

Chapter NR 726

CASE CLOSURE

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Note: Chapter NR 726 as it existed on April 30, 1995 was repealed and a new chapter NR 726 was created effective May 1, 1995.

Note: 1995 Wls. Act 227 renumbered ch. 144, Stats., effective January 1, 1997. To aid in the transition, the statutory citation in parenthesis will be the correct reference on January 1, 1997.

NR 726.01 Purpose. The purpose of this chapter is to specify the minimum requirements and conditions that shall be met before the department may determine that a case related to a specific site or facility may be closed. This chapter is adopted pursuant to ss. 144.431 (1) (a) and (b), 144.442, 144.76, 144.765, 159.03 (1) (a) (289.06, 292.31, 292.11, 292.15, 287.03) and 227.11 (2), Stats.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am., Register, February, 1996, No. 482, eff. 3-1-96.

NR 726.02 Applicability. (1) This chapter applies to the closure of all cases where response action, other than immediate action, is taken at a site, facility or portion of a site or facility that is subject to regulation under s. 144.442 or 144.76, (292.31 or 292.11) Stats., regardless of whether there is direct involvement or oversight by the department, except that this chapter does not apply where the department determines under ch. NR 158, 705 or 708 that no further action is necessary.

(2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter applies to the proposed closure of all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20 (11).

(b) Sites where remedial action has been taken by a person who is seeking the liability exemption under s. 144.765, (292.15) Stats.

(3) 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 there are overlapping restrictions or requirements, the more restrictive requirements shall control. The department shall, after receipt of a request from responsible parties, 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 s. 144.442 or 144.76, (292.31 or 292.11) Stats., may also be subject to regulation under other statutes, including the solid waste statutes in ss. 144.43 to 144.441 and 144.443 to 144.47, (ch. 289) Stats., or the hazardous waste management act, ss. 144.60 to 144.74, (ch. 291) Stats., and the administrative rules adopted pursuant to those statutes. 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, 1995, No. 472, eff. 5-1-95; am. (2), cr. (2) (b), Register, February, 1996, No. 482, eff. 3-1-96.

NR 726.03 Definitions. In this chapter:

(1) "Case closure" means a determination by the department, based on information available at the time of the department's review, that no further action is necessary.

(2) "Responsible parties" means:

(a) Persons who are liable for hazardous substance discharges or environmental pollution under s. 144.442 or 144.76, (292.31 or 292.11) Stats.; and

(b) Owners and operators of solid waste facilities that are subject to regulation under ch. NR 508.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 726.05 Requests for case closure at complex sites. (1) For a site or facility at which a response action other than an immediate action has been conducted and which is classified as complex under s. NR 700.09 (2) or for which the responsible party has chosen to proceed with the complex site process under s. NR 700.11 (2), responsible parties or other interested persons may request that the department close the case under this chapter after compliance with all applicable federal and state public health and environmental laws, including chs. NR 700 to 726 where applicable, has been achieved.

(2) (a) A request for case closure shall be submitted in writing on a close out form supplied by the department and shall be accompanied by a report documenting that the applicable public health and environmental laws, including chs. NR 700 to 724 where applicable, have been complied with, or, where ch. NR 140 enforcement standards or preventive action limits are exceeded, that the criteria in par. (b) are satisfied.

Note: Copies of close out forms may be obtained from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, Wisconsin 53707.

(b) For hazardous substance discharge sites with groundwater contamination that exceeds ch. NR 140 enforcement standards or preventive action limits, the responsible party may request case closure, and the department may grant the request under this section, if the responsible party submits supporting documentation to the department and the department determines that all of the following criteria are satisfied:

1. Adequate source control measures have been taken which include all of the following:

a. Whether regulated or registered under ch. Comm 10 or not, all existing underground storage tanks have been removed, permanently closed or upgraded to prevent new discharges of hazardous substances to the groundwater that would violate ch. NR 140. The same requirement applies to all new and replacement underground storage tanks not regulated under ch. Comm 10.

b. All new and replacement underground storage tanks regulated under ch. Comm 10 have been constructed and are being monitored in accordance with ch. Comm 10.

c. All other existing tanks, pipes, barrels or other containers which may discharge a hazardous substance have been removed, contained or controlled to prevent, to the maximum extent practicable, new discharges of hazardous substances to the groundwater that would violate ch. NR 140.

d. Where applicable, immediate and interim actions have been taken in accordance with ch. NR 708 to protect public health, safety and welfare and the environment.

e. Free product has been removed in accordance with the criteria in s. NR 708.13.

f. The concentration or mass, or both, of a substance and its breakdown products existing in soil or groundwater, or both, have been reduced if the actions are deemed necessary to restore groundwater within a reasonable period of time, to adequately

protect public health and the environment, or to prevent groundwater contamination from migrating beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded.

2. Natural attenuation will bring the groundwater into compliance with ch. NR 140 groundwater quality standards within a reasonable period of time, considering the criteria in s. NR 722.07.

3. Groundwater contamination exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded.

4. If there are ch. NR 140 enforcement standard exceedances on the property or properties, a groundwater use restriction which satisfies the requirements of sub. (8) (am) has been recorded at the county register of deeds office for each property.

5. There is no existing or anticipated threat to public health, safety or welfare, or the environment.

(c) For cases that have been closed conditioned upon the recording of a groundwater use restriction pursuant to par. (b), the responsible party may, at any time after groundwater contaminant concentrations fall below ch. NR 140 preventive action limits, apply for unconditional case closure and may request that the department record an affidavit at the county register of deeds office which gives notice that the previously recorded groundwater use restriction is no longer required. The responsible party may also apply for an exemption under s. NR 140.28 if concentrations fall below ch. NR 140 enforcement standards and the appropriate criteria under s. NR 140.28 are met. Once an exemption is granted under s. NR 140.28, the responsible party may apply for unconditional case closure and may request that the department record an affidavit at the county register of deeds office which gives notice that an exemption has been granted under s. NR 140.28 and that the previously recorded groundwater use restriction is no longer required.

(3) In order to demonstrate that the applicable public health and environmental laws have been complied with, the person who is requesting case closure shall provide the department with all of the following information:

(a) For groundwater:

1. Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the in-field condition requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24 (1) (b), or both.

2. A description of the interim and remedial actions taken at the site or facility.

3. Where the department has required groundwater quality sampling to be conducted, results from 4 successive quarterly rounds of sampling demonstrating compliance with the applicable requirements of ch. NR 140. The samples shall be taken from monitoring wells constructed in accordance with ch. NR 141. The department may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

(b) For soil:

1. Documentation showing that site investigation requirements in ch. NR 716 have been met or, where applicable, documentation which meets the in-field condition requirements in ch. NR 508, the groundwater assessment requirements in s. NR 140.24 (1) (b), or both.

2. A description of the interim and remedial actions taken at the site or facility.

3. A demonstration that the remedial action taken, and any interim action that was taken that constituted the final response action for soil contamination, satisfies the requirements of chs. NR 720 and 722, where applicable.

(c) For sediments:

1. Documentation showing that the site investigation requirements in ch. NR 716 have been met.

2. A description of the interim and remedial actions taken at the site or facility.

3. Sampling data demonstrating that the remedial action selected in accordance with ch. NR 722 has restored the environment to the extent practicable and minimized the harmful effects of the hazardous substances on the air, lands and waters of the state.

(d) Any other information that the department specifically requests.

(4) The department may not close a case under this chapter if, at any time in the future, the remaining level of contamination is likely to:

(a) Pose a threat to public health, safety or welfare or the environment.

(b) Cause a violation of ch. NR 140 groundwater quality enforcement standards at any applicable point of standards application, except where the department has granted an exemption under s. NR 140.28 for a specific hazardous substance or the criteria under s. NR 726.05 (2) (b) are met.

(c) Cause a violation of surface water quality standards in chs. NR 102 to 106.

(d) Cause a violation of air quality standards contained in chs. NR 400 to 499.

(5) Within 30 days after receipt of a request for case closure under s. NR 726.05, the department shall either close the case under sub. (6) or acknowledge in writing the request for case closure and provide an estimated date by which the department intends to determine whether the case can be closed.

(6) Following receipt of a request for case closure under this section, the department shall review the information provided under sub. (3) to determine whether the applicable public health and environmental laws, including chs. NR 700 to 724 where applicable, have been complied with and whether any further threat to public health, safety or welfare or the environment exists at the site or facility. Based on this review, the department shall approve the case closure, conclude that additional response actions, such as additional remedial action or long-term monitoring, are needed at the site or facility, or conclude that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with.

(7) (a) If the department approves the request for case closure, the department shall mail written notice of the approval to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.07 (4).

(b) If the department determines that the applicable public health and environmental laws have not been complied with, the department shall mail written notice to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.07 (4). The notice shall indicate what conditions must be met in order for the case to receive further consideration by the department for closure.

(c) If the department determines that there is not sufficient information to allow the department to determine whether the applicable public health and environmental laws have been complied with, the department shall mail written notice to the responsible parties, other interested persons who have requested closure of the case, and any person who has requested that information under s. NR 714.07 (4). The notice shall indicate what additional information the department needs in order to determine whether the case can be closed.

(8) The department may, as a condition of case closure, require one or more of the following:

(a) That the property owner record a deed restriction for the site or facility at the office of the register of deeds for the county in which the property is located, specifying the legal description of the property, the location of residual contamination on the property, and the existence of on-site engineering controls, if any, in order to prevent exposures to contamination, where a restriction, such as a limitation on land use, is necessary to protect public health, safety or welfare or the environment.

(am) That the property owner record a groundwater use restriction for the property at the county register of deeds office which specifies the legal description of the property, the location, type and concentration of the contaminants and includes the following standard language: "Natural attenuation has been approved by the Department of Natural Resources to remediate groundwater exceeding ch. NR 140 groundwater standards within the boundaries of this property. Construction of wells where the water quality exceeds the drinking water standards in ch. NR 809 is restricted by chs. NR 811 and 812. Special well construction standards or water treatment requirements, or both, or well construction prohibitions may apply. Anyone who proposes to construct or reconstruct a well on this property is required to contact the Department of Natural Resources' Bureau of Drinking Water and Groundwater to determine what specific requirements are applicable prior to constructing or reconstructing a well on this property."

(b) That the property owner record an affidavit at the office of the register of deeds for the county in which the property is located which specifies the legal description of the property and the location of residual contamination on the property, and gives notice to any prospective purchaser of residual contamination.

Note: The restrictions imposed on a property by a deed restriction required under s. NR 726.05 (8) (a) or (am) may be modified with the approval of the department if circumstances change. In this case, an affidavit may be recorded at the register of deeds for the county in which the property is located to update or modify a restriction required under s. NR 726.05 (8) (a) or (am) or an affidavit required under s. NR 726.05 (8) (b).

(c) That all monitoring wells and boreholes installed during any response action be abandoned and documented as abandoned in accordance with s. NR 141.25.

(d) That all wastes generated during the response action be treated or disposed of in accordance with applicable state and federal laws.

(e) Any other conditions necessary to protect public health, safety or welfare or the environment.

Note: For leaking underground storage tank cases, 40 CFR 280.67 requires the department to give public notice, by means designed to reach those members of the public directly affected by the release, if implementation of an approved corrective action plan does not comply with the public health and environmental laws applicable to the selected remedial action and the department is considering case closure. See s. NR 714.05 (2) (d) for further reference.

(9) Responsible parties shall comply with the following requirements when a site or facility's pathway-specific numeric standard based on direct contact with soil is selected using an industrial land use classification in accordance with s. NR 720.11:

(a) Responsible parties shall ensure that a deed restriction is recorded which meets the requirements of par. (c) at the register of deeds' office in the county where the property is located.

(b) Responsible parties shall submit to the department a certified copy of the deed restriction as part of the report required under s. NR 726.05 (2).

(c) Deed restrictions required under this subsection shall include all of the following:

1. The signature of the property owner.
2. The property's legal description.

3. A statement that the use of the property shall be restricted to industrial uses unless soil cleanup standards applicable to non-industrial sites or facilities are met as determined by the department.

(d) Responsible parties shall comply with all applicable requirements of this subsection when an interim action, but no subsequent remedial action, is taken at the site or facility to address soil contamination.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; renum. (2) to be (2) (a) and am. (2) (a), (4) (b), (d) and (8) (b) (note) and cr. (2) (b), (c) and (8) (am), Register, October, 1996, No. 490, eff. 11-1-96.

NR 726.07 Submittals for case closure at simple sites. (1) For sites or facilities classified as simple under s. NR 700.09 (1) and for which the responsible party has not chosen to proceed with the complex site process under s. NR 700.11 (2), the responsible party shall submit a final report of the response action taken at the site or facility which includes the information required by chs. NR 700 to 724, as applicable, and the information specified in s. NR 726.05 (3) and, if applicable, s. NR 726.05 (8). The final report shall be accompanied by a letter of compliance documenting that the response action taken complies with the requirements of chs. NR 700 to 726, as applicable, and all other applicable environmental laws, so that no further action is necessary for the site or facility.

(2) The department shall provide written acknowledgement of receipt of a letter of compliance and final report within 30 days after receipt and shall retain these documents in public files for a minimum of 5 years.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 726.09 Reopening closed cases. (1) The department may require additional response actions, including monitoring, for any case which has previously been closed by the department, if information regarding site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety or welfare or the environment.

(2) If additional response action is required for a previously closed case, the department:

(a) Shall indicate in writing to the responsible parties that additional response action is needed at the site or facility and provide the responsible parties with information regarding the nature of the problem and category of response action that is needed.

(b) May require the responsible parties to achieve compliance with the applicable public health and environmental laws, including chs. NR 700 to 724 where applicable, within a time period established by the department.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

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