

## Chapter NR 728

### ENFORCEMENT

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**Note:** Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1997, No. 500.

**NR 728.01 Purpose.** The purpose of this chapter is to describe the enforcement tools that are available to the department to enforce chs. NR 700 to 750 and to implement response actions at sites or facilities with environmental pollution, and sites where there has been a discharge of a hazardous substance. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1), 292.31, 292.11, 292.15 and 292.41, Stats.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; am., Register, February, 1996, No. 482, eff. 3-1-96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.

**NR 728.02 Applicability.** This chapter applies to enforcement actions taken by the department under the authority of s. 292.11, 292.15, 292.31 or 292.41, stats.

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

**NR 728.03 Definitions.** In this chapter:

(1) "Environmental repair contract" means an agreement entered into by one or more persons and the department pursuant to s. 292.15 or 292.31, Stats., which requires the performance of a response action at a site or facility which causes or threatens to cause environmental pollution.

(2) "Consent order" means an administrative order issued by the department which the order recipient stipulates to and waives the right to a contested case hearing on the order.

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

**NR 728.05 Referrals for rule violations.** Any person who violates the requirements of chs. NR 700 to 750 may be referred to the office of the attorney general by the department. Any person who is referred to the office of the attorney general by the department shall be given written notice of the referral. Section 299.95, Stats., requires that the attorney general enforce chs. 289 to 292, Stats., and all rules promulgated to implement chs. 289 to 292, Stats.

**Note:** Section 299.97, Stats., provides for forfeitures of not less than \$10 nor more than \$5,000 for each violation of chs. 289 to 292, Stats., any rule promulgated under chs. 289 to 292, Stats., or any plan approval, license or special order issued under chs. 289 to 292, Stats. Each day of continued violation is a separate offense.

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

**NR 728.07 Environmental repair contracts.**

(1) **APPLICABILITY.** The department may enter into an environmental repair contract with any person for response actions pursuant to s. 292.15 or 292.31, Stats.

(2) **CONTENT.** All environmental repair contracts entered into pursuant to s. 292.15 or 292.31, Stats., shall contain at a minimum, all of the following provisions:

- (a) A description of the site or facility, and its location.
- (b) A listing of the parties to the contract.
- (c) A schedule for completing the response action covered by the contract.
- (d) Provision for stipulated penalties if the response action is not completed in accordance with the contract schedule.

(e) The method for resolving any disputes which may arise during the implementation of the response actions.

(f) The method for modifying the contract.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1), (2) (intro.), Register, February, 1996, No. 482, eff. 3-1-96.

**NR 728.09 Special orders. (1) EMERGENCY ORDERS.**

The department may issue emergency orders without prior hearing, pursuant to s. 292.11 (7) (c), Stats., to the person or persons responsible for a hazardous substance discharge, for the purpose of protecting public health, safety or welfare. Such an emergency order shall become effective upon receipt. However, the recipient of the order shall have 10 days after service of the order to file a petition for judicial review pursuant to ss. 227.52 and 227.53, Stats. The emergency order shall remain in effect after the filing of a petition for judicial review unless the reviewing court issues a stay.

(2) **UNILATERAL ADMINISTRATIVE ORDERS.** The department may issue unilateral administrative orders pursuant to s. 292.11 (7) (c), Stats. Such an administrative order shall become effective 30 days after service of the order, unless the order recipient petitions for a contested case hearing within that 30-day period. All such petitions shall be filed in accordance with the requirements of s. NR 2.05.

(3) **CONSENT ORDERS.** The department may, in its discretion, issue a consent order pursuant to s. 292.11 (7) (c), Stats., if the order recipient is willing to stipulate to the order's issuance.

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

**NR 728.11 Recording a notice of contamination.**

(1) **GENERAL.** Except for contamination caused by a discharge from a fuel oil tank used solely for residential purposes, the department may, after following the procedures in sub. (2), 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, indicates that contamination from a hazardous substance discharge has been identified on the property which has not been adequately defined or remediated and gives notice to the public, and any prospective purchaser, of the existing contamination and the environmental liability associated with the property.

(2) **PROCEDURE.** Where the department has information to demonstrate that the source of contamination is on the property and the property owner or other responsible party has failed to take adequate response action, the department may record an affidavit at the office of the register of deeds for the county in which the property is located once the following steps have been taken:

(a) The department shall send the property owner a letter, by certified mail, stating the department's intention to record an affidavit at the county register of deeds office giving notice of the contamination, unless the property owner responds by the deadline in the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or provides information which clearly demonstrates that there is no environmental contamination on the property.

(b) If the department receives no response, or an unacceptable response, to the letter sent in par. (a), the department shall send a second letter to the property owner and to any mortgagee of

record, by certified mail, indicating the department's decision to record an affidavit at the county register of deeds office unless the property owner responds by the deadline in the letter indicating that the property will be promptly investigated and remediated in compliance with applicable statutes and rules or appeals the department's determination. The deadline in this letter may not be less than 30 days from the date the property owner receives this letter. A copy of the affidavit to be recorded shall be attached to this letter.

(c) If an acceptable response is not received within the time period set forth in the letter sent in par. (b), the department may, as soon as practicable but in no case less than 15 days after the deadline in the letter sent in par. (b), record the affidavit at the

office of the register of deeds for the county in which the property is located.

**(3) SUBSEQUENT FILINGS.** If the contamination identified in the affidavit is subsequently remediated or otherwise addressed to the satisfaction of the department, the department shall record a second affidavit at the office of the register of deeds for the county in which the property is located to supersede an affidavit filed under sub. (2), after giving written notice to the property owner. A second affidavit shall specify the legal description of the property and indicate whether or not there is any residual contamination exceeding existing state standards on the property that is inaccessible or otherwise impracticable to remediate.

**History:** Cr. Register, February, 1996, No. 482, eff. 3-1-96; r. (4), Register, August, 1997, No. 500, eff. 9-1-97.