

Chapter NR 714

PUBLIC INFORMATION AND PARTICIPATION

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NR 714.01 Purpose. The purpose of this chapter is to identify required public participation and public information activities for response actions undertaken pursuant to chs. NR 700 to 726. Nothing in this chapter shall be construed to prevent the department or responsible parties from providing additional means for public information and participation consistent with the provisions of this chapter. This chapter contains public participation requirements mandated for environmental repair sites or facilities in s. 144.442, Stats., and for leaking underground storage tanks in 40 CFR part 280. This chapter is adopted pursuant to ss. 144.431 (1) (a) and (b), 144.442, 144.76, 144.765, 144.77 and 227.11 (2), Stats.

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: 40 CFR ss. 280.67 (a) to (d).

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am., Register, February, 1996, No. 482, eff. 3-1-96.

NR 714.02 Applicability. This chapter applies to response actions taken under the authority of s. 144.442, 144.76 or 144.765, Stats.

Note: Persons who wish to conduct response actions that will meet the requirements of CERCLA and the National Contingency Plan (NCP) may request that the department enter into a contract with them pursuant to s. 144.442, Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 728 in order to satisfy CERCLA and the NCP.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am., Register, February, 1996, No. 482, eff. 3-1-96.

NR 714.03 Definitions. In this chapter:

(1) "Contested case" has the meaning specified in s. 227.01 (3), Stats. A contested case hearing is only conducted by the department in situations where state statutes allow an aggrieved party to request a hearing before an administrative law judge.

Note: Section 227.01 (3), Stats., defines "contested case" to mean "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order."

(2) "Noncontested case hearing" or "public informational hearing" means a statutorily required hearing conducted as specified in s. NR 2.135, in a matter that is not considered a contested case.

(3) "Public meeting" means a meeting held for general informational purposes which is not required by statute.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 714.05 Program-specific public participation requirements. (1) ENVIRONMENTAL REPAIR. The department shall conduct all of the following public participation activities, as required in s. 144.442, Stats., with respect to:

(a) *Inventory of sites or facilities which may cause or threaten to cause environmental pollution.* The inventory of sites or facilities which may cause or threaten to cause environmental pollution required by s. 144.442 (4) (a), Stats., and any amendments compiled in accordance with s. NR 710.17, shall be published as a class 1 notice under ch. 985, Stats.

Note: The department maintains a number of lists, in addition to the inventory of sites or facilities which may cause or threaten to cause environmental pollution required by s. 144.442 (4) (a), Stats. These lists are: a state-wide list of leaking underground storage tank sites (LUST); a historical list of reported hazardous substance discharge incidents (i.e., spill report); a list of Wisconsin Superfund sites on the NPL; the Wisconsin remedial response site evaluation report; hazard ranking list;

and the registry of waste disposal sites in Wisconsin. To obtain any of these lists, contact the Bureau of Solid and Hazardous Waste Management, Department of Natural Resources, Emergency and Remedial Response Section, Public Information Requests, P. O. Box 7921, Madison, WI 53707.

(b) *Hazard ranking list.* The hazard ranking list, which is compiled in accordance with s. NR 710.19, shall be published as a class 1 notice under ch. 985, Stats. The department shall hold a public informational hearing in accordance with the requirements of s. NR 2.135 on the hazard ranking list, and any amendments to the hazard ranking list, if a hearing is requested within 30 days after the notice is published. As provided in s. 144.442 (4) (c) 4., Stats., notwithstanding s. 227.42, Stats., the public informational hearing may not be converted to a contested case hearing. A public hearing notice shall be published by the department at least 10 days prior to the hearing.

(c) *Proposed remedial action options.* The department shall publish a public notice as a class 1 notice under ch. 985, Stats., upon selection of a proposed remedial action in accordance with ch. NR 722, for sites or facilities where a department-funded remedial action is proposed pursuant to s. 144.442 or 144.76, Stats., or both. The availability of the department's proposed remedial action for public review shall be included in the public notice, including the identification of a department contact person, and his or her phone number and mailing address.

(d) *Other.* The department shall be responsible for conducting or directing appropriate public participation activities for sites or facilities where a department-funded response action is to be conducted pursuant to s. 144.442 or 144.76, Stats., and where the department is overseeing response actions conducted by responsible parties under a contract signed pursuant to s. 144.442, Stats.

(2) LEAKING UNDERGROUND STORAGE TANKS. For all confirmed discharges from leaking underground storage tanks which require a site investigation under ch. NR 716, the department shall conduct, or require responsible parties to conduct, public participation activities which meet all of the following minimum requirements:

(a) Notice shall be provided to the public by means designed to reach those members of the public directly affected by the discharge of a hazardous substance and the implementation and operation of any proposed remedial action. Notice to the public may be provided by any of the following methods:

1. Public notice in local newspapers.
2. Block advertisements.
3. Public service announcements.
4. Publication in a state register.
5. Letters to individual households.
6. Personal contacts by department field staff or responsible parties.

(b) The department shall make available to the public for inspection upon request, in compliance with ss. NR 2.19 and 2.195, site or facility-specific information and decisions concerning response actions.

(c) Before approving of the proposed remedial action, the department may hold a public meeting to consider comments on the proposed remedial action if there is sufficient public interest, or for any other reason.

(d) The department shall notify the public using one of the methods in par. (a) if implementation of the selected remedial action does not comply with all applicable federal and state public health and environmental laws, and closure of the case is under consideration by the department.

Note: If the department is required to give public notice of a remedial action being considered for closure that does not comply with the applicable public health and environmental laws, the department is not required to conduct a noncontested case hearing.

(3) **SUPERFUND.** The department shall conduct appropriate public participation activities consistent with 40 CFR part 300, at sites or facilities on the national priorities list, unless U.S. EPA is conducting the public participation activities. The public participation activities shall include the posting of signs at the site or facility in accordance with s. NR 714.07 (3), either by the U.S. EPA, department or the potentially responsible parties.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1) (c), Register, April, 1995, No. 472, eff. 5-1-95.

NR 714.07 General public participation requirements. (1) **EVALUATION OF NEED FOR PUBLIC PARTICIPATION.** In order to promote effective and meaningful public participation, responsible parties shall conduct all necessary public participation activities, unless otherwise directed by the department. Responsible parties shall evaluate the need for and the level of public participation, based on the following criteria:

(a) *Threats.* Known or potential threats to public health, safety or welfare or the environment that may be reduced by providing information to the public.

(b) *Public concern.* Level of public concern about a specific site, facility or discharge or the number or status of sites, facilities or discharges which require a response action within a particular geographic area.

(c) *Additional information needed.* The need to contact the public in order to gather information about the response action, including immediate or interim actions.

(d) *Other.* Any other factors which may be relevant to a specific site, facility or discharge or to a group of sites, facilities or discharges.

(2) **NOTIFICATION.** If responsible parties or the department determine that public notification is necessary at a site or facility, responsible parties shall include, or the department may direct the responsible parties to include, the following information in publicly disseminated information or news releases:

(a) *Description.* A description of the contamination, including the type, volume and characteristics of the contamination.

(b) *Mitigation.* Response actions underway to contain, reduce or eliminate the threat of the contamination.

(c) *Contacts.* Phone number and address of persons to contact for more information.

(3) **POSTING OF SIGNS.** (a) Unless otherwise directed by the department, responsible parties shall post one or more department-issued signs in the following manner, when any of the following conditions are found at a site or facility:

1. At the edge of the excavated contaminated soil being stored on the site or facility.

2. The specific locations at the facility or site where contaminated media present a direct contact threat to humans.

Note: Responsible parties should consult s. NR 720.11, table 2, and the procedures established in s. NR 720.11 or the procedures established in s. NR 720.19 (5) for residual contaminant levels based on protection of human health from direct contact, to assist in determining when contaminated soil poses a direct contact or inhalation threat to the public.

3. At the entry locations of buildings or structures contaminated with hazardous substances or environmental pollution that pose or may pose a threat to public health, safety or welfare, and where the building or structure will be addressed by one of the response actions for the site or facility.

4. Any other site or facility where the department believes unacceptable human exposure to contaminants exists.

(b) The responsible parties shall add to the department-issued sign required in par. (a) all necessary information, including:

1. Name, address and phone number of the owner or operator of the site or facility or responsible parties.

2. Types of hazardous substances or environmental pollution on the property.

3. Department-issued identification number for the site or facility.

4. For signs posted at contaminated soil piles, the anticipated month, day and year of removal of the soil pile.

5. Any other information the department may request.

(c) Responsible parties shall place the signs at locations on the site or facility in accordance with par. (b), so that they shall be visible to the general public, unless the department specifies the location of the sign or signs. At least one sign shall be placed at the edge of contaminated soil storage piles.

(d) Unless otherwise directed by the department, signs required under this subsection shall be maintained and legible for the duration of the response action until the case is closed out in accordance with ch. NR 726, or until no further action is required by the department in accordance with s. NR 708.09.

(4) **REQUESTS FOR SITE OR FACILITY-SPECIFIC INFORMATION.** Interested persons may request, in writing, that the department keep them informed of the response actions being taken at a site or facility. The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:

(a) Site investigation workplans.

(b) Site investigation reports.

(c) Remedial action options reports.

(d) Department responses to requests for case closure in s. NR 726.07 (1) and final decisions on case closures in s. NR 726.07 (2).

(5) **PUBLIC NOTICE OF REMEDIAL ACTION.** Where a proposed action to address soil contamination includes a performance standard selected in accordance with s. NR 720.19 (2), responsible parties shall publish a public notice as a class I notice under ch. 985, Stats. This notice shall be published concurrently with the submittal of the remedial action option plan for department review and shall contain all of the following information:

(a) Names of responsible parties.

(b) Phone number and mailing address of a contact person for the responsible parties.

(c) Name and address of site or facility.

(d) Summary of proposed remedial action and performance standard.

(e) Location where remedial action option plan can be reviewed by the public.

(6) **ADDITIONAL PUBLIC PARTICIPATION ACTIVITIES.** If the responsible parties or the department determine that additional public participation activities are required to supplement the public notification required under sub. (2), after considering the factors listed in sub. (1), the responsible parties shall, unless otherwise directed by the department, conduct one or more of the following activities:

(a) *Contact government officials.* Contact local government, law enforcement, emergency response and health officials to inform them of the circumstances and the actions that are underway to contain, reduce or eliminate the threat of the contamination.

(b) *Contact interested individuals.* Contact persons who have asked to be kept informed of site or facility activities at various points in the process.

(c) *Contact media.* Prepare radio, newspaper or television announcements.

(d) *Hold informational meetings.* Hold public informational meetings.

(e) *Distribute leaflets.* Distribute leaflets door-to-door in the vicinity of the site or facility.

(f) *Establish a clearinghouse.* Establish an information clearinghouse or hotline number.

(g) *Other.* Use other appropriate mechanisms to contact and inform the public.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; renum. (5) to be (6), cr. (5), Register, March, 1995, No. 471, eff. 4-1-95; am. (3) (a) 2., Register, April, 1995, No. 472, eff. 5-1-95.