periods of time or space, or both.

**(5r)** “Conceptual site model” means a narrative and visual representation of the environmental system and the physical, chemical, and biological processes that determine the transport of any hazardous substance discharges or environmental pollution from sources through various environmental media to receptors.

**SECTION 8. NR 700.03 (6) is amended to read:**

NR 700.03 **(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~~ 799.

**SECTION 9. NR 700.03 (6e) and (Note), (8m), and (8s) are created to read:**

NR 700.03 **(6e)** “Contaminated sediment” has the meaning specified under s. 292.01 (1s), Stats.

Note: Under s. 292.01 (1s), Stats., “contaminated sediment” means “sediment that contains a hazardous substance.”

**(8m)** “Continuing obligation” means any responsibility, requirement, limitation, or combination thereof, that an agency with administrative authority imposes as a condition of approving an interim action, approving a remedial action, or of issuing a case closure letter for a site or facility at which residual contamination remains after the conclusion of an interim action or a remedial action at the site or facility, that is imposed under ch. 292, Stats., or any agreements or contracts authorized under ch. 292, Stats.

NR 700.03 **(8s)** “Data quality objective” means a qualitative and quantitative statement that clarifies the purpose of a data collection effort, defines the most appropriate type of information to collect, determines the most appropriate conditions from which to collect that information, and specifies tolerable levels of potential decision errors.

**SECTION 10. NR 700.03 (11m) (Note) is amended to read:**

NR 700.03 **(11m)** 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 “~~RSSM~~” “RR Sites Map”, that allows users to view spatial information from ~~the BRRTS database~~ BOTW using a geographic information system (GIS) application. Both these applications may be found at <http://dnr.wi.gov/topic/Brownfields/clean.html>  
<https://dnr.wi.gov/topic/Brownfields/WRRD.html>.

**SECTION 11. NR 700.03 (13m) is created to read:**

NR 700.03 **(13m)** “Discrete sample” means a single sample collected at a specific location.

**SECTION 12. NR 700.03 (17) (Note) is amended to read:**

NR 700.03 **(17)** Note: Under s. 292.01 (3m), Stats., “engineering control” means an “object or 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.<sup>2</sup>

**SECTION 13. NR 700.03 (30d) is created to read:**

NR 700.03 (30d) “Investigative waste” means all solid and liquid wastes and contaminated environmental media resulting from activities conducted during a site investigation, immediate action, interim action, remedial action, or a monitoring or sampling event at a site or facility. “Investigative waste” includes soil or sediment from drill cuttings; drilling fluids; contaminated water from construction, purging, development and sampling of monitoring wells; and wash waters used during sampling or decontamination activities.

**SECTION 14. NR 700.03 (43g) is amended to read:**

NR 700.03 (43g) “Phase I environmental site assessment” means an assessment ~~of that~~, at a minimum, follows ASTM standard practice E1527-13, includes hazardous substances as defined under s. NR 700.03 (25) and environmental pollution as defined under s. NR 700.03 (19), and is conducted for a site property to identify all potential, suspected, or known areas of environmental contamination. This assessment may include reviewing records, interviewing persons, and conducting physical inspections of the ~~site~~ property.

**SECTION 15. NR 700.03 (43g) (Note 1) and (Note 2) are created to read:**

NR 700.03 (43g) Note: Under s. NR 700.03, “contamination” 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.

Note: ASTM standard practice E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, is on file at the department and the legislative reference bureau and is available for purchase from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, or at <https://www.astm.org/>.

**SECTION 16. NR 700.03 (43r) and (Note) are amended to read:**



NR 700.03 (43r) “Phase II environmental site assessment” means an assessment ~~of that~~, at a minimum, follows ASTM standard practice E1903-19, includes hazardous substances as defined under s. NR 700.03 (25) and environmental pollution as defined under s. NR 700.03 (19), and is conducted for a site property to physically confirm that contamination exists in potential, suspected, 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 property.

Note: The department recommends that at a minimum, the current ASTM ~~standards~~ standard practices be followed when conducting ~~Phase phase I and Phase phase II~~ Phase phase I and Phase phase II environmental assessments. The department may require information or sampling that is additional to ASTM standard practices, depending upon on the property conditions and the applicable regulatory authority, for example, at a property for which a person is seeking the voluntary party liability exemption under s. 292.15, Stats. When a person is seeking liability protections under CERCLA the person should follow EPA’s requirements contained in 40 CFR Part 312. ~~See EPA’s web page at: [www.epa.gov](http://www.epa.gov) for more information.~~

**SECTION 17. NR 700.03 (43r) (Note 2) is created to read:**

NR 700.03 (43r) Note: ASTM standard practice E1903-19, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, is on file at the department and the legislative reference bureau and is available for purchase from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, or at <https://www.astm.org/>.

**SECTION 18. NR 700.03 (45e) is repealed.**

**SECTION 19. NR 700.03 (54) is repealed and recreated to read:**

NR 700.03 (54) “Sediment” has the meaning specified under s. 292.01 (17g), Stats.

**SECTION 20. NR 700.03 (54) (Note) and (54m) and (Note) are created to read:**

NR 700.03 (54) Note: Section 292.01 (17g), Stats., defines “sediment” to mean “particles in the bed of a navigable water up to the ordinary high-water mark that are derived from the erosion of rock, minerals, soil, and biological materials and from chemical precipitation from the water column and that are transported or deposited by water.”

(54m) “Sediment cover” has the meaning specified under s. 292.01 (17m), Stats.

Note: Under s. 292.01 (17m), Stats., “sediment cover” means “a layer of uncontaminated sand or similar material that is deposited on top of contaminated sediment.”

**SECTION 21. NR 700.03 (56) (intro.) and (a) are amended to read:**

NR 700.03 (56) “Site” means any of the following:

(a) Any site or facility as defined under s. 292.01 (18), Stats., including a waste site as defined in under s. 292.01 (21), Stats.; ~~or~~

**SECTION 22. NR 700.03 (56) (Note) and (59s) and (Note) are created to read:**

NR 700.03 (56) Note: Section 292.01 (18), Stats. defines “site or facility” to mean, “except in s. 292.35, an approved facility, an approved mining facility, a nonapproved facility or a waste site.”

(59s) “Structural impediment” means one or more objects at a site or facility that prevent the completion of a site investigation to determine the degree and extent of contamination, the completion of a remedial action, or both.

Note: Examples of objects that may be structural impediments include: buildings, dams, bridge abutments, and utilities.

**SECTION 23. NR 700.03 (60) is amended to read:**

NR 700.03 (60) “Submittal” means any document, report, plan, set of specifications, engineering design, electronic file, or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR 700 to ~~754~~ 799 or to request department assistance under s. 292.55, Stats.

**SECTION 24. NR 700.05 (1) and (2) are amended to read:**

NR 700.05 (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~~ 799 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~~ 799, the standards and procedures ~~in~~ under s. NR 2.19 are applicable to all sites and facilities, and the standards and procedures ~~in~~ under s. 289.09 (2), Stats., are applicable to the owners and operators of solid waste facilities.

**SECTION 25. NR 700.07 is repealed and recreated to read:**

**NR 700.07 Incorporation by reference.** The following materials are incorporated by reference:

(1) “Test Methods for Evaluating Solid Waste: Physical/Chemical Methods Compendium, SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IV, V, and VI,” referenced in s. NR 716.13 (12).

Note: Copies of “Test Methods for Evaluating Solid Waste: Physical/Chemical Methods Compendium, SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IV, V, and VI,” are available for inspection at the offices of the department and the legislative reference bureau. Copies may be obtained from the Government Printing Office, Room 190, Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 53202 and may be accessed at the U.S. EPA’s web site at: <http://www.epa.gov>.

(2) “National Functional Guidelines for Organic Superfund Methods Data Review (SOM02.4)” and “National Functional Guidelines for Inorganic Superfund Methods Data Review (ISM02.4),” referenced in s. NR 716.13 (18).

Note: Copies of “National Functional Guidelines for Organic Superfund Methods Data Review (SOM02.4)” and “National Functional Guidelines for Inorganic Superfund Methods Data Review (ISM02.4)” may be obtained directly from the U.S. EPA’s website at

www.epa.gov. Copies are also on file at the offices of the department and the legislative reference bureau.

(3) “U.S. EPA office of solid waste and emergency response directive 9200.1-120,” referenced in s. NR 720.12 (3).

Note: The “U.S. EPA office of solid waste and emergency response directive 9200.1-120” is available at [https://www.epa.gov/sites/production/files/2015-11/documents/oswer\\_directive\\_9200.1-120\\_exposurefactors\\_corrected2.pdf](https://www.epa.gov/sites/production/files/2015-11/documents/oswer_directive_9200.1-120_exposurefactors_corrected2.pdf). Copies are also on file at the offices of the department and the legislative reference bureau.

(4) “ASTM E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” referenced in s. NR 700.03 (43g).

Note: ASTM standard practice E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, is on file at the offices of the department and the legislative reference bureau and is available for purchase from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshokocken, PA 19428–2959, or at <https://www.astm.org/>.

(5) “ASTM E1903-19 Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process,” referenced in s. NR 700.03 (43r).

Note: ASTM standard practice E1903-19, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, is on file at the offices of the department and the legislative reference bureau and is available for purchase from ASTM International at 100 Barr Harbor Drive, PO Box C700, West Conshokocken, PA 19428–2959, or at <https://www.astm.org/>.

**SECTION 26. NR 700.11 (1) (a) is repealed and recreated to read:**

NR 700.11 (1) (a) A responsible party shall submit site progress reports on a reporting form provided by the department that includes all of the following:

1. A summary of the completed work and additional work planned to adequately complete the response action at the site or facility.
2. A proposed schedule for the project, including dates for completing additional work planned to complete the response action.
3. A description of any imminent threats related to the hazardous substance discharge and environmental pollution identified and any immediate actions taken within the reporting period.

**SECTION 27. NR 700.11 (1) (a) (Note) is repealed.**

**SECTION 28. NR 700.11 (1) (ae) and (am) are created to read:**

NR 700.11 (1) (ae) Unless otherwise directed by the department, a responsible party shall hire an environmental consultant meeting the requirements under ch. NR 712 and shall provide the name of the consultant and qualifications of the consultant under ch. NR 712 to the department no later than 30 days after issuance of a letter from the department directing the responsible party to take action under ch. 292, Stats.

(am) A responsible party shall submit the site progress reports required under par. (a) to the department on or before every January 1 and July 1 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 under s. NR 706.05. The department may require progress reports be submitted at a different frequency than semi-annually.

**SECTION 29. NR 700.11 (3g) and (Note 1) are amended to read:**

NR 700.11 (3g) NUMBER AND FORMAT 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~~ using electronic methods approved 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 approved by the department.~~ ~~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. Document submittals to the department are public records unless confidentiality is granted through limited scope of the procedure found under s. NR 700.05. Submittals shall not indicate a document is confidential, settlement confidential, privileged or limited in applicability or use by future property owners or the department.

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

**SECTION 30. NR 700.11 (3g) (Note 2) (Note 3) and (Note 4) are repealed.**

**SECTION 31. NR 700.11 (3r) is amended to read:**

NR 700.11 (3r) TECHNICAL OR LIABILITY ASSISTANCE. When requesting technical assistance or liability clarification from the department, ~~the~~ each request shall be submitted with any fee required under ch. NR 749 and on a form supplied by the department.

**SECTION 32. NR 700.11 (3r) (Note) is repealed and recreated to read:**

NR 700.11 (3r) Note: Forms to request technical assistance or liability clarification from the department can be found at <https://dnr.wi.gov/topic/Brownfields/Fees.html>.

**SECTION 33. NR 700.11 (4), (5) and (Note) are created to read:**

NR 700.11 (4) COMPLETENESS. A submittal is not complete and will not be considered to have been received by the department unless the requirements stated within this section are met.

(5) ENFORCEMENT. (a) The department may implement any applicable enforcement tools set forth under ch. NR 728 and applicable state laws for violations of this section.

(b) Any person who violates this section may be subject to penalties under s. 292.99 (1), Stats.

Note: Section 292.99 (1), Stats., states "...any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue."

**SECTION 34. NR 700.13 (1) and (1m) are amended to read:**

NR 700.13 (1) GENERAL REQUIREMENTS. All sampling, preservation, extraction, and analytical methods used for compliance with chs. NR 700 to ~~754~~ 799 shall be done according to the requirements ~~in~~ under 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 under chs. NR 700 to NR ~~754~~ 799 for purposes of determining whether a discharge has occurred or to estimate the degree and extent of contamination.

**SECTION 35. NR 700.15 is created to read:**

**NR 700.15 Property information. (1) DEED AND PARCEL INFORMATION.** (a) Unless otherwise provided by the department in writing, and except as provided under par. (b), where deed and parcel information is required under chs. NR 700 to 799, the person subject to deed and parcel information requirements under chs. NR 700 to 799 shall submit all of the following

information for each right-of-way and property within or partially within the contaminated site boundaries:

1. A copy of the most recent recorded deed. If the most recent recorded deed does not include a legal description, then the most recent deed that includes the legal description shall be included in addition to the most recent recorded deed. In situations where a buyer has purchased property under a land contract and has not yet received a recorded deed, a copy of the land contract that includes the legal description shall be submitted.

2. 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 recorded 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.

3. The most recent parcel identification numbers for each property.

(b) Copies of deeds, or other documents with legal descriptions, are not required to be submitted for any of the following:

1. Contaminated navigable waterways, riverbeds, or lakebeds, or any other situations where contaminated sediment exists and deeds are not available to evidence riparian ownership.

2. Contaminated public-street or highway rights-of-way or railroad right-of-way unless the source of the contamination is in the right-of-way.

(c) At properties where the department determines that the deed does not provide adequate proof of ownership for all or part of the property, or does not clearly establish property boundaries, or both, the department may require any other documentation that establishes legal ownership, property boundaries, or both.



(2) GEOGRAPHIC POSITION. Unless otherwise provided by the department in writing, where geographic position information is required under chs. NR 700 to 799, the responsible party shall obtain and submit to the department information for each property within or partially within the contaminated site boundaries in accordance with all of the following requirements:

(a) *Format.* For all properties, a single point geographic position shall be obtained for a location as close to the center of the property as possible. If requested by the department, coordinates describing the approximate location of the property's boundaries, forming a polygon, shall be obtained and submitted.

(b) *Geographic coordinates.* Latitude and longitude coordinates shall be submitted in decimal degrees format with a precision of 6 digits right of the decimal.

(c) *Acceptable methods.* Acceptable methods for obtaining geographic position data include direct location or interpolation from other features using a base map of 1:24000 scale or finer, aerial photography of 18-inch resolution or finer, mapping grade or better global positioning system technology, or other methods providing comparable accuracy that have been approved by the department.

**SECTION 36. NR 706.05 (1) (c) 3m. is amended to read:**

NR 706.05 (1) (c) 3m. Location of the hazardous substance discharge including street address, county, town, city or village, if appropriate, ~~quarter-quarter section, township, range,~~ geographic position obtained in accordance with the requirements ~~of s. NR 716.15 (5) (d) under~~ s. NR 700.15 (2), and legal description of lot, if located in a platted area.

**SECTION 37. NR 706.05 (1) (c) 3m. (Note) is repealed.**

**SECTION 38. NR 706.05 (2) is amended to read:**

NR 706.05 (2) CONTAINMENT, CLEANUP, DISPOSAL, AND RESTORATION. Responsible parties shall comply with the requirements of chs. NR 700 to ~~754~~ 799 for response actions to discharges of hazardous substances.

**SECTION 39. NR 706.07 (2) (b) 1. is amended to read:**

NR 700.07 (2) (b) 1. The discharged substance has not evaporated or has not been cleaned up in compliance with the requirements of chs. NR 700 to ~~754~~ 799.

**SECTION 40. NR 708.02 (2) (Note) is amended to read:**

NR 708.02 (2) Note: Persons who wish to conduct response actions that will be consistent with the requirements of CERCLA and the NCP may request that the department enter into a contract with them pursuant to s. 292.31, Stats., or a negotiated agreement under s. 292.11 (9) (e) 4., Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained ~~in~~ under chs. NR 700 to ~~754~~ 799 in order to be consistent with CERCLA and the NCP.

**SECTION 41. NR 708.05 (4) (h), (5) (b), and (6) (c) 3. are amended to read:**

NR 708.05 (4) (h) Removing the contaminated soil or sediment, debris or ~~the~~ any hazardous substance that was discharged, or environmental pollution, in compliance with s. NR 708.11 (3) (e).

(5) (b) Contaminated soils, as defined ~~in~~ under s. NR 718.03 (5), or contaminated sediment, as defined under s. NR 700.03 (7m), that are excavated or dredged as part of an immediate action are exempt from the storage requirements of s. NR 718.05 and the solid waste regulatory requirements of ch. 289, Stats., and chs. NR 500 to 538, for a period of 72 hours after the initial excavation or dredging of the contaminated soils or sediment.

(6) (c) 3. Location of the site or facility, or discharge incident, including street address; ~~quarter-quarter section, township, range, and county; and~~ the location information specified ~~in~~ s. NR 716.15 (5) (d) under s. NR 700.15 (2); latitude and longitude, and legal description of lot, if located in platted area.

**SECTION 42. NR 708.09 (1) (f) is amended to read:**

NR 708.09 (1) (f) Migration potential of ~~the contamination~~ any hazardous substance discharge or environmental pollution, including soil and sediment conditions, proximity to

surface water bodies, location of drains or storm sewers, depth to groundwater and the integrity of any ~~containment area engineering control~~.

**SECTION 43. NR 708.09 (2) (d) is created to read:**

NR 708.09 (2) (d) There is visual or analytical evidence that any contaminated sediment or contaminated surface water may be present or is confirmed to be present.

**SECTION 44. NR 708.09 (3) and (Note) are amended to read:**

NR 708.09 (3) REOPENING ~~A~~ AN IMMEDIATE ACTION CASE. The department may require that additional response actions be conducted by responsible parties in compliance with the requirements of chs. NR 700 to ~~754~~ 799 if additional information indicates that ~~residual~~ contamination at a site or facility may be yet undiscovered or poses a threat to public health, safety, or welfare or the environment.

Note: Although the department may determine at this time that no further response action is necessary pursuant to chs. NR 700 to ~~754~~ 799, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

**SECTION 45. NR 708.11 (2) (b) and (d) and (4) (intro.) and (b) are amended to read:**

NR 708.11 (2) (b) Conducting source removal, such as excavation and treatment of highly contaminated soils, groundwater, surface water, or sediment, to prevent or limit further movement of ~~the contamination~~ any hazardous substance or environmental pollution.

(d) Constructing a temporary engineering control, such as a low permeability soil cover, or installing and operating a vapor mitigation system.

(4) DESIGN AND IMPLEMENTATION REQUIREMENTS. For the types of interim actions listed in pars. (a) through (c), responsible parties shall prepare and submit to the department all reports and plans required by ch. NR 724 with the fee that is required under ch. NR 749 for department review and approval prior to proceeding to the next step in design, implementation or operation of an interim action under ch. NR 724, unless otherwise directed.

(b) On-site engineering control or barrier, including a landfill ~~cover cap~~ or groundwater barrier system, sediment cap or a vapor mitigation system other than a radon-type sub-slab depressurization system.

**SECTION 46. NR 708.11 (4) (bm) and (4m) are created to read:**

NR 708.11 (4) (bm) Any action requiring an exemption under ss. NR 718.12 or NR 718.15 to manage contaminated soil or solid waste.

**(4m) PLAN AND COMPLIANCE SCHEDULE AND PROOF OF FINANCIAL RESPONSIBILITY.** At a site where a person takes an interim or remedial action under ch. 292, Stats., and uses an engineering control to address contaminated sediment, the department may, as a condition of approving the interim action, require a plan and compliance schedule and proof of financial responsibility under ch. NR 756.

**SECTION 47. NR 708.15 (1) and (3) (b) are amended to read:**

NR 708.15 (1) GENERAL. Responsible parties shall prepare and submit to the department an interim action report, in accordance with this section, describing each interim action taken. ~~The~~ Except as provided in sub. (2), the interim action report shall be submitted with the fee that is required under ch. NR 749 within 45 days after the interim action has been completed, unless otherwise directed by the department. The report may be submitted alone or as part of the remedial action report or the site investigation report, unless otherwise directed by the department or unless sub. (2) is applicable if that report is submitted within 45 days after the interim action has been completed.

(b) Location of the site or facility, or discharge incident, including street address; ~~quarter-quarter section, township, range, and county;~~ the location information specified ~~in s. NR 716.15 (5) (d) under s. NR 700.15 (2);~~ latitude and longitude, and legal description of lot, if located in platted area.

**SECTION 48. NR 708.15 (4) is created to read:**

NR 708.15 (4) CONTINUING OBLIGATIONS. If the interim action includes a permanent or temporary engineering control, installation of a vapor intrusion mitigation system, management of contaminated soil under ch. NR 718, or any other actions that would necessitate the need for a continuing obligation, the responsible party shall comply with and provide the documentation required under s. NR 708.16 with the interim action report.

**SECTION 49. NR 708.16 is created to read:**

**NR 708.16 Department database requirements and fees for interim actions with continuing obligations.** (1) For sites or facilities where the department has approved an interim action that includes a continuing obligation, the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats., for the approval of an interim action and any information required under s. 292.12 (2) (d), Stats., for the approval of an interim action.

(2) For sites or facilities where the department has approved an interim action that includes use of an engineering control the department shall require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database.

(3) The responsible party shall submit the fees required under ch. NR 749 to the department.

(4) A responsible party shall comply with the following documentation requirements unless otherwise directed by the department:

(a) Submit an interim action report, in compliance with s. NR 708.15.

(b) Provide the geographic position of the property on which a response action was taken, as well as for any other properties within the contaminated site boundaries, in accordance with the requirements under s. NR 700.15 (2).

(c) Provide deed and parcel information in accordance with the requirements under s. NR 700.15 (1).

(d) At the conclusion of the response action required by the department, include one or more photographs documenting the condition and extent of any engineering control or other performance standard, structural impediment, vapor mitigation system, fence, or other feature as required by the department on a case-by-case basis. Pertinent features shall be visible and discernible. Photographs shall be submitted with a title related to the site name and location, compass direction of photograph, and the date on which it was taken.

(e) Provide a site location map that outlines each property within or partially within the contaminated site boundaries on a United States geographic 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 1,200 feet of the site. If there is only one parcel, this map may be combined with the map required under par. (f).

(f) Include, if available, a map of each property within or partially 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.

(5) If another person has entered into a legally enforceable agreement taking responsibility for compliance with continuing obligations under s. 292.12 (5) or (5m), Stats., the responsible party shall, or another person may, provide to the department a copy of the agreement for inclusion in the department's database.

**SECTION 50. NR 708.165 is created to read:**

**NR 708.165 Department response.** The department shall provide a written response when plans and reports are submitted under s. NR 708.11 (4) before an interim action is taken and when an interim action report is submitted. In the written response, the department may do any of the following:

(1) Ask for more information or modifications and establish a deadline for providing the information.

(2) State that the responsible party can proceed to take the next step in design, implementation, or operation of an interim action.

(3) Include requirements to comply with continuing obligations, if applicable, on the source property or an off-site property.

(4) If continuing obligations are required and the information that is required for listing the site or facility on the department database has not been submitted, require the responsible party to submit additional documentation under s. NR 708.16.

**SECTION 51. NR 708.17 (1) (b) is amended to read:**

NR 708.17 (1) (b) ~~Actions~~ Response actions directed by the department ~~may include~~ include removal of soil or sediment contamination, investigations beneath demolished buildings, replacement of infiltration barriers, or installation of vapor migration barriers.

**SECTION 52. NR 708.17 (2) (am) is created to read:**

NR 708.17 (2) (am) Require a plan and compliance schedule and proof of financial responsibility under ch. NR 756.

**SECTION 53. NR 708.17 (2) (d) and (4) (a) are amended to read:**

NR 708.17 (2) (d) If a previously approved response action included a ~~condition~~ continuing obligation regarding a structural impediment, the ~~property owner~~ person legally responsible for the continuing obligation shall notify and obtain approval from the department prior to removal of the building, or other structural impediment, to determine what further action may be necessary. The responsible party or property owner shall conduct those response actions directed by the department prior to affecting any structural impediment.

(4) (a) *Format Requirements.* For sites or facilities required to be included on the department database following a response action, the local governmental unit or economic

development corporation shall submit the information ~~in~~ under par. (b) to the department, in accordance with s. NR 700.11 (3g). Maps and cross-sections shall be to scale, and include a graphic scale and a north arrow.

**SECTION 54. NR 708.17 (4) (Note) is repealed.**

**SECTION 55. NR 708.17 (4) (b) 1. is amended to read:**

NR 708.17 (4) (b) 1. The geographic position of the property on which a response action was taken, as well as for any other properties or riparian zones affected by the ~~release~~ hazardous substance discharge or environmental pollution, in accordance with the requirements ~~of s. NR 716.15 (5) (d)~~ under s. NR 700.15 (2).

**SECTION 56. NR 708.17 (4) (b) 1. (Note) is repealed.**

**SECTION 57. NR 708.17 (4) (b) 5. is repealed and recreated to read:**

NR 708.17 (4) (b) 5. Deed and parcel information under s. NR 700.15 (1).

**SECTION 58. NR 708.17 (4) (b) 5. (Note), 6. and 7. are repealed.**

**SECTION 59. NR 708.17 (4) (b) 8. and 9. are amended to read:**

NR 708.17 (1) (a) 8. A statement that the deeds with legal descriptions of all affected properties have been submitted, unless otherwise directed by the department.

9. A site location map that outlines each property within or partially within the contaminated site boundaries on a United States geographic 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~~ under subd. 10.

**SECTION 60. NR 712.02 (2) and (3) are amended to read:**

NR 712.02 (2) Except as provided ~~in~~ under s. NR 712.11, this chapter applies to all sampling and field work conducted during any response action being taken to satisfy the



requirements of chs. NR 700 to ~~754~~ 799, including the preparation of phase I or phase II environmental site assessments.

(3) Except as provided ~~in~~ under s. NR 712.11, this chapter applies to any person who provides engineering services or performs any scientific evaluation associated with a remedial action or any of the interim actions specified ~~in~~ under chs. NR 700 to ~~754~~ 799 for 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. This chapter also applies to any person who provides engineering services or performs any scientific evaluation associated with a response action taken by a person seeking the liability exemption under s. 292.15, Stats.

**SECTION 61. NR 712.05 (1) is amended to read:**

NR 712.05 (1) GENERAL. All sampling, field work and development of plans for field activities for response actions being taken to satisfy the requirements ~~of~~ under ss. NR 708.09 to 708.15 or chs. NR 716 to ~~754~~ 799 shall be conducted by or under the supervision of a professional engineer, hydrogeologist or scientist, unless sub. (2) or an exemption in s. NR 712.11 is applicable.

**SECTION 62. NR 712.07 (1) is amended to read:**

NR 712.07 (1) Submittals that are prepared to satisfy the requirements of s. NR 708.11 (4) or 708.13 or chs. NR 716 to ~~754~~ 799, which require the performance of engineering services or scientific evaluations, including phase I and phase II environmental site assessments, shall be prepared by or under the supervision of a professional engineer, hydrogeologist, or scientist, except as provided ~~in~~ under s. NR 712.11. All phases of work necessary to obtain data, develop conclusions, recommendations and prepare submittals shall be conducted or supervised by the professional engineer, hydrogeologist, or scientist.

**SECTION 63. NR 712.07 (1) (Note) is repealed and recreated to read:**

NR 712.07 (1) Note: Following ASTM standards alone will not be sufficient to meet the requirements of various environmental assessments that are required under state law. When conducting a site investigation under ch. NR 716, “hazardous substances” and “environmental

pollution” as defined by ch. 292., Stats., must be considered, and the requirements under s. NR 716.07 must be considered. Lenders conducting an environmental assessment per s. 292.21 (1) (c), Stats., shall comply with the specific criteria listed in the state statute. Parties seeking an exemption under s. 292.15, Stats., shall comply with ASTM standards for a phase I environmental site assessment and a phase II environmental site assessment in addition to chs. NR 700 to 799, which may be more comprehensive than ASTM standards.

**SECTION 64. NR 712.07 (2), (3), and (4) are amended to read:**

NR 712.07 (2) Submittals prepared to satisfy the requirements of ch. NR 722, ~~or 724,~~ 726, or s. NR 708.11 (4), including free product removal conducted in accordance with s. NR 708.13, for response actions taken to address groundwater contamination shall be jointly prepared by, or under the supervision of, a professional engineer and a hydrogeologist.

(3) Submittals prepared to satisfy the requirements of ch. NR 722, ~~or 724,~~ 726, or s. NR 708.11 (4) for response actions that address any media other than groundwater shall be prepared by, or under the supervision of, a professional engineer.

(4) Hydrogeologists shall prepare or supervise the preparation of submittals involving the assessment of groundwater conditions at a site or facility, when prepared to satisfy the requirements of ch. NR 716 or 726.

**SECTION 65. NR 712.09 (2) is amended to read:**

NR 712.09 (2) The act of signing the certification means that the professional engineer, hydrogeologist or scientist certifies that, to the best of her or his knowledge, all information contained in the submittal is correct and the submittal was prepared in accordance with all of the applicable requirements of chs. NR 708 to ~~754~~ 799. Conclusions and recommendations in the submittal shall represent the certifier’s best professional opinions and judgments.

**SECTION 66. NR 712.11 (1) (f) and (2) (b) are amended to read:**

NR 712.11 (1) (f) Tank closure assessments performed in accordance with the requirements of ch. ATCP 93 by a site assessor certified by the department of agriculture, trade

and consumer protection, and any other plans, specifications or reports required by the department of agriculture, trade and consumer protection not specifically required by under chs. NR 700 to ~~754~~ 799.

(2) (b) The department may reject or deny any sampling results submitted under this subsection if the department determines that the samples were not taken in accordance with the requirements of this subsection and all other applicable sections of chs. NR 700 to ~~754~~ 799, or that the person taking the samples was not qualified to do so based on the statement submitted to the department under par. (a) 3. If the department rejects or denies any sampling results, the department shall provide the responsible parties with specific reasons for the rejection or denial in writing. If the department concludes that the person undertaking the sampling or certifying the reports is not qualified to do so, the responsible party shall hire a new consultant to retake samples within 30 days after the department specifies the reasons for denial in writing. The responsible parties shall hire a new consultant who meets the qualifications of s. NR 712.05 to conduct any required sampling ~~if the department directs them to do so in writing.~~

**SECTION 67. NR 714.01 is amended to read:**

**NR 714.01 Purpose.** The purpose of this chapter is to identify the required public participation and notification activities for response actions undertaken pursuant to chs. NR 700 to ~~754~~ 799. Nothing in this chapter shall be construed to prevent ~~the department or~~ responsible parties from providing additional means for public participation and notification consistent with the provisions of this chapter. Nothing in this chapter shall be construed to prevent the department from providing or directing additional means for public participation and notification consistent with the provisions of this chapter. This chapter is adopted pursuant to ss. 227.11 (2) and 289.06 (1), Stats., and ch. 292, Stats.

**SECTION 68. NR 714.03 (intro.) and (1) are consolidated, renumbered NR 714.03, and amended to read:**

**NR 714.03 Definitions.** In this chapter: ~~(1) “Public~~ “public meeting” means a meeting held for general informational purposes and that is not required by statute.

**SECTION 69. NR 714.03 (2) is repealed.**

**SECTION 70. NR 714.05 (1) is amended to read:**

NR 714.05 (1) DEPARTMENT DATABASE. The department shall maintain a public database of contaminated sites that are known to the department, in accordance with s. 292.31 (1) (a), Stats. This database may include sites or facilities that have residual contamination, and shall include information about any continuing obligations to maintain structural or institutional safeguards in regard to the residual contamination, in accordance with ss. 292.12 (3) and 292.57, Stats. The department shall include in the database any legally enforceable agreements entered into under s. 292.12 (5) or (5m), Stats.

**SECTION 71. NR 714.05 (1) (Note 2) is created to read:**

NR 714.05 (1) Note: Under s. 292.12 (5) or (5m), Stats., if another person has entered into and is complying with a legally enforceable agreement with a responsible party to comply with certain continuing obligations, and the agreement is included in the database, the responsible party is not required to comply with the continuing obligations specified in that agreement.

**SECTION 72. NR 714.05 (5) (intro.) is amended to read:**

NR 714.05 (5) ~~REQUESTS FOR SITE~~ SITE-SPECIFIC ~~OR FACILITY-SPECIFIC~~ FACILITY-SPECIFIC RESPONSES. Interested persons may request, in writing, that the department keep them informed of approvals or rejections of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with either electronic emailed copies or hard copies of any department approvals or rejections for all of the following documents:

**SECTION 73. NR 714.07 (3) (intro.), (b), (c), (d), and (i) are amended to read:**

NR 714.07 (3) METHODS OF PUBLIC NOTIFICATION AND OUTREACH. Notice shall be provided to the public by means designed to reach those members of the public directly or indirectly affected by the discharge of a hazardous substance or environmental pollution and the implementation and operation of any proposed or actual ~~remedial~~ response action. The department may direct the responsible party to undertake any of the following public

participation activities, and may require departmental approval of materials prepared by the responsible party in order to conduct these activities. The department may also undertake any of these activities, including personal contacts by department staff. Notice to the public may be provided by any of the following methods.

(b) ~~Block advertisements~~ Advertisements, including posters in areas frequented by the public.

(c) Distributing leaflets or other informational materials door-to-door in the vicinity of the site or facility.

(d) Letters, emails, or both, to individual households or personal contacts by responsible parties or their representatives.

(i) Establishing a clearinghouse, toll-free telephone number ~~or internet~~ and web site location where the public may obtain more information about the site or facility and the proposed or actual remedial actions, as well as submit comments and receive responses regarding ~~activities~~ response actions, including those that may generate noise, dust, odors, traffic, or similar local concerns.

**SECTION 74. NR 714.07 (3) (im) is created to read:**

NR 714.07 (3) (im) Developing and actively maintaining a site-specific web site.

**SECTION 75. NR 714.07 (4) (a) (intro.) is amended to read:**

NR 714.07 (4) (a) Unless otherwise directed by the department, responsible parties shall post one or more department-issued signs or signs otherwise approved by the department in the following manner and locations, when any of the following conditions are found at a site or facility:

**SECTION 76. NR 714.07 (4) (a) 6. is created to read:**

NR 714.07 (4) (a) 6. At locations at which exposure to contaminated drinking water, surface water, foam, fish, or other wildlife may pose a threat to public health, safety or welfare.

**SECTION 77. NR 714.07 (4) (b) 2. and 5., (c), and (d) are amended to read:**

NR 714.07 (4) (b) 2. Types of any hazardous substances or environmental pollution on the property or present in the contaminated environmental media, fish, foam, or other wildlife.

5. Any other information the department may request, including how to obtain more information about the contamination.

(c) Responsible parties shall place the signs at locations on the site or facility source property and any contaminated property within the site boundaries in accordance with par. (a), so that they shall be visible to the general public, unless the department specifies the location of additional locations for the sign or signs. At least one sign shall be placed at the edge of contaminated soil storage piles. At the direction of the department, responsible parties shall place signs at locations to advise the public of fish and other wildlife consumption advisories associated with the contamination from the site or facility.

(d) Unless otherwise directed by the department, the responsible party shall maintain signs required under this subsection shall be maintained and to the extent that they are visible and legible for the duration of the response action until final case closure is received in accordance with ch. NR 726, or until no further action is required by the department in accordance with s. NR 708.09.

**SECTION 78. NR 716.02 (2) (Note 2) is amended to read:**

NR 716.02 (2) 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 754 799 in order to be consistent with CERCLA and the NCP.

**SECTION 79. NR 716.03 (4), (8) and (Note) are repealed.**

**SECTION 80. NR 716.07 (1) is amended to read:**

NR 716.07 (1) History of the site or facility, including industrial, commercial or other land uses that may have been associated with ~~one or more~~ any hazardous substance discharges or environmental pollution at the site or facility. The responsible party shall incorporate, where available, information from any phase I environmental site assessments, phase II environmental site assessments, fire insurance maps, operational reports, title searches, aerial photographs, records of product use and waste generation, and any other sources into a chronological assessment of the operational history. The responsible party shall identify all chemical substances that may have been used at or disposed of at the site or facility. This information shall be used in development of the site investigation sampling plan and development of the conceptual site model.

**SECTION 81. NR 716.07 (7m) is created to read:**

NR 716.07 (7m) Potential or known impacts to the food chain from persistent, bioaccumulate, or toxic substances such as PCBs, mercury, dioxins, per-and polyfluoroalkyl substances, and polybrominated diphenyl ethers, including any of the following:

- (a) Fish and fish consumption advisories, or other publicly available fish sampling data.
- (b) Waterfowl and waterfowl consumption advisories, or other publicly available waterfowl sampling data.
- (c) Piscivores.
- (d) Insectivores.
- (e) Any other wildlife and organisms in the air, land, or waters of the state, including any publicly available sampling data relating to these organisms.

**SECTION 82. NR 716.07 (8) (intro.) and (8) (a) are amended to read:**

NR 716.07 (8) Potential ~~for~~ or actual impacts to any of the following:

- (a) Species, habitat or ecosystems sensitive to ~~the contamination~~ any hazardous substance discharges or environmental pollution, including aquatic and benthic communities.

**SECTION 83. NR 716.07 (8m) is created to read:**

NR 716.07 (8m) When the responsible party is investigating contaminated sediment, the need for the responsible party to obtain an ordinary high water mark determination from the department to confirm the boundary between soil and sediment.

**SECTION 84. NR 716.07 (12) is amended to read:**

NR 716.07 (12) ~~The need to gather data to determine the hydraulic~~ Hydraulic conductivity of materials where contaminated groundwater is found, as needed.

**SECTION 85. NR 716.07 (13), (14), (15), (16), (17), and (18) are created to read:**

NR 716.07 (13) A map of pertinent site or facility features, including all of the following:

- (a) Topography and bathymetry.
- (b) Utilities.
- (c) Identification of potential or known structural impediments.
- (d) Identification of free product.
- (e) Areas of sediment deposits.

(f) Locations of past or present site or facility operations, including gas holders, piping or floor drains, outfalls, vents, tanks, pits, ponds, areas of drums, and lagoons, that are known or suspected to have caused or are causing any hazardous substance discharges or environmental pollution as evaluated under sub. (1).

(14) Publicly available information for water levels, waves, water temperature, water quality, and wind from sources such as the department or other state agencies, the United States geological survey, the national oceanic and atmospheric administration, the United States army corps of engineers, universities, municipalities, local airports or other sources to assist with the conceptual site model, contaminant transport model, and implementation of the remedy.



(15) Geomorphological processes to identify potentially contaminated areas.

(16) Bioassay studies on the benthic community, if needed to propose site-specific standards.

(17) Bulk sediment analysis, sediment porewater analysis, and surface water analysis, if needed.

(18) Sample for waste characterization or treatability studies, if needed.

**SECTION 86. NR 716.09 (1) and (Note) and (2) (a) are amended to read:**

NR 716.09 (1) GENERAL. Unless otherwise directed by the department, in cases where a site investigation is required under s. NR 716.05, responsible parties shall submit a work plan to the department within 60 days of receiving notification that a site investigation is required, describing the intended scope and conduct of a field investigation. One ~~paper copy and one~~ electronic copy of the plan shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11 (3g).

Note: Guidance for ~~Electronic Submittals for the 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>.

(2) (a) Site name, address, and ~~location by quarter quarter section, township, range and county, and~~ the location information specified ~~in s. NR 716.15 (5) (d)~~ under s. NR 700.15 (2).

**SECTION 87. NR 716.09 (2) (a) (Note) is repealed.**

**SECTION 88. NR 716.09 (2) (c) is amended to read:**

NR 716.09 (2) (c) Site or facility location map, consisting of the applicable portion of a 1:24,000-scale topographic quadrangle published by the United States geological survey with the name of the quadrangle indicated, and a site layout map to approximate scale depicting property boundaries, the layout of buildings, roads, discharge location and other relevant features of the site.

**SECTION 89. NR 716.09 (2) (dm) is created to read:**

NR 716.09 (2) (dm) A conceptual site model, as defined under s. NR 700.03 (5r), that includes all of the following:

1. A narrative, text, pictorial, computer model, or a combination of those forms, based on the complexity of the site or facility, and using the information collected under ss. NR 716.07 to 716.17.
2. A format that is designed to change and be updated throughout the site investigation process.
3. Content that is based on the scientific process, starting with a hypothesis that is tested and proven with site-specific data.
4. Historical and current information on known and potential sources, fate and transport pathways, exposure pathways, potential receptors, and impacted media.

**SECTION 90. NR 716.09 (2) (e) (intro.), 1., 3., and 4. are amended to read:**

NR 716.09 (2) (e) Basic information on the physiographical and geological setting of the site or facility necessary to choose sampling methods and locations, including all of the following:

1. ~~The~~ Any existing topography or bathymetry, including prominent ~~topographic~~ features.
3. Texture and classification of surficial soils and sediment.
4. An itemization of the parameters for which samples will be analyzed, ~~as well as~~ the analytical methods to be used and ~~their method~~ associated detection limits, including verification that the analytical method selected has detection limits that meet the applicable environmental standards, unless otherwise directed by the department.

**SECTION 91. NR 716.09 (2) (em), (i) and (Note), and (j) are created to read:**

NR 716.09 (2) (em) If the responsible party is investigating contaminated sediment, a description of the location of the ordinary high water mark at the site or facility, including the determination made by the department of the location of the ordinary high water mark at the site or facility, or, if an alternative method of determining the high water mark has been approved by the department, the alternative determination of the location of the ordinary high water mark at the site or facility.

(i) A proposed form to be used for sediment core logging for the department to review and approve, or, if the responsible party does not provide a core log form, the responsible party shall adapt the department's soil boring log information form, Form 4400-122, to be used for sediment core logging.

Note: Form 4400-122 may be accessed at:  
<https://dnr.wi.gov/topic/Groundwater/forms.html>.

(j) Sample information, topographic information, and bathymetric information that has been collected geospatially, including an indication of the methods, equipment, and horizontal and vertical accuracy of the geospatial information.

**SECTION 92. NR 716.11 (3) (e) is created to read:**

NR 716.11 (3) (e) Evaluate whether there is a potential for an adverse effect, or an actual adverse effect, to public health, safety, or welfare from consumption of plants and wildlife, including fish, waterfowl, wildlife and other species as a result of discharges of any hazardous substances or environmental pollution associated with the site or facility, based on fish and wildlife consumption guidelines from the department.

**SECTION 93. NR 716.11 (5) (b) is amended to read:**

NR 716.11 (5) (b) The impacts of the contamination upon known and potential receptors.

**SECTION 94. NR 716.11 (5) (i) is created to read:**

NR 716.11 (5) (i) The water depth, the thickness and type of soft material, the presence of gases or free product liberated by sediment disturbance from actions such as probing or sampling, and free product observed in sediment samples.

**SECTION 95. NR 716.13 (1) and (4) are amended to read:**

NR 716.13 (1) Responsible parties shall use laboratory analyses of environmental media samples which are collected, handled and analyzed in compliance with subs. (2) to ~~(17)~~ (19) to confirm the nature and extent and evaluate the impacts of contamination, if a field investigation is ~~required~~ conducted under s. NR 716.11 (1). Analytical methods used shall be suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the samples to be tested.

(4) All ~~soil~~ samples obtained during the field investigation for the purpose of defining the degree and extent of the contamination shall be discrete, not composite, samples, unless the department explicitly approves in advance, and in writing, composite sampling for a specific site situation.

**SECTION 96. NR 716.13 (4m) is created to read:**

NR 716.13 (4m) Samples collected for determining characteristics of solid waste for off-site management purposes, or bench scale studies may be representative composite samples of different locations and depths.

**SECTION 97. NR 716.13 (5) is amended to read:**

NR 716.13 (5) Maximum holding times for ~~soils~~ all media and analytes shall be in accordance with ~~the sampling method, sample storage container, and analytical methods used~~ applicable requirements under ch. NR 149, unless otherwise approved by the department.

**SECTION 98. NR 716.13 (6) (am) is created to read:**

NR 716.13 (6) (am) For sites and facilities with contaminated sediment, the department may require a quality assurance project plan, more detailed analytical reports, and further data validation based on the complexity of the site or facility as determined under s. NR 716.07.

**SECTION 99. NR 716.13 (6) (c) 1. is amended to read:**

NR 716.13 (6) (c) 1. One ~~replicate~~ duplicate sample for every 10 or less samples.

**SECTION 100. NR 716.13 (6) (cm) and (6m) are created to read:**

NR 716.13 (6) (cm) For sediment samples, all of the following:

1. At least one duplicate sample per sampling event with one duplicate sample for every 10 samples or less.
2. One equipment blank for every sampling technique that utilizes equipment per event.
3. One temperature blank for every shipping container of samples that require cooling for preservation.

**(6m)** Responsible parties shall photograph each sediment core during core processing, clearly showing the material type as well as the location identification, date, and orientation. Any pertinent materials found within the collected sample shall be identified and photographed. Core photographs shall be documented in the site investigation report.

**SECTION 101. NR 716.13 (11) is amended to read:**

NR 716.13 (11) Soil samples collected for analysis of volatile organic compounds for compliance with chs. NR 700 to ~~754~~ 799 shall be preserved immediately after collection to minimize volatilization of contaminants from the sample to the greatest extent possible. Preservation techniques used shall be according to the analytical method to be used. Sampling techniques shall be used that minimize volatilization from the sample. Extraction techniques shall be according to the analytical method selected. Analytical methods used shall be suitable for the matrix, type of analyte, expected level of analyte, regulatory limit, and potential interferences in the samples to be tested.

**SECTION 102. NR 716.13 (12) and (Note) are repealed and recreated to read:**

NR 716.13 (12) Except as provided under sub. (12m), responsible parties shall ensure that other samples taken for analysis are collected, handled and analyzed in accordance with

“Test Methods for Evaluating Solid Waste: Physical/Chemical Methods Compendium, SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IV, V, and VI.”

Note: Copies of “Test Methods for Evaluating Solid Waste: Physical/Chemical Methods Compendium, SW-846, as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IV, V, and VI,” are available for inspection at the department and the legislative reference bureau. Copies may be obtained from the Government Printing Office, Room 190, Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 53202 and may be accessed at the U.S. EPA’s web site at: <http://www.epa.gov>.

**SECTION 103. NR 716.13 (12m) and (Note), (18) and (Note) and (19) are created to read:**

NR 716.13 (12m) If the department determines that an appropriate procedure is not available from the methods and procedures listed under sub. (12), the department may approve the use of any of the items defined as an “authoritative source” under s. NR 149.03 (11). If the department determines that an appropriate procedure is not available from the methods and procedures listed under sub. (12) and from any of the items defined as an “authoritative source” under s. NR 149.03 (11), the department may approve a procedure developed by the department or another source.

Note: Section NR 149.03 (11) defines “authoritative source” as “a publication, text or reference included in Appendix III.” Ch. NR 149 Appendix III lists authoritative sources for information only. Inclusion of a method, procedure, or practice in any of the authoritative sources in ch. NR 149 Appendix III does not grant it approval by the department. The department may recognize or approve other methods of analysis not contained in these authoritative sources as allowed under s. NR 716.13 (12m).

(18) Unless otherwise directed by the department, responsible parties shall validate analytical data in accordance with the “National Functional Guidelines for Organic Superfund Methods Data Review (SOM02.4)” and “National Functional Guidelines for Inorganic Superfund Methods Data Review (ISM02.4)” and shall indicate the level of data validation performed.

Note: Copies of National Functional Guidelines for Organic Superfund Methods Data Review (SOM02.4)” and “National Functional Guidelines for Inorganic Superfund Methods Data Review (ISM02.4)” may be obtained directly from the U.S. EPA’s website at [www.epa.gov](http://www.epa.gov). Copies are also on file at the department and the legislative reference bureau.

(19) The department may require responsible parties to provide data usability and completeness analysis of analytical data.

**SECTION 104. NR 716.14 (1) is repealed and recreated to read:**

NR 716.14 (1) SAMPLES FROM WATERSUPPLY WELLS. (a) Responsible parties shall report all water supply well sampling results to the department and to the well owner, and occupant as applicable, within 10 business days after receiving the sampling results. The report to the department shall include all of the following:

1. The Wisconsin unique well number for drinking water wells.
2. A map showing the sampling and well locations, which meets the requirements under s. NR 716.15 (4).
3. A preliminary analysis of the cause and significance of any contaminant concentrations observed in the samples.
4. An identification of any substances that attain or exceed preventive action limits under ch. NR 140, as well as any other substances observed in the samples for which there are no groundwater quality standards under ch. NR 140.
5. The information required under subs. (2) (c) 1. to 6.

(b) The responsible party shall notify both the remediation and redevelopment project manager and the regional drinking and groundwater specialist or water supply engineer of all water supply well sample results.

**SECTION 105. NR 716.14 (1) (Note 1) is repealed.**

**SECTION 106. NR 716.15 (1) (b) and (2) (c) 4. and 7. are amended to read:**

NR 716.15 (1) (b) *Number of copies.* One ~~paper copy and one~~ electronic copy of the report shall be submitted to the department, unless otherwise directed by the department, in accordance with s. NR 700.11 (3g).

(2) (c) 4. Site or facility name, address, and location ~~by quarter quarter section, township, range, and county, along with the Wisconsin Transverse Mercator coordinates for the site~~ information specified under s. NR 700.15 (2). The location of the property and the contamination shall be given in sufficient detail to allow department personnel to inspect the property and the contaminated area.

7. The geographic positions of all properties within and partially within the contaminated site boundaries, which ~~have been directly located or interpolated from other features on a base map of 1:24000 scale or finer, or which were obtained using differentially corrected global positioning system data or another method of similar or superior accuracy that have been approved by the department.~~ The geographic position data shall be obtained and submitted to the department in accordance with the requirements ~~in sub. (5) (d)~~ under s. NR 700.15 (2).

**SECTION 107. NR 716.15 (3) (j) and (4) (gm) are created to read:**

NR 716.15 (3) (j) The responsible party shall update the conceptual site model based on the receipt of any new data impacting the existing conceptual site model and shall provide the updated conceptual site model to the department within 30 days of the update.

(4) (gm) *Sediment coring.* Responsible parties shall document sediment coring on the logs approved in the site investigation work plan.

**SECTION 108. NR 716.15 (5) (intro.) is renumbered NR 716.15 (5) and amended to read:**

NR 716.15 (5) DEED AND LOCATIONAL INFORMATION. All of the ~~following~~ information required under s. NR 700.15 shall be included in the site investigation report for each property within or partially within the contaminated site boundaries:

**SECTION 109. NR 716.15 (5) (a), (b), (c), and (d) are repealed.**

**SECTION 110. NR 716.15 (7) is created to read:**



NR 716.15 (7) DEPARTMENT REVIEW. In cases where the department is reviewing a site investigation report under this chapter, the department may do any of the following:

(a) Require that additional information be submitted to satisfy the requirements under chs. NR 716 and 722.

(b) Require revisions to the site investigation report, including the conceptual site model.

(c) Establish a schedule for the responsible parties to provide additional information and revisions to the department.

(d) Direct the responsible party to comply with ch. NR 712.

(e) Approve the site investigation report.

**SECTION 111. NR 718.01 is amended to read:**

**NR 718.01 Purpose.** This chapter establishes minimum standards for the storage, transportation, treatment and disposal of contaminated soil, contaminated sediment and certain other solid wastes excavated during response actions required under and conducted in accordance with the requirements of chs. NR 700 to ~~754~~ 799. Where responsible parties have chosen to comply with the requirements of this chapter, the responsible parties are exempt from the storage, transportation, treatment and disposal requirements in ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this chapter. This chapter is adopted pursuant to ss. 287.03, 289.05, 289.06, 289.43 (8), 289.67, and 227.11 (2), Stats., and ch. 292, Stats.

**SECTION 112. NR 718.02 (1) (a) (intro.) and 1. are amended to read:**

NR 718.02 (1) (a) Contaminated soil ~~which~~ that has all of the following characteristics:

1. Is excavated as part of a response action required by and conducted ~~pursuant to~~ under chs. NR 700 to ~~754~~ 799, at sites or facilities subject to regulation under s. 289.67, Stats., or ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.; ~~and~~

**SECTION 113. NR 718.02 (1) (a) 3., 4. and (Note) are created to read:**

NR 718.02 (1) (a) 3. Is dredged and dewatered contaminated sediment as defined under s. NR 718.03 (5m) that meets the requirements under subd. 1. and 2.

4. Is not a waste that is regulated under 15 USC 2601 to 2692 and 40 CFR 761.

Note: This chapter does not apply to wastes that are regulated under 40 CFR 761 and the federal Toxic Substances Control Act, 15 USC 2601 to 2692.

**SECTION 114. NR 718.02 (1) (b) (intro.), 1. and 2. are amended to read:**

NR 718.02 (1) (b) Solid waste ~~which~~ that has all of the following characteristics:

1. Contains materials other than contaminated soil and is excavated during a response action conducted ~~pursuant to~~ under chs. NR 700 to ~~754~~ 799, at sites or facilities subject to regulation under s. 289.67, Stats., or ch. 292, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.;

2. Is not a hazardous waste as defined ~~in~~ under s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended; ~~and~~.

**SECTION 115. NR 718.03 (4m) and (Note), (5m), and (5r) are created to read:**

NR 718.03 (4m) “Contaminated sediment” means sediment that contains any hazardous substances or environmental pollution and is not a hazardous waste as defined under s. NR 660.10 (52) or 42 USC 6901 to 6991, as amended, and regulated under 15 USC 2601 to 2692.

Note: “Contaminated sediment” does not include hazardous waste as defined under s. NR 660.10 (52) or 42 USC 6901 to 6991, the Resource Conservation and Recovery Act, as amended, and regulated under the Toxic Substances Control Act 15 USC 2601 to 2692.

(5m) “Dredged and dewatered contaminated sediment” means contaminated soil.

(5r) “Excavated” means any operation in which soil on or below the ground is moved or otherwise displaced; and includes the dredging of sediment.

**SECTION 116. NR 718.05 (1) and (Note) are repealed and recreated to read:**

NR 718.05 (1) EXEMPTION FROM SOLID WASTE PROGRAM REQUIREMENTS. (a) Except as provided under par. (b), sites or facilities where excavated contaminated soil or contaminated sediment are stored by responsible parties, in accordance with all of the requirements of this section, are exempt from the solid waste program requirements for the storage of contaminated soil under ch. 289, Stats., and chs. NR 500 to 538.

(b) The exemption under par. (a) does not apply to sites or facilities where more than 2,500 cubic yards of excavated contaminated soil are stored or where storage of contaminated soil exceeds 6 months unless the department has approved an exemption in writing after considering all of the following criteria:

1. Waste characteristics and quantities.
2. The geology and hydrology of the area.
3. The unavailability of other suitable alternatives.
4. Compliance with local, other state, and federal regulations.
5. The potential or actual threat to public health, safety, or welfare or the environment.

Note: This section does not apply to the storage by responsible parties of excavated contaminated soil at sites or facilities that are licensed solid waste storage facilities.

**SECTION 117. NR 718.05 (2) (c) and (d) (intro.) are amended to read:**

NR 718.05 (2) (c) *Impervious base.* ~~Responsible~~ Unless otherwise approved by the department in writing, responsible parties shall place contaminated soil on an impervious base material ~~impervious to the contaminant and to water, such as concrete, asphalt, plastic sheeting or an impervious construction fabric~~ to prevent any hazardous substances or environmental pollution from impacting the air, lands or waters of the state.

(d) *Cover and anchoring.* ~~Responsible~~ Unless otherwise approved by the department in writing, responsible parties shall ensure that all contaminated soil in a storage area is sloped and

graded to eliminate depressions in the surface and is completely covered. ~~The~~ An impervious cover shall be in place at all times to prevent any hazardous substances or environmental pollution from impacting the air, lands or waters of the state when the any contaminated soil is not being transferred. All excavated contaminated soil shall be covered, as necessary, to prevent volatilization of soil contaminants in excess of limits under chs. NR 400 to 499. The cover shall be constructed and maintained in accordance with all of the following requirements:

**SECTION 118. NR 718.05 (2) (d) 2. (Note) is created to read:**

NR 718.05 (2) (d) 2. Note: Responsible parties should be aware of and follow all stormwater and other regulatory requirements that apply.

**SECTION 119. NR 718.05 (2) (h) 5. and 7. and (i) 5. are amended to read:**

NR 718.05 (2) (h) 5. The address ~~and location by quarter quarter section, township, range and county, along with the geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property from which the soil was excavated,~~ as specified under s. NR 700.15 (2), of the property from which the contaminated soil was excavated.

7. The address ~~and location by quarter quarter section, township, range and county, along with the geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property where the soil is stored,~~ as specified under s. NR 700.15 (2), of the property where the contaminated soil is stored.

(i) 5. The address ~~and location by quarter quarter section, township, range and county, along with the geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property where the soil is stored,~~ as specified in s. NR 700.15 (2), of the property where the contaminated soil is stored.

**SECTION 120. NR 718.09 (1), (4) (a) 1., 2., 3., and 4., (b) 2. and 5., (7) (intro.), (a), (b), and (c), and (8) (a) are amended to read:**

NR 718.09 (1) GENERAL. If excavated contaminated soil is treated at a non-commercial treatment unit or facility and the treatment unit or facility is operated by the responsible parties in compliance with the requirements of this chapter, that site or facility is exempt from solid waste program requirements for the treatment of the contaminated soil ~~in~~ under ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. If contaminated soil is incorporated into hot-mix asphalt in accordance with sub. (5), the asphalt plant is exempt from solid waste program requirements for treatment of contaminated soil found ~~in~~ under ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. If excavated contaminated soil that is contaminated solely with ~~light petroleum products or light petroleum products in combination with~~ agricultural chemicals regulated by the department of agriculture trade and consumer protection under s. 94.73, Stats., is treated by the responsible parties at a single-application landspreading facility in compliance with sub. (8), that landspreading facility is exempt from solid waste program requirements for the treatment of the contaminated soil ~~in~~ under ch. 289, Stats., and chs. NR 500 to 538, except where solid waste program requirements are specifically referenced in this section. Commercial treatment units or facilities, hot-mix asphalt plants where contaminated soil is treated by means other than incorporation into the asphalt mix, and thermal treatment units or facilities are required to be licensed under ch. 289, Stats., and chs. NR 500 to 538, and are not exempt under this section.

(4) (a) 1. Start up of any type of treatment of excavated contaminated soil that is subject to the requirements ~~of~~ under sub. (7), (8) or (9).

2. Shutdown of any type of treatment of excavated contaminated soil that is subject to the requirements ~~of~~ under sub. (7), (8) or (9).

3. Substantial change in operations of any type of treatment of excavated contaminated soil that is subject to the requirements ~~of~~ under sub. (7), (8) or (9).

4. Completion of any type of treatment of excavated contaminated soil that is subject to the requirements ~~of~~ under sub. (7), (8) or (9).

(b) 2. All locations of sites from which contaminated soil was excavated by address ~~and location by quarter quarter section, township, range and county,~~ along with the geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude as specified under s. NR 700.15 (2).

5. The address ~~and location by quarter quarter section, township, range and county,~~ along with the geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the treatment site as specified under s. NR 700.15 (2).

**(7) BIOREMEDIATION AND TREATMENT BY VOLATILIZATION OF EXCAVATED CONTAMINATED SOIL.** ~~Except as provided in sub. (8), all of the~~ The following requirements apply to the treatment of excavated contaminated soil by bioremediation, volatilization or both:

(a) Responsible parties who treat excavated contaminated soil by bioremediation or volatilization, or both, shall maintain the excavated contaminated soil in compliance with the requirements ~~of~~ under s. NR 718.05 (2) (c), (e), (f) and (g), unless other methods are approved by the department.

(b) All excavated contaminated soil shall be covered, as necessary, to prevent volatilization of soil contaminants in excess of limits ~~in~~ under chs. NR 400 to 499. If a cover is required ~~by~~ under chs. NR 400 to 499, the cover material and anchoring system shall meet the requirements ~~of~~ under s. NR 718.05 (2) (d), unless other methods are approved in writing by the department.

(c) All treatment of excavated contaminated soil by bioremediation or volatilization shall be designed, operated and maintained in accordance with the requirements ~~of~~ under ch. NR 724.

**(8)** (a) *General.* Responsible parties, or their agents or contractors, may conduct single-application landspreading of contaminated soil that is contaminated solely with ~~light petroleum products or light petroleum products in combination with~~ agricultural chemicals regulated by the department of agriculture, trade and consumer protection under s. 94.73, Stats., provided that the requirements ~~of~~ under pars. (b), (c), (d) and (e) are met. Landspreading of contaminated soil ~~which~~ that contains chemicals regulated by the department of agriculture, trade and consumer

protection under s. 94.73, Stats., shall also be conducted in accordance with a plan that has received prior written approval from the department of agriculture, trade and consumer protection.

**SECTION 121. NR 718.09 (8) (b) 1. c. is repealed.**

**SECTION 122. NR 718.09 (8) (b) 1. d. is amended to read:**

NR 718.09 (8) (b) 1. d. Soil samples shall be collected and analyzed in accordance with the provisions ~~in s. under s.~~ NR 716.13 (11), ~~and~~ (12), and (12m).

**SECTION 123. NR 718.09 (8) (b) 2. a. and (c) 1. f. (Note) are repealed.**

**SECTION 124. NR 718.09 (8) (d) 1. (intro.) is amended to read:**

NR 718.09 (8) (d) 1. ~~Except as provided in subd. 4., single-application~~ Single-application landspreading of excavated contaminated soil may be conducted at a facility that has been approved under par. (c) without additional department approval if the responsible party, or an agent or contractor, submits an operation plan to the department at least 10 days, but not more than 70 days, prior to the start of the operation, and complies with the operation standards ~~in~~ under subd. 3., unless the department issues a written objection. The operation plan for a single-application landspreading facility shall contain the following information:

**SECTION 125. NR 718.09 (8) (d) 3. i. and 4. are repealed.**

**SECTION 126. NR 718.12 (1) (title), (a), (b), (c) (intro.), (d) (intro.), and (e) 1. are amended to read:**

**NR 718.12 Management of contaminated soil. (1) GENERAL REQUIREMENTS FOR MANAGING CONTAMINATED SOIL WHEN CONDUCTING AN IMMEDIATE, INTERIM, OR REMEDIAL ACTION.** (a) If responsible parties manage contaminated soil at a site ~~or~~, facility, or non-metallic mine where the reclamation plan allows contaminated solid waste to be managed, in accordance with the provisions of this section, that site~~or~~, facility, or non-metallic mine is exempt from the solid waste program requirements ~~in~~ under ch. 289, Stats., and chs. NR 500 to 538 for the contaminated soil disposal.

(b) The response action shall be conducted in accordance with all of the applicable requirements ~~in~~ under chs. NR 700 to ~~754~~ 799. Immediate, interim and remedial actions shall be conducted in compliance with all applicable laws, including ss. NR 708.05, 708.11 to 708.16, and ch. NR 724, in addition to the requirements under this section.

(c) Responsible parties may not place or replace excavated contaminated soil in the following areas unless the department has granted a written exemption to these location standards, after considering all of the factors listed ~~in~~ under par. (d):

(d) Responsible parties may manage contaminated soil in a location listed ~~in~~ under par. (c) if the department has granted a written exemption from that location standard, after considering all of the following:

(e) 1. For each site ~~or~~ facility, or non-metallic mine, one sample shall be collected for analysis for each 100 cubic yards of contaminated soil, for the first 600 yards with a minimum of 2 samples being collected. For volumes of contaminated soil that exceed 600 cubic yards, one sample for each additional 300 cubic yards shall be collected for analysis.

**SECTION 127. NR 718.12 (1) (f) is created to read:**

NR 718.12 (1) (f) Documentation provided to the department to satisfy the requirements under s. NR 708.05 (6) shall include a description of how contaminated soil was managed in compliance with this section.

**SECTION 128. NR 718.12 (2) (title), (a), and (b) (intro.) are amended to read:**

NR 718.12 (2) ADDITIONAL REQUIREMENTS FOR MANAGING CONTAMINATED SOIL ~~MANAGED AS PART OF~~ WHEN CONDUCTING AN INTERIM ACTION OR REMEDIAL ACTION. (a) Responsible parties shall provide the department with written notice at least 7 days prior to ~~initiating soil excavation activities~~ excavating, dredging or otherwise disturbing contaminated soil that will be managed under this section.

(b) Prior to ~~managing~~ conducting an interim or remedial action that requires managing contaminated soil under s. ~~NR 718.12~~ this section, responsible parties shall submit a soil



~~management plan design report~~ to the department for review and approval. Unless otherwise approved, at a minimum soil management plans the report shall meet the requirements under s. NR 724.09 and shall contain all the following information:

**SECTION 129. NR 718.12 (2) (b) 1., 3., 4., and 5. are repealed.**

**SECTION 130. NR 718.12 (2) (b) 8., and (c) 2. are amended to read:**

NR 718.12 (2) (b) 8. Sufficient information to justify that the placement or replacement of contaminated soils will meet the requirements ~~of under~~ s. NR ~~726.13 (1) (b) 1. to 5~~ 726.13 (1) (b) 1. to 6.

(c) 2. The address ~~and location, by quarter-quarter section, township, range, and county,~~ along with the geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude, as specified under s. NR 700.15 (2), of the site ~~or,~~ facility, or non-metallic mine, where the contaminated soil is to be placed.

**SECTION 131. NR 718.12 (2) (c) 3. (Note) is repealed.**

**SECTION 132. NR 718.12 (2) (d) and (e) are amended to read:**

NR 718.12 (2) (d) If implementation of the ~~soil management plan design report~~ will result in the need for a continuing obligation on the property as defined ~~by~~ under s. NR 725.05 (2), the responsible party shall provide written notification to anyone meeting the criteria ~~in~~ under s. NR 725.05 (1) at least 30 days prior to submitting the ~~soil management plan design report~~ to the department for review. Unless otherwise approved by the department, notification letters shall meet the requirements ~~contained in~~ under s. NR 725.07.

(e) For sites ~~or,~~ facilities, or non-metallic mines where the department approves ~~a soil management plan~~ an interim or other remedial action that includes a continuing obligation ~~which~~ that meets any of the criteria ~~in~~ under s. NR 725.05 (2), the department may require that the site ~~or,~~ facility, or non-metallic mine, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. Unless otherwise approved by the department, all applicable database documentation requirements set forth ~~in~~

under s. NR 726.11 shall be met. The fees required ~~by~~ under ch. NR 749 shall be submitted to the department.

**SECTION 133. NR 718.12 (2) (f) is created to read:**

NR 718.12 (2) (f) Documentation provided to the department to satisfy the requirements under s. NR 708.15 or 724.15 shall also include a description of how contaminated soil was managed and how the action complied with the design report approved by the department.

**SECTION 134. NR 718.15 is amended to read:**

**NR 718.15 Management of other solid wastes.** If solid waste ~~which~~ that contains waste other than contaminated soil is replaced at the site or facility from which it was excavated, as part of a response action conducted in compliance with all of the applicable requirements ~~in~~ under chs. NR 700 to ~~754~~ 799, and the department has granted prior written approval for the action, the replacement of that solid waste on the site or facility from which it was excavated is exempt from the requirements ~~of~~ under ch. 289, Stats., and chs. NR 500 to 538.

**SECTION 135. NR 720.03 (1) is renumbered NR 720.03 (1L).**

**SECTION 136. NR 720.03 (1b), (1e), and (1h) are created to read:**

NR 720.03 (1b) “AF<sub>res-a</sub>” means the variable for skin adherence factor for an adult, measured in milligrams per square centimeter, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

(1e) “AF<sub>res-c</sub>” means the variable for skin adherence factor for a child, measured in milligrams per square centimeter, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

(1h) “AF<sub>w</sub>” means the variable for skin adherence factor for a composite worker, measured in milligrams per square centimeter, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**SECTION 137. NR 720.03 (1m) is renumbered NR 720.03 (1y).**

**SECTION 138. NR 720.03 (1p), (1r), (1u), (4b), (4e), (4h), (4k), (4n), (4q), (4t), (4w), (4y), (10d), (10h), (10p), (10t), (11m), (14e), (14m), and (14s) are created to read:**

NR 720.03 **(1p)** “ $BW_{res-a}$ ” means the variable for body weight for an adult, measured in kilograms, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(1r)** “ $BW_{res-c}$ ” means the variable for body weight for a child measured in kilograms, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(1u)** “ $BW_w$ ” means the variable for body weight for a composite worker, measured in kilograms, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4b)** “ $ED_{res}$ ” means the variable for exposure duration, measured in years, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4e)** “ $ED_{res-a}$ ” means the variable for exposure duration for an adult, measured in years, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4h)** “ $ED_{res-c}$ ” means the variable for exposure duration for a child, measured in years, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4k)** “ $ED_w$ ” means the variable for exposure duration for a composite worker, measured in years, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4n)** “ $EF_{res}$ ” means the variable for exposure frequency, measured in days per year, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4q)** “EF<sub>res-c</sub>” means the variable for exposure frequency for a child measured in days per year, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4t)** “EF<sub>w</sub>” means the variable for exposure frequency for a composite worker, measured in days per year, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4w)** “ET<sub>res-c</sub>” means the variable for child exposure time, measured in hours per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(4y)** “ET<sub>w</sub>” means the variable for exposure time for a composite worker, measured in an hour, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(10d)** “IR<sub>w</sub>” means the variable for soil ingestion rate for a composite worker, measured in milligrams per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(10h)** “IR<sub>res-a</sub>” means the variable for soil intake rate for an adult, measured in milligrams per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(10p)** “IR<sub>res-c</sub>” means the variable for soil intake rate for a child, measured in kilograms per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**(10t)** “LT” means the variable for lifetime, measured in years, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

(11m) “PEF” means the variable for particulate emission factor, measured in cubic meters per kilogram, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

(14e) “SA<sub>res-a</sub>” means the variable for skin surface area for an adult, measured in square centimeters per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

(14m) “SA<sub>res-c</sub>” means the variable for skin surface area for a child measured in square centimeters per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

(14s) “SA<sub>w</sub>” means the variable for surface area for a composite worker, measured in square centimeters per day, equivalent to the variable used by the U.S. EPA to calculate regional screening levels, as described under s. NR 720.12 (2m).

**SECTION 139. NR 720.08 (1), (2) (a), and (3) (a) are amended to read:**

NR 720.08 (1) GENERAL. If a responsible party selects this option for implementation of a remedial action under s. NR 720.05, performance standards shall be established and maintained so that the residual contaminants in the soil do not pose a threat to public health, safety, or welfare or the environment.

(2) (a) Placement of a ~~permanent~~ an engineering control such as a cap or soil cover to limit infiltration and thereby minimizing the leaching of soil contaminants to groundwater that is constructed and maintained until the threat to groundwater no longer exists.

(3) (a) Placement of a ~~permanent~~ an engineering control such as a cap or soil cover that is constructed and maintained until the direct contact threat no longer exists.

**SECTION 140. NR 720.10 (1) is amended to read:**

NR 720.10 (1) GENERAL. If a responsible party selects this option for implementation of a remedial action under s. NR 720.05, residual contaminant levels for soil based on protection of groundwater shall be developed using the enforcement standards established ~~in~~ under ch. NR 140

or using procedures consistent with the methodology ~~in~~ under ss. 160.13 and 160.15, Stats., and the criteria ~~in~~ under s. NR 722.09 (2) (b) 2. when there is no enforcement standard ~~as the target concentrations in~~ for the hazardous substance or environmental pollution in groundwater. ~~If~~ When the department of health has ~~not~~ developed a recommended enforcement standard ~~and~~ under ss. 160.07 or 160.09, Stats., or a federal maximum contaminant level exists, ~~that the more~~ protective value ~~may~~ shall be used for calculating a soil residual contaminant level.

**SECTION 141. NR 720.12 (1) (intro.) and (a) are amended to read:**

NR 720.12 (1) GENERAL. If a responsible party selects this option for implementation of a remedial action under s. NR 720.05, residual contaminant levels for soil based on protection of human health from direct contact shall be developed using the following criteria:

(a) For individual ~~compounds~~ carcinogenic polycyclic aromatic hydrocarbon compounds, with the exception of naphthalene, using an excess cancer risk of  ~~$1 \times 10^{-6}$~~   $1 \times 10^{-5}$  and a hazard quotient for non-carcinogens of one; ~~and.~~

**SECTION 142. NR 720.12 (1) (am) is created to read:**

NR 720.12 (1) (am) For all other individual compounds using an excess cancer risk of  $1 \times 10^{-6}$  and a hazard quotient for non-carcinogens of one.

**SECTION 143. NR 720.12 (1) (b) is amended to read:**

NR 720.12 (1) (b) ~~The cumulative excess cancer risk will not exceed  $1 \times 10^{-5}$  and the hazard index for non-carcinogens will not exceed one for the site or facility~~ risk posed by all individual compounds shall not pose a significant direct contact or inhalation risk.

**SECTION 144. NR 720.12 (2m) and (Note) are created to read:**

NR 720.12 (2m) EXPOSURE ASSUMPTION VARIABLES. The exposure assumption variables that are defined under s. NR 700.03 and referenced in s. NR 720.12 (3) are found in “U.S. EPA office of solid waste and emergency response directive 9200.1-120.”

Note: The “U.S. EPA office of solid waste and emergency response directive 9200.1-120” is available at [https://www.epa.gov/sites/production/files/2015-11/documents/oswer\\_directive\\_9200.1-120\\_exposurefactors\\_corrected2.pdf](https://www.epa.gov/sites/production/files/2015-11/documents/oswer_directive_9200.1-120_exposurefactors_corrected2.pdf). Copies are also on file at the department and the legislative reference bureau.

**SECTION 145. NR 720.12 (3) (a) 1. a., b., c., and d., 2. a., b., c., and d., (b) 1. a., b., c., and d., and 2. a., b., c., and d. are amended to read:**

NR 720.12 (3) (a) 1. a. Incidental ingestion of soil shall be assumed to occur at ~~the rate of 200 mg of soil per day for a 15 kg child for 350 days each year~~ a child’s soil intake rate of  $IR_{res-c}$  for a child with a body weight of  $BW_{res-c}$  with an exposure frequency of  $EF_{res-c}$ .

b. Dermal absorption of soil shall be determined assuming a child’s daily exposed skin surface area of ~~2,800  $cm^2$~~   $SA_{res-c}$  with a skin-soil adherence factor of ~~0.2  $mg/cm^2$~~   $AF_{res-c}$  and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at a 24-hour daily exposure rate determined by the ~~volatile’s~~ volatile contaminant’s soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of  ~~$1.43 \times 10^9$   $m^3/kg$~~  PEF.

d. An averaging period for exposure shall equal the default child exposure duration of ~~6 years~~  $ED_{res-c}$ .

2. a. Incidental ingestion of soil shall be assumed to occur at the rate of ~~100 mg of soil per day for a 70 kg adult worker for 250 days each year~~  $IR_w$  for an adult worker with a body weight of  $BW_w$  for an exposure frequency of  $EF_w$ .

b. Dermal absorption of soil shall be determined assuming an adult outdoor worker’s daily exposed skin surface of ~~3,300  $cm^2$~~   $SA_w$  with a skin-soil adherence factor of ~~0.2  $mg/cm^2$~~   $AF_w$  and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at an 8-hour daily exposure rate determined by the volatile contaminant’s soil-to-air

volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of  $1.43 \times 10^{-3} \text{ m}^3/\text{kg}$  PEF.

d. An averaging period of exposure shall equal the default exposure duration of 25 years  $ED_w$ .

(b) 1. a. Incidental ingestion of soil shall be assumed to occur at the ~~rate of 200 mg of soil per day for 350 days each year for 6 years for a 15 kg child and the rate of 100 mg per day for 350 days each year for 24 years for a 70 kg adult~~ child soil intake rate  $IRS_{res-c}$  for an exposure frequency of  $EF_{res}$  for the child exposure duration of  $ED_{res-c}$  for a child of body weight  $BW_{res-c}$  and at the adult soil intake rate of  $IRS_{res-a}$  for an exposure frequency of  $EF_{res}$  for the adult exposure duration of  $ED_{res-a}$  for an adult of body weight  $BW_{res-a}$ .

b. Dermal absorption of soil shall be determined assuming a child's daily exposed skin surface area of ~~2,800  $\text{cm}^2$~~   $SA_{res-c}$  with a skin-soil adherence factor of ~~0.2  $\text{mg}/\text{cm}^2$~~   $AF_{res-c}$ , and an adult's daily exposed skin-surface area of ~~5,700  $\text{cm}^2$~~   $SA_{res-a}$  with a skin-soil adherence factor of ~~0.07  $\text{mg}/\text{cm}^2$~~   $AF_{res-a}$  and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at a 24-hour daily exposure rate determined by the volatile contaminant's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of  $1.43 \times 10^{-3} \text{ m}^3/\text{kg}$  PEF. For mutagenic contaminants, age segmented exposure durations shall be assumed when age adjusted cancer slope factors are available.

d. An averaging period of ~~30 years of exposure~~ duration  $ED_{res}$  consisting of 6  $ED_{res-c}$  child years and 24  $ED_{res-a}$  adult years shall be assumed during a ~~70 year~~ lifetime of  $LT$ .

2. a. Incidental ingestion of soil shall be assumed to occur at the ~~rate of 100 mg of soil per day for 250 days each year for a 70 kg adult worker~~  $IR_w$  for a duration of  $EF_w$  for an adult worker with a body weight of  $BW_w$ .



b. Dermal absorption of soil shall be determined assuming an adult outdoor worker's daily exposed skin surface of ~~3,300 cm<sup>2</sup>~~ SA<sub>w</sub> with a skin-soil adherence factor of ~~0.2 mg/cm<sup>2</sup>~~ AF<sub>w</sub> and a contaminant specific dermal absorption fraction.

c. Inhalation of outdoor soil vapors shall be assumed to occur for each volatile contaminant at an 8-hour daily exposure rate determined by the volatile contaminant's soil-to-air volatilization factor, and inhalation of particulate matter shall be determined assuming a particulate emission factor of ~~1.43 x 10<sup>-9</sup> m<sup>3</sup>/kg~~ PEF.

d. An averaging period of ~~25 years of exposure~~ ED<sub>w</sub> shall be assumed during a ~~70 year~~ lifetime of LT.

**SECTION 146. NR 722.02 (2) and (3) (Note) are amended to read:**

NR 722.02 (2) Unless otherwise specified elsewhere in chs. NR 700 to NR ~~754~~ 799, this chapter applies to all remedial actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department, except for those sites or facilities being addressed under the dry cleaner response program.

(3) 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~~ under 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~~ 799 in order to be consistent with CERCLA and the NCP.

**SECTION 147. NR 722.07 (3) (a) is amended to read:**

NR 722.07 (3) (a) Except as provided ~~in~~ under par. (b), responsible parties shall use all of the criteria ~~in~~ under sub. (4) to further evaluate appropriate remedial action options that have been identified for further evaluation under sub. (2), for each contaminated medium ~~or~~ and migration or exposure pathway. This evaluation process shall be used to determine which remedial action option constitutes the most appropriate technology or combination of

technologies to restore the environment, to the extent practicable, within a reasonable period of time and to minimize the harmful effects of the contamination to the air, land, or waters of the state, to address the exposure pathways of concern, and effectively and efficiently ~~address~~ minimize or eliminate the source of the contamination.

**SECTION 148. NR 722.07 (3) (a) (Note 2) is repealed.**

**SECTION 149. NR 722.07 (3) (b) (intro.), 1m. and 2m. are amended to read:**

NR 722.07 (3) (b) A detailed evaluation based on the criteria ~~in~~ under sub. (4) is not required in those cases where a remedial action option identified during the initial screening results in the reuse, recycling, destruction, detoxification, treatment, or any combination thereof of ~~the~~ any hazardous substances or environmental pollution present at the site or facility and this proposed option meets all of the following requirements:

1m. Is proven to be effective in remediating the types of hazardous substances present at the site, based on experience gained at other sites with similar site characteristics and conditions;

2m. Can be implemented in a manner that will not pose a significant risk of harm to human health, safety, or welfare or the environment;~~and.~~

**SECTION 150. NR 722.07 (3) (b) 2s. is created to read:**

NR 722.07 (3) (b) 2s. Chemicals produced in the treatment process are identified and may not cause adverse impact to public health, safety, or welfare or the environment.

**SECTION 151. NR 722.07 (3) (b) 3. is amended to read:**

NR 722.07 (3) (b) 3. Is likely to result in the reduction or control, or both, of ~~the~~ any hazardous substances or environmental pollution present at the site or facility to a degree and in a manner that is in compliance with the requirements ~~of~~ under s. NR 722.09 (2) to (4).

**SECTION 152. NR 722.07 (4) (a) 3. gm. is created to read:**

NR 722.07 (4) (a) 3. gm. The technical feasibility of managing excavated or dredged contaminated soil or contaminated sediment or other solid waste under s. NR 718.12 or 718.15, if needed to conduct the remedial action option.

**SECTION 153. NR 722.09 (2) (intro.), (a), (b) 2., and (c) 1. are amended to read:**

NR 722.09 (2) ENVIRONMENTAL LAWS AND STANDARDS. Responsible parties shall select a remedial action or combination of remedial actions that achieve restoration of the environment to the extent practicable, minimize the harmful effects from the contamination on the air, lands and waters of the state and comply with all applicable local, state, and federal public health and environmental laws and ~~environmental~~ standards. Environmental laws and standards include:

(a) Soils. ~~Contaminated soil~~ Soil impacted by any discharge of a hazardous substance or environmental pollution shall be restored in compliance with the requirements of under ch. NR 720.

(b) 2. For substances ~~which~~ that do not have an established standard ~~in~~ under ch. NR 140, the department may take or require the responsible parties to conduct any necessary actions, such as developing site-specific environmental standards in cooperation with the department of health services, to protect public health, safety, or welfare or the environment, or to prevent a significant damaging effect on groundwater or surface water quality for ~~present or future consumptive or non-consumptive~~ including any combination of present consumptive uses, future consumptive uses, present non-consumptive uses, and future non-consumptive uses, and including uses by animal, plant, and aquatic life.

(c) 1. Discharges of any hazardous substances or environmental pollution to surface waters or wetlands may not result in a surface water quality standard ~~contained in~~ under chs. NR 102 to 106 being exceeded and may not exceed effluent limitations established by the department based on “best available control technology currently available” or, where appropriate, “best available control technology economically achievable,” in accordance with ch. NR 220.

**SECTION 154. NR 722.09 (2) (c) 1m. is created to read:**

NR 722.09 (2) (c) 1m. Surface waters impaired due to contaminated soil or sediment shall be restored to achieve surface water quality standards under chs. NR 102 to 106.

**SECTION 155. NR 722.09 (2) (c) 2. is amended to read:**

NR 722.09 (2) (c) 2. For substances that do not have established criteria ~~in~~ under ss. NR 102.14 and 105.05 to 105.09, any hazardous substance discharges to or environmental pollution impacting surface waters or wetlands may not exceed site-specific water quality criteria established by the department pursuant to the general standards of ss. NR 102.04 (1) (d) and 103.03 (2) (d).

**SECTION 156. NR 722.09 (2) (cm) is created to read:**

NR 722.09 (2) (cm) *Contaminated sediment*. A responsible party shall restore contaminated sediment in accordance with the following requirements:

1. Restore the environment to the extent practicable and minimize the harmful effects of the contaminated sediment.

2. Protect the public interest, which includes the protection of public health, safety, or welfare or the environment, and the present and prospective uses of all waters of the state for public and private water supplies, propagation of fish and other aquatic life and wild and domestic animals, domestic and recreational purposes, and agricultural, commercial, industrial, and other legitimate uses.

3. Comply with the requirements under chs. NR 102 to 106.

4. Restore contaminated sediment to the extent that sediment remaining after completion of the remedial action shall not have contaminant concentrations that will result in specific human health consumption advisories in fish, birds, or wildlife.

5. Restore contaminated sediment to the extent that sediment remaining after completion of the remedial action shall have been restored to be protective of human health risk based residual contaminant levels under ch. NR 720 or to site-specific levels approved by the department.

6. For sites or facilities with contaminated sediment, the responsible party shall evaluate potential ecological and human health effects using a method approved by the department.

**SECTION 157. NR 722.09 (2) (d) (intro.), 1., and 2., and (e) 1. and 2. are amended to read:**

NR 722.09 (2) (d) ~~Discharges to the air~~ Air. All emissions to the air shall comply with applicable requirements ~~in~~ under ch. 285, Stats., chs. NR 400 to 499, and any other applicable federal or state environmental laws. In addition, for those sites or facilities where a discharge of volatile hazardous substances has occurred, the vapor intrusion pathway shall be evaluated to determine the likelihood of those substances entering the breathing space of a structure. Air ~~contaminated from vapor intrusion~~ shall be restored in accordance with the following requirements:

1. At sites or facilities where vapors have migrated from the source of contamination, active remedial actions shall be taken to limit or prevent, to the extent practicable, any potential and actual hazardous substance discharges and or environmental pollution that may attain or exceed vapor action levels.

2. The department may take or require the responsible parties to conduct any necessary actions, including actions to address any other hazardous substances or environmental pollution that do not have applicable federal or state standards, such as developing site-specific environmental standards in cooperation with the department of health services, to protect public health, safety, or welfare or to prevent a ~~significant damaging~~ unacceptable effect on indoor air quality for present or future use, or to prevent contamination of the air, lands, or waters of the state through the air migration pathway.

(e) 1. Any waste, debris or waste stream generated by the remedial action shall be managed in compliance with all applicable local, state, and federal laws and regulations. Contaminated debris, at a minimum, shall be addressed to minimize the harmful effects to protect health, safety, and welfare and the environment.

2. Management of materials contaminated with polychlorinated biphenyls (PCBs) shall comply with the requirements ~~of~~ under ch. NR 157 and TSCA, ~~if~~ as applicable.

**SECTION 158. NR 722.09 (2) (f) is created to read:**

NR 722.09 (2) (f) *Drinking water*. The following apply to contaminated drinking water:

1. Contaminated drinking water shall be restored in accordance with the following requirements:

a. The water supply for any community or non-transient non-community public water system as defined under ch. NR 809 shall be restored in accordance with maximum contaminant level standards set forth under ch. NR 809.

b. The water supply for any transient non-community public water system as defined under ch. NR 809 and any private water system as defined under ch. NR 812, shall meet the applicable standards for groundwater under par. (b) or surface water and wetland standards described under par. (c).

c. Where there are no standards available under subd. 1. a. or b., the responsible party shall seek the approval of the department and the department of health services to establish a site-specific drinking water standard and to comply with those department approved standards.

2. The department shall issue an advisory to a well owner to protect public health due to exposure to contaminated drinking or groundwater when a substance attains or exceeds any of the following:

a. The drinking water maximum contaminant level under ch. NR 809.

b. The groundwater enforcement standard for public health parameters under ch. NR 140.

c. The department of health services' recommended groundwater enforcement standard under s. 160.07, Stats., or a site-specific recommendation from department of health services if the standards in subd. 1. a. or b. do not sufficiently protect public health.

Note: A person with a private water supply that is subject to an advisory issued under subd. 2. may be eligible for compensation for private water contamination or for an emergency temporary water supply from the department. Applicable conditions and requirements for

compensation for private water contamination are under s. 281.75, Stats. The applicable conditions and requirements for temporary emergency water supplied by the department are under ch. NR 738.

**SECTION 159. NR 722.09 (4) (b) 3. (Note) is amended to read:**

NR 722.09 (4) (b) 3. Note: Material contaminated with polychlorinated biphenyls (PCBs) must be managed in accordance with the requirements of under chs. NR 700 to ~~754~~ 799. EPA has independent authority to regulate material contaminated with PCBs under TSCA. The department and EPA have entered into a memorandum of understanding that specifies how responsibility for government oversight at sites with PCB contamination will be determined. The memorandum of agreement can be found at: <http://dnr.wi.gov/files/pdf/pubs/rr/rr786.pdf>.

**SECTION 160. NR 722.09 (5m) and (Note) are created to read:**

NR 722.09 (5m) ENGINEERING CONTROLS. If engineering controls are considered for selection, responsible parties shall, at a minimum, evaluate an on-site engineering control to address all hazardous substances, environmental pollution, contaminated media, and migration and exposure pathways.

Note: Engineering controls include on-site or off-site containment methods, such as covers, soil covers, engineered structures, liners, gas collection systems, armoring of sediments, erosion controls, vapor mitigation systems, and groundwater slurry walls. Restricting access to a site or facility, such as constructing a fence, is not an engineering control.

**SECTION 161. NR 722.11 (1), (2) and (3) are amended to read:**

NR 722.11 (1) The responsible party may request, and the department may consider granting, approval to prepare and submit a risk assessment for the purpose of developing environmental standards only if the responsible ~~parties demonstrate~~ party demonstrates in writing to the satisfaction of the department that:

(2) If the department authorizes the use of a risk assessment to develop environmental standards, the responsible ~~parties~~ party shall utilize standard exposure assumptions that are

approved in advance and in writing by the department. The department may approve, modify or disapprove of the risk assessment prepared by the responsible ~~parties~~ party and shall provide a written explanation of the department's action to the responsible ~~parties~~ party.

(3) When the department enters into a contract ~~pursuant to~~ under s. 292.31, Stats., or a negotiated agreement under s. 292.11 (7), Stats., the department shall determine whether or not a risk assessment should be prepared and by whom, under subs. (1) and (2).

**SECTION 162. NR 722.13 (2) (a) 1., 3., and 4. are amended to read:**

NR 722.13 (2) (a) 1. The department's database identification number for the site or facility.

3. A summary of the nature and extent of contamination at the site or facility, based on the data gathered during the site investigation, including the most current conceptual site model.

4. A summary of the geologic, ~~and hydrogeologic,~~ and hydraulic characteristics at the site or facility, based on data gathered during the site investigation.

**SECTION 163. NR 722.13 (2) (cm) is created to read:**

NR 722.13 (2) (cm) *Ordinary high water mark*. Where applicable, at sites or facilities with contaminated sediment, a description of the location of the ordinary high water mark at the site or facility, including all of the following:

1. The determination made by the department of the location of the ordinary high water mark at the site or facility, or, if an alternative method of determining the ordinary high water mark has been approved by the department, the alternative determination of the location of the ordinary high water mark at the site or facility.

2. Any supporting data such as survey points and background information.

3. The proposed type and location of any sediment cap, sediment cover, and sediment engineering control, and demarcation of the differing remedial actions for contaminated soil and contaminated sediment.



**SECTION 164. NR 722.13 (2) (e) 6. is amended to read:**

NR 722.13 (2) (e) 6. A description of how ~~treatment~~ residuals generated in connection with the selected remedial action option will be managed on-site and, if applicable, off-site.

**SECTION 165. NR 722.13 (2) (e) 8., 9., 10., and 11. are created to read:**

NR 722.13 (2) (e) 8. A description of which remedial action addresses soil contamination and which remedial action addresses sediment contamination.

9. A description of the continuing obligations as required for the selected remedy.

10. A description of the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state.

11. A description of any financial assurance required for the selected remedy under ch. NR 756.

**SECTION 166. NR 722.15 (2) (e) 1m. is created to read:**

NR 722.15 (2) (e) 1m. Require a plan and compliance schedule and proof of financial responsibility under ch. NR 756, if an interim or remedial action using an engineering control is selected to address contaminated sediment.

**SECTION 167. NR 722.17 (1), (3), and (4) are amended to read:**

NR 722.17 (1) For sites or facilities where the department has approved a remedial action that includes a continuing obligation which meets any of the criteria ~~in~~ under ss. NR 722.15 (2) (e) and 725.05 (2), the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats. for the approval of a remedial action and any information required under s. 292.12 (2) (d), Stats., for the approval of a remedial action.

(3) The fees required ~~by~~ under ch. NR 749 shall be submitted to the department, in accordance with ch. NR 749.

(4) Documentation requirements shall meet ~~s. NR 726.11, to the extent practicable~~ the requirements under ss. NR 700.15 and 726.11, unless otherwise directed by the department.

**SECTION 168. NR 722.17 (5) is created to read:**

NR 722.17 (5) If another person has entered into a legally enforceable agreement for complying with continuing obligations under s. 292.12 (5) or (5m), Stats., the responsible party shall, or other person may, provide to the department a copy of the agreements for inclusion in the department's database.

**SECTION 169. NR 724.02 (1) (br) is created to read:**

NR 724.02 (1) (br) Any action requiring an exemption under s. NR 718.12 or 718.15 to manage contaminated soil, contaminated sediment, or solid waste.

**SECTION 170. NR 724.02 (2) (Note 2) is amended to read:**

NR 724.02 (2) 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~~ under 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~~ under chs. NR 700 to ~~754~~ 799 in order to be consistent with CERCLA and the NCP.

**SECTION 171. NR 724.05 (2) (b) and (Note) and (e) 2. d. are amended to read:**

NR 724.05 (2) (b) One ~~paper copy and one~~ electronic copy of each plan or report shall be submitted to the department, in accordance with s. NR 700.11 (3g).

Note: Electronic copies should be submitted ~~in the Adobe Portable Document Format (PDF) on optical disk media~~ in a method approved by the department. Guidance on electronic submittals can be accessed at <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf>.

(e) 2. d. Site name, address, ~~and location by quarter quarter section, township, range and county, and geographic position determined in accordance with the requirements of s. NR 716.15 (5) (d), and the latitude and longitude of the property as specified under s. NR 700.15 (2).~~

**SECTION 172. NR 724.09 (3), (5), (6), (7), and (8) are amended to read:**

NR 724.09 (3) A complete and detailed description of the remedial or interim action being designed, and a description of how the remedial or interim action addresses all hazardous substances and environmental pollution, and environmental media, receptors, and pathways of concern in the final, department-approved, conceptual site model.

(5) Any treatability study information, pilot test results, aquifer pumping test results, dewatering tests, or other test results utilized in the design, unless this information was previously submitted to the department.

(6) ~~A~~ For each media, a listing of all local, state and federal permits, licenses and approvals required to construct and implement the remedial or interim action.

(7) A brief description of the local, state, and federal public health and environmental laws and standards applicable to the contamination and the interim or remedial action being implemented, including the physical location where the environmental standards shall be complied with for each medium of concern.

(8) A preliminary discussion of the types of, frequency of, locations of, and schedule for monitoring of the remedial or interim action, including confirmation sampling. This discussion shall address any water, sediment, soil, soil gas, air, vapor, or other monitoring required for each component of the remedial or interim action.

**SECTION 173. NR 724.09 (9) (Note) is repealed.**

**SECTION 174. NR 724.09 (12) and (13) are created to read:**

NR 724.09 (12) Discussion of any continuing obligations and any plan and schedule to implement, monitor, inspect, and maintain the continuing obligations.

(13) Discussion of any types of financial assurance required under ch. NR 756.

**SECTION 175. NR 724.13 (1) (a) and (b), and (2) (intro.), (d) 1., 2., and (g) (Note) are amended to read:**

NR 724.13 (1) (a) Unless otherwise directed by the department, responsible parties shall conduct all necessary operation and maintenance activities in accordance with this section and in compliance with all applicable local, state, or federal public health and environmental laws, whichever are more stringent, until all applicable public health and environmental laws are complied with as required in under chs. NR 700 to 754 799.

(b) Responsible parties shall operate and maintain any engineering controls, caps, cover systems, liners, physical hydraulic containment systems, leachate collection systems, and gas collection, extraction, and management systems at sites or facilities for which they are responsible until no longer required by the department.

(2) OPERATION AND MAINTENANCE PLAN. Unless otherwise directed by the department, responsible parties shall submit to the department an operation and maintenance plan when on-site or off-site maintenance activities are necessary to implement, monitor or ensure the effectiveness of a remedial or interim action. The plan shall outline all operation, monitoring, and maintenance activities, from design through case closure under ch. NR 726 or through post-closure under ch. NR 727, through the life of the remedy, as appropriate, including all of the following information:

(d) 1. Long-term monitoring required under s. NR 724.17~~;~~

2. Laboratory or field tests, test methods and sampling ~~methods; and~~ techniques.

(g) Note: Engineering controls may include a cap, soil cover, barrier, or vapor mitigation system. A sediment cover is not an engineering control under s. 292.01 (3m), Stats.

**SECTION 176. NR 724.13 (2) (j) (Note) is repealed.**

**SECTION 177. NR 724.13 (2) (o) and (p) are created to read:**

NR 724.13 (2) (o) For sediment caps, all of the following:

1. Measures to identify the presence, integrity, and efficacy of the engineering control that may include bathymetry, coring, poling, and other methods approved by the department.

2. Physical and chemical evaluation of the materials above, below, and of the cap itself including bulk chemistry, sediment porewater, and physical parameters such as grain size, density, specific gravity, and water content.

3. Event-based monitoring for rain and scour events from the United States geological survey or other gauge data and hydraulic events including a pre-determined flood event.

4. Period monitoring at planned intervals.

(p) For properties that are part of the site or facility and not owned by the responsible party, verification of sufficient legal access to conduct the activities in the operation and maintenance plan.

**SECTION 178. NR 724.13 (3) (Note 2) is amended to read:**

NR 724.13 (3) (a) Note: Copies of remediation system operation and maintenance reporting forms 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, or~~ at <http://dnr.wi.gov/files/PDF/forms/4400/4400-194.pdf>.

**SECTION 179. NR 724.15 (2m) is created to read:**

NR 724.15 (2m) Unless otherwise directed by the department, if the implemented remedy affects the extent or concentration of contaminants, the responsible party shall include in the report all of the following:

(a) Results from confirmation sampling of the impacted media that demonstrate that the remedy was successful, and the remedial objectives have been met.

(b) Verification that the confirmation sampling performed was adequate to demonstrate that the remaining level of contamination is not likely to pose a threat to public health, safety or welfare or the environment.

(c) A description of confirmation sampling procedures and maps that depict location of confirmation sampling.

**SECTION 180. NR 724.17 (1) is amended to read:**

NR 724.17 (1) GENERAL. Responsible parties shall conduct all necessary and appropriate long-term monitoring ~~at a site or facility~~ in accordance with all of the requirements of this section and any other applicable local, state, and federal public health and environmental laws.

**SECTION 181. NR 724.17 (3r) is created to read:**

NR 724.17 (3r) LONG-TERM MONITORING RESULTS FOR SEDIMENT. (a) In addition to the requirements under sub. (3m), for sediment engineering controls, the department may require responsible parties to conduct an inspection of any structural impediment or engineering control, including a cap, and submit a maintenance report 60 days after case closure and every 5 years following, along with the fee under ch. NR 749, to the department for review and approval.

(b) The inspection and maintenance report required under par. (a) shall include, at a minimum, a plan and compliance schedule for all of the following:

1. Engineering control presence, efficacy, and integrity analysis.
2. The identification for the need for repairs and schedule to conduct repairs.
3. Engineering control settlement analysis including overall settlement and differential settlement.
4. An evaluation of financial assurance and compliance with ch. NR 756 to determine whether identified costs, including any engineering control and structural impediment repair costs, are addressed by existing financial assurance.

5. The conclusions of the 5-year review, including an identification of issues, recommendations, and follow-up actions, and a determination of whether the remedy is protective of human health and the environment.

6. Other relevant items, as required by the department.

**SECTION 182. NR 724.18 is created to read:**

NR 724.18 **Plan and compliance schedule and proof of financial responsibility for sites or facilities with contaminated sediment engineering controls.** Interim and remedial actions taken under this chapter that include a contaminated sediment engineering control are subject to the requirements under ch. NR 756.

**SECTION 183. NR 725.02 (1) and (2) are amended to read:**

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

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

**SECTION 184. NR 725.05 (2) (a) and (b) are amended to read:**

NR 725.05 (2) (a) ~~Groundwater~~ Unless otherwise directed by the department, contamination which that attains or exceeds ~~ch. NR 140~~ enforcement standards under ch. NR 140, or, if ch. NR 140 standards are not available, groundwater contamination that attains or exceeds any site-specific groundwater contamination standards for the site approved by the

department, when the contamination remains after completion of the remedial action and the property is not serviced by a municipal water system.

(b) Soil contamination ~~which~~ that attains or exceeds ~~ch. NR 720~~ residual contaminant levels ~~remains~~ under ch. NR 720 or exceeds any site-specific soil contamination standards developed for the site approved by the department and those levels remain after completion of the remedial action.

**SECTION 185. NR 725.05 (2) (bm), (cm), and (m) are created to read:**

NR 725.05 (2) (bm) Continuing obligations when directed by the department.

(cm) Sediment contamination that attains or exceeds site-specific, ecological, or human health risk standards under ch. NR 722 remains after completion of the remedial action.

(m) An engineering control is being used to address contaminated sediment.

**SECTION 186. NR 725.05 (2) (L) (Note 2) is amended to read:**

NR 725.05 (2) (L) Note: The department may also require notification for site-specific reasons upon review of a case closure request, in accordance with s. NR 726.13 and prior to case closure, upon review of an interim action plan under s. NR 724 or upon review of a remedial action plan in accordance with s. NR 722.15 (2) (e). Responsible parties are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

**SECTION 187. NR 725.07 (1) and (3) (Note) are amended to read:**

NR 725.07 (1) NOTIFICATION FORM. The responsible party, or other party required by the department to provide notification ~~by the department~~, shall provide the notification of any contamination ~~and~~ or continuing obligations on a form provided by the department, that contains the standard provisions in the form. All notifications shall also include the provisions about ~~the~~ any applicable continuing obligations on the affected properties or rights-of-way. The closure-related paragraphs shall be altered to fit the situation, as applicable. Notifications sent before a person applies for case closure at a site with residual contamination shall include, at a minimum,



a description of the type of residual contamination and the location and description of any engineering control or sediment cover on the site.

(3) Note: Send notifications for DOT rights-of-way electronically to: DOTHazmatUnit@dot.wi.gov, or by mail to: Wis. DOT Bureau of ~~Equity and Environmental Services, 4802 Sheboygan Ave. Room 451~~ Technical Services, Environmental Services -- Hazmat, PO Box 7965, 5 South, Madison, WI 53707-7965. Include “Notification of Contamination” in the subject line of the e-mail. The Department of Transportation (DOT) sends a receipt electronically (e-mail). Email is the preferred notification method.

**SECTION 188. NR 726.02 (2) (a) is amended to read:**

NR 726.02 (2) (a) Solid waste facilities where remedial action is required by the department ~~pursuant to ch. NR 508~~ under ch. 289, Stats.

**SECTION 189. NR 726.02 (2) (c) is created to read:**

NR 726.02 (2) (c) Hazardous waste facilities where corrective action is being required by the department under ch. 291, Stats.

**SECTION 190. NR 726.05 (1) and (4) (b), (c), and (d) are amended to read:**

NR 726.05 (1) COMPLIANCE. The responsible party or other person requesting case closure shall ensure compliance with all applicable ~~federal, state, and local, state, and federal~~ public health and environmental laws, including chs. NR 140, 141, and 700 to ~~754~~ 799 as applicable, prior to requesting case closure.

(b) Cause a violation of ~~ch. NR 140~~ groundwater quality enforcement standards ~~at any applicable point of standards application,~~ under ch. NR 140 or, if ch. NR 140 standards are not available, site-specific standards approved by the department under s. NR 722.09, 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~~ under chs. NR 102 to 106 or other site-specific standards that have been developed for the site or facility and approved by the department.

(d) Cause a violation of air quality standards ~~contained in~~ under chs. NR 400 to 499 or other site-specific standards that have been developed for the site or facility and approved by the department.

**SECTION 191. NR 726.05 (4) (f) is created to read:**

NR 726.05 (4) (f) Cause a violation of drinking water standards under ch. NR 809 or 812, or other site-specific standards that have been developed for the site or facility and approved by the department.

**SECTION 192. NR 726.05 (5) is repealed and recreated to read:**

NR 726.05 (5) COMPLETENESS. (a) The department may review a case closure request if a responsible party or other person seeking case closure has submitted to the department a case closure request that is complete and meets the documentation requirements under ss. NR 726.09 and 726.11, if applicable.

(b) The department may deny incomplete closure requests for a site or facility, including sites or facilities at which the department determines a site investigation has not been completed under ch. NR 716.

(c) The department may apply a fee for an incomplete closure request to a site investigation review on a case-by-case basis, and the department may then require a new closure request and closure fee to be submitted.

(d) The department shall not approve case closure for a site or facility until all applicable submittals required under chs. NR 700 to 799 for the site or facility have been received by the department and are completed in compliance with chs. NR 700 to 799, including all of the following:

1. Semi-annual site progress reports required under ch. NR 700.

2. Reports and documentation for any immediate or interim actions required under ch. NR 708.
3. Compliance with all professional certifications, qualifications, and signatures that are required with applicable submittals under ch. NR 712.
4. Work plans and site investigation reports conducted under ch. NR 716.
5. Remedial action options reports conducted under ch. NR 722, with the selected remedial actions identified.
6. Design, construction documentation, operation, maintenance and monitoring plans and reports conducted under ch. NR 724.
7. Submittals that confirm continuing obligations have been identified and affected property owners have been notified under ch. NR 725.
8. Forms and requirements for closure under ch. NR 726.
9. Payment of fees under ch. NR 749, including closure and database fees, and payment of fees under ch. NR 750, if applicable.

**SECTION 193. NR 726.05 (6) (intro.), (b), (c) (intro.), and (e) are amended to read:**

NR 726.05 (6) CRITERIA FOR CASE 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, under ch. NR 140 or site-specific~~ standards for the site or facility have been approved by the department under s. NR 722.09 (2), the responsible party or other person requesting case closure shall submit a case closure request to the agency for the site or facility that documents that all of the following criteria are satisfied, if applicable:

(b) Natural attenuation will bring the groundwater into compliance with ~~ch. NR 140~~ groundwater quality standards under ch. NR 140, or, where ch. NR 140 standards are not available, alternative standards for the site approved by the department under s. NR 722.09 (2), within a reasonable period of time, considering the criteria ~~in~~ under 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 under ch. NR 140 or, site-specific standards approved by the department under s. NR 722.09 (2), will not migrate beyond the boundaries of any property that falls into either one of the following categories:

(e) Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 141, 149, and 700 to 754 799, have been complied with.

**SECTION 194. NR 726.05 (8m) is created to read:**

NR 726.05 (8m) CRITERIA FOR CLOSURE FOR SITES OR FACILITIES WITH SEDIMENT CONTAMINATION. A responsible party may not submit a request for case closure for a site or facility until all of the following criteria have been met:

(a) The sediment pathway has been investigated and the site investigation has been approved by the department in accordance with ch. NR 716.

(b) Sediment no longer exceeds ecological and human health risks under ch. NR 722.

(c) A remedial action has been conducted to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of this state.

(d) All local, state, and federal laws and standards have been complied with.

(e) Financial assurance, if required under ch. NR 756, has been obtained and maintained in accordance with requirements.

**SECTION 195. NR 726.07 (1) is amended to read:**

NR 726.07 (1) All sites or facilities meeting any of the criteria ~~in~~ under s. NR 725.05 (2) or 726.13 (1) (c), upon approval of the case 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, and any lake or river beds, shall be included.

**SECTION 196. NR 726.07 (1) (Note) is created to read:**

NR 726.07 (1) Note: 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 situation 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.

**SECTION 197. NR 726.09 (1) is amended to read:**

NR 726.09 (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)~~ under chs. NR 725 and 726 are satisfied. ~~One paper copy and one~~ 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.

**SECTION 198. NR 726.09 (1) (Note 1) and (Note 2) are repealed.**

**SECTION 199. NR 726.09 (2) is amended to read:**

NR 726.09 (2) GENERAL REQUIREMENTS. In order to demonstrate that applicable ~~federal, state and local~~, state, and federal 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 part of~~ part of the case closure request, in the format that is specified in this subsection, and in the order that is specified in the form, including all of the following:

**SECTION 200. NR 726.09 (2) (a) is renumbered NR 726.09 (2) (aw).**

**SECTION 201. NR 726.09 (2) (ac), (ag), (an), and (ar) are created to read:**

NR 726.09 (2) (ac) An executive summary of the contamination sources, degree and extent of contamination in all affected media, remedial actions taken to address the contamination, and the types and locations of any continuing obligations proposed to address exposure to residual contamination.

(ag) A description of general site information and history including site location, land usage, and zoning.

(an) A site location map that outlines all properties and rights-of-way within the contaminated site boundaries on either a United States geological survey topographical map or plat map, that includes all of the following, where applicable:

1. Parcel identification numbers.
2. Sufficient detail to permit the parcels to be located easily.
2. The location of all municipal and potable wells within 1200 feet of the site.
3. Graphic scales for the site location map and any other maps and cross sections.
4. A north arrow pointing to the top of the map.

(ar) A summary of site investigation activities and final conceptual site model completed for the site or facility including affected media, types of contaminants, the scope of field investigation, degree and extent of contamination, and all potential and known receptors and migration pathways.

**SECTION 202. NR 726.09 (2) (b) is repealed.**

**SECTION 203. NR 726.09 (2) (b) (intro.), 1., 2., 3. and 4. are created to read:**

NR 726.09 (2) (b) A description of the interim and remedial actions taken at the site or facility, including, where applicable, the following:

1. For all sites or facilities, the nature, degree and extent of any residual contamination that will remain at the site, and how exposure pathways were addressed.

2. For sites or facilities where residual soil contamination exceeds soil standards under ch. NR 720 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 under chs. NR 720 and 722, where applicable.

3. For sites or facilities with residual sediment contamination that attains or exceeds ecological and human health risks under ch. NR 722 at the time that case closure is requested, include a demonstration that any remedial action taken, and any interim action taken that constituted the final response action for sediment contamination, satisfies the requirements under ch. NR 722, assures attainment and maintenance of surface water quality standards as established under s. 281.15 (1), Stats., and satisfies requirements under chs. NR 102 to 106, or other site-specific standards approved by the department, unless otherwise directed by the department.

4. For sites or facilities where sediment contamination exceeds any applicable 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 sediment contamination, satisfies the applicable requirements.

**SECTION 204. NR 726.09 (2) (c) is repealed.**

**SECTION 205. NR 726.09 (2) (d) (intro.), 1., and 2., (e), and (f) are renumbered NR 726.09 (2) (b) 5. (intro.), a., and b., 6., and 7., and amended to read:**

NR 726.09 (2) (b) 5. For sites or facilities where soil excavation, sediment dredging, or active soil remediation occurred:

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

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

6. 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 under~~ ch. NR 140 or, where ch. NR 140 standards are not available, site-specific standards for a site approved by the department under s. NR 722.09 (2), or the requirements of under s. NR 726.05 (6), unless otherwise directed or approved by the agency.

7. 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 any~~ hazardous substances on the air, lands, and waters of the state or environmental pollution to protect health, safety, and welfare and the environment.

**SECTION 206. NR 726.09 (2) (g) and (Note) and (3) are amended to read:**

NR 726.09 (2) (g) Submit to the department documentation that all other closure conditions have been satisfied, within 120 days after the department provides a ~~conditional closure~~ remaining actions needed response.

Note: This requirement is meant to cover well abandonment and any other minor condition identified in a ~~conditional closure~~ remaining actions needed 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> by visiting <http://dnr.wi.gov> and searching “3300-005”.



(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~~ delivered.

**SECTION 207. NR 726.09 (3) (Note) is repealed.**

**SECTION 208. NR 726.11 (1) (b) (Note) is repealed.**

**SECTION 209. NR 726.11 (2) (a) is amended to read:**

NR 726.11 (2) (a) A ~~location~~ map ~~which~~ that shows the location and extent of the structure or feature to be maintained, in relation to other structures or features on the site or facility. The map shall also include the extent and type of residual contamination, and include any available property boundaries.

**SECTION 210. NR 726.11 (2m) is created to read:**

NR 726.11 (2m) PLAN, COMPLIANCE SCHEDULE, AND PROOF OF FINANCIAL RESPONSIBILITY FOR SITES OR FACILITIES WITH CONTAMINATED SEDIMENT. (a) Responsible parties or other persons requesting closure at a site or facility where an engineering control was utilized to address contaminated sediment shall submit to the department all of the following documents:

1. A plan, a compliance schedule, and proof of financial responsibility for maintenance of an engineering control.

2. A plan, a compliance schedule, and proof of financial responsibility for an investigation of the extent of contamination and the performance of any necessary remedial action if a structural impediment is subsequently removed that had prevented the responsible party from completing the investigation or remedial action at the site or facility.

(b) The department shall include the information submitted under par. (a) on the database under s. 292.12 (3), Stats.

**SECTION 211. NR 726.11 (3) is amended to read:**

NR 726.11 (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, compass direction, and the date on which ~~it was~~ they were taken.

**SECTION 212. NR 726.11 (3m) is created to read:**

NR 726.11 (3m) LEGALLY ENFORCEABLE AGREEMENT FOR CONTINUING OBLIGATIONS AT SITES OR FACILITIES. The responsible party shall provide to the department a copy of any legally enforceable agreements entered into under s. 292.12 (5) or (5m), Stats., for inclusion on the department's database.

**SECTION 213. NR 726.11 (4) (intro.) is amended to read:**

NR 726.11 (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:~~

**SECTION 214. NR 726.11 (4) (a) is repealed and recreated to read:**

NR 726.11 (4) (a) Deed and parcel information in accordance with requirements under s. NR 700.15 (1).

**SECTION 215. NR 726.11 (4) (a) (Note) is repealed.**

**SECTION 216. NR 726.11 (4) (b) is repealed and recreated to read:**

NR 726.11 (4) (b) Geographic position data for each property in compliance with the requirements under s. NR 700.15 (2), 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.

**SECTION 217. NR 726.11 (4) (c) and (d) are amended to read:**

NR 726.11 (4) (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, or lake or river beds 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 and rights-of-way affected by residual contamination or a continuing obligation.

**SECTION 218. NR 726.11 (4) (d) (Note), (e), (f) and (Note) are repealed.**

**SECTION 219. NR 726.11 (5) (intro.) and (b), (c) 1. and 2., (d) (intro.), 1., and 2., and (e) are amended to read:**

NR 726.11 (5) MAPS AND CROSS SECTIONS. All the following information shall be included in ~~a department database~~ an attachment to the case closure request:

(b) A detailed ~~site~~ map of all contaminated properties within the contaminated site or facility boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells, structural impediments, engineering controls, 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, and river or lake beds in relation to the source property and in relation to the boundaries of contamination exceeding applicable standards.

(c) 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. Include soil sample results and identify the location and type of any structural impediment.

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, soil types, any fill materials, locations and elevations of

geologic rock units, surface features, contaminant source locations, sample locations and results, subsurface migration pathways, and any active remediation or treatment zones. 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 under ch. NR 140 or, where ch. NR 140 standards are not available, site-specific standards for the site or facility approved by the department under s. NR 722.09 (2) 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, surface features, subsurface migration pathways, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits or, where ch. NR 140 standards are not available, site-specific standards for the site or facility approved by the department under s. NR 722.09 (2) that remains when case closure is requested, any active remediation or treatment zones, 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 under ch. NR 140 or, where ch. NR 140 standards are not available, alternative standards for the site approved by the department, 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.

(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, and any additional mapping information required by the department.

**SECTION 220. NR 726.11 (5) (em) and (f) are created to read:**

NR 726.11 (5) (em) For sites or facilities where sediment samples were collected, include a map delineating the boundaries between soil and sediment, including a delineation between engineering controls addressing soil and engineering controls addressing sediment.

(f) For sites or facilities where vapor samples were taken to investigate the vapor intrusion pathway in relation to residual soil and groundwater contamination, a map showing location and results of any sub-slab, indoor air, soil vapor, soil gas, and ambient air testing, that includes locations and footprints of affected structures and utility corridors, and indicates where residual contamination poses a future risk of vapor intrusion.

**SECTION 221. NR 726.11 (6) (intro.), (a), (b) (intro.) and 1. are amended to read:**

NR 726.11 (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 or other site-specific standards that have been developed for the site and approved by the department 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. Results equal to or greater than residual contaminant levels under ch. NR 720 and background threshold values shall be clearly identified. Soil data tables shall identify the saturation level and soil strata from which samples were collected.

(b) *Groundwater*. For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard or, where standards under ch. NR 140 are not available, site-specific standards for the site approved by the department under s. NR 722.09 (2) at the time that case closure is requested, include all of the following:

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, and results equal to or greater than standards under ch. NR 140 clearly identified.

**SECTION 222. NR 726.11 (6) (bm) is created to read:**

NR 726.11 (6) (bm) *Vapor*. For sites where vapor samples were taken to investigate the vapor intrusion pathway in relation to residual soil and groundwater contamination, a table of analytical results showing sample type, collection method, analytical method, date of sample collection, and time period for sample collection, with results equal to or greater than applicable vapor levels clearly identified.

**SECTION 223. NR 726.11 (6) (c) and (7) (intro.) and (c) are amended to read:**

NR 726.11 (6) (c) *Other*. For sites or facilities where samples other than soil or groundwater, or vapor were collected, include a table specifying the sample type, sample number or location, sample results, ~~and collection date~~ collection dates, and any additional sampling information required by the department.

(7) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities ~~where a~~ with any monitoring well that has not been abandoned in accordance with the requirements of under ch. NR 141 at the time of case closure, with a well that the property owner has requested to keep and not abandon, or with a well required by the agency under s. NR 726.05 (7) (a) for continued monitoring after closure, the following information shall be included in ~~a department database attachment to~~ the case closure request.

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

**SECTION 224. NR 726.11 (7) (c) (Note) is repealed.**

**SECTION 225. NR 726.13 (1) (a) 2. and (b) 2., 3., and 4. are amended to read:**

NR 726.13 (1) (a) 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 local, state, and federal public health and environmental laws, including chs. NR 700 to ~~754~~ 799, have been complied with, or where ~~ch. NR 140~~ enforcement standards under ch. NR 140 or, where standards under ch. NR 140 are not available, site-specific standards for the site or facility approved by the department under NR 722.09 (2), are the only standards that are attained or exceeded, that the criteria in s. NR 726.05 (6) are satisfied.

(b) 2. Cause a violation of a ch. NR 140 groundwater quality enforcement standard or, where ch. NR 140 standards are not available, site-specific standards for the site or facility approved by the department under s. NR 722.09 (2) 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 or other site-specific standards under s. NR 722.09 (2) that have been developed and approved for the site or facility by the department.

4. Cause a violation of air quality standards contained in chs. NR 400 to 499 or other site-specific standards under s. NR 722.09 (2) that have been developed and approved for the site or facility by the department.

**SECTION 226. NR 726.13 (1) (b) 6. is created to read:**

NR 726.13 (1) (b) 6. Cause a violation of drinking water standards set forth under chs. NR 809 and 812 or other site-specific standards under s. NR 722.09 (2) that have been developed for the site and approved by the department.

**SECTION 227. NR 726.13 (2) (b) and (d) are amended to read:**

NR 726.13 (2) (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~~ 799 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.

(d) If the department determines that the applicable local, state, and federal 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.

**SECTION 228. NR 726.13 (2) (d) (Note) is repealed.**

**SECTION 229. NR 726.13 (2) (h) is created to read:**

NR 726.13 (2) (h) Where additional conditions of closure are required under par. (d), (e), and (f), the department may establish a schedule for response. The department may require an additional closure fee if any of the following apply:

1. The person requesting closure does not comply with the schedule.
2. The remaining closure requirements are not completed and approved by the department within 18 months of the notice under par. (d), (e), or (f).
3. The department has applied the closure fee to another submittal under sub. (5).

**SECTION 230. NR 726.15 (1) (b) is amended to read:**



NR 726.15 (1) (b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the case closure letter that apply to the property under ch. 709, Stats. The case closure letter may also shall require the property owner to notify affected occupants of the need for specific continuing obligations that interference with the continuing obligations is prohibited.

**SECTION 231. NR 726.15 (1) (b) (Note) is created to read:**

NR 726.15 (1) (b) Note: For information on Wisconsin real estate disclosure laws please see ch. 709, Stats., and Pub-RR-973, Environmental Contamination & Your Real Estate, available at: <https://dnr.wi.gov/topic/smallbusiness/purchasespills.html>.

**SECTION 232. NR 726.15 (1) (d) is amended to read:**

NR 726.15 (1) (d) For conditions of closure that require maintenance of a continuing obligation that does not address sediment, a requirement that the property owner operate and maintain the engineering control, and any other continuing obligations, including the applicable system, cover or containment system in accordance with the operation and maintenance plan developed under ch. NR 724 and contained in the case closure letter approval. The case closure letter shall also include conditions regarding inspections, documentation, availability, and submittal of an inspection log, at a frequency determined by the agency. If the responsible party has entered into a legally enforceable agreement with the property owner to take responsibility for the continuing obligation, the responsible party shall comply with this subsection and shall provide the department with a copy of the signed enforceable agreement with the request for case closure.

**SECTION 233. NR 726.15 (1) (dm) and (2) (bm) and (dm) are created to read:**

NR 726.15 (1) (dm) For conditions of closure that require maintenance of a continuing obligation that addresses sediment, the responsible party shall operate and maintain the engineering control and other continuing obligations, including the applicable containment system or other engineering control in accordance with the operation and maintenance plan developed under ch. NR 724. The case closure letter shall include conditions regarding inspections, documentation, availability, and submittal of an inspection log by the property

owner of a sediment site or responsible party for a sediment site, at a frequency determined by the agency. If the responsible party has entered into a legally enforceable agreement with the property owner to take responsibility for the continuing obligation, the responsible party shall comply with this subsection and shall provide the department with a copy of the signed enforceable agreement with the request for case closure.

(2) (bm) *Residual sediment contamination.* If there is residual sediment contamination at the time of case closure, the final case closure letter shall include a description of the extent of sediment contamination, the reasons why there is residual contamination, and locations of the residual contamination, and shall state that any sediment that is excavated or dredged in the future from an area that had residual sediment contamination at the time of case closure shall be sampled, analyzed, handled, and disposed of or managed in compliance with applicable local, state, and federal laws.

(dm) *Engineering control to address contaminated sediment.* For sites or facilities at which an engineering control is used to address contaminated sediment, the case closure letter shall reference any plan and compliance schedule or proof of financial responsibility that are required for the maintenance of the engineering control under ch. NR 756.

**SECTION 234. NR 726.15 (2) (e) is amended to read:**

NR 726.15 (2) (e) *Building, ~~soil cover~~, cap, engineering control, 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~~ cap, 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 department shall include in the case closure letter ~~shall include~~ conditions which require the property owner to ensure that the building, ~~soil cover cap~~, 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 department shall include in the case closure letter ~~shall include~~ a description of the residual contamination and the location of the building, ~~soil cover cap~~, cover, or engineered containment structure, and in the letter, the department shall ~~restrict condition~~ the use of the land where the building, ~~soil cover cap~~, cover, or engineered

containment structure is located to ensure that the building, ~~soil cover cap~~, or cover, ~~will function~~ functions as intended, to prevent direct contact, as required by the applicable performance standard. The department, in the case closure letter shall also require the property owner to maintain and repair any building, cap, cover, or engineered containment structure or shall require the property owner to notify the agency prior to replacing the building, ~~soil cover cap~~, 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.

**SECTION 235. NR 726.15 (2) (em) is created to read:**

NR 726.15 (2) (em) *Structure or engineering control for prevention of direct contact with sediment.* For sites or facilities where a structure or an engineering control is required to be maintained in order to prevent direct contact with contaminated sediment that attains or exceeds ecological and human health risks or site-specific standards under s. NR 722.09 (2), the case closure letter shall include conditions which require the responsible party to ensure that the structure or engineering control will be repaired and maintained until it is no longer needed. The department shall include in the case closure letter a description of the residual contamination and the location of the structure or engineering control. In the case closure letter, the department shall require the responsible party to notify affected property owners or occupants of the location of the structure or engineering control to ensure that the structure or engineering control will function as intended, to prevent direct contact and other exposures, as required by the applicable performance standard. The responsible party, as determined under s. 292.12, Stats., shall inspect, maintain and repair the sediment engineering control. The responsible party, property owner, or occupant who proposes to disturb, halt, or remove the engineering control shall notify and receive written, prior approval from the department to take such actions. The department may require the responsible party, as determined under s. 292.12, Stats., to conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contaminant accessible, conduct a remedial action, or both.

**SECTION 236. NR 726.15 (2) (f) and (m) are amended to read:**

NR 726.15 (2) (f) *Structural impediment*. For sites or facilities where a ~~building or other structural impediment at a site or facility~~ structure or other impediment, including buildings, has prevented the completion of an investigation to determine the degree and extent of residual contamination, ~~or the completion of a remedial action, or both,~~ the case closure letter shall include a description of the general location of the residual contamination, and The department, in the case closure letter, shall require the property owner or other responsible party to notify the agency and then and receive written approval from the department prior to taking any actions that may impact the structural impediment or engineering control. The department may require the property owner or responsible party to conduct an investigation of the degree and extent of contamination any necessary response actions at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible. If applicable, the case closure letter shall reference any plan and compliance schedule, proof of financial responsibility, or both, that are required under ch. NR 756.

(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 case 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 any hazardous substances or environmental pollution remain in media other than soil, groundwater, sediment, 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,~~ at the site or facility the final case closure letter shall also state that any sediments contaminated soils, contaminated sediment, or other solids solid waste 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~~ local, state, and federal laws.

**SECTION 237. NR 727.01 is amended to read:**

**NR 727.01 Purpose.** The purpose of this chapter is to specify the minimum responsibilities of responsible parties and owners and occupants of properties with residual contamination, where continuing obligations have been imposed in a closure approval letter ~~or~~ ~~in~~ a remedial action plan approval, or an interim action approval, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

**SECTION 238. NR 727.02 is amended to read:**

**NR 727.02 Applicability.** This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under ~~ch. 292, Stats. chs. 289, 291, and 292, Stats., regardless of whether there is direct involvement or oversight by the department.~~ including solid waste facilities where remedial action is required by the department and hazardous waste facilities at which corrective action is being required by the department. This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under chs. 289, 291, and 292, Stats., regardless of whether there is direct involvement or oversight by the department.

**SECTION 239. NR 727.05 (1) (intro.) is amended to read:**

NR 727.05 (1) A ~~party or~~ person who owns or occupies a property ~~where~~ at which a continuing obligation has been imposed under either s. NR 708.165, 708.17, or 722.15 or ch. NR 726, or a person who has entered into a legally enforceable agreement, recorded on the database, to comply with continuing obligations under s. 292.12 (5) or (5m), Stats., shall, for any applicable continuing obligations that do not address sediment, do all of the following:

**SECTION 240. NR 727.05 (1) (a) (Note) and (2) are repealed.**

**SECTION 241. NR 727.05 (5), (6), and (7) are created to read:**

NR 727.05 (5) At sites or facilities with continuing obligations that apply to sediment, the property owner or occupant shall avoid all of the following:

(a) Interference with any response actions taken.

(b) Actions that may make the contamination worse or that would cause or worsen the discharge of any hazardous substance or environmental pollution to the environment.

(6) A person that is responsible for sediment contamination under s. 292.12, Stats., for which a continuing obligation has been imposed under either s. NR 708.17 or 722.15 or ch. NR 726 shall do all of the following:

(a) Comply with the requirements imposed by the department, including any continuing obligation necessary to ensure that conditions at the property, site, or facility remain protective of public health, safety, and welfare and the environment.

(b) Perform the following actions in compliance with the conditions specified by the department, as applicable:

1. Operate and maintain the response action required.

2. Maintain an inspection log and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed as determined by the department.

3. Submit the inspection log electronically, on a form provided by the department, to the agency at the frequency required by the agency.

4. Conduct long-term monitoring as approved in the maintenance plan.

(c) Provide the agency reasonable access to the property for inspection of any required continuing obligations.

(d) Manage any residual contamination in accordance with applicable local, state, and federal laws.

(e) Maintain any financial assurance required under ch. NR 756.

(7) A person who owns or occupies a property may not interfere with any continuing obligation that addresses sediment or another person's actions to comply with continuing obligations that address sediment.

**SECTION 242. NR 727.07 (intro.) is amended to read:**

**NR 727.07 Notification of the agency with administrative authority regarding continuing obligations.** For situations where a continuing obligation has been imposed under either s. NR 708.165, 708.17, 722.15, or 726.13, the property owner shall notify the agency with administrative authority in writing within 45 days prior to taking any of the following actions and receive the approval of the agency with administrative authority prior to proceeding with any of the following actions, to determine whether further action may be necessary to protect human health, safety, or welfare or the environment:

**SECTION 243. NR 727.09 (1), (2) and (Note), (4) (intro.), (a), and (b), (5) (intro.), (a), and (b), and (6) (a) (intro.) are amended to read:**

NR 727.09 (1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The agency may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either s. NR 708.165, 708.17, 722.15, or 726.13, in cases where compliance with the restriction, condition, or continuing obligation has not been maintained.

(2) UPDATING A GROUNDWATER USE RESTRICTION. For cases that have been closed conditioned upon the recording of a groundwater use restriction, the responsible party or property owner may, at any time after groundwater contaminant concentrations fall below ch. NR 140 ~~preventive action limits~~ enforcement standards, apply for ~~unconditional~~ case closure and may request that the agency issue an affidavit that can be recorded at the county register of deeds office to give notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for a preventive action limit exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140.28 are met. Once an exemption is granted under s. NR 140.28, the responsible party may request that the agency issue an affidavit that can be recorded at the

county register of deeds office to give notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.

Note: Prior to November, 2001, cases with groundwater enforcement standard exceedances were closed with a deed restriction, called a groundwater use restriction. The groundwater use restriction required department review and approval of a water supply well constructed or reconstructed on an affected property. Since November, 2001, these sites have been closed by adding them to a department database. Chapter NR 812 contains the requirement for department review and approval of any well constructed or reconstructed on a property listed on the ~~GIS Registry (department database)~~ department database. Responsible parties or property owners of sites or facilities or properties subsequently meeting groundwater enforcement standards may request to have the deed restriction updated and the site or property removed from the department database, or that the information on the database be modified.

(4) REMOVAL FROM THE DEPARTMENT DATABASE. For ~~eases~~ sites or facilities that have been included on the department database under s. NR 708.165, 708.17, 722.15, or 726.13, the responsible party, or property owner ~~or other party~~ may apply to the agency for removal of the site or facility or property, as applicable, from the department database. A site may not be removed from the database until all applicable standards have been met and all requirements imposed have been satisfied or nullified. A request may be submitted to the agency at any time after any of the following have been achieved:

(a) Groundwater contaminant concentrations are below ~~ch. NR 140~~ enforcement standards under ch. NR 140 or, where ch. NR 140 standards are not available, site-specific standards for the site approved by the department under s. NR 722.09 (2).

(b) Soil contaminant concentrations are below ~~ch. NR 720~~ soil standards under ch. NR 720 or other site-specific standards that have been developed for the site and approved by the department.

(5) MODIFICATION OF THE DEPARTMENT DATABASE. For ~~eases~~ sites or facilities that have been included on the department database under s. NR 708.165, 708.17, 722.15, or 726.13, the responsible party, property owner or other party may request that the department modify



information on the department database at any time after any of the following have been achieved:

(a) Groundwater contaminant concentrations are below ~~ch. NR 140~~ enforcement standards under ch. NR 140, or, where ch. NR 140 standards are not available, site-specific standards for the site approved by the department under s. NR 722.09 (2).

(b) Soil contaminant concentrations are below ~~ch. NR 720~~ soil standards under ch. NR 720 or other site-specific standards that have been developed for the site and approved by the department.

(6) (a) Deed notices that are required for modification ~~or removal~~ of a site or facility or property ~~from~~ that is listed on the department database, or for another agency decision, shall be drafted in compliance with all of the following requirements:

**SECTION 244. NR 727.11 (1) and (2) are amended to read:**

NR 727.11 (1) REQUEST FOR REVIEW. A request for a review, a determination, or processing a change to the department database under this chapter may not be considered by the agency until ~~proof of~~ payment of the required fees has been received by the department's remediation and redevelopment program, in accordance with ch. NR 749.

(2) REVIEW FEE. For sites or facilities where the department has administrative authority to oversee the remediation of the site or facility, the fee listed ~~in~~ under ch. NR 749 for review of a request to update a deed restriction, or to modify ~~or remove~~ a site or facility or property ~~from~~ on the department database shall be submitted to the department with each request.

**SECTION 245. NR 727.13 (3) (b) is amended to read:**

NR 727.13 (3) (b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. NR 700 to ~~754~~ 799 where applicable, within a time period established by the department.

**SECTION 246. NR 728.01 is amended to read:**

**NR 728.01 Purpose.** The purpose of this chapter is to describe the tools that are available to the department to ensure compliance with chs. NR 700 to ~~754~~ 799 and to implement response actions at sites or facilities with environmental pollution, and sites or facilities where there has been a discharge of a hazardous substance. This chapter is adopted pursuant to ss. 227.11 (2) and 289.06 (1), Stats., and ch. 292, Stats.

**SECTION 247. NR 728.05 is amended to read:**

**NR 728.05 Referrals for rule violations.** Any person who violates the requirements ~~of~~ under chs. NR 700 to ~~754~~ 799 or ch. 292, Stats., may be referred to the office of the attorney general by the department. Any person who is referred to the office of the attorney general by the department shall be given written notice of the referral. Section 299.95, Stats., requires that the attorney general enforce chs. 289 to 292, Stats., and all rules promulgated to implement chs. 289 to 292, Stats.

**SECTION 248. NR 749.03 is repealed.**

**SECTION 249. NR 749.04 (1) and (Note 1) are amended to read:**

NR 749.04 (1) When a person requests the department to review a document listed in Table 1, the person requesting this assistance shall pay in advance to the department the applicable fees in Table 1 plus adjustments as described under sub. (1m). A person may request that department assistance be provided in either written form or in the form of oral comments. Appropriate fees shall accompany all requests for specific department assistance. Department assistance will not be provided unless the applicable fee accompanies the request for assistance. These fees are not proratable or refundable. The department may require that fees be submitted electronically. Processing charges incurred by the department due to the payor's selected method of payment shall be passed on to the payor.

Note: ~~If~~ Except for fees for the voluntary liability exemption program under ch. NR 750, if the NR 700 series rules require that a document be submitted to the department, such as in s. NR 716.09 (1), but the person does not specifically request a department review of the document, then a review fee is not required, unless the department review is required pursuant to an

enforcement-related requirement under ch. NR 728, such as an enforceable order, agreement or enforcement action.

**SECTION 250. NR 749.04 (1m) and (Note) and (2) (Note) are created to read:**

NR 749.04 (1m) A person that pays fees collected under this chapter shall include the amount stated in Table 1, plus a compounding increase of 5 percent, rounded to the nearest whole dollar, for every third calendar year with the first increase beginning on January 1, 2025, and subsequent increases occurring on January 1 of every third year thereafter.

Note: The fee schedule and updates shall be posted to the department web site at <https://dnr.wi.gov/topic/Brownfields/Fees.html>.

(2) Note: Under s. NR 726.05 (5), the department may apply a fee for an incomplete closure request to a site investigation on a case-by-case basis, and the department may then require that a new closure request and closure fee to be submitted.

**SECTION 251. NR 749.04 (Table 1) is repealed and recreated to read:**

TABLE 1 -- FEE SCHEDULE		
TYPE OF LETTER OR ASSISTANCE	STATUTORY CITATION	FEE
<i>(a) Agreements.</i>		
1. Tax assignment agreement.	ss. 75.106 (2) (f) and 292.55	\$715
2. Tax cancellation agreement.	ss. 75.105 (2) (d) and 292.55	\$715
3. Negotiated agreements. <sup>a</sup>	s. 292.11 (7) (d) 2.	\$1425
4. Environmental repair contracts. <sup>a</sup>	s. 292.31 (3) and (7)	\$1425
5. Enforcement actions. <sup>a</sup>	s. 292.94 (d)	a
6. Negotiation and cost recovery. <sup>a</sup>	s. 292.35 (13) (a)	a
<b>Note:</b> For contracts and negotiated agreements, the \$1425 fee is for department time associated with reviewing the document. If the negotiated agreement identifies other reports or activities that require department review, there would be a separate review fee for each item specified.		
<i>(b) Liability clarification letters.</i>		
1. Off-site exemption letters.	s. 292.13 (3)	\$715
2. Lease letters — single properties.	s. 292.55	\$715
3. Lease letters — multiple properties.	s. 292.55	\$1425
4. General liability clarification letters.	s. 292.55	\$715
5. Lender assessments.	s. 292.21 (1) (c) 1. d.	\$715
<i>(c) Technical assistance.</i>		
1. ch. NR 708 No further action letter. <sup>b</sup>	s. 292.55	\$355

2. ch. NR 708 Interim action plan.		\$1070
3. ch. NR 708 Interim action report.		\$1070
4. ch. NR 716 No further investigation.		\$715
5. ch. NR 716 Site investigation work plan.		\$715
6. ch. NR 716 Site investigation report.		\$1070
7. ch. NR 720 Soil cleanup standards/reports.		\$1070
8. ch. NR 722 Remedial action options report.		\$1070
9. ch. NR 724 Remedial design report.		\$1070
10. ch. NR 724 Operation and maintenance report.		\$435
11. ch. NR 724 Construction documentation report.		\$715
12. ch. NR 724 Long-term monitoring plans.		\$435
13. ch. NR 726 Case closure action.		\$1070
14. ch. NR 506 Exemption for building on a historic waste site.		\$715
15. ch. NR 756 Plan and compliance schedule.		\$1070
16. ch. NR 756 Inspection report.		\$715
17. Other technical assistance.		\$715
(d) Department database fees.	ss. 292.12 (3) (b) and 292.57	
1. Listing sites on the database.		\$355
2. Modifying sites or properties listed on the database.		\$1070
(a) Persons subject to enforcement actions under ch. 292, Stats., including submittals identified as a result of enforcement orders, agreements, or processes shall pay fees for each service requested or required by the department. If approved by the department, responsible parties may agree to pay the department an hourly fee for project oversight as determined by the provisions set forth in ch. NR 750.		
(b) Immediate actions associated with emergency spill cleanup activities, including department signoff on the Notification for Hazardous Substance Discharge form, do not require a review fee.		

**SECTION 252. NR 749.05 is amended to read:**

**NR 749.05 Alternative fees for ~~negotiated~~ contracts and agreements.** As part of a contract, negotiated agreement, or environmental agreement as defined under ch. NR 728, responsible parties may agree to pay the department an hourly fee for project oversight as determined by the provisions ~~set forth in~~ under ch. NR 750.

**SECTION 253. NR 749.06 is created to read:**

**NR 749.06 Enforcement fees.** Under s. 292.94, Stats., the department may assess and collect fees from a responsible party who is subject to an order or other enforcement actions under ch. NR 728 and ch. 292, Stats. Fees applicable to enforcement actions shall be assessed pursuant to Table 1, beginning with those submittals identified in the enforcement conference summary that is developed after the department issues a notice of violation until enforcement action is formally resolved by the state. If approved by the department, a responsible party may

agree to pay the department an hourly fee for project oversight as determined by the provisions set forth under ch. NR 750, in lieu of fees under Table 1.

**SECTION 254. NR 749.07 is created to read:**

**NR 749.07 Database fees.** For sites or facilities that meet the criteria under s. NR 725.05 (2) or 726.13 (1) (c), the responsible party or other person subject to the payment of database fees under this chapter shall pay the following fees:

(1) A single database fee for listing, on the database, any continuing obligations at a site or facility that address residual soil contamination.

(2) A single database fee for listing, on the database, any continuing obligations at a site or facility that address contamination other than residual soil contamination.

**SECTION 255. NR 750.03 (2m) is amended to read:**

NR 750.03 (2m) “Environmental investigation of the property” means a study of the entire property, including any discharges that have or may have migrated off the property, and approved by the department, consisting of a ~~Phase I and Phase II environmental assessment~~ phase I environmental site assessment and a phase II environmental site assessment and a site investigation, based on information documented in these environmental assessments.

**SECTION 256. NR 750.03 (2m) (Note 1) and (Note 2), (3) and (Note) are created to read:**

NR 750.03 (2m) Note: s. NR 700.03 (43g) defines “phase I environmental site assessment” as an assessment of that, at a minimum, follows ASTM standard practice E1527-13, includes hazardous substances as defined in s. NR 700.03 (25) and environmental pollution as defined in s. NR 700.03 (19), and is conducted for a property to identify all potential, suspected or known areas of environmental contamination. This assessment may include reviewing records, interviewing persons, and conducting physical inspections of the property.

Note: NR 700.03 (43r) defines “phase II environmental site assessment” as an assessment that, at a minimum, follows ASTM standard practice E1903-19, includes hazardous substances as defined under s. NR 700.03 (25) and environmental pollution as defined under s. NR 700.03

(19), and is conducted for a property to physically confirm that contamination exists in potential, suspected or known areas of environmental contamination, 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 property.

(3) “Property” has the meaning specified under s. 292.15 (1) (c), Stats.

Note: Section 292.15 (1), Stats., reads: “Property” means the area of real property that is included in an application to obtain an exemption under this section, made up of a legally identifiable parcel or legally identifiable contiguous parcels created in compliance with applicable laws.

**SECTION 257. NR 750.05 (1), (2) (a) 3. and (c), and (5) are amended to read:**

NR 750.05 (1) APPLICATION SUBMITTAL. An applicant shall submit to the department a completed application form for each property, requesting department oversight in reviewing and approving the proposed response actions. The applicant shall submit with each application a non-refundable fee of ~~\$250.00~~ \$500.00, to cover the department’s cost of reviewing and processing the application. The department may not review the application until the specified fee is submitted to the department. In addition to the application form, the applicant shall include any attachments required by the department, including a copy of the most recent recorded property deed and a map ~~which~~ that clearly shows the boundaries of the property for which the applicant is seeking the voluntary party liability exemption.

(2) (a) 3. The area of land for which the application was submitted meets the definition of a property ~~in s. NR 700.03 (45e)~~ under s. NR 750.03 (3).

(c) *Notification to applicant.* The department shall mail written notice to the applicant stating whether or not the department believes that the applicant and the property are eligible for an exemption under s. 292.15, Stats. If the department finds that the applicant and property meet the criteria ~~in par. (a)~~ for eligibility under s. 292.15, Stats., and the applicant chooses to proceed in the program, the applicant shall, at a minimum, submit to the department the appropriate fee ~~in~~ under s. NR 750.07, a ~~Phase~~ phase I environmental assessment, and a scope of work necessary to

conduct an adequate ~~Phase~~ phase II environmental assessment, unless otherwise directed by the department. If the department finds that the applicant or the property does not meet the criteria ~~in~~ under par. (a), the applicant will not receive department oversight under s. 292.15, Stats. The applicant may submit additional information to the department to try to establish that the applicant or the property does meet the criteria ~~in~~ under par. (a), and may proceed to conduct a response action, while the department makes that determination, if the response action is conducted in compliance with the requirements ~~of~~ under chs. NR 700 to ~~754~~ 799 and ss. 292.11 and 292.15, Stats.

**(5) PROPERTY BOUNDARY CHANGES.** Any time ~~after an application is submitted~~ between the application submittal and the certificate of completion request, if the boundaries of the property change, the applicant shall notify the department in writing within 60 days of the property boundary change. ~~The notification shall occur no later than 60 days prior to the request for a certificate of completion on the property. The voluntary party or parties shall submit a revised application to clearly demonstrate the boundaries and legal descriptions of the properties for which the applicant is seeking the liability exemption.~~ The applicant shall notify the department if they intend to request the exemption for the property initially submitted with the application or request to modify the property boundaries in accordance with s. 292.15 (2) (at), Stats.

**SECTION 258. NR 750.07 (1) (a) is amended to read:**

NR 750.07 (1) (a) Review of submittals required under this chapter, chs. NR 700 to ~~754~~ 799 or under an agreement entered into under s. NR 728.07, or participation in meetings with the applicants or their representatives to discuss an application or proposed project.

**SECTION 259. NR 750.07 (1) (c) is repealed.**

**SECTION 260. NR 750.09 (6) is created to read:**

NR 750.09 (6) For properties where the voluntary party is seeking an exemption from liability for voluntary party remediation under s. 292.15 (2) (af), Stats., when contaminated sediment exists on a property from a release of any hazardous substance or environmental

pollution on or originating from a property, the insurance or other financial assurance requirements under ch. NR 758 have been satisfied.

**SECTION 261. NR 754.05 (2m) and (Note) are created to read:**

NR 754.05 (2m) “Property” has the meaning specified under s. 292.15 (1) (c), Stats.

Note: Section 292.15 (1), Stats., reads: “Property” means the area of real property that is included in an application to obtain an exemption under this section, made up of a legally identifiable parcel or legally identifiable contiguous parcels created in compliance with applicable laws.

**SECTION 262. Chapter NR 756 is created to read:**

**Chapter NR 756**

**FINANCIAL RESPONSIBILITY AT CONTAMINATED SEDIMENT SITES WITH  
ENGINEERING CONTROLS**

**NR 756.01 Purpose.** The purpose of this chapter is to establish planning, compliance, and financial responsibility requirements for sites or facilities with contaminated sediment that rely on an engineering control to protect public health, safety, welfare, and the environment from the contaminated sediment. This chapter is adopted under s. 227.11 (2) and ch. 292, Stats.

**NR 756.02 Applicability.** Except as otherwise provided, this chapter applies to all sites or facilities where a person who is required to take action under ch. 292, Stats., with respect to contaminated sediment, takes an interim or remedial action that includes the use of an engineering control to address the contaminated sediment.

**NR 756.03 Definitions.** In this chapter:

(1) “Contaminated sediment engineering control” means an engineering control used to address contaminated sediment.



(2) “Event” means an occurrence that may affect the completion of the goals established in the plan and compliance schedule that are induced by either weather, or the combination of human activity and weather, including significant flood events, increased flow rates, anthropogenic induced scour, an increase in event frequency, or other events having a deleterious effect on the protectiveness of the contaminated sediment remedy.

(3) “Person required to submit proof” means a person that is required to submit proof of financial responsibility under s. NR 756.04 (1) d., including a person that has assumed responsibility under s. 292.15 (5m) (am), Stats.

(4) “Proof period” means the amount of time for which proof of responsibility requirements are applicable.

(5) “Proof method” means a mechanism for providing proof of financial responsibility under s. NR 756.06.

(6) “Third-party action” means activities that may affect the completion of the goals established in a plan and compliance schedule or that have a deleterious effect on the protectiveness of the contaminated sediment remedy that are taken by persons other than the person required to submit a plan and compliance schedule or proof of responsibility under this chapter.

**NR 756.04 Plan and compliance schedule; financial responsibility; fees. (1)**

GENERAL. As a condition of approving an interim action, a remedial action, or of granting case closure, the department may require a person who is required to take action under ch. 292, Stats., with respect to contaminated sediment, and who takes action that includes the use of a contaminated sediment engineering control, to do any of the following:

(a) Maintain any contaminated sediment engineering controls on the site or facility.

(b) Investigate the extent of residual contamination and perform any necessary remedial action if a structural impediment is removed that had prevented a complete investigation or remedial action at the site.

(c) Submit a plan and compliance schedule for satisfying the requirements under pars. (a) and (b) to the department for approval.

(d) Submit proof of financial responsibility sufficient to pay the costs of complying with the plan and compliance schedule under par. (c) to the department for approval.

**(2) PLAN AND COMPLIANCE SCHEDULE AND PROOF OF FINANCIAL RESPONSIBILITY.** (a) *Requirements; plan and compliance schedule.* The responsible party shall provide to the department a design report meeting the requirements under s. NR 724.09, along with a plan and compliance schedule that identifies the scheduled actions that will lead to the completion of any applicable requirements under sub. (1) (a) and (b) for the purposes of meeting the requirements under ch. 292, Stats. Unless otherwise directed by the department, a person required to submit a plan and compliance schedule shall include all of the following in the plan and compliance schedule:

1. Scheduled actions that will be taken to attain the goals established under sub. (1) (a) and (b), and dates for completion of these actions. These actions may include items required under ss. NR 724.13, 724.15, and 724.17, as applicable, and any other actions directed by the department in writing. Verification of sufficient legal access to conduct all scheduled actions shall be included.

2. An engineering analysis certified by a licensed professional engineer, as defined under s. NR 712.03. The analysis shall include the duration and ongoing efficacy of any engineering controls or structural impediments and assessment of the vulnerability of any engineering controls or structural impediments to any events or third-party actions that may occur and affect completion of the goals established in the plan and compliance schedule.

3. Inspection and reporting criteria that include an inspection schedule. The inspection schedule shall require an inspection and a report at least every 5 years. The inspection report shall provide an engineering analysis of the current conditions of the engineering control or structural impediment with respect to ongoing efficacy, vulnerabilities, events or actions identified under subd. 2. The inspection report shall be certified by a licensed professional engineer, as defined under s. NR 712.03. Report conclusions shall include identification of

issues, recommendations and follow-up actions, and a determination of whether the remedy is protective of human health and the environment.

4. Any access agreements needed to secure legal access for the department to the enter property to determine compliance with this chapter and any plan and compliance schedule required under this chapter.

(b) *Requirements; financial responsibility.* Unless otherwise directed by the department, a person required to submit proof, as required under this chapter, for all of the following:

1. The costs of planned engineering control monitoring, maintenance, inspections, and repair for each year of the proof period.

2. The costs of any additional engineering control monitoring, maintenance, inspections, and repair that may be needed following any events or third-party actions that may occur during the proof period, including investigation and remediation following a failed engineering control.

3. The costs of inspection, investigation of the extent of residual contamination, and the performance of any necessary response actions following the removal of a structural impediment that had prevented a complete investigation or remedial action at the site at the time of the approval of the plan.

4. The costs of any additional investigation and remediation necessary if the building or other structural impediment is removed pursuant to any events or third-party actions that may occur during the proof period.

(3) LENGTH OF REQUIREMENTS. (a) *Proof period.* Except as otherwise approved by the department, a person required to submit proof shall maintain proof of financial responsibility for the proof period for each applicable financial responsibility requirement under sub. (2) (b).

(b) *Establishing the initial proof period.* A person that is required to submit a plan and compliance schedule and proof of financial responsibility under this chapter shall submit to the department, as part of the plan and compliance schedule, a proposed initial proof period for each applicable financial responsibility requirement under sub. (2) (b). The proposed initial proof

period is subject to approval by the department as part of the plan and compliance schedule and is subject to extension under par. (c).

(c) *Extension of plan and compliance schedule and proof period.* The department may, in writing, extend the plan and compliance schedule and the proof period for any applicable financial responsibility requirement until the department determines that the actions under s. NR 756.04 (1) (a) and (b) are no longer applicable and necessary to protect human health and the environment.

Note: The actions under s. NR 756.04 (1) (a) and (b) are no longer applicable and necessary if the engineering control is no longer needed and the structural impediment is removed, and any remaining contamination is investigated and remediated.

Note: Under s. NR 756.07 (2), a person that is required to maintain proof of financial responsibility is required to seek review of the length of the proof period from the department prior to submitting an adjustment to the cost estimate. Under s. NR 756.12 (3), a person that is required to maintain proof of financial responsibility is required to seek review of the length of the proof period from the department prior to submitting an application for a reduction in the amount of required financial responsibility.

(4) **SUBMITTAL.** The department may require a person subject to requirements under sub. (1) to submit the plan and compliance schedule and proof of financial responsibility simultaneously with the plans, reports, and specifications required under ss. NR 708.15, 708.17, 722.13, and chs. NR 724 and 726.

(5) **DEPARTMENT RESPONSE.** When reviewing a plan for approval, the department may elect to do any of the following in regard to the entire plan or a part of the plan:

(a) Deny a request for approval.

(b) Request that additional information be supplied as part of the plan and compliance schedule.

(c) Require adjustments to actions, timeframes, and analyses presented in the plan and compliance schedule.

(d) Approve the plan and compliance schedule.

**(6) FEES AND INSPECTIONS.** (a) Plan and compliance schedule review fees shall be submitted in accordance with ch. NR 749.

(b) Reports, including inspection reports, required under sub. (2) (a) 3. shall be submitted with a fee in accordance with ch. NR 749.

(c) The department may enter a property for which access has been provided to determine compliance with this chapter and any plan and compliance schedule required under this chapter.

**NR 756.05 Responsibility at contaminated sediment sites; access.** (1) Requirements of this chapter shall be met in accordance with the applicable requirements under s. 292.12 (5m), Stats.

(2) Any person that acquires responsibility for the requirements of this chapter under s. 292.12 (5m) (am), Stats., shall provide any proof of financial responsibility required under s. NR 756.04 (1) (d) to the department in accordance with this section. Proof of financial responsibility shall be maintained by the transferor during transfer of responsibility until the person acquiring responsibility under s. 292.15 (5m) (am), Stats., obtains department approval of proof of financial responsibility under s. NR 756.04 (5).

(3) The length of any requirement imposed under s. NR 756.04 does not limit the responsibilities of a person under ch. 292, Stats., and any other rules promulgated under ch. 292, Stats.

(4) A person that is subject to the requirements under s. NR 756.04 (1) that does not own or occupy the property on which any engineering controls or structural impediments that are subject to the requirements under s. NR 756.04 (1) are located shall obtain access to the property in accordance with s. 292.12 (5m) (a) 2., Stats., and shall provide verification of access to the department.

**NR 756.06 Methods of providing proof of financial responsibility.** A person required to submit proof shall establish proof of financial responsibility made payable to or established for the benefit of the department. A person submitting financial assurances for a plan and compliance schedule shall specify, as part of the plan and compliance schedule, the methods of providing proof of financial responsibility that will be used. To provide proof of financial responsibility, the person required to submit proof may use up to 2 of the following methods for each of the types of costs listed under s. NR 756.04 (2) (b):

(1) **PERFORMANCE OR FORFEITURE BOND.** (a) A person required to submit proof may submit a performance or forfeiture bond. The performance or forfeiture bond shall be in the amount determined under s. NR 756.08 and conditioned upon faithful performance by the person required to submit proof and any successor in interest of all requirements of the approved plan and compliance schedule or subsequent remedial actions required by the department. Bonds shall be delivered to the department for approval. All bonds shall be established using forms supplied by the department.

(b) Bonds shall be issued by a surety company among those listed as acceptable sureties for federal bonds in Circular 570 of the U.S. department of the treasury. At the option of the owner, a performance bond or a forfeiture bond may be filed. The department shall be the obligee of the bond. Surety companies may have the opportunity to complete the respective requirements of the plan and compliance schedule in lieu of cash payment to the department if the person required to submit proof, or any successor in interest, fails to carry out the respective requirements of the approved plan and compliance schedule. The department shall mail notification of the department's intent to use the funds for that purpose to the last known address of the person required to submit proof.

Note: Copies of Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" can be obtained from surety bond branch, financial management service, department of the treasury, Washington D.C. 20227, phone (202) 874-6850.

(c) Each bond shall provide that, as long as any respective obligation of the plan and compliance schedule remains, the bond may not be canceled by the surety, unless a replacement

bond or other proof of financial responsibility under this section is provided to the department by the person required to submit proof. If the surety proposes to cancel a bond, the surety shall provide notice to the department and to the owner in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 90-day notice period, the owner shall deliver to the department a replacement bond or other proof of financial responsibility under this section, and the bond or other proof of financial responsibility shall remain in effect as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule. The surety may discharge its obligation under the bond at any time by paying the unused portion of the bond to the department.

(d) If the surety company becomes bankrupt or insolvent or if its authorization to do business is revoked or suspended, the person required to submit proof shall, within 30 days after receiving written notice of the bankruptcy, insolvency, revocation, or suspension, deliver to the department a replacement bond or other proof of financial responsibility under this section, and the replacement bond or other proof of financial responsibility shall remain in effect as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule.

(2) DEPOSIT WITH THE DEPARTMENT. A person required to submit proof may make a deposit with the department in the form of cash, certificates of deposit, or U.S. government securities. The amount of the deposit shall be determined under s. NR 756.08 and deposits shall be submitted to the department for approval. Cash deposits placed with the department shall be segregated and invested in an interest-bearing account. All interest payments shall be accumulated in the account. The department may use part or all of the funds to carry out the respective requirements in the plan and compliance schedule if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the person required to submit proof.

(3) ESCROW ACCOUNT. (a) A person required to submit proof may establish an escrow account. An established escrow account may include any of the following assets:

1. Cash.

2. Securities issued by the federal government.

3. Debt securities issued by a commission, board, agency, or other instrumentality of the federal government that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency.

4. State bonds issued under subch. I of ch. 18, Stats.

5. Corporate bonds that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency. Corporate bonds may not be used to provide more than 50 percent of the required amount of proof of financial responsibility.

(b) If a person required to submit proof establishes an escrow account, the amount shall be determined under s. NR 756.08 and the account shall be with a bank or financial institution located within the state of Wisconsin that is examined and regulated by the state or a federal agency. A total of no more than the amount of the Federal Deposit Insurance Corporation insurance limit in cash and certificates of deposit may be placed into escrow accounts or trust accounts established by the person required to submit proof in the same bank or financial institution for the purposes of providing financial assurance to the department. U.S. government securities shall be used in these escrow or trust accounts for amounts in excess of the amount of the Federal Deposit Insurance Corporation insurance limit. All interest or coupon payments shall accumulate in the account. A duplicate original of the escrow agreement for closure or long-term care, with original signatures, shall be submitted to the department for approval. Escrow account forms shall be supplied by the department. The department shall be a party to the escrow agreement, which shall provide that there shall be no withdrawals from the escrow account except as authorized in writing by the department. The escrow agreement shall further provide that the department shall have the right to withdraw and use part, or all, of the funds in the escrow account to carry out the respective requirements of the approved plan and compliance schedule if the person required to submit proof fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the person required to submit proof.



(4) IRREVOCABLE TRUST. (a) A person required to submit proof may create an irrevocable trust. The corpus of the irrevocable trust may include any of the following:

1. Securities issued by the federal government.

2. Debt securities issued by a commission, board, agency, or other instrumentality of the federal government that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency.

3. State bonds issued under subch. I of ch. 18, Stats.

4. Corporate bonds that have a rating that is the highest rating category assigned by Standard & Poor's Corporation, Moody's Investors Service, or other similar nationally recognized rating agency. Corporate bonds may not be used to provide more than 50 percent of the required amount of proof of financial responsibility.

(b) If a person required to submit proof creates an irrevocable trust, the trust shall be exclusively for the purpose of ensuring that the person required to submit proof or any successor in interest will comply with the requirements of the approved plan and compliance schedule. The trust agreement shall designate the department as sole beneficiary. The trustee shall be a bank or other financial institution located within the state of Wisconsin that has the authority to act as a trustee and whose trust operations are regulated and examined by the state or a federal agency. The trust corpus shall consist of cash, certificates of deposit, or U.S. government securities in the amount determined under s. NR 756.08. A total of no more than the amount of the Federal Deposit Insurance Corporation insurance limit in cash and certificates of deposit may be placed into escrow accounts or trust accounts established by the owner in the same bank or financial institution for the purposes of providing financial assurance to the department. U.S. government securities shall be used in these escrow or trust accounts for amounts in excess of the Federal Deposit Insurance Corporation insurance limit. All interest or coupon payments shall accumulate in the account. A duplicate original of the trust agreement with original signatures shall be submitted to the department for approval. Trust forms shall be supplied by the department. The trust agreement shall provide that there shall be no withdrawal from the trust fund except as

authorized in writing by the department. The trust agreement shall further provide that sufficient funds shall be paid from the trust fund to the beneficiary in the event that the person required to submit proof or any successor in interest fails to complete the respective requirements of the approved plan and compliance schedule. The department shall mail notification of its intent to use funds for that purpose to the last known address of the person required to submit proof.

(5) IRREVOCABLE LETTER OF CREDIT. (a) A person required to submit proof may submit an irrevocable letter of credit. The letter of credit shall be in the amount determined under s. NR 756.08, and available exclusively for the purpose of assuring that all respective requirements of the approved plan and compliance schedule will be complied with. The original letter of credit shall be delivered to the department for approval. Letter of credit forms shall be supplied by the department.

(b) A letter of credit shall be issued by a bank or financial institution that has the authority to issue letters of credit and whose letter of credit operations are examined and regulated by a federal agency, or in the case of a bank or financial institution located within the state of Wisconsin, that is examined and regulated by the state or a federal agency. The department shall be the beneficiary of the letter of credit.

(c) The letter of credit shall provide either that the unused portion of the letter of credit shall be payable in full to the department upon the expiration of the letter of credit or that as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule, the letter of credit may not be canceled by the bank or financial institution unless a replacement letter of credit or other proof of financial responsibility under this section is provided to the department by the person required to submit proof. If the bank or financial institution proposes to cancel a letter of credit, the bank or financial institution shall provide notice to the department and the person required to submit proof in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration date of the 90-day notice period, the person required to submit proof shall deliver to the department a replacement letter of credit or other proof of financial responsibility under this section, in the absence of which either the letter of credit shall remain in effect as long as any respective obligation of the person required to submit proof remains under the plan and

compliance schedule or the unused portion of the letter of credit shall be payable in full to the department.

(d) If the bank or financial institution becomes bankrupt or insolvent or if its authorization to do business is revoked or suspended, the person required to submit proof shall, within 30 days after receiving written notice of bankruptcy, insolvency, revocation, or suspension, deliver to the department a replacement letter of credit or other proof of financial responsibility under this section, and the replacement letter of credit shall either remain in effect as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule or be payable in full to the department.

(e) The letter of credit shall further provide that the department has the right to withdraw and use part, or all, of the funds to carry out the respective requirements of the plan and compliance schedule if the person required to submit proof fails to do so. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the person required to submit proof.

**(6) INSURANCE.** (a) A person required to submit proof may submit an insurance policy. The insurance policy shall be issued for the maximum risk limit determined under s. NR 756.08. A certificate of insurance shall be delivered to the department for approval. Certificate of insurance forms shall be submitted on a form supplied by the department.

(b) Except for captive insurance companies, the insurer shall be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states. The department, after conferring with the Wisconsin insurance commissioner, shall determine the acceptability of a surplus lines or captive insurance company to provide coverage for proof of financial responsibility. The department shall ask the insurance commissioner to provide a financial analysis of the insurer including a recommendation as to the insurer's ability to provide the required coverage. The department shall be the beneficiary of the insurance policy. The department may require a periodic review of the acceptability of a surplus lines or captive insurance company.

(c) The insurance policy shall provide either that the unused proceeds of the policy shall be payable in full to the department upon expiration of the policy or that, as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule, the insurance policy may not be canceled by the insurer unless a replacement insurance policy or other proof of financial responsibility under this section is provided to the department by the person required to submit proof. If the insurer proposes to cancel an insurance policy, the insurer shall provide notice to the department and to the person required to submit proof in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 90-day notice period, the person required to submit proof shall deliver to the department a replacement insurance policy or other proof of financial responsibility under this section, and either the policy shall remain in effect as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule or the proceeds of the policy shall be payable in full to the department.

(d) If the insurance company becomes bankrupt or insolvent or if the company receives an unfavorable evaluation under s. 618.41 (6) (d), Stats., the person required to submit proof shall, within 30 days after receiving written notice of bankruptcy, insolvency, or an unfavorable evaluation, deliver to the department a replacement insurance policy or other proof of financial responsibility under this section and the replacement policy or other proof of financial responsibility shall either remain in effect as long as any respective obligation of the person required to submit proof remains under the plan and compliance schedule or be payable in full to the department.

(e) The insurance policy shall further provide that funds, up to an amount equal to the maximum risk limit of the policy, will be available to the department to carry out the respective requirements of the approved plan and compliance schedule if the person required to submit proof fails to do so. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the person required to submit proof.

(f) Each insurance policy shall contain a provision allowing assignment of the policy to a successor person required to submit proof. Assignment may be conditioned upon the consent of the insurer, provided consent is not unreasonably refused.

(7) OTHER METHODS. The department may consider other methods of financial responsibility that the department finds satisfactory to ensure that the person required to submit proof will comply with the respective requirements specified in the plan and compliance schedule. The department may consider other financial commitments made payable to or established for the benefit of the department to ensure the person required to submit proof will comply with the requirements of the approved plan and compliance schedule. The department shall review the request of any person required to submit proof to establish proof of financial responsibility to determine whether the proposed method provides a degree of assurance that is at least equal to that provided by the methods listed in this section. The department may review such a request after the person required to submit proof submits a complete request, all supporting information, and any additional information required by the department as part of the plan and compliance schedule.

**NR 756.07 Cost estimates. (1) GENERAL.** (a) For the purpose of determining the amount of proof of financial responsibility that is required under s. NR 756.06, a person required to submit proof shall submit the estimated costs together with all necessary justification and documentation, as required by the department, to the department for approval as part of the initial request for approval of the plan and compliance schedule. The costs shall be based on a third party performing the work and reported on a per unit basis, as applicable. The source of estimates shall be indicated.

(b) For the planned costs under s. NR 756.04 (2) (b) 1. and 3., the person required to submit proof shall estimate the annual cost in current dollars for each year of the plan and compliance schedule proof period.

(c) For the additional costs under s. NR 756.04 (2) (b) 2. and 4., the person required to submit proof shall estimate costs in current dollars and shall multiply the sum of the costs by a percentage that is provided by the department and determined by the department based on all of the following criteria, as applicable:

1. The cost of response actions taken to address contaminated sediments at the site and the cost of response actions that are part of any approved plan to address contaminated sediments for the site.

2. The assessment of the vulnerability of any engineering controls and structural impediments to any occurrences, including third-party actions and events, that may affect the protectiveness of any engineering controls and the completion of the goals established in the plan and compliance schedule.

3. The following site-specific characteristics:

a. Types and amounts of bioaccumulative elements and substances present.

b. Volume of contaminated material.

c. Degree of contamination.

d. Cap complexity, including use of geosynthetics, armoring, and amendments.

e. Hydrologic and hydraulic characteristics.

f. Presence of outstanding resource waters or exceptional resource waters.

g. Design factor of safety.

h. Dissolved phase contaminants and chemical characteristics.

i. Fish advisories issued.

j. Navigation.

k. Drinking water sources.

(2) EXTENSIONS AND ADJUSTMENTS. (a) Prior to submitting a new cost estimate under par. (b), the person required to submit proof shall request in writing that the department review the length of the plan and compliance schedule and the length of the proof period for each

applicable financial responsibility requirement. The department shall respond within 60 days of the request and shall provide any extensions in writing.

(b) The person required to submit proof shall prepare and submit to the department a new cost estimate during the proof period at all of the following times:

1. Once every 5 years, unless the costs are revised within the 5-year period as required under subd. 2. The new cost estimate shall use current dollars.

2. When any change in site design or operation is approved by the department in writing.

**(3) COSTS FOR ENGINEERING CONTROL MAINTENANCE.** Cost estimates for engineering control maintenance shall include all of the following, as applicable:

(a) Sampling, surveying, and monitoring, including bathymetry survey, core sampling, pore water measurements, poling, surface water sampling, event-based monitoring, regular monitoring, and comparison with previous monitoring occurrences. For the purposes of preparing cost estimates, all regular monitoring requirements specified in the plan and compliance schedule shall apply over the entire proof period.

(b) Modeling, including transport modeling and conceptual site modeling.

(c) Chemical and physical analysis.

(d) Repair and replacement of engineering controls. The expected operating life of all engineering controls shall be specified in the plan and compliance schedule. As each of these features reach the end of their anticipated operating life, the cost of their replacement shall be added to the estimate for the appropriate year of the proof period.

**(4) COSTS FOR SITE INVESTIGATION AND REMEDIATION FOLLOWING STRUCTURAL IMPEDIMENT REMOVAL.** Costs estimates for inspection, the investigation of the extent of residual contamination, and performance of any necessary response actions that are needed following the removal of a structural impediment shall include all of the following, as applicable:

(a) Site investigation.

(b) Remedial action, including remedial action planning, design, and permitting. The length of time necessary to complete the remedial action to address the contamination shall be estimated and the cost of remedial actions for each year shall be presented.

(c) Full dredge including disposal.

(d) Annual monitoring and event monitoring.

(e) The expected life of any structural impediments, which shall be specified in the plan and compliance schedule, when practicable. As each structural impediment reaches the end of its anticipated life, the cost of the investigation and remediation following the removal of the structural impediment shall be added to the estimate for the appropriate year of the proof period. If the expected life of a structural impediment cannot be determined at the time of the plan and compliance schedule, the investigation and remediation following removal shall be planned to occur in the last year of the proof period and the costs shall be added to the estimate for the last year of the proof period.

Note: Under par. (e), the costs of inspection and response actions following a structural impediment removal may be based on the actual estimated date of inspection and response actions or based on a hypothetical date of inspection and response actions. The option for using a hypothetical date is intended to apply in situations when a person required to submit proof is unable to determine a removal date based on currently available data.

**(5) ADDITIONAL COSTS OF EVENTS AND THIRD-PARTY ACTIONS.** If an assessment of the vulnerability of any engineering controls and structural impediments to any events or third-party actions that may occur indicates that events or third-party actions may affect the protectiveness of the contaminated sediment engineering control and the attainment of the goals established in the plan and compliance schedule, cost estimates shall include damage, destruction, deterioration, and failure of any engineering controls and structural impediments following an event, including all of the following, as applicable:

(a) The costs of repair, replacement, or removal of any engineering controls used to address contaminated sediment.



(b) The costs of site investigation and remedial action plan and design, including permitting, following the removal of any structural impediment.

(c) Dredging and disposal of contaminated sediment in the area that may be affected by the unplanned event.

(d) The costs of post-event inspection, monitoring, maintenance, and repair.

(6) **DUPLICATIVE COSTS.** The department shall not impose financial responsibility costs under sub. (5) that are duplicative of those required under subs. (3) and (4).

Note: The department shall not impose financial responsibility costs under sub. (5) that are duplicative of those required under subs. (3) and (4). For example, if financial assurance is required for the cost of replacement of an engineering control under sub. (3), then the costs of replacement of an engineering control may only be required under sub. (5) to the extent that additional funding would be needed due to the nature or timing of the event or third-party action.

(7) **INFLATION RATE.** The rates of inflation applied to cost estimates approved by the department in previous years shall be derived from the most recent implicit price deflator for gross domestic product published by the U.S. department of commerce in its Survey of Current Business. The inflation rate is the result of dividing the latest published annual deflator by the deflator for the previous year. The projected rate of inflation to be applied in proof of financial responsibility calculations for all future years shall be equal to the rate of inflation for the last full calendar year.

**NR 756.08 Calculating the amount of the proof of financial responsibility.** (1) A person required to submit proof shall, as part of the initial request for approval of the plan and compliance schedule, calculate the necessary amounts of proof of financial responsibility based on the methods of providing proof of financial responsibility under s. NR 756.06 that have been chosen by the person required to submit proof.

(2) For the planned costs under s. NR 756.04 (2) (b) 1. and 3., all of the following procedures for calculating the amount of proof of financial responsibility shall be used, as applicable:

(a) If proof of financial responsibility is submitted as escrow, trust or department accounts, the amount of proof of financial responsibility shall, at minimum, be equal to the sum of all estimated planned action expenditures for the entire proof period when the expenditure for each year has first been expressed in future dollars and then brought to present value using a discount rate based on future earnings. Future earnings shall be calculated based on a projected rate of return equal to the projected rate of inflation plus one percent, or the department may require that, when estimating future earnings on these accounts, the weighted average rate of return of the investments held in the account be used for a period of time not to exceed the weighted average maturity of the investments held in the account rounded to the nearest whole year. Earnings for years beyond the weighted average maturity of the investments in the account shall be calculated based on a projected rate of return equal to the projected rate of inflation plus one percent.

(b) If proof of financial responsibility is submitted as bonds, letters of credit, or insurance, the amount of proof of financial responsibility shall be equal to the sum of the costs in current dollars of performing the requirements for each year of the proof period.

(3) For the additional costs under s. NR 756.04 (2) (b) 2. and 4., the amount of proof of financial responsibility shall be equal to the sum of the costs in current dollars for completion of the requirements.

**NR 756.09 Changing methods of proof of financial responsibility.** A person required to submit proof may change from one method authorized under s. NR 756.06 to another with written approval from the department, but not more than once per year. A change may only be made on the anniversary of the first submittal of proof of financial responsibility under s. NR 756.06, unless otherwise approved by the department. The amount of funds secured by the new method of providing proof of financial responsibility shall be in the amount that is equal to the amount that would have accumulated had the new method been used as the original method.

**NR 756.10 Adjustment of financial responsibility.** (1) A person required to submit proof shall submit to the department verification of the adjustment of the amount of funds secured by a method of proof of financial responsibility on a form supplied by the department.

(2) The amounts of funds secured by methods of proof of financial responsibility shall be adjusted according to all of the following requirements:

(a) The amounts of funds for all proof methods shall be adjusted annually under s. NR 756.07 (7) to account for increases in cost estimates based on adjustments for inflation. The annual proof method adjustments shall be submitted to the department by December 31.

(b) Adjusted proof methods shall be submitted within 60 days after a new cost estimate submitted in accordance with s. NR 756.07 is approved by the department. The adjusted proof methods shall be in an amount adequate to cover the most recently approved cost estimate.

(3) For a person using trust accounts, escrow accounts or deposits with the department to meet the requirements of this chapter, revised proof of financial responsibility calculations shall be performed under s. NR 756.08 and submitted to the department by March 1 of the year succeeding the calendar year in which the weighted average annual rate of return of any trust or escrow account has fallen by one percent or more.

**NR 756.11 Access and default.** If the department determines that a person required to submit proof is in violation of any of the requirements specified in the plan and compliance schedule or this chapter, the department and its designees may enter upon the site or facility and carry out the approved actions or plan and compliance schedule requirements. The department may use part or all of the funds deposited with it, or the funds deposited in escrow or trust accounts, or performance or forfeiture bonds, or letters of credit, insurance, or funds accumulated under other approved methods to carry out the approved actions or plan and compliance schedule requirements.

**NR 756.12 Authorization to release funds.** (1) PLANNED ACTIONS. Subject to sub. (3), for costs under s. NR 756.04 (2) (b) 1. and 3., one year after the issuance of the interim action, remedial action, or closure approval that is the subject of the financial responsibility requirement, and annually thereafter for the proof period, the person required to submit proof who has carried out all required actions and response actions under the approved plan and compliance schedule during the preceding year may apply to the department for reimbursement of funds from an escrow account, trust account, deposit with the department, or other approved

methods, or for reduction of the bond, insurance or letter of credit equal to the estimated costs for that year. The application shall be accompanied by an itemized list of costs incurred. Upon determination that the expenditures incurred are in accordance with the requirements anticipated in the approved plan and compliance schedule, the department may authorize in writing the release of the funds or approve a reduction in the bond, insurance, or letter of credit. Prior to authorizing a release of the funds or a reduction of the amount of funds secured by the bond, insurance, or letter of credit, the department shall determine that adequate funds exist to complete the required actions under the plan and compliance schedule for the remaining proof period. The department shall make determinations within 90 days after the application is received. For persons using escrow accounts, trust accounts, or deposits with the department, the department may authorize the release and return of up to 75 percent of the expected cost of planned actions for the current year. Any funds remaining in an escrow account, trust account, or on deposit with the department at the termination of the proof period shall be released to the person required to submit proof.

(2) EVENTS. Subject to sub. (3), for costs under s. NR 756.04 (2) (b) 2. and 4., when a person required to submit proof has completed all of the requirements under the plan and compliance schedule, the person required to submit proof may apply to the department for release of the bond, insurance, or the letter of credit or return of the money held on deposit, in escrow, or in trust. Upon determination by the department that requirements under the plan and compliance schedule have been fulfilled and financial responsibility for costs under s. NR 756.04 (2) (b) 2. and 4. is no longer necessary to protect human health and the environment, the department shall authorize in writing the release and return of all funds accumulated in such accounts or give written permission for cancellation of the bond, insurance, or letter of credit. The department shall make a determination within 90 days after the application is received.

(3) EVALUATION OF PROOF PERIOD. Prior to submitting an application for the release of funds under sub. (1) or (2), the person required to submit financial assurances under s. NR 756.04 (1) shall request in writing that the department review the length of the plan and compliance schedule and the length of the proof period for each applicable financial responsibility requirement. The department shall respond within 60 days of the request and shall provide the length of any extension or reduction in writing.

**NR 756.13 Bankruptcy or receivership notification.** (1) A person required to submit proof shall notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under the bankruptcy code, 11 USC 101 to 1532, naming the person required to submit proof as debtor, within 10 days after commencement of the proceeding.

(2) A person required to submit proof shall notify the department by certified mail of the commencement of a voluntary or involuntary proceeding within a state circuit court under ch. 128, Stats., naming the person required to submit proof as debtor, within 10 days after commencement of the proceeding.

**NR 756.14 Compliance.** (1) If a person required to submit proof fails to comply with any requirements in the approved plan and compliance schedule, the department may take any of the following actions:

(a) The department may require the forfeiture or conversion of any standard method of establishing proof of financial responsibility. All funds received from the forfeiture or conversion of any standard method of establishing proof of financial responsibility shall be credited to the department and managed specifically for the site in the same manner as a settlement to the environmental fund.

(b) The department may request the department of justice to initiate court action against the person required to submit proof to recover funds sufficient to pay the cost of complying with the plan and compliance schedule. Any funds recovered in an action under this paragraph or as a settlement in anticipation of an action under this paragraph shall be credited to the department and managed specifically for the site in the same manner as a settlement to the environmental fund.

(2) If a person required to submit proof fails to comply with any requirements in the approved plan and compliance schedule, the department may take action or contract with a person to take action to comply with these requirements from funds obtained for that purpose under sub. (1) (a).

**SECTION 263. Chapter NR 758 is created to read:**

## Chapter NR 758

### INSURANCE AND FINANCIAL RESPONSIBILITY AT CONTAMINATED SEDIMENT SITES IN THE VOLUNTARY PARTY LIABILITY EXEMPTION PROGRAM

**NR 758.01 Purpose.** This chapter establishes rules and procedures promulgated under s. 292.15 (2) (af) 3m., (am) 2m., and (e), Stats., that the department shall use to determine if voluntary parties have met the requirements under s. 292.15 (2) (af) and (am), Stats., related to environmental insurance, or other forms of financial responsibility, for voluntary parties seeking liability exemptions for sites with contaminated sediment.

**NR 758.03 Applicability.** This chapter applies to voluntary parties, and successors and assigns of voluntary parties, as described under s. 292.15 (3), Stats., seeking an exemption from liability for voluntary party remediation under s. 292.15 (2) (af) or (am), Stats., where contaminated sediment exists from a release of a hazardous substance on or originating from a property. In this chapter, requirements that apply to a voluntary party shall also apply to successors or assigns of the voluntary party, if the successor or assignee agrees to pay for the insurance required under this chapter pursuant to a third-party agreement shared with the department.

#### **NR 758.05 Definitions.**

(1) “Preexisting pollution condition” means contaminated soil, groundwater or sediment or other media from a discharge of a hazardous substance that occurred prior to the date the environmental investigation of a property was approved by the department.

(2) “Property” has the meaning specified under s. 292.15 (1) (c), Stats.

Note: Section 292.15 (1) (c), 2017 Stats., defines “property” to mean “the area of real property that is included in an application to obtain an exemption under this section, made up of a legally identifiable parcel or legally identifiable contiguous parcels created in compliance with applicable laws.”

(3) “Voluntary party” has the meaning specified under s. 292.15 (1) (f), Stats.

Note: Section 292.15 (1) (f), Stats., defines “voluntary party” to mean a person who submits an application to obtain an exemption under s. 292.15, Stats., and pays any fees required under s. 292.15 (5), Stats.

**NR 758.07 Insurance requirement.** (1) STATEINSURANCE CONTRACT. (a) If the department enters into a contract under s. 292.15 (2) (e), Stats., the voluntary party seeking a liability exemption under s. 292.15 (2) (af), Stats., shall do all of the following:

1. Pay the department insurance fees calculated under par. (b).
2. Submit a completed application form to the department.
3. Comply with the requirements and procedures described in this chapter for the property to obtain coverage under the state’s master insurance contract.

(b) The department shall publish a state insurance contract fee schedule annually. The fee shall be calculated based on the cost of the insurance premium, a contribution towards the state’s deductible, and other expenses necessary to administer the program.

(2) INDIVIDUAL POLICY. If the department does not enter into a contract with an insurance company as described under sub. (1) or the voluntary party is unable to use the contract under sub. (1), the voluntary party seeking the liability exemption under s. 292.15 (2) (af), Stats., shall obtain and maintain insurance that conforms to all of the following requirements unless a waiver is obtained under s. NR 758.15:

(a) The insurance policy shall provide liability insurance covering claims for response action expenses caused by preexisting pollution conditions in the sediment on, at, or emanating from the insured location.

(b) The insurance policy shall cover response action expenses in the event that the department issues a written determination that additional remedial action is necessary due to the occurrence of the conditions described under s. 292.15 (2) (b) 2. or 3., Stats.

Note: Section 292.15 (2) (b) 2. and 3., Stats., refer to situations when the department discovers that a cleanup fails to fully restore the environment and minimize the effects from a

discharge of a hazardous substance and when the department discovers the contamination from a hazardous substance that is the subject of a cleanup is more extensive than anticipated.

(c) The insurance policy shall name the department as an insured party for response action.

(d) The insurer providing the insurance policy shall be rated at A X or better from A.M. Best Rating Services. If the insurer's rating falls below A X, the voluntary party shall notify the department within 30 days of this change and provide replacement coverage with a subsequent, qualified insurer within 90 days.

(e) Except under par. (f), the voluntary party shall submit a signed certificate of insurance from the insurer to the department that includes endorsement language developed by the department that certifies that coverage conforms with the requirements of this chapter.

(f) As an alternative to the endorsement language required under par. (e), the voluntary party may request that the department approve an alternative set of endorsements naming the voluntary party as the insured. The department may approve an alternative set of endorsements if all of the following requirements are met:

1. The alternative endorsements do not dilute the coverage naming the department as an insured party that are required by this chapter.
2. The alternative endorsements substantially meet the purpose and intent of this section.
3. The voluntary party provides an explanation of why the required endorsements described under par. (e) were not provided.

(g) If the insurer terminates or lapses coverage for any reason, the insurer shall directly notify the department of the termination within 30 days.

(h) The insurance policy may not include any of the following:

1. An exclusion that limits coverage for response action expenses caused by pre-existing pollution conditions in the sediment on, at, or emanating from the insured location.



2. Capital improvements exclusions.

3. Voluntary investigation exclusions.

(i) The insurance policy shall state that, except for non-payment of premium or misrepresentation by the insured, cancellation or termination of the insurance by the insurer will only be effective upon the following occurrences:

1. Notification to the department and the voluntary party in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date.

2. Not less than 30 days prior to the expiration of the 90-day notice period, the voluntary party shall deliver to the department a replacement insurance policy or other proof of financial responsibility in compliance with this section that shall remain in effect for the length of coverage required under s. NR 758.11.

(j) If the insurer becomes bankrupt or insolvent or if the company receives an unfavorable evaluation under s. 618.41 (6) (d), Stats., the voluntary party or its successor or assigns shall, within 30 days after receiving written notice, deliver to the department a replacement insurance policy or other proof of financial responsibility under this section. The replacement insurance policy or proof of financial responsibility shall remain in effect for the length of coverage required under s. NR 758.11.

(k) The insurance policy shall contain a provision allowing assignment of the policy to a successor of the voluntary party. Assignment may be conditioned upon the consent of the insurer, provided consent is not unreasonably refused.

(3) If coverage beyond the required coverage described in this chapter is obtained, the voluntary party shall submit the insurance endorsements to the department, if requested by the department. If the department determines that the additional coverage and endorsements adversely interfere with coverage required under this chapter, the department may determine that the requirements of this section have not been met and deny the application for a liability exemption.

**NR 758.09 Calculating the amount of the insurance coverage.** To calculate the amount of insurance coverage required, the voluntary party shall submit to the department a summary of the total costs spent on the investigation and remediation of the contaminated sediment at the insured location, including all money spent by the voluntary party as well as other parties including local, state, or federal government entities. The limits of the insurance shall be dedicated to the response actions of the insured location and may not be shared with other coverage parts and may not be limited by the insurance policy's aggregate limit for other coverages. The insurance shall provide coverage with limits of no less than the following:

(1) If the cost of the site investigation and remediation of the contaminated sediment was less than \$1,500,000, then the insurance limit for response action coverage shall be at least \$1,000,000.

(2) If the cost of the site investigation and remediation of the contaminated sediment was \$1,500,000 to \$3,999,999, then the insurance limit for response action coverage shall be at least \$3,000,000.

(3) If the cost of the site investigation and remediation of the contaminated sediment was \$4,000,000 or more, then the insurance limit for response action coverage shall be at least \$5,000,000.

(4) If the voluntary party is unable to provide a summary of the costs, the voluntary party shall provide the coverage described under sub. (3).

**NR 758.10 Deductible.** (1) All insurance policies providing coverage required under this chapter shall be written with a per-occurrence deductible and not with a self-insured retention basis.

(2) The insurance policy shall have a deductible of no more than \$50,000 per occurrence unless a higher deductible is approved by the department in writing before the certificate of completion is issued.

(3) If a claim is made on the policy by the department, the department may pay the deductible if funds are available.

(4) The voluntary party shall pay a fee to the department that is equal to 5 percent of the deductible before a certificate of completion is issued. The department may use those funds toward payment of a future deductible.

**NR 758.11 Length of coverage.** (1) The voluntary party shall maintain insurance coverage that meets the conditions under this chapter for 25 years after a closure letter has been issued by the department under s. NR 758.19 (2).

(2) The policy term of the insurance may be of any length longer than one year. If the policy term ends before 25 years after the date that the closure letter is issued, the policy shall be renewed by the voluntary party to provide the 25 years of coverage.

(3) At least 90 days before the end of the existing policy period, the voluntary party or its successors or assigns shall provide a certificate of insurance from the insurer and proof of insurance for a policy renewal or new policy that meet the requirements of this chapter.

**NR 758.12 Proof of insurance.** The voluntary party shall submit annually a copy of the certificate of insurance to the department that demonstrates that the requirements for insurance described in this chapter are being met.

**NR 758.13 Financial responsibility other than insurance.** (1) The department shall accept a form of financial responsibility from the voluntary party other than insurance to meet the requirements of this chapter if all of the following conditions apply:

(a) The financial responsibility is in the amount required under s. NR 758.09.

(b) The financial responsibility will provide coverage for 25 years.

(c) The financial responsibility covers response action expenses in the event that the department issues a written determination that additional remedial action is necessary due to the occurrence of any of the conditions described under s. 292.15 (2) (b) 2. or 3., Stats.

(d) The financial responsibility satisfies the requirements that a person required to submit proof financial responsibility under s. NR 756.04 (1) is required to follow, as specified under s. NR 756.06 (1), (2), (3), (4), (5), and (8).

(e) The hazardous substance contained in the contaminated sediment is not mercury, PCBs, as defined in s. 299.45 (1) (a), Stats., or dioxin.

(2) If a form of financial responsibility is provided other than insurance, the voluntary party shall do all of the following:

(a) Follow the requirements under s. NR 756.09 if changes to the method of financial responsibility are requested.

(b) Provide access to the department and its designees to enter upon the site or facility and carry out appropriate site investigation and response actions.

(c) Take actions needed in order for the department to use part or all of the money deposited with the department, or the money deposited in escrow or trust accounts, or performance or forfeiture bonds, or letters of credit, or funds accumulated under other approved methods, to carry out the approved actions or plan and compliance schedule requirements.

(d) Notify the department in the event of bankruptcy, insolvency, or receivership naming the voluntary party in accordance with s. NR 756.13.

**NR 758.15 Waiver of insurance requirement.** The voluntary party may submit a written request for a waiver of the insurance requirement under s. NR 758.07 to the department. The department may waive the insurance requirement after considering all the following factors, which shall be identified in the request for waiver:

(1) The voluntary party's explanation of the circumstances eliminating the need for insurance.

(2) The hazardous substance contained in the contaminated sediment. The department may not grant a waiver if mercury, PCBs, as defined in s. 299.45 (1) (a), Stats., or dioxin is one of the identified hazardous substances.

(3) Any of the applicable following site-specific factors:

(a) The volume of contaminated sediment.

- (b) Concentrations of hazardous substances in the sediment.
- (c) Threat to ecological resources.
- (d) Known and potential effects of contaminated sediment on human health including consumption of fish, birds or other wildlife.
- (e) Risk that additional cleanup would be needed.
- (f) Anticipated cost of additional future cleanup.
- (g) Extent of removal of the known contaminants completed in accordance with applicable cleanup standards for the known contaminants.

**NR 758.19 Certificate of completion.** The department shall issue a certificate of completion under s. 292.15 (2) (af), Stats., to a voluntary party that is subject to the requirements of this chapter if the department determines that all the following requirements have been met:

- (1) The voluntary party has submitted to the department a request for case closure under ch. NR 726.
- (2) The department has approved the request for case closure for the site.
- (3) The voluntary party has submitted to the department any of the following pertaining to financial responsibility requirements:
  - (a) A certificate of insurance and copy of the policy with endorsements and the deductible fee required under s. NR 758.10.
  - (b) Documentation that demonstrates that an alternative form of financial responsibility has been provided that meets the requirements under s. NR 758.13.
  - (c) Documentation that the voluntary party received a waiver of the requirements from the department as described under s. NR 758.15.

(5) The voluntary party has reimbursed the department for any department costs incurred under chs. NR 749 and 750.

(6) All of the conditions under s. 292.15 (2) (af) 1. to 6., Stats., have been met.

**NR 758.21 Failure to satisfy requirements in this chapter.** The voluntary party, and successors and assigns of the voluntary party, as described under s. 292.15 (3), Stats., including the property owner, will no longer qualify for the liability protections under s. 292.15 (2) (af), Stats., if the voluntary party or its successors or assigns fails to satisfy the requirements of this chapter and the department provides a written determination stating that the requirements are not being met after at least 90 days from the date of non-compliance.

**NR 758.23 Partial cleanup at contaminated sediment sites.** For a site at which contaminated sediment exists in addition to a hazardous substance in soil or in soil and groundwater on a property from a release of a hazardous substance on or originating from the property, the department may approve a partial cleanup if all of the following apply:

(1) A voluntary party requests a liability exemption for a partial cleanup under s. 292.15 (2) (am), Stats., for the soil or soil and groundwater on the property.

(2) All requirements under s. 292.15 (2) (am), Stats., have been met.

(3) An environmental investigation of the property is conducted and approved by the department.

Note: The environmental investigation must be performed for the entire property, including the upland portion and portions containing sediment.

(4) The voluntary party or another person shall enter into a written legally enforceable agreement with the department to restore the environment to the extent practicable and minimize the harmful effects from the contaminated sediment on the property or the discharges resulting in contaminated sediment. The agreement shall require that remedial action and case closure shall be completed by satisfying the requirements under ch. NR 726 and, if applicable, ch. NR 756.

(5) One of the following requirements have been met to determine the amount of financial assurance:

(a) The voluntary party, or a person who has entered into a legally enforceable agreement with the department, shall prepare a remediation cost estimate. This estimate shall include a schedule with anticipated costs for each year. For the purpose of determining the amount of financial assurance that is required, the voluntary party, or a person who has entered into a legally enforceable agreement with the department, shall submit the estimated costs to complete the remedial action to the department for approval. The remediation cost estimate shall be prepared by an environmental consultant and include all of the following:

1. Cost estimates for all actions necessary under chs. NR 700 to NR 799 to obtain site closure under ch. NR 726 for each contaminated sediment site resulting from a hazardous substance discharge on or from the property that is subject to the request for approval of a partial cleanup under s. 292.15 (2) (am), Stats.

2. Cost estimates for remedial action planning, design, and permitting; dredging, including mobilization and disposal; and post-construction sampling and monitoring.

(b) If the voluntary party is unable to prepare a remediation cost estimate that meets the requirements under par. (a) due to exceptional conditions, the voluntary party shall submit a justification as to why it is unable to submit a cost estimate and the amount of financial assurance shall default to a \$5,000,000 minimum, unless the department determines that valuation is insufficiently low to conduct all actions necessary under chs. NR 700 to NR 799 to obtain site closure under ch. NR 726. If the department determines that \$5,000,000 is insufficient, the department shall determine an amount of financial assurance based on data collected from similar cleanup projects.

(6) The voluntary party provides financial assurance that meets all of the following requirements:

1. The financial assurance satisfies the requirements that a person required to submit proof of financial responsibility under s. NR 756.04 (1) d. is required to follow, as specified under s. NR 756.06 (1),(2), (3), (4), (5), (7) or (8).

2. The amount of financial assurance is the annual cost in current year dollars for the costs estimated under sub. (5) in addition to a 10 percent contingency amount.

3. The inflation rate shall be calculated as described under s. NR 756.07 (6).

4. The amount of financial responsibility provided shall be calculated based on the chosen method of providing proof of financial responsibility and calculated using the method under s. NR 756.08 (1) (a) or (b).

**NR 758.24 Partial cleanup at contaminated sediment sites – use of financial assurance and other ongoing requirements and procedures.** If the department approves a partial cleanup under s. 292.15 (2) (am), Stats., and requirements under s. NR 758.23 have been met, all of the following apply:

(1) The voluntary party, or a person who has entered into a legally enforceable agreement with the department under s. NR 758.23 (4), shall follow the requirements under s. NR 756.09 if changes to the method of providing financial assurance under s. NR 758.23 (5) are requested.

(2) The voluntary party, or a person who has entered into a legally enforceable agreement with the department under s. NR 758.23 (4), may request an adjustment of the amount of financial assurance under s. NR 758.23 (5) provided due to a change in the remedial actions planned if approved by the department in writing.

(3) The voluntary party, or a person who has entered into a legally enforceable agreement with the department under s. NR 758.23 (4), shall notify the department in the event of bankruptcy, insolvency, or receivership in accordance with s. NR 756.13.

(4) The voluntary party, or a person who has entered into a legally enforceable agreement under s. NR 758.23 (4), with the department, shall comply with the agreement under s. NR 758.23 (4) and make reasonable progress, as determined by the department, to conduct the remedial action to obtain case closure by satisfying the requirements under ch. NR 726 and, if applicable, ch. NR 756. Whenever the department determines that the voluntary party, or a person who has entered into a legally enforceable agreement under s. NR 758.23 (4) with the department, is not making reasonable progress toward completing the remedial action needed to



restore the environment to the extent practicable and minimize the harmful effects from the contaminated sediment on the property or the discharges resulting in contaminated sediment, the department and its designees may enter upon the site or facility and carry out the appropriate remedial actions. The department may use part or all of the money deposited with it, or the money deposited in escrow or trust accounts, or performance or forfeiture bonds, or letters of credit, insurance, or funds accumulated under other approved methods for providing financial assurance to carry out the actions.

(5) The voluntary party, or a person who has entered into a legally enforceable agreement under s. NR 758.23 (4) with the department, may request authorization to release funds annually by following the applicable requirements under s. NR 756.12 (1).

**SECTION 264. EFFECTIVE DATE.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

**SECTION 265. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

Preston D. Cole, Secretary

(SEAL)