

Chapter NR 712

PERSONNEL QUALIFICATIONS FOR CONDUCTING ENVIRONMENTAL RESPONSE ACTIONS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 712.01 Purpose. This chapter establishes minimum standards for experience and professional qualifications for persons who perform and provide certain services or scientific evaluations associated with specified environmental response actions. This chapter is adopted pursuant to s. 227.11 (2) and ch. 292, Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am., Register, February, 1995, No. 482, eff. 3-1-96; CR 12-023; am. Register October 2013 No. 694, eff. 11-1-13.

NR 712.02 Applicability. (1) Except as provided in s. NR 712.11, this chapter applies to work performed by environmental consultants hired by the department under the authority of s. 292.11 or 292.31, Stats.

(2) Except as provided in 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, including the preparation of phase I or phase II environmental site assessments.

(3) Except as provided in 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 chs. NR 700 to 754 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.

Note: Responsible parties who take an immediate action or interim action that does not involve the construction or operation of on-site treatment or an engineering control, as specified in s. NR 708.11 (4), are not required to hire personnel who meet the qualifications in this chapter, except that sampling and field work that is being done in conjunction with the immediate or interim action must comply with the requirements of this chapter.

(4) The department may exercise enforcement discretion on a case-by-case basis and choose to regulate a site, facility, or a portion of a site or facility under only one of a number of potentially applicable statutory authorities. However, where overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, upon receipt of a written request and appropriate ch. NR 749 fee from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ch. 289, Stats., or the hazardous waste management act, ch. 291, Stats., and the administrative rules adopted pursuant to those statutes. In addition, federal authorities such as CERCLA, RCRA, or TSCA may also apply to a site or facility or portions of a site or facility. One portion of a site or facility may be regulated under a different statutory authority than other portions of that site or facility.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am. (3), Register, February, 1996, No. 482, eff. 3-1-96; CR 12-023; am. (2) to (4) Register October 2013 No. 694, eff. 11-1-13.

NR 712.03 Definitions. In this chapter:

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(1) "Hydrogeologist" means a person who is licensed as a hydrogeologist or registered as a geologist with the department of safety and professional services, and is a graduate of an accredited institution of higher education and who has successfully completed 30 semester hours or 45 quarter hours of course work in geology. At least 6 semester hours or 9 quarter hours of the geology course work shall be hydrogeology, geohydrology or groundwater geology. This person shall also have acquired, through education and field experience, the ability to direct the drilling of borings and the installation and development of wells, describe and classify geologic samples, and evaluate and interpret geologic and hydrogeologic data.

Note: The term registered geologist means a Professional Geologist that has been licensed in accordance with the provisions in ch. GHSS 2, Wis. Adm. Code and the term licensed hydrogeologist means a Professional Hydrogeologist that has been licensed in accordance with the provisions in ch. GHSS 3, Wis. Adm. Code.

(2) "Professional engineer" means an engineer registered with the department of safety and professional services.

(3) "Scientist" means a person who is a graduate of an accredited institution of higher education and who has successfully completed the necessary credit hours to receive a degree in a field of scientific expertise applicable to environmental response actions, including, but not limited to, geology, chemistry, agronomy, crops and soils, soil science, toxicology and biology.

(4) "Supervised field experience" means experience collecting samples of air, soil, water or other media completed with guidance from, and oversight by, a person who meets the requirements of s. NR 712.05 (2).

(5) "Supervision" means personal, active oversight and control of the preparation of submittals.

Note: Supervision of field personnel may be by telephone or other form of remote communication, unless otherwise specified in this chapter.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; corrections in (1), (2) made under s. 13.92 (4) (b) 6., 7., Stats., Register February 2012 No. 674; CR 12-023; am. (1) Register October 2013 No. 694, eff. 11-1-13.

NR 712.05 Sampling and field work requirements.

(1) GENERAL. All sampling, field work and development of plans for field activities for response actions being taken to satisfy the requirements of ss. NR 708.09 to 708.15 or chs. NR 716 to 754 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.

(2) SAMPLING FOR IMMEDIATE AND INTERIM ACTIONS NOT INVOLVING TREATMENT OR ENGINEERING CONTROLS. For immediate actions and interim actions that do not involve treatment or engineering controls, samples of air, soil, water or other media for field measurement or analytical laboratory analysis are not required to be collected under the supervision of a professional engineer, hydrogeologist or scientist, but shall be collected by one of the following, unless the sampling is exempt under s. NR 712.11 (2):

(a) A graduate of a vocational or technical school with course work in science or engineering who has 40 hours of supervised field experience; or

(b) Any person who has all of the following:

1. 40 hours of training in collecting, preserving, filtering and transporting environmental samples and decontaminating sampling equipment that meets the requirements of sub. (4) (a).

2. 80 hours of supervised field experience that meets the requirements of sub. (4) (a).

3. A letter or certificate that meets the requirements of sub. (4) (b).

(3) SAMPLING FOR INTERIM ACTIONS INVOLVING TREATMENT OR ENGINEERING CONTROLS AND REMEDIAL ACTIONS. For remedial actions and interim actions that involve treatment or engineering controls, samples of air, soil, water or other media for field measurements or analytical laboratory analysis shall be collected by a professional engineer, hydrogeologist, scientist or any one of the following working under the supervision of a professional engineer, hydrogeologist or scientist, unless the sampling is exempt under s. NR 712.11 (2):

(a) A graduate of a vocational or technical school with course work in science or engineering who has 40 hours of supervised field experience; or

(b) Any other person who has all of the following:

1. 40 hours of training in collecting, preserving, filtering and transporting environmental samples and decontaminating sampling equipment that meets the requirements of sub. (4) (a).

2. 80 hours of supervised field experience that meets the requirements of sub. (4) (a).

3. A letter or certificate that meets the requirements of sub. (4) (b).

(4) TRAINING AND EXPERIENCE. (a) Training and supervised field experience required by subs. (2) and (3) shall include sampling methods for all media that a person is expected to sample in the course of his or her employment.

(b) A letter or certificate documenting the supervised field experience and training shall be signed and dated by the person conducting the training. The person conducting the training must meet the qualifications specified in sub. (2). The letter or certificate shall be kept on file with the employer. Documentation of supervised field experience and training shall be provided to the department upon request.

(5) SOIL BORING LOGS. (a) The written descriptions of soil and rock on soil boring logs shall be prepared by a graduate of an accredited institution of higher education with a major in an appropriate science or engineering specialty. This person shall have acquired, through education and actual field experience, the ability to direct the drilling of borings, classify geologic samples and evaluate and interpret geologic and hydrogeologic data. The following academic disciplines are considered appropriate science specialties for preparers of soil boring logs: earth sciences, geochemistry, geology, geophysics, hydrogeology and soil science. The following engineering majors are considered appropriate engineering specialties for preparers of soil boring logs: environmental, civil, geological, geotechnical, mining, mineral, petroleum, agricultural and geophysical.

(b) The logs shall be developed in accordance with the requirements of ch. NR 141 and shall be signed by the person that developed the written description in the boring logs of the soil and rock.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; CR 12-023: am. (1) Register October 2013 No. 694, eff. 11-1-13.

NR 712.07 Requirements for submittal preparation.

(1) Submittals that are prepared to satisfy the requirements of s. NR 708.11 (4) or 708.13 or chs. NR 716 to 754, 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 s. NR 712.11. All phases of work necessary to obtain data, develop conclusions, recommendations and prepare submittals shall be con-

ducted or supervised by the professional engineer, hydrogeologist, or scientist.

Note: The department recommends that at a minimum, ASTM standards be followed when conducting Phase I and Phase II environmental site assessments. EPA's requirements contained in 40 CFR Part 312 must be followed in order to be eligible for the liability protections contained in CERCLA.

(2) Submittals prepared to satisfy the requirements of ch. NR 722 or 724 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 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.

Note: This chapter is not intended to authorize the practice of professional engineering in violation of ch. 443, Stats.

(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.

(5) Submittals addressing any media other than groundwater, which are prepared to satisfy the requirements of ch. NR 716 or 720, shall be prepared by or under the supervision of a professional engineer, a hydrogeologist or a scientist.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am. (5), Register, March, 1995, No. 471, eff. 5-1-95; am. (2) and (3), Register, April, 1995, No. 472, eff. 5-1-95; CR 12-023: am. (1) Register October 2013 No. 694, eff. 11-1-13.

NR 712.09 Submittal certification. **(1)** Submittals prepared by, or under the supervision of, a professional engineer, a hydrogeologist or a scientist shall be dated and certified by the professional engineer, hydrogeologist or scientist using the appropriate certification set forth in sub. (3). The responsibility for signing the certification may not be delegated to others.

(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. Conclusions and recommendations in the submittal shall represent the certifier's best professional opinions and judgments.

(3) The appropriate certification in pars. (a) to (c) shall be attached to all submittals to the department to demonstrate that the requirements of s. NR 712.07 have been met.

(a) The following certification shall be attached to any submittal that is required to be prepared by, or under the supervision of, a professional engineer under s. NR 712.07 (2), (3) or (5):

"I, _____, hereby certify that I am a registered professional engineer in the State of Wisconsin, registered in accordance with the requirements of ch. A-E 4, Wis. Adm. Code; that this document has been prepared in accordance with the Rules of Professional Conduct in ch. A-E 8, Wis. Adm. Code; and that, to the best of my knowledge, all information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code."

Signature, title and P.E. number

P.E. stamp

(b) The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified hydrogeologist under s. NR 712.07 (2), (4) or (5):

"I, _____, hereby certify that I am a hydrogeologist as that term is defined in s. NR 712.03 (1), Wis. Adm. Code, am registered in accordance with the requirements of ch. GHSS 2, Wis. Adm. Code, or licensed in accordance with the requirements of ch. GHSS 3, Wis. Adm. Code, and that,

to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code.”

Signature and title

Date

(c) The following certification shall be attached to any submittal that is required to be prepared or to have its preparation supervised by a certified scientist under s. NR 712.07 (5):

“I, _____, hereby certify that I am a scientist as that term is defined in s. NR 712.03 (3), Wis. Adm. Code, and that, to the best of my knowledge, all of the information contained in this document is correct and the document was prepared in compliance with all applicable requirements in chs. NR 700 to 726, Wis. Adm. Code.”

Signature and title

Date

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; CR 12-023: am. (2), (3) (b) Register October 2013 No. 694, eff. 11-1-13.

NR 712.11 Exemptions. (1) GENERAL. The following submittals are exempt from the requirements of this chapter:

(a) Submittals related to research projects prepared by, or under the supervision of, employees of state or federal educational or research institutions who have the training, but not the experience, registration or education needed to be a professional engineer, hydrogeologist or scientist. This exemption applies only to persons preparing or supervising the preparation of a submittal pursuant to s. NR 712.07, not to field personnel covered under s. NR 712.05.

(b) Analytical laboratory reports prepared by laboratories that are certified or registered under ch. NR 149 or the U.S. EPA contract laboratory program.

(c) Plans or specifications for air emission treatment devices that are submitted to the department’s bureau of air management for approval.

(d) Plans or specifications submitted to the department’s bureau of water quality for approval of lagoon or treatment system abandonment.

(e) Plans and specifications submitted to the department to meet the requirements of ch. NR 108.

Note: Section NR 108.04 (2) (c) requires the final plans and specifications for wastewater treatment devices to be submitted under the signature and the seal of a professional engineer.

(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 chs. NR 700 to 754.

(g) Plans for the landspreading of soil contaminated only with fertilizers or regulated pesticides.

(2) SAMPLING. (a) Sampling that is conducted in compliance with all of the following conditions is exempt from the requirements of s. NR 712.05 (1) to (3), except as provided in par. (b):

1. The sampling is conducted by responsible parties or by an employee of the responsible parties in compliance with all of the requirements of chs. NR 700 to 726, except s. NR 712.05 (1) to (4).

2. The sampling is conducted by responsible parties or by an employee of the responsible parties in accordance with all applicable sampling protocols established by the department. A description of sampling and sample preservation methods shall be provided to the department by the responsible parties at the time that the sampling results are submitted.

3. A statement is included in the submittals that describes the education, training and experience that qualifies the person who collected the samples to take samples without meeting the requirements of s. NR 712.05 (2).

(b) The department may reject 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, 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 any sampling results, the department shall provide the responsible parties with specific reasons for the rejection in writing. The responsible parties shall hire a 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.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-95; am. (1) (f), Register, February, 1997, No. 494, eff. 3-1-97; correction in (1) (f) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; correction in (1) (f) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12-023: am. (1) (d), (f), (2) (b) Register October 2013 No. 694, eff. 11-1-13; corrections in (1) (f) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 no. 694.