

Chapter NR 726

CASE CLOSURE

NR 726.01 Purpose.
 NR 726.02 Applicability.
 NR 726.03 Definitions.

NR 726.05 Requests for case closure.
 NR 726.07 Submittals for case closure at simple sites.
 NR 726.09 Reopening closed cases.

Note: Chapter NR 726 as it existed on April 30, 1995 was repealed and a new chapter NR 726 was created effective May 1, 1995.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: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

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. 227.11 (2), 287.03, 289.06, 292.11, 292.15 and 292.31, 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. 292.11 or 292.31, 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 708 that no further action is necessary, or where the site is classified as a simple site and the responsible party chooses to follow the simple site process outlined in s. NR 700.11 (1).

(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 508.04 (4).

(b) Sites where remedial action has been taken by a person who is seeking the liability exemption under s. 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. 292.11 or 292.31, 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. 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; am. (1), Register, February, 1997, No. 494, eff. 3-1-97; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; **CR 01-129: am. (1), Register July 2002 No. 559, eff. 8-1-02.**

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.

(1m) "GIS registry" means the department's geographic information system registry of closed remediation sites.

(2) "Responsible parties" means:

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

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

(3) "Right-of-way" means the strip of land over which railroad tracks run, or within which a public street or highway has been constructed, regardless of whether the strip of land is owned by the railroad or the entity that maintains the public street or highway. For the purposes of this chapter, a "right-of-way" includes corridors created by dedication, by the granting of an easement and by the acquisition of fee title.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; **CR 01-129: cr. (1m) and (3), Register July 2002 No. 559, eff. 8-1-02.**

NR 726.05 Requests for case closure. (1) The agency with administrative authority to oversee the remediation of the site or facility may grant case closure under this section, conditioned upon compliance with the applicable requirements of sub. (8), if the fees required by ch. NR 749 have been paid and it has been documented, in the case close out report that is submitted to the agency in compliance with the requirements of sub. (3), that all applicable public health and environmental laws, including chs. NR 700 to 724 and 749, have been complied with, or where ch. NR 140 enforcement standards are the only standards that are exceeded, that the criteria in sub. (2) (b) are satisfied.

(2) (a) General requirements for case closure requests. 1. A request for case closure shall be submitted in writing on a case summary and close out form supplied by the agency with administrative authority over the site and shall be accompanied by a case close out report documenting that applicable public health and environmental laws, including chs. NR 700 to 746, have been complied with, or, where ch. NR 140 enforcement standards are the only environmental standards exceeded, that the criteria in par. (b) are satisfied.

Note: Copies of the WDNR case summary and close out form for sites over which the department has administrative authority 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. The WDNR case summary and close out form (form 4400-202) may also be obtained from the publications section of the department's remediation and redevelopment internet site at <http://www.dnr.state.wi.us/org/aw/rr/>.

2. For sites with groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that case closure is requested, all properties within or partially within the contaminated site boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be entered onto the department's GIS registry. For those sites, responsible parties shall submit the following items, for each property within or partially within the contaminated site boundaries, other than public street or highway rights-of-way or railroad rights-of-way, in a groundwater GIS registry attachment to the case close out report:

a. A copy of the most recent deed which includes the legal description of each property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public street or highway rights-of-way or railroad rights-of-way. Information on residual groundwater or soil contamination that has migrated onto a right-of-way will be found in the documents that are submitted as part of the case close out report for the source property. It is only in the situation where the source of the contamination is in a right-of-way, that a right-of-way will be listed on the GIS registry as a separate property. In those situations, the maps

that are required to be submitted, as an attachment to the case close out report for the site, will show where contaminated groundwater or soil samples were collected and will provide points of reference for locating residual contamination in the right-of-way.

b. A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map.

c. The parcel identification number for each property, if the county in which the property is located uses parcel identification numbers.

d. Geographic position data for each property in compliance with the requirements of s. NR 716.15 (2)(k), unless this information was previously submitted to the agency with administrative authority for the site as part of the site investigation report, or unless the agency with administrative authority has directed that the responsible party does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department's GIS registry that is available on the internet at <http://gomapout.dnr.state.wi.us/org/at/et/geo/gwur>.

3. For sites with soil contamination that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19 at the time that case closure is requested, the properties within or partially within the contaminated site boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be entered onto the department's GIS registry. For those sites, responsible parties shall submit the following items for each property within or partially within the contaminated site boundaries, other than public street or highway rights-of-way or railroad rights-of-way, in a soil GIS registry attachment to the case close out report:

a. A copy of the most recent deed which includes the legal description of the property, except that, in situations where a buyer has purchased property under a land contract and has not yet received a deed, a copy of the land contract which includes the legal description shall be submitted.

Note: Copies of deeds, or other documents with legal descriptions, are not required to be submitted for contaminated public street or highway rights-of-way or railroad rights-of-way. Information on residual groundwater or soil contamination that has migrated onto a right-of-way will be found in the documents that are submitted as part of the case close out report for the source property. It is only in the situation where the source of the contamination is in a right-of-way, that a right-of-way will be listed on the GIS registry as a separate property. In those situations, the maps that are required to be submitted, as an attachment to the case close out report for the site, will show where contaminated groundwater or soil samples were collected and will provide points of reference for locating residual contamination in the right-of-way.

b. A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map.

c. The parcel identification number for each property, if the county in which the property is located uses parcel identification numbers.

d. Geographic position data for each property in compliance with the requirements of s. NR 716.15 (2)(k), unless this information was previously submitted to the agency with administrative authority for the site as part of the site investigation report, or unless the agency with administrative authority has directed that the responsible party does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department's GIS registry that is available on the internet at <http://gomapout.dnr.state.wi.us/org/at/et/geo/gwur>.

4. If there is residual soil contamination in a public street or highway right-of-way or a railroad right-of-way that exceeds generic or site-specific residual contaminant levels for soil as determined under ss. NR 720.09, 720.11 and 720.19, or ch. NR 140 enforcement standards for groundwater, the responsible party shall give written notification of the presence of the residual soil or groundwater contamination from the responsible party's source

property that remains within the public street or highway right-of-way to the clerk of the town and county, or village or city where the right-of-way is located, and the municipal department or state agency that is responsible for maintaining the public street or highway, and written notification of the presence of the residual soil or groundwater contamination from the responsible party's source property that remains within the railroad right-of-way to the railroad that maintains the railroad right-of-way.

5. For sites where waste was generated during the response action and was stored or treated on-site, all the waste shall be handled and disposed of in accordance with applicable state and federal laws before a case closure request is submitted.

(am) *Specific agency requirements.* 1. For sites where the department has administrative authority to oversee the remediation of the site, the case close out fee and, if entry on the GIS registry is required under par. (a) 2. or 3., the fee or fees listed in ch. NR 749 for adding a site to the department's GIS registry shall be submitted to the department with each case closure request.

2. For sites contaminated with petroleum products discharged from a petroleum storage tank for which the department of commerce has administrative authority under s. 101.144, Stats., and sites for which department of agriculture, trade and consumer protection has administrative authority under s. 94.73, Stats., that are required by par. (a) 2. or 3. to be entered onto the department's GIS registry, the fee or fees listed in ch. NR 749 for adding a site to the department's GIS registry shall be submitted to the department before a case summary and close out form and a case close out report are submitted to the agency with administrative authority over the site. For these sites, a case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department's bureau for remediation and redevelopment tracking system, which is available on the department's internet site.

Note: The department's bureau for remediation and redevelopment tracking system can be found on the internet at <http://gomapout.dnr.state.wi.us/org/at/et/geo/gwur>.

Note: "Petroleum storage tank" is defined in s. 101.144 (1)(bm), Stats., to mean "a storage tank that is used to store petroleum products together with any on-site integral piping or dispensing system." The term "petroleum storage tank" does not include a pipeline facility.

(b) For sites with groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that case closure is requested, including sites contaminated with petroleum products discharged from a petroleum storage tank that are eligible for closure under chs. NR 726 and 746, the responsible party shall submit a case close out report to the agency with administrative authority for the site that documents that all of the following criteria are satisfied, if applicable:

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 and mass of a substance and its breakdown-products in groundwater have been reduced due to naturally occurring physical, chemical and biological processes as necessary to adequately protect public health and the environment, and prevent groundwater contamination from migrating beyond the boundaries of the property or properties for which groundwater use restrictions have been recorded, except that sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07 (2) or 746.08 (2) shall be considered to have satisfied the criterion in this subdivision paragraph without having to provide supporting documentation other than documentation required by ch. NR 746.

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, except that sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy all of the risk screening criteria in s. NR 746.06 (2) and are eligible for closure under s. NR 746.07 (2) or (4) or 746.08 (2) or (4), shall be considered to have satisfied the criterion in this subdivision without having to provide supporting documentation other than documentation required by ch. NR 746.

3. The groundwater plume margin is stable or receding, and after case closure, groundwater contamination exceeding ch. NR 140 preventive action limits will not migrate beyond the boundaries of any property that falls into either one of the following categories:

a. Properties for which a preventive action limit exemption has been granted.

b. Properties that have been identified as having existing groundwater contamination that exceeds ch. NR 140 enforcement standards and that will be included on the department's geographic information system registry of closed remediation sites.

4. If there are ch. NR 140 enforcement standard exceedances on any property within or partially within the contamination site boundaries, the owner of each property with ch. NR 140 enforcement standard exceedances, other than the owners of public street or highway rights-of-way, railroad rights-of-way or properties owned by the responsible party, shall be sent a letter that contains the standard provisions in Appendix A, at a minimum. In addition, a fact sheet supplied by the department, that describes the use of natural attenuation as a final remedy, shall be enclosed with all letters that are sent to satisfy the requirements of this subdivision. The responsible party shall send these letters via certified mail, return receipt requested, or priority mail with signature confirmation, and shall submit written proof of the date on which the letters were received in a groundwater GIS registry attachment to the case close out report. If the letters are sent via priority mail with signature confirmation, the responsible party may use the signature waiver option if the responsible party has reason to believe that the owner of the property may refuse to sign for the letter. The date of receipt of these letters shall be at least 30 days prior to the date on which the agency with administrative authority completes its review of the case close out report, unless all of the affected property owners waive their right to comment within 30 days on the proposed case close out and copies of the waivers are submitted to the agency with administrative authority.

Note: Copies of the department's fact sheet on the use of natural attenuation as a final remedy 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.

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

6. Except for ch. NR 140, all applicable public health and environmental laws, including chs. NR 700 to 724 and 749, have been complied with.

(c) For cases that have been closed conditioned upon the recording of a groundwater use restriction, 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 agency with administrative authority for the site issue an affidavit that can be recorded at the county register of deeds office to give 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 agency with administrative authority for the site issue an affidavit that can be recorded at the county register of deeds office to give 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 applicable public health and environmental laws have been complied with, and to provide information on the location and nature of any residual contamination at the site, the person who is requesting case closure shall submit all of the following information, that is applicable, as attachments to the case close out report, in the order and format that is specified in this subsection:

(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 agency with administrative authority for the site has required groundwater quality sampling to be conducted, results from 4 successive quarterly rounds of sampling to demonstrate compliance with either the applicable requirements of ch. NR 140 or the requirements of sub. (2) (b). The samples shall be taken from monitoring wells constructed in accordance with ch. NR 141. The agency with administrative authority for the site may approve an alternative monitoring program designed to show whether groundwater quality standards have been met.

4. For sites where groundwater exceeds any ch. NR 140 enforcement standard at the time that case closure is requested, all of the following information shall be included as a groundwater GIS registry attachment to the case close out report, following the information required in sub. (2)(a) 2., 3. and 4., and the site shall be included in the department's GIS registry:

a. A site location map that outlines all properties within the contaminated site boundaries on a United States geographic survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

b. A map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells and potable wells. This map shall also show the location of all contaminated public street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of groundwater contamination exceeding ch. NR 140 enforcement standards. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

c. A table of the most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified. Shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department.

d. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map was required as part of the site investigation report. An isoconcentration map should include the areal extent of groundwater contamination exceeding ch. NR 140 preventive action limits and the areal extent of groundwater contamination exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

e. A table including, at a minimum, the previous 4 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table. A groundwater flow map, representative of groundwater movement at the site, shall be included. If groundwater flow direction varies by more than 20 degrees over the history of water level measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.

f. A geologic cross-section, if one was required as part of the site investigation report, that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination exceeding ch. NR 140 preventive action limits that remains when case closure is requested, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any. This geologic cross-section shall be to scale and may not be any larger than 8.5 by 14 inches, except that if a geologic cross-section is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, it may be larger.

g. A statement signed by the responsible party affirming that he or she believes that legal descriptions for all of the properties within or partially within the contaminated site's boundaries that have groundwater contamination exceeding ch. NR 140 enforcement standards, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency with administrative authority for the site, either as an attachment to the site investigation report or as part of the groundwater GIS registry attachment to the case close out report.

h. A copy of the letters sent by the responsible party to all owners of land within or partially within the contaminated site's boundaries whose property has groundwater contamination that exceeds ch. NR 140 enforcement standards at the time that case closure is requested, as required by sub. (2)(b) 4., and a copy of all written notifications that are required to be sent under sub. (2)(a) 4. in cases where there is residual contamination in a public street or highway right-of-way or a railroad right-of-way.

(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.

4. For sites where soil contamination exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19 at the time that case closure is requested, all of the following information shall be included in a soil GIS registry attachment to the case close out report, and the site shall be included in the department's GIS registry:

a. A site location map that outlines all properties within the contaminated site boundaries on a United States geographic survey topographic map or plat map in sufficient detail to permit the parcels to be located easily. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

b. A map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells and potable wells. This map shall also show the location of all contaminated public street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of soil contamination exceeding generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19. This map shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

c. A table of the analytical results showing results for all contaminants found in pre-remedial sampling and in the most recent soil sampling, with sample collection dates identified. Shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department.

d. A map that shows the location where all soil samples were collected and identifies, with a single contour, the horizontal extent of each area of contiguous residual soil contamination that exceeds generic or site-specific residual contaminant levels, as determined under ss. NR 720.09, 720.11 and 720.19, within the contaminated site boundaries. These maps shall be to scale and may not be any larger than 8.5 by 14 inches, except that if the map is submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, the map may be larger.

e. A geologic cross-section showing the vertical extent of residual soil contamination that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19, if one was required as a part of the site investigation report. If there is groundwater contamination on the site that exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, one geologic cross-section may be submitted to show the vertical extent of both soil and groundwater contamination. These geologic cross-sections shall be to scale and may not be any larger than 8.5 by 14 inches, except that if these geologic cross-sections are submitted in electronic form in portable document format ("pdf"), readable by the adobe acrobat reader, they may be larger.

f. A statement signed by the responsible party affirming that he or she believes that legal descriptions for all of the properties within or partially within the contaminated site's boundaries that have soil contamination exceeding generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11 and 720.19, at the time that case closure is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency with administrative authority for the site, either as an attachment to the site investigation report or as part of a soil GIS registry attachment to the case close out report.

g. A copy of all written notifications that are required to be sent under sub. (2)(a) 4. in cases where there is residual contamination in a public street or highway right-of-way or a railroad right-of-way.

(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 agency with administrative authority over the site 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 746 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, or 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) (a) The following shall be required for case closure at all sites, including sites contaminated with petroleum products dis-

charged from petroleum storage tanks that are eligible for closure under chs. NR 746 and 726, where applicable:

1. All monitoring wells and boreholes installed during any response action taken for the site shall be abandoned and documented as abandoned in accordance with s. NR 141.25, except for specific wells that the agency with administrative authority over the site approves of retaining until sampling is no longer required.

2. If there is residual soil contamination at the time of case closure, the final closure letter shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

3. Any other condition for case closure that is necessary to protect public health, safety or welfare or the environment may be required.

(b) A deed restriction that complies with sub. (9) shall be signed and recorded for the property within 90 days after conditional case closure is granted in the following situations, including sites closed under chs. NR 746 and 726 unless the sites are specifically exempted:

1. If a property has been classified as industrial under s. NR 720.11 (1) and soil contamination on the property has only been remediated to the industrial residual contaminant levels in Table 2 in s. NR 720.11 or to a site-specific residual contaminant level that has been determined based upon industrial land use exposure assumptions, a deed restriction shall be signed and recorded that restricts the use of that property to an industrial land use until non-industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation, and requires that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

2. If a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, a deed restriction shall be required as a condition of case closure. The deed restriction shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency with administrative authority over the site and then conduct an investigation of the degree and extent of residual contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible. If residual contamination is found at the time that the structural impediments are removed, the contamination shall be addressed in compliance with applicable state and federal laws.

3. If there is residual soil contamination beneath a building or a cap, such as concrete or asphalt pavement, or composite cap, or within an engineered containment structure, that exceeds generic or site-specific residual contaminant levels based on protection of groundwater as determined under ss. NR 720.09 and 720.19, which would pose a threat to groundwater if the building, cap or containment structure were removed, a deed restriction shall be required as a condition of case closure. The deed restriction shall include a description of the residual contamination and the location of the building, cap or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cap or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The deed restriction shall also require the property owner to maintain and repair or replace the building, cap or containment structure with a structure of similar permeability until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds generic or site-specific residual contaminant levels that protect the groundwater, as determined under ss. NR 720.09 and 720.19, and require that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled,

analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

4. If a soil cover, cap or engineered containment structure must be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.11 and 720.19, a deed restriction shall be required to ensure that the soil cover or cap, such as concrete or asphalt pavement, or a composite cap, or engineered containment structure will be repaired and maintained until it is no longer needed. The deed restriction shall include a description of the residual contamination and the location of the soil cover, cap or engineered containment structure, and shall restrict the use of the land where the soil cover, cap or engineered containment structure is located to ensure that the soil cover or cap will function as intended, to prevent direct contact, as required by the applicable performance standard. The deed restriction shall also require the property owner to maintain and repair or replace the soil cover, cap or engineered containment structure until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds generic or site-specific residual contaminant levels that protect human health from direct contact, as determined under ss. NR 720.11 and 720.19, and requires that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) A deed restriction or deed notice may be required as a condition of case closure in situations other than those listed in par. (b) if department staff, in cases where the department has administrative authority to oversee the remediation of the site, or staff of the department of commerce or the department of agriculture, trade and consumer protection, in cases where these agencies have administrative authority, determine that there are site-specific circumstances that make a deed notice or deed restriction necessary to adequately protect human health or safety or the environment.

(9) Deed restrictions and deed notices that are required as a condition of case closure shall be drafted in compliance with all of the following requirements:

(a) The document shall be drafted as an affidavit in the format required by s. 59.43 (2m), Stats.

(b) The property's legal description shall be typed onto the form or a copy of the legal description shall be attached and incorporated by reference.

(c) The document shall be signed by the property owner or owners, and their signatures shall be notarized.

(10) If closure is conditionally granted under this section, responsible parties shall submit to the department with administrative authority over the remediation of the site or facility copies,

showing the recording information added by the register of deeds office, of any required deed restriction or deed notice that has been recorded as a condition of closure, and documentation that all other closure conditions have been satisfied, within 120 days after conditional closure is granted.

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; am. (1), (2) (a), (b) 1. f., 2. to 4. and (6), Register, January, 2001, No. 541, eff. 2-1-01; CR 00-111: cr. (2) (am), (d), and (3) (a) 4., am. (2) (b) 3., 4., and (2) (c), and r. (8) (am), Register October 2001 No. 550, eff. 11-1-01; **CR01-129: r. and recr. (1), (2) (am), (8) and (9), am. (2) (a), (b) (intro.), 3. (intro.), 4., and (c), (3) (intro.), (a) 3., 4. (intro.), a., b., c., and d., (4) (intro.), renum. (3) (a) 4. e. to g. to be (3) (a) 4. f. to h., and am., cr. (2) (a) 2. to 5., (b) 6., (3) (a) 4. e., (b) 4. and (10), Register July 2002 No. 559, eff. 8-1-02.**

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 746, 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 746, 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; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

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 746 where applicable, within a time period established by the department.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (2) (b), Register, January, 2001, No. 541, eff. 2-1-01.