

Table 5

Range of Responses for Exceedance of a Preventive Action Limit for Indicator Parameters and Substances of Health or Welfare Concern

1. No action pursuant to s. NR 140.24 (5) and consistent with s. 160.23, Stats.
2. Sample wells or require sampling of wells.
3. Require a change in the monitoring program, including increased monitoring.
4. Require an investigation of the extent of groundwater contamination.
5. Require a revision of the operational procedures at the facility, practice or activity.
6. Require a change in the design or construction of the facility, practice or activity.
7. Require an alternate method of waste treatment or disposal.
8. Require prohibition or closure and abandonment of a facility, practice or activity in accordance with sub. (6).
9. Require remedial action to renovate or restore groundwater quality.
10. Revise rules or criteria on facility design, location or management practices.

(5) The department may determine that no response is necessary when:

(a) The concentration of a substance within a design management zone is detected above the preventive action limit, the enforcement standard has not been attained or exceeded within the design management zone, and the department determines that there is no indication that the preventive action limit will be attained or exceeded at any point outside the design management zone, or

(b) The background concentration of a substance is greater than the preventive action limit, the anticipated or detected incremental increase in the concentration of a substance which results from a specific facility, practice or activity is not greater than the preventive action limit, and the anticipated or detected concentration is not greater than the enforcement standard either within or outside of the design management zone.

(6) The department may not impose a prohibition on a practice or activity or require closure of a facility which produces the substance unless the department:

(a) Bases its decision upon reliable test data;

(b) Determines, to a reasonable certainty, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard at the point of standards application;

(c) Establishes the basis for the boundary and duration of the prohibition; and

(d) Ensures that any prohibition imposed shall be reasonably related in time and scope to maintaining compliance with the enforcement standard at the point of standards application.

(7) The department may take any actions within the context of regulatory programs established in statutes or rules outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or nonconsumptive uses, whether or not an enforcement standard and preventive action limit for a sub-

stance have been adopted under this chapter. Nothing in this chapter authorizes an impact on groundwater quality which would cause surface water quality standards contained in chs. NR 102 to 104 to be attained or exceeded.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (5) (intro.) and (6) (intro.), Register, October, 1988, No. 394, eff. 11-1-88.

NR 140.26 Responses when an enforcement standard is attained or exceeded. (1) If the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application:

(a) The owner or operator of the facility, practice or activity shall notify the department in writing when monitoring data is submitted that an enforcement standard has been attained or exceeded in accordance with applicable statutes, rules, permit or plan approval. Where no deadlines are imposed, the owner or operator shall notify the department as soon as practical after the results are received. The notification shall provide a preliminary analysis of the cause and significance of the concentration.

(b) Upon receipt of the notice under par. (a), the department shall evaluate the information and, if further information is required to make the assessment under par. (c), may direct the owner or operator to prepare and submit a report by a specified deadline. The report shall assess the cause and significance of the increased concentration based on a consideration of the factors identified in s. NR 140.24 (1) (c) and shall propose a response to achieve compliance with the enforcement standard at the point of standards application and to comply with sub. (5).

(c) The department shall assess the cause and significance of the concentration of the substance in determining the appropriate response measures to achieve compliance with the enforcement standard at the point of standards application and to comply with sub. (5). In addition to all other relevant information, the department shall consider the information submitted under sub. (1) and the factors listed in s. NR 140.24 (1) (c), where applicable.

(2) Based on the evaluation of the increased concentration as outlined in sub. (1), the department shall require responses as necessary to achieve compliance with the enforcement standard at the point of standards application and to comply with sub. (5). The range of responses which the department may take or require if an enforcement standard for a substance of public health or welfare concern has been attained or exceeded at a point of standards application are listed in Table 6. More than one response may be required by the department. In addition, the department may require one or more responses from Table 5, except number one.

Table 6

Range of Responses for Exceedance of Enforcement Standards for Substances of Health or Welfare Concern

1. Require a revision of the operational procedures at a facility, practice or activity.
2. Require a change in the design or construction of the facility, practice or activity.
3. Require an alternate method of waste treatment or disposal.
4. Require prohibition or closure and abandonment of a facility, practice or activity.
5. Require remedial action to renovate or restore groundwater quality.
6. Revise rules or criteria on facility design, location or management practices.

(3) If an activity or practice is not subject to regulation under subch. IV of ch. 144 or 147, Stats., and if the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application, the department shall take the following responses unless it can be shown to the department that, to a reasonable certainty, by the greater weight of the credible evidence, an alternative response will achieve compliance with the enforcement standard at the point of standards application:

(a) Prohibit the activity or practice which uses or produces the substance; and

(b) Require remedial actions with respect to the specific site in accordance with this chapter.

(4) If nitrates or any substance of welfare concern only attains or exceeds an enforcement standard, the department is not required to impose a prohibition or close a facility if it determines that:

(a) The enforcement standard was attained or exceeded, in whole or in part, because of high background concentrations of the substance; and

(b) The additional concentration does not represent a public welfare concern.

(5) When compliance with the enforcement standard is achieved at the point of standards application, s. NR 140.24 applies.

(6) The department may take any actions within the context of regulatory programs established in statutes or rules outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or nonconsumptive uses, whether or not an enforcement standard and preventive action limit for a substance have been adopted under this chapter. Nothing in this chapter authorizes an impact on groundwater quality which would cause surface water quality standards contained in chs. NR 102 to 104 to be attained or exceeded.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85.

NR 140.27 Responses when an enforcement standard is attained or exceeded at a location other than a point of standards application. If the concentration of a substance in groundwater attains or exceeds an enforcement standard at a location other than a point of standards application for an enforcement standard, s. NR 140.24 shall apply.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

Register, January, 1990, No. 409

NR 140.28 Exemptions. (1) EXEMPTIONS REQUIRED. (a) The department may not approve a proposed facility, practice or activity at a location where a preventive action limit or enforcement standard adopted under s. NR 140.10 or 140.12 has been attained or exceeded unless an exemption has been granted under this section.

(b) Remedial action is required under s. NR 140.24 or 140.26 when a preventive action limit or an enforcement standard has been attained or exceeded at a point of standards application unless an exemption has been granted under this section.

(2) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS BELOW THE PREVENTIVE ACTION LIMIT. The department may grant an exemption under this section when a preventive action limit is attained or exceeded if it determines that:

(a) The measured or anticipated increase in the concentration of the substance will be minimized to the extent technically and economically feasible;

(b) Compliance with the preventive action limit is either not technically or economically feasible;

(c) The enforcement standard for that substance will not be attained or exceeded at the point of standards application; and

(d) Any existing or projected increase in the concentration of the substance above the background concentration does not present a threat to public health or welfare.

(3) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS ABOVE A PREVENTIVE ACTION LIMIT. (a) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of nitrate or a substance of public welfare concern attains or exceeds the preventive action limit if the facility, practice or activity is designed to achieve the lowest possible concentration for that substance which is technically and economically feasible and the existing or anticipated increase in the concentration of the substance does not present a threat to public health or welfare.

(b) The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of a substance of public health concern, other than nitrate, attains or exceeds a preventive action limit for that substance:

1. If the facility, practice or activity has not caused and will not cause the further release of that substance into the environment; or

2. If the background concentration of the substance does not exceed the enforcement standard for that substance, the facility, practice or activity has not caused and will not cause the concentration of the substance to exceed the enforcement standard for that substance at a point of standards application and the facility, practice or activity is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible.

(4) CRITERIA FOR GRANTING EXEMPTIONS WHERE THE BACKGROUND CONCENTRATION IS ABOVE AN ENFORCEMENT STANDARD. (a) The depart-

ment may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of nitrate or a substance of public welfare concern attains or exceeds an enforcement standard if the facility, practice or activity is designed to achieve the lowest possible concentration for that substance which is technically and economically feasible and the existing or anticipated increase in the concentration of the substance does not present a threat to public health or welfare.

(b) 1. The department may grant an exemption under this section to a facility, practice or activity which is regulated by the department in an area where the background concentration of a substance of public health concern, other than nitrate, attains or exceeds the enforcement standard for that substance if:

a. The facility has not caused and will not cause the further release of that substance into the environment; or

b. 1) The facility is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible; and

2) The existing or anticipated increase in the concentration of the substance has not caused or will not cause an increased threat to public health or welfare; and

3) The existing or anticipated incremental increase in the concentration of the substance by itself, has not exceeded or will not exceed the preventive action limit.

2. The department shall take action under s. NR 140.26 if it determines that the increase in the concentration of the substance causes an increased threat to public health or welfare or it determines that the incremental increase in the concentration of the substance, by itself, exceeds the preventive action limit.

(5) EXEMPTION PROCEDURES. If the department grants an exemption for a substance it shall specify:

(a) The substance to which the exemption applies;

(b) The terms and conditions of the exemption, which may include an alternative concentration limit, under which the department may seek remedial action under s. NR 140.24 or 140.26 relating to the substance; and

(c) Any other conditions relating to the exemption.

History: Cr. Register, September, 1985, No. 357, eff. 10-1-85; am. (1) (a) and (b), (3) (a), (b) (intro.) and 2., (4) (a) and (b) 1. and (5) (b), Register, October, 1988, No. 394, eff. 11-1-88.