

CR 86-120

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

File Ref:

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy 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-40-86 was duly approved and adopted by this Department on November 20, 1986. 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 here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 27th
day of March, 1987.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

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APR 1 1987
1:45 pm
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6-1-87

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD CREATING RULES

.....
IN THE MATTER of creating ch. NR 551 .
of the Wisconsin Administrative Code .
pertaining to abandoned container .
response .
.....

SW-40-86

Analysis Prepared by The Department of Natural Resources

These rules are promulgated under the authority of ss. 144.77(3) and 227.11(2)(a), Stats., and interpret s. 144.77, Stats.

The creation of ch. NR 551, Wis. Adm. Code, will allow the department to eliminate or reduce the dangers to public health or welfare, or the environment posed by abandoned containers of hazardous substances.

Chapter NR 551 provides the framework for development and amendment of an abandoned container contingency plan. The plan will provide procedures regarding investigation, removal, and disposal of abandoned containers. In most cases, the department becomes aware of abandoned containers from public tips that drums of unknown material have been abandoned in an area without the consent of the property owner, on public property, or into or adjacent to surface water. When a significant environmental release of a hazardous substance occurs, the spill response plan (Chapter NR 158) provides guidance for department response.

Chapter NR 551 has not been prepared using the format of any federal regulation and does not rely on the authority found in s. 227.14(1m), Stats., as affected by 1985 Wisconsin Act 182.

SECTION 1. Chapter NR 551 is created to read:

CHAPTER NR 551
ABANDONED CONTAINER RESPONSE

NR 551.01 PURPOSE. The purpose of this chapter is to establish criteria and procedures for developing, establishing and amending a contingency plan to respond to abandoned containers of hazardous substances.

NR 551.02 APPLICABILITY. This chapter is applicable to department response to abandoned containers of hazardous substances, except for removal of buried containers since this work is beyond the scope of abandoned container response work. Chapters NR 158 and 550 are applicable to response work involving buried containers.

NR 551.03 DEFINITIONS. (1) "Abandoned container" has the meaning found in s. 144.77(1), Stats.: "any container which contains a hazardous substance and is not being monitored and maintained."

(2) "Container" means any vessel, tank, bag, box, carton, barrel or drum, which holds or encloses an actual or suspected hazardous substance.

(3) "Department" means the department of natural resources.

(4) "Hazardous substance" has the meaning found in s. 144.01(4m), Stats.: "any substance or combination of substances including any waste of a solid, semi-solid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department."

(5) "Local government" includes municipal police and fire departments, municipal public health agencies, county offices of emergency government, county sheriffs, and emergency medical services.

NR 551.04 CONTINGENCY PLAN DEVELOPMENT. The department shall develop a contingency plan for responding to abandoned containers. The contingency plan shall include guidance on actions to locate, secure, sample, analyze, remove, and dispose of abandoned containers of hazardous substances.

NR 551.05 CONTINGENCY PLAN AMENDMENT AND REVIEW. The contingency plan shall be amended when necessary to improve response to abandoned containers of hazardous substances. At a minimum, the plan shall be reviewed by the department at least once every 4 years. The department shall maintain records regarding actions taken in response to abandoned containers and these records shall be taken into account in reviewing the contingency plan.

NR 551.06 CONTINGENCY PLAN ELEMENTS. The contingency plan shall include the following:

- (1) Safety measures;
- (2) Site access;
- (3) Site investigation and sampling;
- (4) Hazardous substance analysis;
- (5) Transportation of waste; and
- (6) Disposal of waste.

NR 551.07 CRITERIA FOR ABANDONED CONTAINER RESPONSE.

(1) Factors to be considered when evaluating a potential abandoned container request are as follows:

- (a) Quantity, toxicity, and environmental mobility of the hazardous substance;

(b) Location of the container and any special threats it presents to public health, safety or the environment;

(c) Estimated cost of response;

(d) Identity of the generator or owner of the abandoned containers; and

(e) Violation of state environmental protection laws, and department authority to issue an administrative order to a responsible party.

(2) Criteria for evaluating abandoned container requests:

(a) Except in emergency situations where a hazardous substance poses an imminent threat to public health, safety or the environment, abandoned container requests may not be approved when the responsible party is known and has the financial resources to respond to the problem; and

(b) Costs versus potential risks shall be considered when evaluating abandoned container responses in cases where public health, safety or environmental risk is low.

NR 551.08 EVALUATION OF DISPOSAL OPTIONS. (1) The department shall evaluate disposal options for hazardous waste disposal. Primary options, listed in order of preference, are:

(a) Reclamation or recycling;

(b) Waste treatment which renders a substance nonhazardous prior to disposal;

(c) Incineration; and

(d) Land disposal.

(2) If land disposal is the preferred option, the department shall evaluate any disposal site selected by a contractor to determine, on the basis of available information, if the facility complies with current state and federal regulations.

NR 551.09 COST RECOVERY. (1) The department is entitled, under the provisions of s. 144.77(6)(c), Stats., to recover monies expended by the department, to contain, remove or dispose of abandoned containers of hazardous substances, or to take any other emergency action under s. 144.77, Stats., from any persons who caused the containers to be abandoned or are responsible for the containers.

(2) If the persons who caused the containers to be abandoned or are responsible for the containers are identified after a state funded response is complete, the department may act to recover costs.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on November 20, 1986.

The rules shall take effect as provided in s. 227.22(2)(intro.), Stats.

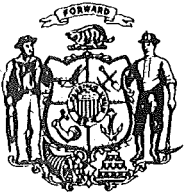
Dated at Madison, Wisconsin March 27, 1987

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By Carroll D. Besadny
Carroll D. Besadny, Secretary

6873V



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

March 30, 1987

File Ref: 1020

Mr. Orlan L. Prestegard
Revisor of Statutes
Suite 904
30 W. Mifflin Street

RECEIVED

APR 1 1987

Revisor of Statutes
Bureau

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. SW-40-86. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Energy, Environmental Resources and Utilities pursuant to s. 227.19, Stats. A summary of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

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

Sincerely,


C. D. Besadny
Secretary

Enc.