

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-090

### 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 Appendix A to ch. NR 716, sub. (2) (d) 2., “groundwater water” is redundant. Can “groundwater” be deleted?
- b. The use of “Commerce” to denote a state agency is awkward drafting style. It is suggested that the definition of “Commerce” be deleted and that the term be replaced by “the department of commerce” throughout the rule.
- c. The definition of “utility corridor” in s. NR 746.03 is unnecessary. The rule defines that term in s. 700.03 (66m), and that definition applies to chs. 700 to 750.
- d. Section NR 746.05 (4) refers to a responsible person or an agent of the responsible person. If an agent is to be authorized generally to act on behalf of a responsible person, that should be established in a provision that applies to the entire chapter or in the definition of “responsible person.” (Also, the phrase should be “responsible person or his or her agent” rather than “their agent.”)
- e. The cross-references in s. NR 746.08 (1) are surplusage and should be deleted. **Who** makes the determination under this subsection as to how the site is classified? How does this provision relate to s. NR 746.04?

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

a. The note after s. NR 726.05 (2) (b) 3. refers to a “preventive action limit exception.” This phrase is used at several other places in the rule. Does this refer to the procedure in s. NR 140.28?

b. The title of ch. NR 746 describes only a portion of the contents of the chapter. The majority of the chapter relates to site investigation, risk screening and site closure, which do not relate to “interagency” responsibilities.

c. In s. NR 746.03 (9) and (10), should the defined terms be hyphenated for consistency with sub. (7)?

d. Section NR 746.05 (4) (b). A release of petroleum product is referred to in s. 746.03 (18) as being “more than 10 years old.” The term “release” is defined as the “original discharge to the environment.” The phrase in s. NR 746.05 (4) (b) would fit better with this definition by rephrasing it as “the release . . . occurred more than 10 years ago.” This phrase occurs at several other places in the rule. Also, “decision making” should be hyphenated.

e. Section NR 746.06 (1). The rule provides that risk criteria “shall be used to determine” the need for remedial action. Who makes this determination? “The second shall be” should be replaced by “is.” “Could” should be replaced by “may” and “but is not limited to” should be deleted. It is not clear how the examples in the second half of this subsection relate to determining whether a remedial action is required.

f. Section NR 746.06 (2) (intro.). This provision relates to “decisions . . . for identifying sites that are eligible for closure.” However, sub. (1) relates to determining whether remedial action is required. Also, the connection between this provision and the cross-referenced provision of s. NR 746.07 is unclear.

g. Section NR 746.06 (2) (a). The need for “documented” and “verified” is unclear. It seems obvious that the department can reject undocumented or unverified information.

h. Section NR 746.06 (2) (d). “Approved” should be replaced by “identified.”

i. Section NR 746.07. This section contains too much material. At a minimum, the subsections should be drafted as sections of the rule. The title includes “approval,” but there is little if anything in this section regarding approval of remedial actions.

j. Section NR 746.07 (1) (intro.). This provision relates to site closure decisions and sets forth certain criteria for making those decisions. However, the term “site closure” is defined in s. NR 746.03 (23) as a determination made pursuant to ch. NR 726. The relationship between ch. NR 726 and s. NR 746.07 should be clarified.

k. Section NR 746.07 (1) (a) (intro.). This provision uses site conditions to determine closure eligibility, and also raises a question regarding the relationship of this provision to ch.

NR 726. Most of ch. NR 726 relates to actions required by the department and the owner, rather than to site conditions.

l. Section NR 746.07 (1) (a) 1. “Have been satisfied” suggests that the owner must do something to satisfy risk screening criteria. If risk screening criteria relate to the site condition, it should be redrafted as “the site meets all of the risk screening criteria in s. NR 746.06 (2).” This comment also applies to s. NR 746.07 (1) (b) 1., (c) 1. and (d) 1.

m. Section NR 746.07 (1) (a) 2. The cross-reference to ch. NR 726 should be sufficient; the material after “including” is part of ch. NR 726 and need not be restated. If there is some need to call particular attention to this, it may be done in a note.

n. Section NR 746.07 (1) (b) (intro.). The sentence should begin: “A site that has . . . .” This comment applies to sub. (2) (b) (intro.) also.

o. Section NR 746.07 (1) (b) 2. The material after “including” appears to create a variation on the corresponding requirement of ch. NR 726. If so, this can be stated more clearly.

p. Section NR 746.07 (2). Apparently, the only difference between this subsection and sub. (1) is the few words in the introductory paragraph. There does not appear to be any reason to have separate subsections. Section NR 746.07 (2) could be replaced by a brief provision stating that closure decisions after remedial action are also to be made based on the requirements of s. NR 746.07 (1).

q. Section NR 746.07 (5). The title refers to remediation funding, but only par. (c) relates to funding. A more descriptive title should be used.

r. Section NR 746.07 (5) (a). It is very difficult to understand the purpose of this paragraph. The context of sub. (5) suggests that these provisions apply to sites where the owner does not record deed restrictions or deed notices. If this is the purpose of this subsection, or if the subsection has any other purpose, it should be more clearly stated.

s. Section NR 746.07 (5) (b). This relates to the same subject as a number of other provisions of the rule and of current rules. For example, s. NR 746.07 (1) establishes when a site may be closed without remedial action and s. NR 726.09 allows closed cases to be reopened. The connections between these provisions should be clearly established. Also, this paragraph should be clarified to state when the department may make a decision to require additional remedial action. The word “such” should be replaced by a reference to par. (a), if that is the intent.

t. Section NR 746.07 (6). This subsection refers to the tracking of remediation progress. However, ch. NR 746 generally does not apply to remediation, other than natural attenuation. This provision refers to “remediation that has been conducted” and suggests that it refers to active types of remediation. This provision should be clarified to indicate its intent.

u. In s. NR 746.08 (2), if the site investigation report identifies a site as medium- or low-risk site and, pursuant to this provision, the report is submitted directly to the Department of

Commerce, how can the Department of Natural Resources “transfer the site file” to the Department of Commerce? See also s. NR 746.08 (3).