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Chapter NR 700

GENERAL REQUIREMENTS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 700.01 Purpose. (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to 750, to incorporate by reference specified regulations or materials, and to grant confidential status for records, reports and other information furnished to or obtained by the department for use in the administration of chs. NR 702 to 750.

(2) The purpose of chs. NR 700 to 750 is to establish consistent, uniform standards and procedures that allow for site-specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under s. 292.11, 292.15, 292.31 or 292.41, Stats. The department intends that responsible parties and other interested persons should be able to efficiently move through the process set forth in chs. NR 700 to 736 with minimal department oversight, except where s. 292.15, Stats., requires department oversight. These rules are adopted pursuant to ss. 227.11 (2), 281.19 (1), 287.03 (1) (a), 289.05 (1), 289.06, 289.31 (7), 289.43 (8), 291.05 (6), 292.11, 292.15, 292.31 and 292.41, Stats., and ch. 160, Stats.

Note: A flow chart showing how a site or facility moves from discovery to case closure under chs. NR 700 to 726 is included in Appendix A. The flow chart outlines a process that begins with the discovery of a hazardous substance discharge or environmental pollution. A discharge of a hazardous substance is required to be reported to the department pursuant to ch. NR 706. If there is a need for immediate action, procedures identified in ch. NR 708 are required to be followed. If immediate action is not required, or if immediate action has been completed, a site investigation may be required which complies with the requirements of ch. NR 716. An interim action may be required to be conducted pursuant to ch. NR 708. Following completion of the site investigation, responsible parties generally are required to select and implement a remedial action consistent with the requirements of chs. NR 722 and 724. Following completion of the remedial action, or in some cases at the completion of the ch. NR 716 site investigation, application for case closure may be made to the department pursuant to ch. NR 726.

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

NR 700.02 Applicability. (1) This chapter and chs. NR 702, 704 and 708 to 750 apply to actions taken by the department under the authority of s. 292.11, 292.15, 292.31 or 292.41, Stats.

(2) This chapter and chs. NR 706, 708, 712 to 728 apply to actions taken by responsible parties at sites, facilities or portions of a site or facility that are subject to regulation under s. 292.11 or 292.31, Stats., regardless of whether there is direct involvement or oversight by the department.

Note: The department of agriculture, trade and consumer protection has the authority under s. 94.73, Stats., to issue corrective action orders to parties who are responsible for the discharge of an agricultural chemical, to require that the responsible parties take action that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands or waters of this state. The department of natural resources has been informed that the department of agriculture, trade and consumer protection intends to require that this chapter and chs. NR 708 and 712 to 726 be applied to actions taken by responsible parties as directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats. For actions directed by the department of agriculture, trade and consumer protection under s. 94.73, Stats., submittals under chs. NR 708 and 712 to 726 shall be sent to the department of agriculture, trade and consumer protection, and approvals required by these chapters shall be obtained from the department of agriculture, trade and consumer protection.

Note: Persons who are not responsible parties and who voluntarily take a response action at a site or facility that is subject to regulation under s. 292.31 or 292.11, Stats., are not required to comply with the standards and procedures in chs. NR 700 to 724 unless the person is seeking the liability exemption under s. 292.15, Stats. However, the department is not likely to consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to 724 have been complied with, and

a person who did not originally fall within the definition of a responsible party may become a responsible party if the actions taken by that person cause the discharge of a hazardous substance or if the person takes possession or control of the site or facility.

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. 292.31 (1), Stats. However, a CERCLA-quality response action will likely require compliance with additional requirements beyond those contained in chs. NR 700 to 724 in order to satisfy CERCLA and the NCP.

(2m) This chapter and chs. NR 708, 712 to 728 and 750 apply to actions taken by persons who are seeking the liability exemption under s. 292.15, Stats.

(3) In addition to being applicable to sites or facilities that are subject to regulation under s. 292.11 or 292.31, Stats., ch. NR 720 applies to soil contamination at all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to s. NR 508.04 (4).

(b) Hazardous waste facilities where the owner or operator is required to close the facility pursuant to s. 291.29, Stats., or subchs. G and H of ch. NR 664, or to institute corrective action pursuant to s. 291.37, Stats., or s. NR 635.17, or where the department has imposed special requirements where a discharge has occurred under s. NR 600.07.

Note: Sections NR 600.07 and 635.17 no longer exist.

(c) Wastewater lagoons, storage structures and treatment structures that are abandoned pursuant to s. NR 110.09, 213.07 or 214.08.

(d) Sites where remedial action is being taken by a person who is seeking the liability exemption under s. 292.15, Stats.

(4) In addition to being applicable to sites or facilities that are subject to regulation under s. 292.11 or 292.31, Stats., ch. NR 722 applies to the evaluation of proposed remedial action for all of the following:

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

Note: NR 508.20 (11) was repealed eff. 7-1-96.

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

(5) In addition to being applicable to sites or facilities that are subject to regulation under s. 292.11 or 292.31, Stats., ch. NR 726 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).

Note: NR 508.20 (11) was repealed eff. 7-1-96.

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

(6) 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 overlapping restrictions or requirements are applicable, the more restrictive shall control. The department shall, after receipt of a request from a responsible party, provide a letter that indicates which regulatory program or programs the department considers to be applicable to a site or facility.

Note: Sites or 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 these

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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, 1994, No. 460, eff. 5-1-94; renum. (3) and (4) to be (5) and (6), cr. (3), Register, March, 1995, No. 471, eff. 4-1-95; cr. (4), Register, April, 1995, No. 472, eff. 5-1-95; am. (1), (3) (intro.), (a) and (b), (4), (5), cr. (2m), (3) (d), (4) (b), (5) (b), Register, February, 1996, No. 482, eff. 3-1-96; am. (2), Register, February, 1997, No. 494, eff. 3-1-97; correction in (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541; **correction in (3) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621.**

NR 700.03 Definitions. The following definitions apply to chs. NR 700 to 750:

(1) “Approve” or “approval” means a written acceptance by the department of a plan, report or other document that has been submitted to the department for review.

(2) “Background soil quality” means:

(a) Soil quality that is attributable to the parent material from which the soil was derived and the natural processes which produce soil, or from contamination from lead, polynuclear aromatic hydrocarbons or polychlorinated biphenyls attributable to atmospheric deposition, but not attributable to hazardous substance discharges or the discharge of pollutants, as that phrase is defined in s. 283.01, Stats.

(b) Soil quality that is found at or within reasonable proximity to the site or facility, at a depth comparable to that of the area to be remediated, in the same soil layer and in an area unaffected by hazardous substances discharges or the discharge of pollutants.

(3) “Business days” means Monday through Friday excluding the holidays listed in s. 230.35 (4) (a), Stats.

(4) “CERCLA” means the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 USC 9601 to 9675.

(5) “CFR” means the code of federal regulations.

(6) “Consultant” means a person or business under contract to perform a response action taken under, or subject to regulation under, chs. NR 702 to 736.

(7) “Contamination” or “contaminated” means:

(a) Where the air, land or waters of the state have been affected by the discharge of a hazardous substance; or

(b) Where environmental pollution exists.

(8) “Contingency plan” means a document setting out an organized, planned and coordinated course of action to be followed in the event of a hazardous substance discharge or imminent threat of a hazardous substance discharge.

(9) “Day” means calendar day, except where the phrase “business day” is used.

(10) “Debris” means material resulting from the construction, demolition or razing of buildings, roads and other structures and materials that have been discarded at a site or facility.

(11) “Department” means the department of natural resources.

(12) “Department-funded response action” means a response action undertaken by the department using the authority of s. 292.11, 292.31 or 292.41, Stats., which is funded in whole or in part by appropriations in s. 20.370 (2) or 20.866 (2), Stats.

(13) “Discharge” has the meaning specified in s. 292.01 (3), Stats.

Note: Under s. 292.01 (3), Stats., “discharge” means, but is not limited to, “spilling, leaking, pumping, pouring, emitting, emptying or dumping.”

(14) “Dispose” or “disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water in a manner which may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(15) “Emergency” means a situation which requires an immediate response to address an imminent threat to public health, safety or welfare or the environment.

(16) “Enforcement standard” has the meaning specified in s. NR 140.05 (7).

Note: Section NR 140.05 (7) defines “enforcement standard” to mean “a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12.”

(17) “Engineering control” means an action designed and implemented to contain contamination and minimize the spread of contamination within a media or to another media. Engineering controls include, but are not limited to: the installation of a cover with low permeability; groundwater extraction and treatment; slurry walls; solidification; and stabilization.

(18) “Environment” means any plant, animal, natural resource, surface water (including underlying sediments and wetlands), groundwater, drinking water supply, land surface and subsurface strata, and ambient air within the state of Wisconsin or under the jurisdiction of the state of Wisconsin.

(19) “Environmental pollution” has the meaning specified in s. 291.01 (4), Stats.

Note: Section 291.01 (4), Stats., defines “environmental pollution” to mean “the contamination or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.”

(20) “Environmental standards” mean those cleanup standards, performance standards, standards of control and other substantive and procedural requirements, criteria or limitations promulgated as a regulation or rule under or pursuant to federal environmental or state environmental or facility citing laws that specifically address a hazardous substance, pollutant, remedial action, location or other circumstances found at a site or facility.

(21) “Facility” means “approved facility” as defined in s. 289.01 (3), Stats., “approved mining facility” as defined in s. 289.01 (4), Stats., and “nonapproved facility” as defined in s. 289.01 (24), Stats.

Note: Under s. 289.01 (3), Stats., “approved facility” means “a solid or hazardous waste disposal facility with an approved plan of operation under s. 289.30 or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility’s design and plan of operation comply substantially with the requirements necessary for plan approval under s. 289.30.” “Approved mining facility” means “an approved facility which is part of a mining site, as defined under s. 293.01 (8), used for the disposal of solid waste resulting from mining, as defined under s. 293.01 (5), or prospecting, as defined under s. 293.01 (12).” “Nonapproved facility” means “a licensed solid or hazardous waste disposal facility which is not an approved facility.”

(22) “Free product” means a discharged hazardous substance or environmental pollution that is present in the environment as a floating or sinking non-aqueous phase liquid.

(23) “Groundwater” has the meaning specified in s. 160.01 (4), Stats.

Note: Section 160.01 (4), Stats., defines “groundwater” to mean “any waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil.” See “waters of the state” definition in sub. (67).

(24) “Groundwater quality standards” mean site-specific standards developed pursuant to ch. NR 140 and groundwater quality standards adopted by the department in ch. NR 140, including enforcement standards, preventive action limits, indicator parameters and alternative concentration levels.

(25) “Hazardous substance” has the meaning specified in s. 299.01 (6), Stats.

Note: Section 299.01 (6), Stats., defines “hazardous substance” to mean “any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.”

(26) “Hazardous waste” has the meaning specified in s. 291.01 (7), Stats.

Note: Section 291.01 (7), Stats., defines “hazardous waste” to mean any “solid waste identified by the department as hazardous under s. 291.05” Federal laws and rules may have broader or different definitions than the state does. If so, federal hazardous waste laws must be complied with, in addition to state laws.

(27) “High groundwater level” has the meaning specified under s. NR 214.03 (11).

Note: Section NR 214.03 (11) defines “high groundwater level” to mean “the higher of the elevation to which the soil is saturated and observed as a free water sur-

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face in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile.”

(28) “Immediate action” means a response action that is taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution, to halt the discharge, contain or remove discharged hazardous substances or remove contaminated environmental media, in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety or welfare that may exist. This term includes both emergency and non-emergency immediate actions.

Note: Examples of immediate actions may be found in s. NR 708.05 (4). If further action will be required after a non-emergency response action is taken, that action would meet the definition of “interim action” in s. NR 700.03 (29). The principal distinction between a non-emergency, immediate action and an interim action is that a site investigation will be required in conjunction with an interim action, but not with a non-emergency immediate action. In addition, interim actions will be closed out using the criteria in ch. NR 726, not the “no further action” criteria in s. NR 708.09 which apply at the completion of an immediate action.

(28m) “Industrial land use” means the utilization of a parcel of real estate for manufacturing operations that use machinery and mechanical power to produce products or services, including electrical power, or for a service business that provides storage facilities, product distribution or maintenance or repair services for machinery.

Note: Examples of industrial land uses include manufacturing and assembly plants; warehouses; scrap salvage operations; foundries and forging plants; metal pressing, stamping and spinning plants; electrical generating plants and electrical substations; slaughter houses and meat processing plants; fertilizer and pesticide packaging plants; bottling plants; wholesale bulk fuel storage and distribution facilities; railroad yards; and businesses that sell and repair motor vehicles, recreational vehicles, transportation containers or construction machinery and equipment.

(29) “Interim action” means a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety, or welfare or the environment, while other response actions are being taken or planned for the site or facility.

Note: Examples of interim actions may be found in s. NR 708.11. “Interim action” does not include emergency or non-emergency immediate actions. An interim action is followed by subsequent response actions at the site or facility, unless the department determines in compliance with the requirements of ch. NR 726, that no further response action is necessary after a site investigation has been conducted.

(30) “Interim action options report” means a report which identifies and evaluates various interim action options with the goal of selecting an option which meets the environmental standards for the interim action being undertaken.

(31) “Long-term monitoring” means systematic evaluation of the selected remedial or interim action option through collection and inspection of soil data, groundwater data, surface water data, sediment data, and other relevant data.

(32) “Management of a hazardous substance” means the treatment, storage or disposal, including recycling, of a hazardous substance.

(33) “Media” means air, surface water, groundwater, sediments and land surface and subsurface strata, including soil.

(34) “Migration pathway” means natural geologic features or cultural features, including but not limited to water mains, sewage laterals, drain tiles and road beds, which allow the movement of a hazardous substance or environmental pollution in liquid, solid, dissolved or vapor phase.

(35) “Municipal population” means the number of people residing in the municipality according to the most recent department of administration estimates.

(36) “Municipality” has the meaning specified in s. 299.01 (8), Stats.

Note: Section 299.01 (8), Stats., defines “municipality” to mean, “any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district”.

(37) “National priorities list” means the list, compiled by the U.S. environmental protection agency (EPA) pursuant to section 105 (8) (b) of CERCLA, of hazardous substance releases in the

United States that are priorities for investigation and remedial action.

(38) “National contingency plan” or “NCP” means 40 CFR part 300.

(38m) “Natural attenuation” means the reduction in the concentration and mass of a substance and its breakdown products in groundwater, due to naturally occurring physical, chemical, and biological processes without human intervention or enhancement. These processes include, but are not limited to, dispersion, diffusion, sorption and retardation, and degradation processes such as biodegradation, abiotic degradation and radioactive decay.

(39) “Naturally occurring background” means the quality of individual media in the vicinity of a discharge of a hazardous substance or environmental pollution that has not been affected by a hazardous substance discharge or environmental pollution.

(40) “Operation and maintenance” means measures designed to monitor, operate and maintain the effectiveness of response actions.

(41) “Operator” has the meaning specified in s. 292.31 (8) (a) 1., Stats.

Note: Section 292.31 (8) (a) 1., Stats., defines “operator” to mean “any person who operates a site or facility or who permits the disposal of solid waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits the disposal of solid waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.”

(42) “Owner” has the meaning specified in s. 292.31 (8) (a) 2., Stats.

Note: Section 292.31 (8) (a) 2., Stats., defines “owner” to mean “any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.”

(42m) “Pathway” means the route a substance takes in traveling to a receptor or potential receptor or the specific portal of entry, such as lungs, skin or digestive tract, that the substance takes to potentially express its toxic effect, or both.

Note: The food chain pathway for cadmium, for example, refers to cadmium being taken up in plant tissue and the plant tissue being ingested by an organism.

(43) “Person” has the meaning specified in s. 299.01 (10), Stats.

Note: Section 299.01 (10), Stats., defines “person” to mean “an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.”

(44) “Point of standards application” has the meaning specified in s. NR 140.05 (15).

Note: Section NR 140.05 (15) defines “point of standards application” to mean “the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded.”

(45) “Practicable” means capable of being implemented, taking into account:

(a) The technical feasibility of a remedial action option, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and

(b) The economic feasibility of a remedial action option, considering the cost of the remedial action option compared to its technical feasibility.

(45m) “Property boundary” means the boundary of the total contiguous parcel of land owned or leased by a common owner or lessor, regardless of whether public or private roads run through the parcel.

(46) “Preventive action limit” has the meaning specified in s. NR 140.05 (17).

Note: Section NR 140.05 (17) defines “preventive action limit” to mean “a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15, Stats., and s. NR 140.10, 140.12 or 140.20.”

(47) “Receptor” means environmental resources, including but not limited to, plant and animal species and humans, sensitive environments and habitats, water supply wells, and buildings or

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locations that have the potential to be, or have actually been, exposed to contamination.

(48) “Remedial action” means those response actions, other than immediate or interim actions, taken to control, minimize, restore or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling or reuse, and any monitoring required to assure that such actions protect public health, safety and welfare and the environment.

(49) “Remedial action options report” means a report which identifies and evaluates various remedial action options with the goal of selecting an option in compliance with the requirements of s. NR 722.11.

(50) “Response” or “response action” means any action taken to respond to a hazardous substance discharge or to environmental pollution, including emergency and non-emergency immediate actions, investigations, interim actions and remedial actions.

(51) “Responsible party” means any person who is required to conduct a response action or is liable to reimburse the department for the costs incurred by the department to take response action under s. 292.11, 292.31 or 292.41, Stats.

(52) “Restore” or “restoration” means those actions necessary to return the environment to its original condition before the hazardous substance discharge or environmental pollution occurred. Such actions may include, but are not limited to, the replacement or removal of injured plant and animal life and treatment of contaminated soils.

Note: This definition was formerly found in s. NR 158.04 (5).

(53) “Risk assessment” means a site-specific characterization of the current or potential threats that may be posed to public health, safety and welfare and the environment by contamination migrating to or in groundwater or surface water, discharging to the air, leaching through or remaining in soil, bioaccumulating in the food chain, or other exposure pathways.

(54) “Sediment” means particles in surface waters or wetlands that are derived from the erosion of rock, minerals, soils and biological materials, as well as chemical precipitation from the water column. Sediment particles are transported by, suspended in or deposited by water.

(55) “Sensitive environment” means an area of exceptional environmental value, where a discharge could pose a greater threat than a discharge to other areas, including but not limited to: wetlands; habitat used by state or federally designated endangered or threatened species; national or state fish and wildlife refuges and fish and wildlife management areas; state and federal designated wild and scenic rivers, designated state riverways and state designated scenic urban waterways; riparian areas; rookeries; cold water communities as defined in s. NR 102.04 (3) (b), Lakes Superior and Michigan and the Mississippi river, environmentally sensitive areas and environmental corridors identified in area-wide water quality management plans, special area management plans, special wetland inventory studies, advanced delineation and identification studies and areas designated by the U.S. EPA under section 404 (c) 33 USC 1344 (c); calcareous fens; state forests, parks, trails and recreational areas; state and federal designated wilderness areas; designated or dedicated state natural areas established under ss. 23.27 to 23.29, Stats.; wild rice waters as listed in s. NR 19.09; and any other waters identified as outstanding or exceptional resource waters in ch. NR 102.

(56) “Site” means:

- (a) Any waste site as defined in s. 292.01 (21), Stats.; or
- (b) Any area where a hazardous substance has been discharged.

Note: Section 292.01 (21), Stats., defines “waste site” to mean “any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.”

(57) “Site investigation” means an investigation undertaken in conformance with ch. NR 716.

(58) “Soil” means unsaturated organic material, derived from vegetation and unsaturated, loose, incoherent rock material, of any origin, that rests on bedrock other than foundry sand, debris and any industrial waste.

(59) “Solid waste” has the meaning specified in s. 289.01 (33), Stats.

Note: Section 289.01 (33), Stats., defines “solid waste” to mean “any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source [material, as defined in s. 254.31 (10)], special nuclear [material, as defined in s. 254.31 (11),] or by-product material, as defined [in] s. 140.52 [254.31 (3)].” The material in brackets is effective 1–1–97.

(60) “Submittal” means any document, report, plan, set of specifications, engineering design or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR 702 to 750.

(61) “Surface water” has the meaning specified in s. NR 103.02 (3).

Note: “Surface water” means “all natural and artificial, named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters.”

(62) “Superfund” means the federal environmental cleanup fund and program created by CERCLA.

(63) “Treatment” means any method, technique or process, including thermal destruction, which changes the physical, chemical or biological character or composition of a hazardous substance or environmental pollution so as to render the contamination less hazardous.

(64) “Treatability study” means the testing and documentation activities to evaluate the effectiveness of an interim or remedial action prior to full scale design and implementation. Treatability study includes, but is not limited to, bench scale studies and pilot scale studies.

Note: Treatability studies provide additional data for the detailed analysis of treatment alternatives and the engineering design of remedial alternatives under ch. NR 724.

(65) “U.S. EPA” or “EPA” means the United States environmental protection agency.

(66) “Underground storage tank” or “UST” means any one or a combination of tanks, including connected pipes, that is used to contain an accumulation of hazardous substances, and the volume of which, including the volume of connected underground pipes, is 10 percent or more beneath the surface of the ground. The term does not include any of the following or pipes connected to any of the following:

- (a) Septic tanks.
- (b) Pipeline facilities, including gathering lines, regulated under:
 1. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.).
 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.).
 3. State laws comparable to the provisions of the law referred to in subd. 1. or 2. for intrastate pipeline facilities.
- (c) Surface impoundments, pits, ponds or lagoons.
- (d) Storm water or waste water collection systems.
- (e) Flow-through process tanks.
- (f) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
- (g) Storage tanks situated in an underground area, such as, but not limited to, a basement, cellar, mineworking, drift, shaft or tun-

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nel, if the storage tank is situated upon or above the surface of the floor.

Note: This definition of “underground storage tank” is based on the definition found in s. Comm 10.01 (98), Register February 2008. [Repealed and recreated as s. Comm 10.050 (122).

(66m) “Utility corridor” means any utility line that runs underground and any backfilled trench that was constructed to install a water main or lateral, a sewer main or lateral or other utility line.

(67) “Waters of the state” has the meaning specified in s. 281.01 (18), Stats.

Note: Section 281.01 (18), Stats., defines “waters of the state” to include “those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within the state or its jurisdiction.”

(68) “Wetlands” has the meaning specified in s. 23.32, Stats.

Note: Section 23.32, Stats., defines “wetland” to mean “those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.”

(69) “Work plan” means a plan which outlines the intended scope of a response action, or any phase of a response action, including but not limited to intended methods, procedures and techniques to be used during the response action.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; cr. (42m), Register, March, 1995, No. 471, eff. 4-1-95; am. (49), Register, April, 1995, No. 472, eff. 5-1-95; am. (intro.), Register, October, 1995, No. 478, eff. 11-1-95; am (intro.), (60), Register, February, 1996, No. 482, eff. 3-1-96; cr. (38m) and (45m), Register, October, 1996, No. 490, eff. 11-1-96; emerg. cr. (66m), eff. 5-18-00; cr. (66m), Register, January, 2001, No. 541, eff. 2-1-01; CR 01-129; cr. (28m), Register July 2002 No. 559, eff. 8-1-02.

NR 700.05 Confidentiality of information. (1) Except as provided under sub. (2), any record, report or other information furnished to, or obtained by, the department in the administration of chs. NR 700 to 750 is a public record subject to the provisions of ss. 19.21, 19.31 to 19.39, Stats., and s. NR 2.195.

(2) If confidential status is sought for any record, report or other information furnished to or obtained by the department under chs. NR 700 to 750, the standards and procedures in s. NR 2.19 are applicable to all sites and facilities, and the standards and procedures in s. 289.09 (2), Stats., are applicable to the owners and operators of solid waste facilities.

Note: Under s. NR 2.19, the department may grant confidential status if: (1) the standards for granting confidential status found in s. 289.09 or 291.15, Stats., are met; (2) confidential treatment is in the public interest using the balancing test in *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672 (1965); or (3) a specific statutory or common law right to confidential treatment is applicable.

(3) Records, reports and other information for which the department has granted confidential status may be:

(a) Used by the department in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific person or responsible party and the analyses or summaries do not reveal records or other information granted confidential status;

(b) Released by the department to the U.S. EPA or its authorized representative, if the U.S. EPA or its authorized representative agrees to protect the confidentiality of the records, reports or other information;

(c) Released for general distribution if the person who provided the information to the department expressly agrees to the release; and

(d) Released on a limited basis if the department is directed to take this action by a judge or administrative law judge under an order which protects the confidentiality of the record, report or other information.

Note: Sections 292.11 (8), 292.31 (1) (d) and (3) (e), and 292.41 (5), Stats., provide the department with authority to gain access to property for the purpose of conducting response actions, and access to records relating to abandoned containers, discharged hazardous substances and solid waste disposed of at a site or facility.

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

NR 700.07 Incorporation by reference. The material listed in this section is incorporated by reference at the paragraph noted: “SW-846, Test Methods for Evaluating Solid Waste”, by

the U.S. Environmental Protection Agency, Office of Solid Waste, loose-leaf manual, dated November 1986, as amended by December 1987 update and November 1990 update II, referenced in s. NR 716.13 (3).

Note: These materials are available for inspection in the offices of the department of natural resources, 101 S. Webster Street, Madison, Wisconsin or may be purchased for personal use from:

National Technical Information Service

U.S. Department of Commerce

Springfield, VA 22161

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

NR 700.09 Site or facility classification. (1) SIMPLE SITES. If a site or facility meets all of the following criteria, the site or facility may be classified as simple and responsible parties may use the simple site process in s. NR 700.11 (1) for that site or facility:

(a) All the contaminants of concern present at the site or facility are listed in Table 1 or Table 2 in ch. NR 720, unless gasoline range organics or diesel range organics, or both are the only other contaminants of concern;

Note: For example, if polynuclear aromatic hydrocarbon (PAH) compounds are present, they would be considered contaminants of concern. With the exception of naphthalene, PAH compounds are generally only of concern for direct contact due to their relatively low migration potential. PAH compounds include, but are not limited to: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(ghi)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, 1-methyl naphthalene, 2-methyl naphthalene, naphthalene, phenanthrene and pyrene.

(b) No residual soil contamination at the site or facility will adversely affect surface water;

(c) No residual soil contamination at the site or facility will adversely affect a sensitive environment; and

(d) No residual soil contamination at the site or facility will concentrate through plant uptake.

(2) COMPLEX SITES. If any of the criteria for simple sites in sub. (1) are not met, or if the responsible party decides to follow the complex site process, the site or facility shall be classified as complex and responsible parties shall use the complex site process in s. NR 700.11 (2) for that site or facility.

Note: The use of the procedures in s. NR 700.11 (3) may be used to respond to environmental contamination even when the site or facility meets the criteria for a simple site.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; r. and recr. Register, April, 1995, No. 472, eff. 5-1-95.

NR 700.11 Submittals. (1) SIMPLE SITE PROCESS. If the site or facility meets the criteria specified in s. NR 700.09 (1) and the responsible party chooses to proceed with the simple site process, all of the following shall apply:

(a) Responsible parties shall submit site progress reports that summarize the completed work and additional work planned to adequately complete the response action at the site or facility to the department at 6 month intervals until a letter of compliance is submitted as required by par. (b). The first site progress report shall be submitted to the department no later than 6 months after the responsible party notifies the department of the discharge in accordance with s. NR 158.06 or 705.05.

Note: Chs. NR 158 and 705 were repealed eff. 3-1-97. See ch. NR 706 for replacement rules.

Note: Approvals, permits or licenses required by department rules other than ch. NR 700 to 799 are still required when using the simple site process.

(b) Responsible parties shall submit a final report for the response action at the site or facility which includes the information required by chs. NR 700 to 746, as applicable, and a letter of compliance documenting that the response action has complied with the requirements of chs. NR 700 to 746, as applicable, and any other applicable environmental regulations, so that no further action is necessary for the site or facility.

Note: Other applicable environmental regulations include, but are not limited to regaining and maintaining the preventive action limits (PALs) in ch. NR 140 for groundwater.

(c) Except as provided in par. (f) and sub. (3), the department may not approve or disapprove of submittals for simple sites. However, the department may review site progress reports and

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other submittals for simple sites in order to determine whether or not the department should take enforcement action against the parties who are responsible for a site or facility.

Note: The department's enforcement authorities are set forth in ch. NR 728.

(d) The department shall provide written acknowledgement of receipt of the letter of compliance and final report within 30 days and shall file these materials in the public record file.

(e) Notwithstanding par. (c), the department may audit files for sites or facilities on an ad hoc basis. Based on the findings of an audit, the department may:

1. Concur with the final report and letter of compliance and require no further action.

2. Determine that the final report or letter of compliance are not complete and require the responsible party to submit additional information.

3. Determine that the response action was inadequate and require the responsible party to take additional response actions as necessary.

Note: The department will generally only audit cases within 3 years of submittal of the final report and letter of compliance.

(f) Responsible parties shall submit a remedial action options report that complies with the requirements of s. NR 722.13 for department approval, prior to implementing a selected remedy, if the selected remedy includes landfill disposal of more than 2000 cubic yards of untreated contaminated unconsolidated material.

(2) COMPLEX SITE PROCESS. Except as provided in sub. (3), if a site or facility is classified as complex under s. NR 700.09 (2) or if the responsible party chooses to proceed with the complex site process, all of the following shall apply:

(a) Responsible parties shall comply with sub. (1) (b), unless otherwise directed by the department.

(b) Responsible parties shall submit a site investigation report, pursuant to ch. NR 716 within 30 days after completion of the report unless the site is exempt from this requirement under par. (e), and a draft remedial options report meeting the requirements of ch. NR 722 within 30 days after completion of the report unless the site is exempt from this requirement under par. (f).

(c) The department shall provide written acknowledgement of receipt of the site investigation report and draft remedial options report within 30 days and specify the estimated date for completion of department review.

(d) The department may audit submittals for complex sites in accordance with sub. (1) (e) where the determination has been made that limited department review will be provided to a complex site.

(e) Responsible persons for sites where the only contamination is from the discharge of petroleum products from petroleum storage tanks are not required to submit a site investigation report within 30 days after completion of the report if the responsible person estimates that the cost of completing a site investigation, remedial action plan and remedial action will not exceed \$60,000, and the agency with administrative authority over the site determines that competitive public bidding is not required under s. 101.143 (3) (cp) 1., Stats. For these sites, site investigation data are required to be submitted with the site closure request.

(f) Responsible persons for sites where the only contamination is from the discharge of petroleum products from petroleum storage tanks are not required to submit a remedial action options report unless the agency with administrative authority over the site under ch. NR 746 requests a remedial action options report.

(3) ADDITIONAL SUBMITTALS OR MORE EXTENSIVE REVIEW. The department may require additional submittals or more extensive department review than is provided for in sub. (1) or (2) in the following circumstances:

(a) Where the owners or operators of a site or facility are eligible for reimbursement under s. 101.143, Stats.

Note: Section 101.143, Stats., is the petroleum storage remedial action statute, under which the department of industry, labor and human relations administers the pe-

roleum environmental cleanup fund act, known as PECFA. Section NR 700.11 (3) (a) applies to the owners or operators of sites who are eligible under the PECFA program to receive reimbursement for response actions from the PECFA. Department of natural resources' review and approval is required for these sites by ch. Comm 47, DNR review of PECFA-eligible sites will be more frequent than that described in the simple site review process under s. NR 700.11 (1).

(b) Where an application is submitted to the department by a person seeking a liability exemption under s. 292.15, Stats.

Note: Section 292.15, Stats., applies to persons acquiring contaminated property. Department review of submittals is required by s. 292.15, Stats., to be more frequent than that described in the simple site review process under s. NR 700.11 (1) to determine if a thorough investigation of the property has been conducted and the environment has been satisfactorily restored and the harmful effects from any release of a hazardous substance has been minimized.

(c) Where environmental standards are not achieved and additional response action is needed before a no-further-action determination is appropriate.

Note: Groundwater contaminated at levels attaining or exceeding a Preventive Action Limit (PAL) in ch. NR 140 is an example of where environmental standards have not been achieved and additional response action is needed. If no additional remedial action is practicable at the site or facility, then a site or facility specific exemption must be issued in accordance with s. NR 140.28 (3). In either case, department review will be required more frequently than that described in the simple site review process under s. NR 700.11 (1).

(d) Where information is available that would affect the site or facility classification, relative priority, eligibility under s. 101.143, Stats., or the availability of department staff to serve as project managers, the department may change the required level of department review and oversight for a site or facility or take enforcement action under ch. NR 728.

(4) DUE DATES. A submittal shall be considered to be filed in a timely manner if it is mailed or delivered to the department on the due date. If the last day of a specified time period falls on a Saturday, Sunday or holiday listed in s. 230.35 (4) (a), Stats., the submittal may be mailed or delivered to the department on the next business day.

Note: The holidays listed in s. 230.35 (4) (a), Stats., are: January 1; the 3rd Monday in January; the last Monday in May; July 4; the first Monday in September; the 4th Thursday in November; December 24; December 25; December 31; and the day following January 1, July 4 or December 25 if those holidays fall on a Sunday.

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95; am. (3) (b), Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. (1) (b) and (2) (b), cr. (2) (e), eff. 5-18-00; am. (1) (b) and (2) (b), cr. (2) (e) and (f), Register, January, 2001, No. 541, eff. 2-1-01; correction in (2) (e) was made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.

NR 700.13 Sample preservation and analysis.

(1) PETROLEUM PRODUCTS. Soil or groundwater analyses for gasoline range organics or diesel range organics conducted for compliance with chs. NR 700 to 736 shall be completed in accordance with the "Modified GRO, Method for Determining Gasoline Range Organics" and the "Modified DRO, Method for Determining Diesel Range Organics", as specified in Appendix III to ch. NR 149.

(2) VOLATILE ORGANIC COMPOUNDS. (a) Soil samples collected for analysis of volatile organic compounds for compliance with chs. NR 700 to 736 shall be preserved in methanol immediately after collection unless the samples are stored in a device which insures sample integrity. Samples stored in a suitable device, including brass tubes and EnCore™ samplers, shall be preserved in methanol according to sub. (3). The department may approve alternate storage devices on a case-by-case basis prior to use in the field. Samples shall be preserved and handled as specified in section 8 and Table 1 of the "Modified GRO, Method for Determining Gasoline Range Organics".

(b) Methanol-preserved soil samples shall be extracted in the vial by shaking for 2 minutes and sonicating in an ultrasonic water bath for 20 minutes. After sonication, an aliquot not larger than 100 microliters shall be removed and introduced into a purge and trap system as in par. 7.3.3.2.4 of method 5030A in "Test Methods for Evaluating Solid Waste (SW-846)".

(c) Methanol-preserved soil samples shall be analyzed by gas chromatography or gas chromatography/mass spectrometry using capillary columns. Suitable analytical methods are found in SW-846.

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(3) HOLDING TIMES. Maximum holding times for soils shall be in accordance with the following table:

| Analysis Method | Sample Storage | Maximum Holding Times from Date and Time of Collection | | | |
|-----------------------|----------------|--|----------|------------|----------|
| | | Solvent Addition | Shipping | Extraction | Analysis |
| GRO/VOC/PVOC | VOC vial | immediately | 4 days | 21 days | 21 days |
| | Brass Tube | within 2 hours | 4 days | 21 days | 21 days |
| | EnCore™ | within 48 hours | 40 hours | 21 days | 21 days |
| VOC/PVOC Confirmation | NA | NA | NA | NA | 28 days |
| DRO | VOC vial | 72 hours | 72 hours | 47 days | 47 days |
| | EnCore™ | 72 hours | 72 hours | 47 days | 47 days |

Note: The "Modified GRO, Method for Determining Gasoline Range Organics" (WI-PUBL-SW-141) and "Modified DRO, Method for Determining Diesel Range Organics" (WI-PUBL-SW-140) are available from the Department of Natural Resources, Emergency and Remedial Response Section, 101 S. Webster St., Madison, WI 53707.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; **correction in (1) made under s. 13.92 (4) (b) 7., Stats.**