

01-129

LS

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. RR-9-01

Legislative Council Rules Clearinghouse Number 01-129

Subject of Rules Use of deed restrictions and deed notices for the closure of environmental remediation cases, and the implementation of a geographic information system registry of closed remediation sites for properties with residual soil contamination that exceeds, at the time of case closure, generic or site-specific, contaminant levels as determined under ch. NR 720.

Date of Transmittal to Presiding Officers April 26, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

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An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 700, 714, 722, 726 and 749, Wis. Adm. Code

Use of deed restrictions and deed notices for the closure of environmental remediation cases, and the implementation of a geographic information system registry of closed remediation sites for properties with residual soil contamination that exceeds, at the time of case closure, generic or site-specific contaminant levels as determined under ch. NR 720

Board Order No. RR-9-01
Clearinghouse Rule No. 01-129

Statement of Need

The rule changes proposed to ch. NR 726 are needed to clarify the criteria and process for applying deed restrictions and deed notices to contaminated properties where residual soil contamination remains after case closure. The rule changes authorize the creation of a soil geographic information system (GIS) registry that will be available on the Internet to replace the use of most soil deed notices. The rule changes in ch. NR 749 establish a fee of \$200 to enable the Department to recover its costs in managing the GIS registry. The fee will be charged at the time closure is requested. The soil GIS registry will be analogous to the groundwater GIS registry which will be available on the Internet. Sites closed with residual soil contamination will be placed on the soil GIS registry as a means of notifying future owners/users of the property of the existence of soil contamination.

Because the GIS registry will provide public access to information about residual contamination at properties, this package repeals s. NR 714.07(5), which previously required responsible parties to publish a legal notice in a local newspaper when the proposed a performance standard to address residual soil contamination. The rule specifies when deed restrictions are to be placed on properties with soil contamination remaining after site closure. These new rules will help ensure consistent application of deed restrictions by staff at the Department of Natural Resources and the Department of Commerce. The rule change will allow the owners of contaminated properties and other responsible parties to anticipate what restrictions on land use are likely to be required as a condition of case closure by clearly establishing the type of institutional controls that will be required by the agencies at the time of closure in various fact situations. Other related changes to chs. NR 700 and 726 are included to define the terms "industrial land use", to specify the contents of the required deed instruments and to make the rules that were recently adopted to implement a groundwater GIS registry consistent with these new soil GIS registry rules. In addition, these rules reflect changes made in response to comments made during the public comment period.

Modifications as a Result of Public Hearing

As of result of public hearing comments, the rule was revised to clarify that "industrial land use" does not apply to retail gas facilities; to clarify that responsible parties will not be required to submit legal descriptions for contaminated rights-of-way, but will be required to submit a copy of the most recent deed or land contract for the property; proposed modifications to s. NR 726.05(2)(a)2. and 3. were omitted; to allow consultants to submit maps larger than 8.5 by 11 inches if they are submitted in electronic format; a modification to reflect the fact that the BRRS database can now be used to determine if required GIS registry fees have been paid; modifications to the requirement for isoconcentration maps and the requirement for a geologic cross-section.

Appearances at the Public Hearing and Their Position

In support:

Carl B. Stay, Environmental Resources Management, 700 W. Virginia Street, Suite 601, Milwaukee, WI 53204

Jeff King, Gannett Fleming, Inc., 8025 Excelsior Drive, Madison, WI 53717

Bruce Weber, Engineering Partners International, 2000 Engel Street, Suite 185B, Madison, WI

In opposition – none

As interest may appear:

David Swimm, Department of Commerce [no address given]

Allen O'Leary, Northland Cranberries, P.O. Box 8020, Wisconsin Rapids, WI 54495

John Small, 111 Country Club Road, Green Bay, WI 54313

Joyce Grimsbo, KC's Service Station, 25490 590th Street, Palisade, MN 56469

John Grimsbo, KC's Service Station, 25490 590th Street, Palisade, MN 56469

Stephen Owens, SIGMA Environmental Services, 220 E. Ryan Road, Oak Creek, WI 53154

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted, except for:

5.a. The last sentence in s. NR 726.05(2)(a)2.d., which required the responsible party to make use of available software and information on the Internet, has been replaced with a note that informs the reader that geographic position data can be found by using the Department's GIS registry, which is available on the Internet.

The term "generic residual contaminant levels" is used in ss. NR 720.09 and 720.11, Wis. Adm. Code. Both sections contain criteria for determining the "generic residual contaminant level". In response to the Rule Clearinghouse Comment 5.a., s. NR 726.05(2)(a)3.(intro.) has been amended to reference the specific sections in ch. NR 720 that spell out how the "generic residual contaminant level" is determined, instead of referring to the entire chapter.

5.b. Yes. Section ATCP 35.02(1)(e), Wis. Adm. Code, provides that corrective action orders issued by DATCP must contain notice that the corrective action that is ordered will be required to comply with the applicable DNR rules found in chs. NR 700, 706, 708 and 712 to 726, Wis. Adm. Code. A reference to cases that DATCP has administrative authority over, under s. 94.73, Stats., has been added to s. NR 726.05(8)(c).

Final Regulatory Flexibility Analysis

The Department does not expect any negative impact on small businesses as a result of this action. This rule package should help small businesses by eliminating the use of deed notices and clarifying when deed restrictions are necessary when contaminated soil remains on a property at the time of closure.

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 714.07(5) and 726.05(2)(d); to renumber and amend NR 726.05(3)(a)4.e. to g.; to amend NR 722.09(2)(a), 726.02(1), 726.05(2)(a), (b)(intro.), 3.(intro.) and 4. and (c), (3)(intro.) and (a) 3. and 4.(intro.), a. to d., (4)(intro.), Appendix A in ch. NR 726 (intro.) and Table 1 in ch. NR 749; to repeal and recreate NR 726.05(title), (1), (2)(am), (8) and (9); and to create NR 700.03(28m), 726.03(1m) and (3), 726.05(2)(a)2. to 5., (b)6., (3)(a)4.e. and (b)4. and 726.05(10), relating to the use of deed restrictions and deed notices for the closure of environmental remediation cases, and the implementation of a geographic information system registry of closed remediation sites for properties with residual soil contamination that exceeds, at the time of case closure, generic or site-specific residual contaminant levels as determined under ch. NR 720.

RR-09-01

Analysis Prepared by the Department of Natural Resources

Statutory authority: Section 227.11(2)(a), Stats.

Statutes interpreted: Sections 292.11 and 292.31 and ch. 160, Stats.

The amendments to ch. NR 726 that are included in this rule package specify the fact situations in environmental remediation cases in which deed restrictions are to be required as a condition of case closure. The amendments also provide that deed restrictions or deed notices may be required if department staff determine that there are site-specific circumstances that make a deed restriction or notice necessary to adequately protect human health or safety or the environment. For remediation cases that fall within the categories specified in this rule, additional remediation or monitoring would be required if the person responsible for the hazardous substance contamination wanted to achieve case closure without a deed restriction.

After the effective date of these rule changes, the amendments in this rule package will also require sites that are closed with residual soil contamination that exceeds generic or site-specific residual contaminant levels (as determined under sections NR 720.09, 720.11 and 720.19) to be included in the Department's geographic information system registry of closed remediation sites ("the GIS registry"). Responsible parties are required by the amended rules to send letters to affected landowners to notify them that there will be residual soil contamination on their property after the case is closed. Also, the fee schedule that is found in Table 1 of ch. NR 749 is amended to add an additional fee of \$200 for adding these sites to the GIS registry. Because the listing of a site on the GIS registry will give notice to the public of closed sites with residual soil contamination, this rule package repeals s. NR 714.07 (5), which had previously required responsible parties to publish a legal notice in a local newspaper whenever they proposed to use a performance standard to address residual soil contamination. Other related changes to chs. NR 700 and 726 are included to define the terms "industrial land use" and "right-of-way," to specify the contents of the required deed instruments, and to make the rules that were recently adopted to implement a groundwater GIS registry consistent with these new soil GIS registry rules.

SECTION 1. NR 700.03 (28m) is created to read:

NR 700.03(28m) "Industrial land use" means the utilization of a parcel of real estate for manufacturing operations that use machinery and mechanical power to produce products or services, including electrical power, or for a service business that provides storage facilities, product distribution or maintenance or repair services for machinery.

Intent to exclude retail gas stations

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

SECTION 2. NR 714.07 (5) is repealed.

SECTION 3. NR 722.09 (2)(a) is amended to read:

NR 722.09 (2)(a) *Soils.* ~~4.~~ Contaminated soil shall be restored in compliance with the requirements of ch. NR 720.

~~2. Where a performance standard will be selected in accordance with s. NR 720.19 (2) for a soil remedial action, the responsible parties shall conduct public participation activities in compliance with s. NR 714.07 (5).~~

SECTION 4. NR 726.02 (1) is amended to read:

NR 726.02 (1) This chapter applies to the closure of all cases where response action, other than immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under s. 292.11 or 292.31, Stats., regardless of whether there is direct involvement or oversight by the department, except that this chapter does not apply where the department determines under ch. NR 708 that no further action is necessary, or where the site is classified as a simple site and the responsible party chooses to follow the simple site process outlined in s. NR 700.11 (1).

SECTION 5. NR 726.03 (1m) and (3) are created to read:

NR 726.03 (1m) "GIS registry" means the department's geographic information system registry of closed remediation sites.

NR 726.03 (3) "Right-of-way" means the strip of land over which railroad tracks run, or within which a public street or highway has been constructed, regardless of whether the strip of land is owned by the railroad or the entity that maintains the public street or highway. For the purposes of this chapter, a "right-of-way" includes corridors created by dedication, by the granting of an easement and by the acquisition of fee title.

SECTION 6. NR 726.05 (title) and (1) are repealed and recreated to read:

NR 726.05 (title) **Requests for case closure.** (1) The agency with administrative authority to oversee the remediation of the site or facility may grant case closure under this section, conditioned upon compliance with the applicable requirements of sub. (8), if the fees required by ch. NR 749 have been paid and it has been documented, in the case close out report that is submitted to the agency in compliance with the requirements of sub. (3), that all applicable public health and environmental laws, including chs. NR 700 to 724 and 749, have been complied with, or where ch. NR 140 enforcement standards are the only standards that are exceeded, that the criteria in sub. (2)(b) are satisfied.

SECTION 7. NR 726.05 (2)(a) is amended to read:

NR 726.05 (2)(a)(title) General requirements for case closure requests. 1. A request for case closure shall be submitted in writing on a case summary and close out form supplied by the department agency with administrative authority over the site and shall be accompanied by a case close out report documenting that ~~the applicable public health and environmental laws, including chs. NR 700 to 746 where applicable,~~ have been complied with, or, where ch. NR 140 enforcement standards ~~or preventive action limits~~ are the only environmental standards exceeded, that the criteria in par. (b) are satisfied.

Note: Copies of the WDNR case summary and close out forms for sites over which the department has administrative authority 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. The WDNR case summary and close out form (form 4400-202) may also be obtained from the publications section of the department's remediation and redevelopment internet site at <http://www.dnr.state.wi.us/org/aw/rr/>.

SECTION 8. NR 726.05(2)(a)2. to 5. are created to read:

NR 726.05(2)(a)2. For sites with groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that case closure is requested, all properties within or partially within the contaminated site boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be entered onto the department's GIS registry. For those sites, responsible parties shall submit 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, in a groundwater GIS registry attachment to the case close out report:

a. A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Rights-of-way will not be listed as separate properties on the department's GIS registry. However, contaminated public street and highway rights-of-way and railroad rights-of-way will be identified with the associated source property. Site location maps, that show the location of all contaminated rights-of-way in relation to the source property and in relation to the boundaries of groundwater contamination exceeding NR 140 standards, are required to be submitted as part of the case close out report and will be included in the GIS registry.

b. 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 deed or land contract refers to a certified survey map or a recorded plat map.

c. The parcel identification number for each property, if the county in which the property is located uses parcel identification numbers.

d. Geographic position data for each property in compliance with the requirements of s. NR 716.15 (2)(k), unless this information was previously submitted to the agency with administrative authority for the site as part of the site investigation report, or unless the agency with administrative authority has directed that the responsible party does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department's GIS registry that is available on the internet at <http://gomapout.dnr.state.wi.us/org/at/et/geo/gwur>.

3. For sites with soil contamination that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19 at the time that case closure is requested, the properties within or partially within the contaminated site boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be entered onto the department's GIS registry. For those sites, responsible parties shall submit 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, in a soil GIS registry attachment to the case close out report:

a. A copy of the most recent deed which includes the legal description of the property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Rights-of-way will not be listed as separate properties on the Department's GIS registry. However, contaminated public street and highway rights-of-way and railroad rights-of-way will be identified with the associated source property. Site location maps, that show the location of all contaminated rights-of-way in relation to the source property and in relation to the boundaries of soil contamination exceeding generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19, are required to be submitted as part of the case close out report and will be included in the GIS registry.

b. 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 deed or land contract refers to a certified survey map or a recorded plat map.

c. The parcel identification number for each property, if the county in which the property is located uses parcel identification numbers.

d. Geographic position data for each property in compliance with the requirements of s. NR 716.15 (2)(k), unless this information was previously submitted to the agency with administrative authority for the site as part of the site investigation report, or unless the agency with administrative authority has directed that the responsible party does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department's GIS registry that is available on the internet at <http://gomapout.dnr.state.wi.us/org/at/et/geo/gwur>.

4. If there is residual soil contamination in a public street or highway right-of-way or a railroad right-of-way that exceeds generic or site-specific residual contaminant levels for soil as determined under ss. NR 720.09, 720.11 and 720.19, or ch. NR 140 enforcement standards for groundwater, the responsible party shall give written notification of the presence of the residual soil or groundwater contamination from the responsible party's source property that remains within the public street or highway right-of-way to the clerk of the town and county, or village or city where the right-of-way is located, and the municipal department or state agency that is responsible for maintaining the public street or highway, and written notification of the presence of the residual soil or groundwater contamination from the responsible party's source property that remains within the railroad right-of-way to the railroad that maintains the railroad right-of-way.

5. For sites where waste was generated during the response action and was stored or treated on-site, all the waste shall be handled and disposed of in accordance with applicable state and federal laws before a case closure request is submitted.

SECTION 9. NR 726.05(2)(am) is repealed and recreated to read:

NR 726.05(2)(am) *Specific agency requirements.* 1. For sites where the department has administrative authority to oversee the remediation of the site, the case close out fee and, if entry on the GIS registry is required under par. (a) 2. or 3, the fee or fees listed in ch. NR 749 for adding a site to the department's GIS registry shall be submitted to the department with each case closure request.

2. For sites contaminated with petroleum products discharged from a petroleum storage tank for which the department of commerce has administrative authority under s. 101.144, Stats., and sites for which department of agriculture, trade and consumer protection has administrative authority under s. 94.73, Stats., that are required by par. (a) 2. or 3. to be entered onto the department's GIS registry, the fee or fees listed in ch. NR 749 for adding a site to the department's GIS registry shall be submitted to the department before a case summary and close out form and a case close out report are submitted to the agency with administrative authority over the site. For these sites, a case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department's bureau for remediation and redevelopment tracking system, which is available on the department's internet site.

Note: The department's bureau for remediation and redevelopment tracking system can be found on the internet at <http://gomapout.dnr.state.wi.us/org/at/et/geo/gwur>.

Note: "Petroleum storage tank" is defined in s. 101.144 (1)(bm), Stats., to mean "a storage tank that is used to store petroleum products together with any on-site integral piping or dispensing system." The term "petroleum storage tank" does not include a pipeline facility.

SECTION 10. NR 726.05 (2)(b)(intro.) is amended to read:

NR 726.05 (2)(b)(intro.) For hazardous substance discharge sites with groundwater contamination that exceeds ch. NR 140 enforcement standards or preventive action limits at the time that case closure is requested, including sites contaminated with petroleum products discharged from a petroleum storage tank that are eligible for closure under chs. NR 746 and 726, the responsible party may request case closure, and the department may grant the request under this section, if the responsible party submits supporting documentation to the department and the department determines shall submit a case close out report to the agency with administrative authority for the site that documents that all of the following criteria are satisfied, if applicable:

SECTION 11. NR 726.05 (2)(b) 3. (intro.) and 4. are amended to read:

NR 726.05 (2)(b) 3. (intro.) After The groundwater plume margin is stable or receding, and after case closure, groundwater contamination exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property that falls into either one of the following categories:

4. If there are ch. NR 140 enforcement standard exceedances on any property within or partially within the contamination site boundaries, the owner of each property with ch. NR 140 enforcement standard exceedances will be included on the department's geographic information system registry of closed remediation sites, and for a public street or highway right-of-way where there are ch. NR 140 enforcement standard exceedances, the responsible party has given written notification of the presence of the residual soil and groundwater contamination from the responsible party's source property that remains within the right-of-way to the clerk of the town and county, or village or city where the right-of-way is located, and the municipal department or state agency that is responsible for maintaining the street or highway, other than the owners of public street or highway rights-of-way, railroad rights-of-way or properties owned by the responsible party, shall be sent a letter that contains the standard provisions in Appendix A, at a minimum. In addition, a fact sheet supplied by the department, that describes the use of natural attenuation as a final remedy, shall be enclosed with all letters that are sent to satisfy the

requirements of this subdivision. The responsible party shall send these letters via certified mail, return receipt requested, or priority mail with signature confirmation, and shall submit written proof of the date on which the letters were received in a groundwater GIS registry attachment to the case close out report. If the letters are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the owner of the property may refuse to sign for the letter. The date of receipt of these letters shall be at least 30 days prior to the date on which the agency with administrative authority completes its review of the case close out report, unless all of the affected property owners waive their right to comment within 30 days on the proposed case close out and copies of the waivers are submitted to the agency with administrative authority.

Note: Copies of the department's fact sheet on the use of natural attenuation as a final remedy 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.

SECTION 12. NR 726.05 (2)(b) 6. is created to read:

NR 726.05 (2)(b) 6. Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 700 to 724 and 749, have been complied with.

SECTION 13. NR 726.05 (2)(c) is amended to read:

NR 726.05 (2)(c) For cases that have been closed conditioned upon the recording of a groundwater use restriction, the responsible party may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, apply for unconditional case closure and may request that the ~~department agency with administrative authority for the site~~ 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 an 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 apply for unconditional case closure and may request that the ~~department agency with administrative authority for the site~~ 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.

SECTION 14. NR 726.05 (2)(d) is repealed.

SECTION 15. NR 726.05 (3)(intro.) is amended to read:

NR 726.05 (3)(intro.) In order to demonstrate that ~~the applicable 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, the person who is requesting case closure shall provide the department with~~ submit all of the following information, that is applicable, as attachments to the case close out report, in the order and format that is specified in this subsection:

SECTION 16. NR 726.05 (3)(a) 3. is amended to read:

NR 726.05 (3)(a) 3. Where the ~~department agency with administrative authority for the site~~ has required groundwater quality sampling to be conducted, results from 4 successive quarterly rounds of sampling ~~demonstrating to demonstrate compliance with either the applicable requirements of ch. NR 140 or the requirements of sub. (2)(b).~~ The samples shall be taken from monitoring wells constructed in accordance with ch. NR 141. The ~~department agency with administrative authority for the site~~ may

approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

SECTION 17. NR 726.05 (3)(a) 4. (intro.), a., b., c., and d. are amended to read:

~~NR 726.05 (3)(a) 4. (intro.) All of the following information shall be included in the case closure application for~~ For sites where groundwater exceeds any ch. NR 140 enforcement standard, ~~in the order and format required in this subdivision, following the information required in sub. (2)(am), for inclusion at the time that case closure is requested, all of the following information shall be included as a groundwater GIS registry attachment to the case close out report, following the information required in sub. (2)(a) 2., 3. and 4., and the site shall be included in the geographic information system department's GIS registry of closed remediation sites:~~

a. A site location map ~~which~~ that outlines all properties 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. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

b. A map of all contaminated properties 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 groundwater contamination exceeding ch. NR 140 enforcement standards. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

c. A table of the most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified. Shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department.

d. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map ~~has been generated~~ was required as part of the site investigation report. An isoconcentration map should include the areal extent of groundwater contamination exceeding ch. NR 140 preventive action limits and the areal extent of groundwater contamination exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. This map shall be to scale and may not any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

SECTION 18. NR 726.05 (3)(a) 4. e. to g. are renumbered NR 726.05(3)(a)4.f. to h., and as renumbered, are amended to read:

NR 726.05(3)(a)4.f. A geologic cross-section, if one was ~~generated~~ required as part of the site investigation report. ~~A geologic cross-section should include,~~ that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination exceeding ch. NR 140 preventive action limits that remains when case closure is requested, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any. This ~~map~~ geologic cross-section shall be to scale and may not be any larger than 8.5 by 14 inches, except that if a geologic cross-section is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, it may be larger.

g. A statement signed by the responsible party affirming that ~~certifies~~ he or she believes that the legal descriptions ~~that are attached to the statement are complete and accurate~~ for all of the properties within or partially within the contaminated site's boundaries that have groundwater contamination that ~~exceeds~~ exceeding ch. NR 140 enforcement standards, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency with administrative authority for the site, either as an attachment to the site investigation report or as part of the groundwater GIS registry attachment to the case close out report.

h. A copy of the letters sent by the responsible party to all ~~landowners~~ owners of land within or partially within the contaminated site's boundaries whose property has groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that case closure is requested, as required by sub. (2)(b) 4., and a copy of all written notifications that are required to be sent under sub. (2)(a) 4. in cases where there is residual contamination in a public street or highway right-of-way or a railroad right-of-way. ~~All letters that are sent to satisfy the requirements of this subdivision paragraph shall include the department's fact sheet describing the use of natural attenuation as a final remedy, and shall contain, at a minimum, the standard provisions in Appendix A, and written documentation shall be submitted to the department to prove that the letters were delivered via certified mail, return receipt requested, or priority mail with signature confirmation. If letters are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the landowner may refuse to sign for the letter.~~

SECTION 19. NR 726.05 (3)(a) 4. e. is created to read:

NR 726.05 (3)(a) 4. e. A table including, at a minimum, the previous 4 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table. A groundwater flow map, representative of groundwater movement at the site, shall be included. If groundwater flow direction varies by more than 20 degrees over the history of water level measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.

SECTION 20. NR 726.05 (3)(b) 4. is created to read:

NR 726.05 (3)(b) 4. For sites where soil contamination exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19 at the time that case closure is requested, all of the following information shall be included in a soil GIS registry attachment to the case close out report, and the site shall be included in the department's GIS registry:

a. A site location map that outlines all properties within the contaminated site boundaries on a United States geographic survey topographic map or plat map in sufficient detail to permit the parcels to be located easily. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

b. A map of all contaminated properties 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 soil contamination exceeding generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

c. A table of the analytical results showing results for all contaminants found in pre-remedial sampling and in the most recent soil sampling, with sample collection dates identified. Shading and

cross-hatching may not be used on data summary tables unless prior approval is obtained from the department.

d. 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 generic or site-specific residual contaminant levels, as determined under ss. NR 720.09, 720.11 and 720.19, within the contaminated site boundaries. These maps shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

e. A geologic cross-section showing the vertical extent of residual soil contamination that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19, if one was required as a part of the site investigation report. If there is groundwater contamination on the site that 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. These geologic cross-sections shall be to scale and may not be any larger than 8.5 by 14 inches, except that if these geologic cross-sections are submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, they may be larger.

f. A statement signed by the responsible party affirming that he or she believes that legal descriptions for all of the properties within or partially within the contaminated site's boundaries that have soil contamination exceeding generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency with administrative authority for the site, either as an attachment to the site investigation report or as part of a soil GIS registry attachment to the case close out report.

g. A copy of all written notifications that are required to be sent under sub. (2)(a) 4. in cases where there is residual contamination in a public street or highway right-of-way or a railroad right-of-way.

SECTION 21. NR 726.05 (4)(intro.) is amended to read:

NR 726.05 (4)(intro.) ~~The department~~ agency with administrative authority over the site may not close a case under this chapter if, at any time in the future, the remaining level of contamination is likely to:

SECTION 22. NR 726.05 (8) is repealed and recreated to read:

NR 726.05(8)(a) The following shall be required for case closure at all sites, including sites contaminated with petroleum products discharged from petroleum storage tanks that are eligible for closure under chs. NR 746 and 726, where applicable:

1. All monitoring wells and boreholes installed during any response action taken for the site shall be abandoned and documented as abandoned in accordance with s. NR 141.25, except for specific wells that the agency with administrative authority over the site approves of retaining until sampling is no longer required.

2. If there is residual soil contamination at the time of case closure, the final closure letter shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

3. Any other condition for case closure that is necessary to protect public health, safety or welfare or the environment may be required.

(b) A deed restriction that complies with sub. (9) shall be signed and recorded for the property within 90 days after conditional case closure is granted in the following situations, including sites closed under chs. NR 746 and 726 unless the sites are specifically exempted:

1. If a property has been classified as industrial under s. NR 720.11 (1) and soil contamination on the property has only been remediated to the industrial residual contaminant levels in Table 2 in s. NR 720.11 or to a site-specific residual contaminant level that has been determined based upon industrial land use exposure assumptions, a deed restriction shall be signed and recorded that restricts the use of that property to an industrial land use until non-industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation, and requires that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

2. If a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, a deed restriction shall be required as a condition of case closure. The deed restriction shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency with administrative authority over the site and then conduct an investigation of the degree and extent of residual contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible. If residual contamination is found at the time that the structural impediments are removed, the contamination shall be addressed in compliance with applicable state and federal laws.

3. If there is residual soil contamination beneath a building or a cap, such as concrete or asphalt pavement, or composite cap, or within an engineered containment structure, that exceeds generic or site-specific residual contaminant levels based on protection of groundwater as determined under ss. NR 720.09 and 720.19, which would pose a threat to groundwater if the building, cap or containment structure were removed, a deed restriction shall be required as a condition of case closure. The deed restriction shall include a description of the residual contamination and the location of the building, cap or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cap or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The deed restriction shall also require the property owner to maintain and repair or replace the building, cap or containment structure with a structure of similar permeability until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds generic or site-specific residual contaminant levels that protect the groundwater, as determined under ss. NR 720.09 and 720.19, and require that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

4. If a soil cover, cap or engineered containment structure must be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.11 and 720.19, a deed restriction shall be required to ensure that the soil cover or cap, such as concrete or asphalt pavement, or a composite cap, or engineered containment structure will be repaired and maintained until it is no longer needed. The deed restriction shall include a description of the residual contamination and the location of the soil cover, cap or engineered containment structure, and shall restrict the use of the land where the soil cover, cap or engineered containment structure is located to ensure that the soil cover or cap will function as intended, to prevent direct contact, as required by the applicable performance standard. The deed restriction shall also require the property owner to maintain and repair or replace the soil cover, cap or engineered containment structure until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds generic or site-specific residual contaminant levels that protect human health from direct contact, as determined under ss. NR 720.11 and 720.19, and requires that any soil that is excavated in the future from an area that had residual soil contamination at the time of

case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) A deed restriction or deed notice may be required as a condition of case closure in situations other than those listed in par. (b) if department staff, in cases where the department has administrative authority to oversee the remediation of the site, or staff of the department of commerce or the department of agriculture, trade and consumer protection, in cases where these agencies have administrative authority, determine that there are site-specific circumstances that make a deed notice or deed restriction necessary to adequately protect human health or safety or the environment.

SECTION 23. NR 726.05(9) is repealed and recreated to read:

NR 726.05(9) Deed restrictions and deed notices that are required as a condition of case closure shall be drafted in compliance with all of the following requirements:

- (a) The document shall be drafted as an affidavit in the format required by s. 59.43 (2m), Stats.
- (b) The property's legal description shall be typed onto the form or a copy of the legal description shall be attached and incorporated by reference.
- (c) The document shall be signed by the property owner or owners, and their signatures shall be notarized.

SECTION 24. NR 726.05 (10) is created to read:

NR 726.05 (10) If closure is conditionally granted under this section, responsible parties shall submit to the department with administrative authority over the remediation of the site or facility copies, showing the recording information added by the register of deeds office, of any required deed restriction or deed notice that has been recorded as a condition of closure, and documentation that all other closure conditions have been satisfied, within 120 days after conditional closure is granted.

SECTION 25. Chapter NR 726 Appendix A (intro.) is amended to read:

Appendix A All letters sent to landowners whose property has groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that case closure is requested shall contain the following provisions, at a minimum, in order to satisfy the requirements of s. NR 726.05 (2)(b) 4. and (3)(a) 4. g.:

SECTION 26. Table 1 in ch. NR 749 is amended to read:

TABLE 1 – FEE SCHEDULE

Type of Letter or Assistance	Statutory Citation	Fee
Tax Cancellation Agreement	ss. 75.105 (2) (d) and 292.55	\$ 500
Negotiated Agreements	s. 292.11 (7) (d) 2.	1000
Off-site Letters	s. 292.13 (3)	500
Lender Assessments	s. 292.21 (1) (c) 1. d.	500
Negotiation and Cost Recovery	s. 292.35 (13)	(a)
General Liability Clarification Letters	s. 292.55	500
Lease Letters – Single Properties	s. 292.55	500
Lease Letters – Multiple Properties	s. 292.55	1000
Case Close-out Actions by the Department under ch. NR 726. ^(b)	s.292.55	

- Cases with no groundwater contamination exceeding ESs		750
- Cases with groundwater contamination exceeding ESs		1000
<u>Addition Adding a Site to the GIS Registry:</u>	s. 292.55	
- Cases submitted for closure with groundwater exceeding ESs to agencies other than the department		250
- Cases submitted for closure with soil contamination exceeding RCLs		200
Site Investigation Workplan	s. 292.55	500
Site Investigation Report	s. 292.55	750
Site Specific Soil Cleanup Standards; NR 720.19 Reports	s. 292.55	750
Remedial Action Options Report	s. 292.55	750
Remedial Design Reports	s. 292.55	750
Operation and Maintenance Reports	s. 292.55	300
Construction Documentation Report	s. 292.55	250
Long-term Monitoring Plans	s. 292.55	300
No Further Action Letters under ch. NR 708 ^(a)	s. 292.55	250
Other Technical Assistance	s. 292.55	500

- (a) Local governmental units in the negotiation and cost recovery process in s. 292.35, Stats., shall pay fees for each service requested.
- (b) All requests for case closure need to be accompanied by the review fee in order to be considered complete.
- (c) Immediate actions associated with spill cleanup activities, including department signoff on the spill reporting form, do not require a review fee.

Note: The department will not review Phase I or Phase II Environmental Assessments, unless they are part of the Voluntary Party Liability Exemption process in s. 292.15, Stats., or as part of a lender requesting this review in accordance with s. 292.21 (1) (c) 1. d., Stats.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 24, 2002.

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.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-129

AN ORDER to repeal NR 714.07 (5) and 726.05 (2) (d); to amend NR 722.09 (2) (a), 726.02 (1), 726.05 (2) (a), (b) (intro.), 3. (intro.) and 4. and (c), 726.05 (3) (intro.) and (a) 3. and 4. (intro.), a., c., e., f. and g., 726.05 (4) (intro.), chapter NR 726 Appendix A (intro.) and chapter NR 726 Table 1 (28m), 726.05 (2) (b) 6. and (3) (b) 4. and 726.05 (10), relating to the use of deed restrictions and deed notices for the closure of environmental remediation cases, and the implementation of a geographic information system registry of closed remediation sites for properties with residual soil contamination that exceeds, at the time of case closure, generic or site-specific residual contaminant levels as determined under ch. NR 720.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

11-12-01 RECEIVED BY LEGISLATIVE COUNCIL.

12-07-01 REPORT SENT TO AGENCY.

RS:MCP;jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

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CLEARINGHOUSE RULE 01-129

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. NR 726.05 (2) (a) 2. (intro.) and 3. (intro.), the phrase “are required to” should be replaced by the word “shall.”

b. In s. NR 726.05 (2) (am), the acronym “GIS” either should be defined or spelled out. [For example, see s. NR 726.05 (2) (a). See also the use of the acronym “USGS” in s. NR 726.05 (3) (b) 4. a.]

c. In SECTION 9, the notation “(intro.)” should be inserted prior to the word “After.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section NR 726.05 (2) (a) 2. d. refers to software and information that is available on the Internet. Section NR 726.05 (2) (a) 3. (intro.) and other provisions in the rule refer to “generic” contaminant levels under ch. NR 720. These statements do not appear to provide sufficiently specific information for the responsible party to comply with the rule.

b. Section NR 726.05 (8) (c) refers to the Department of Natural Resources and the Department of Commerce. Should this provision also refer to the Department of Agriculture, Trade and Consumer Protection?

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 726 and NR 749

Subject

Changes to NR 726, Case Closure for Deed Restrictions and Soil GIS Registry and NR 749, Fees for Providing Assistance

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

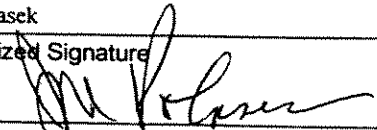
Affected Chapter 20 Appropriations
 20.370 2 (dh)

Assumptions Used in Arriving at Fiscal Estimate

The rule package proposes a change in the NR 749 fee schedule to enable the Department to recover costs in maintaining the soil GIS registry. The fee is \$200 per site added to the registry. It is estimated that 500 sites per year will be closed with residual soil contamination and will therefore be required to participate in the soil GIS registry. The \$200 per site times the 500 estimated sites will result in an increased revenue of \$100,000.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 04-04-02

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 726 and NR 749

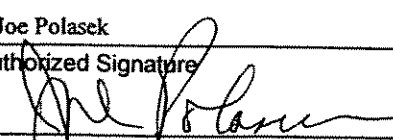
Subject
 Changes to NR 726, Case Closure for Deed Restrictions and Soil GIS Registry and NR 749, Fees for Providing Assistance

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ -	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs		-	-
Local Assistance		-	-
Aids to Individuals or Organizations		-	-
Total State Costs by Category		\$ -	\$ -
B. State Costs by Source of Funds			
GPR		\$ -	\$ -
FED		-	-
PRO/PRS		-	-
SEG/SEG-S		-	-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ -	\$ -
GPR Earned		-	-
FED		-	-
PRO/PRS		100,000	-
SEG/SEG-S		-	-
Total State Revenues		\$ -	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ -	\$ -
Net Change in Revenues	\$ 100,000	\$ -

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	04-04-02

H