

# Clearinghouse Rule 95-091

95-091



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

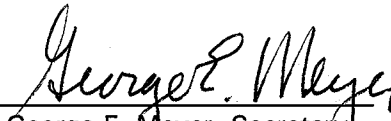
PO Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES ) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-28-95 was duly approved and adopted by this Department on October 28, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

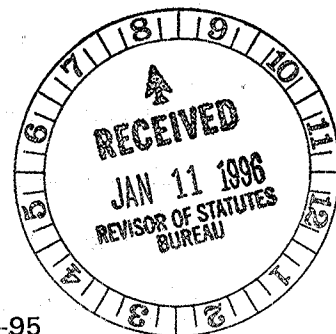
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 9th day of January, 1996.

  
George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
CREATING RULES



The Wisconsin Natural Resources Board proposes an order to create NR 728.11, relating to actions taken by the Department to implement chs. NR 700 to 736.

SW-28-95

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.76 and 227.11, Stats.

Statutes interpreted: s. 144.76, Stats.

Section 144.76, Stats., known as the Hazardous Substance Spills Law, provides that a person who possesses or controls a hazardous substance that is discharged, or who causes the discharge of the hazardous substance, must take the necessary actions to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, land or waters of this state. This responsibility applies not only to a person who causes the discharge of a hazardous substance, but also to an owner of contaminated property where a hazardous substance is continuing to discharge to the environment.

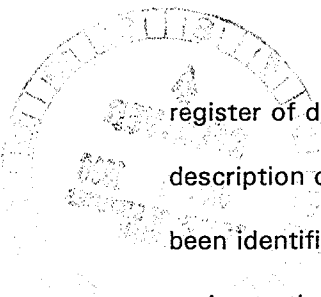
Chapters NR 700 to 736, Wis. Adm. Code, establish the minimum standards for conducting an investigation and remediation of environmental contamination resulting from a discharge of a hazardous substance. Chapter NR 728 describes the tools which are available to the Department to enforce those chapters. The proposed s. NR 728.11 sets forth the process to be used by Department staff to record affidavits to give notice of the existence of contamination from a hazardous substance discharge.

The Department currently has the authority to initiate enforcement actions when responsible parties don't fulfill their obligations under s. 144.76, Stats. However, the initiation of enforcement action requires significant staff resources to be committed to develop and manage the necessary followup, and it may be wasted effort if the responsible parties are insolvent and unable to pay for an investigation or cleanup. Given the existing staffing levels, workload dictates that Department resources be directed towards the highest priority sites, oftentimes resulting in many of the lower priority sites making little or no progress towards cleanup. This new rule will mean that, rather than having to choose between issuing an administrative order or doing nothing, Department staff will have the option of putting a lower priority site on hold by recording an affidavit, after contacting the property owner and any mortgagees of record, to flag the property so that the public, lenders and prospective purchasers are aware that a problem exists.

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**SECTION 1.** NR 728.11 is created to read:

NR 728.11 RECORDING A NOTICE OF CONTAMINATION. (1) GENERAL. Except for contamination caused by a discharge from a fuel oil tank used solely for residential purposes, the department may, after following the procedures in sub. (2), record an affidavit at the office of the



register of deeds for the county in which the property is located which specifies the legal description of the property, indicates that contamination from a hazardous substance discharge has been identified on the property which has not been adequately defined or remediated and gives notice to the public, and any prospective purchaser, of the existing contamination and the environmental liability associated with the property.

(2) PROCEDURE. Where the department has information to demonstrate that the source of contamination is on the property and the property owner or other responsible party has failed to take adequate response action, the department may record an affidavit at the office of the register of deeds for the county in which the property is located once the following steps have been taken:

(a) The department shall send the property owner a letter, by certified mail, stating the department's intention to record an affidavit at the county register of deeds office giving notice of the contamination, unless the property owner responds by the deadline in the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or provides information which clearly demonstrates that there is no environmental contamination on the property.

(b) If the department receives no response, or an unacceptable response, to the letter sent in par. (a), the department shall send a second letter to the property owner and to any mortgagee of record, by certified mail, indicating the department's decision to record an affidavit at the county register of deeds office unless the property owner responds by the deadline in the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or appeals the department's determination. The deadline in this letter may not be less than 30 days from the date the property owner receives this letter. A copy of the affidavit to be recorded shall be attached to this letter.

(c) If an acceptable response is not received within the time period set forth in the letter sent in par. (b), the department may, as soon as practicable but in no case less than 15 days after the deadline in the letter sent in par. (b), record the affidavit at the office of the register of deeds for the county in which the property is located.

(3) SUBSEQUENT FILINGS. If the contamination identified in the affidavit is subsequently remediated or otherwise addressed to the satisfaction of the department, the department shall record a second affidavit at the office of the register of deeds for the county in which the property is located to supersede an affidavit filed under sub. (2) , after giving written notice to the property owner. A second affidavit shall specify the legal description of the property and indicate whether or not there is any residual contamination exceeding existing state standards on the property that is inaccessible or otherwise impracticable to remediate.

(4) SUNSET CLAUSE. This rule will sunset one year after the effective date of this rule.....[Revisor insert date].

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resource Board on October 26, 1995.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

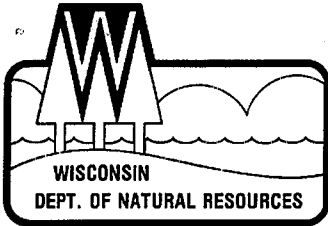
*January 9, 1996*

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

*George E. Meyer*  
George E. Meyer, Secretary

(SEAL)



**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

PO Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

January 8, 1996

Mr. Gary L. Poulson  
Assistant Revisor of Statutes  
131 West Wilson Street - Suite 800  
Madison, WI

*Gary*  
Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. SW-28-95. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

*George*  
George E. Meyer  
Secretary

Enc.

