Meeting Notes
Remediation and Redevelopment External Advisory Group – NR 700

Tuesday, Dec. 5, 2023 |Noon-1:30 p.m. | Milwaukee Water Commons | Adams Garden Park | 1836 W. Fond Du Lac Ave. |Milwaukee, WI 53205

Action items/assignments for next meeting

- **ALL:** To volunteer for issue paper development for July 2024 rulemaking topics (site investigations and conceptual site models, fees), please email MollyE.Schmidt@wisconsin.gov with copy to Jodie.Thistle@wisconsin.gov.
- **ALL:** Subscribe to the RR EAG listserv to receive information about future meeting dates, agendas, resources, and other EAG-relevant items. Zoom attendees are automatically added to the listserv; if you would like to opt out, please email Jodie.Thistle@wisconsin.gov.

Introductions

In-person attendees

- Michele Norman, DNR
- Judy Fassbender, DNR
- Mark Rutkowski, Shannon & Wilson, Inc.
- Tony Shoen, The Sigma Group
- Chris Bonniwell, Tetra Tech
- Jodie Thistle, DNR
- Michael Prager, DNR
- Jenna Borski, DNR
- Jody Irland, DNR
- Rob Hoverman, DNR
- Frank Dombrowski, WEC Energy Group

Zoom attendees

- Donna Volk, Ramboll
- Ashley Wagner, Cedar Corporation
- Chad Rogness, Lifetime Radon Solutions
- Chris Valcheff, True North Consultants, Inc.
- Glenn Luke, WEC Energy Group
- Grace Winter
- Jeremiah Johnson, Geosyntec Consultants
- Ray Tierney, SCS Engineers
- Adam Roder, The Sigma Group
- Jeremiah Yee, DHS
- Margaret Brunette, DNR

Review Takeaways from Last Meeting

- Meeting notes and materials from Sept. 7, 2023, meeting

DNR updates

- The DNR is developing two scope statements to initiate rulemaking. The first relates to continuing obligations, the second relates to soil standards. Staff will request permission from the Natural Resources Board to hold a preliminary public hearing on these scope statements. If approved, DNR will hold this hearing on Dec. 21, 2023. Staff will then seek approval of the scope statements at a Natural Resources Board meeting in January 2024. If approved, staff will begin drafting rule language in February 2023 under the advisement of a Rule Advisory Committee.
- The DNR is working with external volunteers to develop two issue papers on (1) fees and (2) site investigation requirements and conceptual sites models. These issue papers are intended to identify all/any issues relating to the subject matter – with the idea that a

solution could be a legislative proposal, an internal process adjustment, rulemaking, or improved communication strategies and tools. The issue papers will be completed in April 2024, prior to the next round of DNR rulemaking, which would begin with scope statement preparation in July 2024.

Issue Paper Discussion

- Staff and external volunteers have drafted outlines for issue papers for two topics, with the goal of gathering input at today's meeting and the next External Advisory Group meeting. After that, DNR staff and volunteers will use both rounds of input to develop a full issue paper and bring to the next NR 700 EAG Subgroup meeting on Feb. 28, 2024.
- **Fee issue paper.** Please see the outline provided in the program presentation.
- **Site investigation requirements and conceptual site models issue paper.** Please see the outline provided in meeting presentation and the meeting materials.
- To volunteer for issue paper development (site investigations and conceptual site models, fees), please email MollyE.Schmidt@wisconsin.gov with copy to Jodie.Thistle@wisconsin.gov.

Adjourn

Paper/Agenda #

Issue Paper Outline (12/5/2023 DRAFT)
Conceptual Site Models and Site Investigations

NR 700 EAG Subgroup
Molly Schmidt, Michele Norman, Jodie Thistle, Donna Volk, Josh Davenport

TYPE OF RECOMMENDATION

[e.g., statutory, regulatory, administrative]

BACKGROUND

NR 716 language can be ambiguous or confusing; seeking to identify issues and improve clarify and regulatory efficiency.

A. Conceptual Site Model (CSM)
- Not explicitly named in code as a requirement although components of a CSM are necessary to complete a site investigation
- Unclear when development of a CSM should begin and that it is an ongoing/living model that builds with each iteration of investigation as well as when remedial actions are taken
- Unclear how to present a CSM as part of the SI process (format, etc.) and RAOR, RAP, closure

B. Site Investigation Scoping
- SIWP requires scoping information per NR 716.09. The DNR doesn't receive SIWPs for most cases, although they are required.
- SIR requires scoping information per NR 716.15 and references NR 716.07
- Difficult for the DNR to review reports without adequate background information and presentation of general site conditions
- Work plans should be required for each iteration of site investigation.

C. DNR technical review requests
- Very few fee review requests received for SIWP, SIR, RAOR, which can result in compounding issues, less efficiency in cleanup.
- When fee review is requested for SIWP, the responsible party (RP) may need to wait 60 days before beginning field work. But if no technical review is requested, the timeframe is 30 days, resulting in a disincentive for time-sensitive projects to seek fee review.

D. Groundwater
- Often when Monitored Natural Attenuation (MNA) parameters are potentially a remedy or part of a remedy, the justification of MNA is limited to decreasing contaminant concentrations. Under NR 716.13(13), MNA parameters should be collected during site investigation (SI) work and should include analysis and interpretation of geochemical indicators and parameters.
- The correct use of temp wells (wells that do not comply with NR 141 construction requirements) and grab samples as being for field screening purposes is unclear. Results are generally not considered to be representative of groundwater conditions and not to be used for regulatory compliance. Also, a temp well variance request (for wells not complying with NR 141) must be submitted prior to use for DNR review.

E. Data Interpretation
- Most site investigation reports (SIRs) do not include the interpretation of data required under NR 716.15 (3)(h). Often, the results are presented, but there is no discussion of how the degree and extent has been defined in all environmental media and impacts to receptors.

F. J-flagged Lab Data
- If lab results are estimated or "J-flagged", those results require interpretation, however, there is typically no discussion of how the RP/consultant consider the J-flagged data to be representative of site conditions.

G. Method Detection Limits
- Increased method detection limits due to dilution (e.g., interference) that result in “no detect” of a COC but the method detection limit is well above the RCL.

H. Exceptions noted by the lab during analysis of environmental samples
- The SIR should discuss any samples noted by the lab as not being received in an appropriate condition.
- Typically, if the lab identifies that the environmental samples have been received in a condition that may affect the data results, these situations are not discussed in the SIR. For example, if the samples were not received on ice or there is air in a sample vial, the data results may be affected.

I. Visual Aids
- Variability in Flow Direction. Variations in flow direction must be illustrated on water table and potentiometric surface maps under NR 716.15(4)(b)1, however, typically, only one flow direction map is provided with no discussion of variability in flow direction, which can affect receptors and remedial options.
- Isoconcentration Maps. Maps should include data to support illustration/depiction of extent of contamination displayed as isoconcentration lines. See NR 716.15(4)(c). Maps should include both isoconcentration lines and data.
- Cross Sections. Include data to support illustration/depiction of extent of contamination displayed as isoconcentration lines. See NR 716.15(4)(d). Cross sections should pass through the source area(s) and along potential/known migration pathways to potential receptors.
- Photographs. Photographs are required, but rarely submitted, to document site work. See NR 716.15(4)(f).

J. Iterative Nature of SI & Comprehensive SIR
- Often, multiple SI reports are submitted to the DNR. The DNR recognizes that the SI is an iterative process; however, if multiple SIRs and technical reports with SI data have been submitted, a comprehensive report is needed to integrate and interpret all the data that has been collected to respond to the hazardous substance discharge.
- Frequently, DNR staff are trying to review multiple reports to determine if the degree and extent of contamination has been defined in all environmental media. This is an inefficient and time-consuming process.

PROPOSAL

A. CSM
- The ITRC definition of a CSM is "a three-dimensional visualization of site conditions that allows for evaluation of contaminant sources and affected media, migration pathways and potential receptors"
- Require development of a CSM to be maintained as a communication and decision-making tool throughout the NR 700 process (potentially through rule revisions and guidance).
- Potential CSM steps:
    - Begins when a hazardous substance discharge is reported
    - Evolves as scoping information is gathered
    - The initial CSM should be included in the submittal of an SIWP and updated CSMs included with subsequent submittals throughout process, including closure submittal
    - As site investigation data are collected, the CSM should be updated
    - Should be included in the submittal of an SIR and show the degree and extent of contamination in all affected media
    - CSM directly supports the RAOR/RAP in evaluating remedial options
    - Closure application should include the CSM to demonstrate that the site investigation is complete and how the response/remedial actions address any residual contamination and are protective
- CSM examples as part of a guidance document should be created for simple and complex sites

B. SIWP
- Clarify when additional work plans and fees would be required for additional SI field work. Add authority to require subsequent workplans and a fee per plan when additional investigation steps are proposed.
- Clarify whether additional SIWPs require all previous background data that was submitted as part of previous SIWP.
- The pace of the investigation should be considered when requiring developing a work plans. For investigations where the RP needs to move forward more quickly but multiple field iterations may be anticipated, consider stepped/dynamic work plan approaches that outline how an RP will move forward with additional investigation based on the initial fieldwork (e.g., stepping out monitoring wells based on specific pre-defined criteria). How would this be reviewed/approved/fees collected?
- RP's understand that they are proceeding at their own risk if they proceed with fieldwork without SIWP approval; regardless of approval of SIWP, the DNR may request additional work.

C. DNR technical review requests
- Consider having a consistent timeframe (60 days) for both fee and non-fee SIWP (through rule revisions)
- Consider incentivizing the submittal of a fee, for example, changing review time to 90/180 days without fee and 30/60 days with fee (through rule revision).
- Consider requiring a fee review for SIWP, SIR, RAOR, RAP (through rule revisions)
- Consider a graduated scale for expediting reviews. Larger the fee, the faster the review.

D. Groundwater
- Clarify when field monitoring of DO, ORP, pH, temp, alkalinity is required and then submit as part of SI report.
- Certain MNA parameters should be included in the SIWP based on contaminant identified during discharge notice.
- Consider adding clarity to administrative code or/and guidance regarding temporary groundwater monitoring wells and grab samples; consider clarifying terminology to be consistent with industry terms
- Further clarify types of temporary wells used by industry and when pre-approval is required

E. Data Interpretation
- Further discuss issue, causes, and potential resolution for lack of interpretation of data required under NR 716.15 (3)(h). Consider whether administrative review for completeness applies.

F. J-flagged Lab Data
- Further discuss issues ("J-flagged" interpretation and discussion of how data is representative of site conditions), causes and potential resolution.
- Consider requiring data validation section in SI Report

G. Method Detection Limits
- Further discuss issue (increased method detection limits due to dilution that result in “no detect” of a COC but the method detection limit is well above the RCL), causes and potential resolution.
- Include discussion in report of elevated detection limits
- Clarify whether this will this be interpreted as above the RCL standard (see NR 720.07(2))
- Consider requiring data validation section in SI Report

H. Exceptions noted by the lab during analysis of environmental samples
- Consider requiring QA/QC report discussion in SIR
- Consider requiring data validation section in SIR

I. Visual Aids
- Further discuss issues (missing data relating to variability in flow direction, isoconcentration maps, cross sections, and photographs), causes and potential resolution(s).
- Consider whether administrative review for completeness applies
- Clarify in code to specify exactly what DNR wants for visual aids
- Clarify when photographs are appropriate and what types of photos DNR is looking for

J. Iterative Nature of SI & Comprehensive SIR
- Further discuss issues (submission of multiple SIRs and technical reports with SI data with no comprehensive report and resulting inefficiencies for DNR staff), causes, and potential resolution.
- A comprehensive SI should consist of all relevant data and visual aids, taking into account the time gap between sampling events, if applicable.

RESOURCES NEEDED

[DNR staff participation estimated hours, external participation estimated hours]

ENVIRONMENTAL JUSTICE EVALUATION

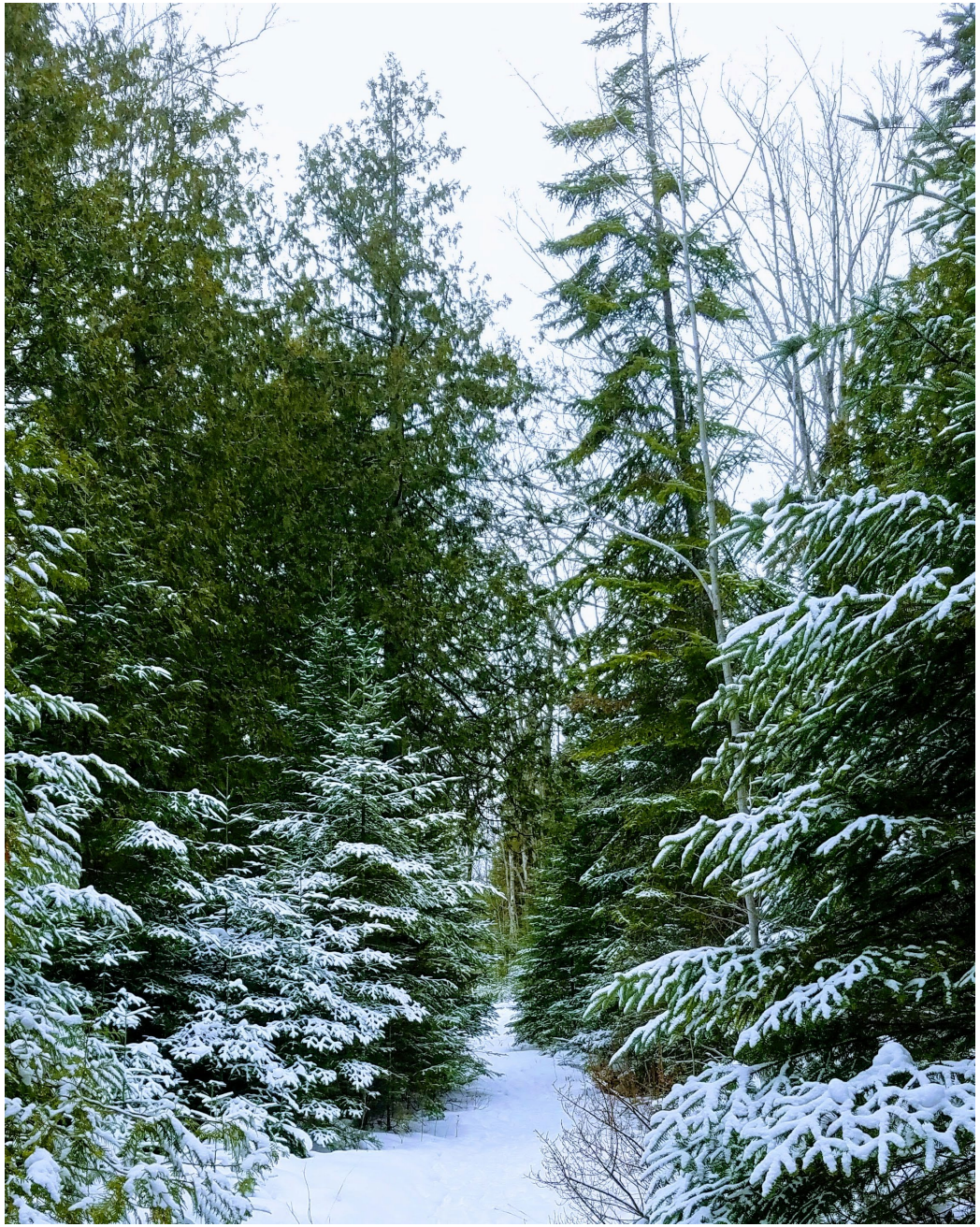
[Explain how this proposal furthers Wisconsin DNR goals regarding environmental justice]

COMMENTS

[Notable comments from issue paper draft writing process from subgroup members, including alternative approaches considered]

NR 700 Subgroup

REMEDIATION & REDEVELOPMENT
EXTERNAL ADVISORY GROUP
Tuesday, Dec. 5, 2023

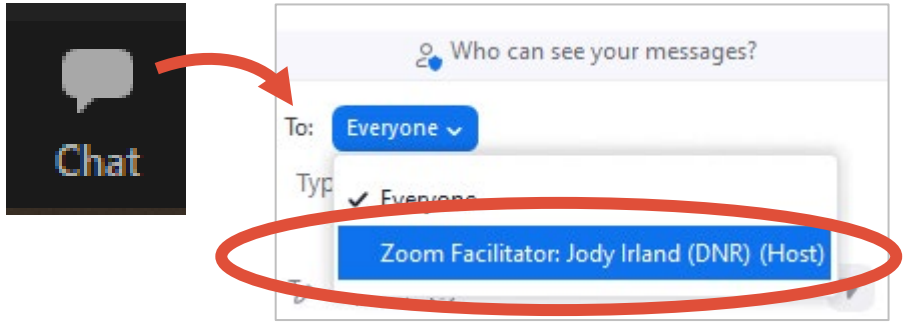


Zoom Meeting Logistics

All attendees are muted

Written Comments/Questions

- Use chat and select Zoom facilitator in the “To” dropdown
- Remarks will be read out loud by facilitator



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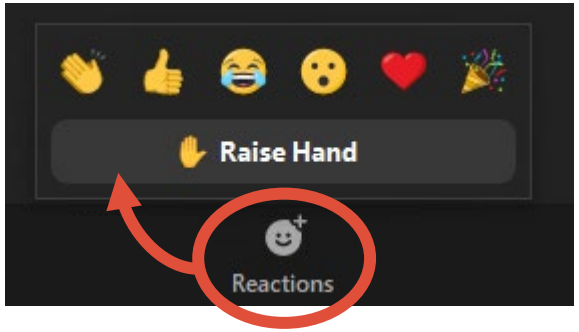
Verbal Comments/Questions

- Raise hand to request a turn to talk (* 9 on phone)
- Please unmute when your name is called (*6 on phone)



Agenda

- Introductions
- Review Takeaways
- DNR Updates
- Issue Paper Discussion
  - Fees
  - Site investigation requirements and conceptual site models
- Next Steps and Assignments
- Adjourn

Find agenda and meeting materials at **dnr.wisconsin.gov/topic/brownfields/rreag** under “meetings”

Future Meeting Dates

Sign up
to receive notifications for RR EAG
and subgroups
dnr.wi.gov/topic/brownfields/rreag

RR EAG - January 25, 2024
- 1 – 4 p.m.

Subgroup Series – Feb. 28
- 10 a.m. – 5:30 p.m.
- Madison GEF 2

RR EAG - April 11, 2024
- 1 – 4 p.m.

Subgroup Series – May 29
- 10 a.m. – 5:30 p.m.
- Madison GEF 2

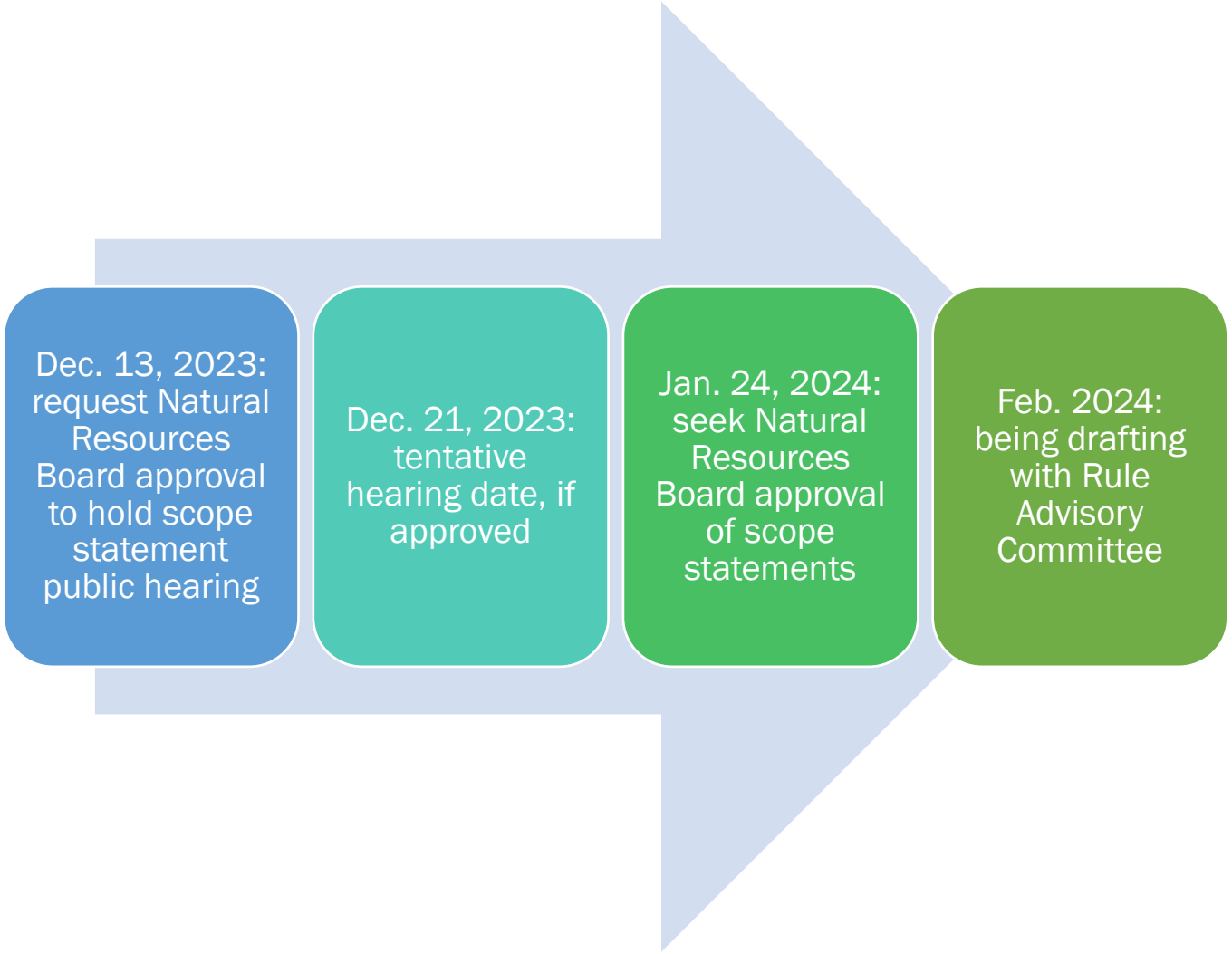
RR EAG - July 25, 2024 (tentative)

Last Meeting Takeaways

- Vapor intrusion continuing obligations discussion
- DNR RR Program processes brainstorm
- NR 700 EAG Subgroup open invitation for policy initiatives

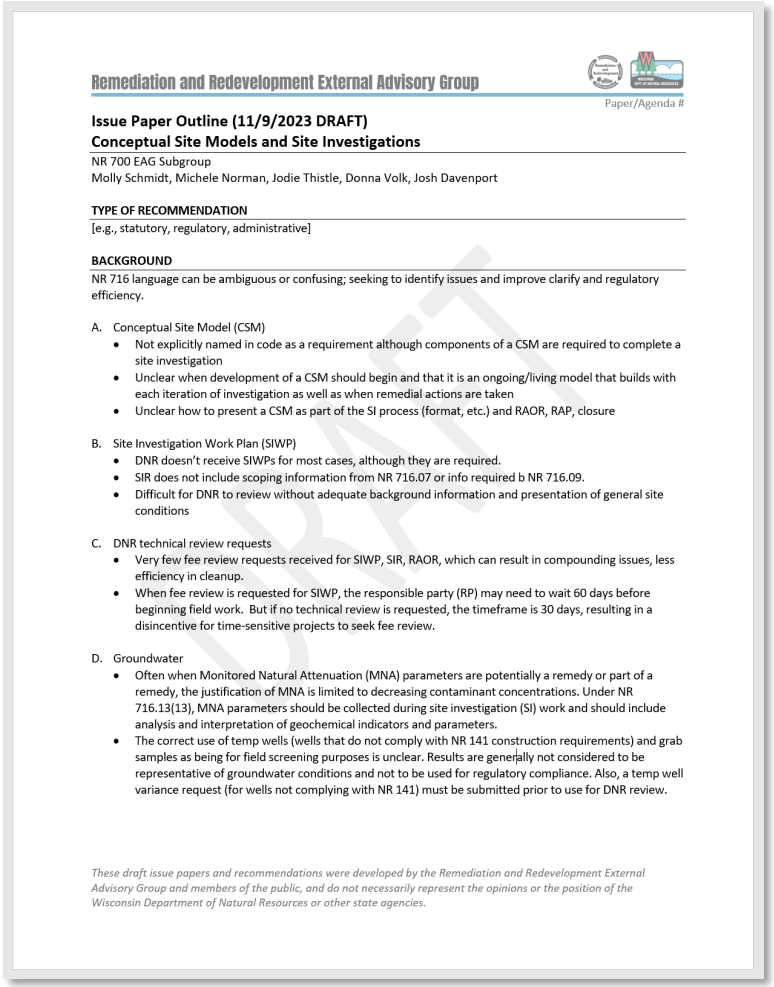
DNR Updates

- 2024 Rulemaking Input
  - Continuing obligations
  - Soil standards



DNR Updates

- Issue Paper Development
  - Fees / Solutions for Funding Sustainability
  - Site Investigation / Conceptual Site Models



Remediation and Redevelopment External Advisory Group

Paper/Agenda #

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Molly Schmidt, Michele Norman, Jodie Thistle, Donna Volk, Josh Davenport

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- Unclear how to present a CSM as part of the SI process (format, etc.) and RAOR, RAP, closure

B. Site Investigation Work Plan (SIWP)
- DNR doesn't receive SIWPs for most cases, although they are required.
- SIR does not include scoping information from NR 716.07 or info required b NR 716.09.
- Difficult for DNR to review without adequate background information and presentation of general site conditions

C. DNR technical review requests
- Very few fee review requests received for SIWP, SIR, RAOR, which can result in compounding issues, less efficiency in cleanup.
- When fee review is requested for SIWP, the responsible party (RP) may need to wait 60 days before beginning field work. But if no technical review is requested, the timeframe is 30 days, resulting in a disincentive for time-sensitive projects to seek fee review.

D. Groundwater
- Often when Monitored Natural Attenuation (MNA) parameters are potentially a remedy or part of a remedy, the justification of MNA is limited to decreasing contaminant concentrations. Under NR 716.13(13), MNA parameters should be collected during site investigation (SI) work and should include analysis and interpretation of geochemical indicators and parameters.
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These draft issue papers and recommendations were developed by the Remediation and Redevelopment External Advisory Group and members of the public, and do not necessarily represent the opinions or the position of the Wisconsin Department of Natural Resources or other state agencies.

Conceptual Site Models and Site Investigations

NR 700 EAG Subgroup

Molly Schmidt, Michele Norman, Jodie Thistle, Donna Volk, Josh Davenport

Background and Proposals

Background:

- NR 716 language can be ambiguous or confusing

Proposal:

- Seek to identify issues
- Recommend ways to clarify and improve NR 716
- Assess changes that could improve regulatory efficiency.

Initial Considerations

A. Conceptual Site Model
B. Site Investigation Workplan Scoping
C. DNR Technical Review Requests
D. Groundwater
E. Data Interpretation
F. J-Flagged Lab Data
G. Method Detection Limits
H. Exceptions Noted by Lab
I. Visual Aids
J. Iterative SI & Comprehensive SIR

A. Conceptual Site Model (CSM)

- Not explicitly named in code as a requirement although components of a **CSM are necessary** to complete a site investigation

- When should development of a CSM begin?

A **CSM is an ongoing/living model** that builds with each iteration of investigation and may continue to be be updated as remedial actions are taken.

- Unclear how to present a CSM as part of the SI process (format, etc.) and RAOR, RAP, closure

A. Conceptual Site Model (CSM)

- The ITRC definition of a CSM is “a three-dimensional visualization of site conditions that allows for evaluation of contaminant sources and affected media, migration pathways and potential receptors”
- Require development of a CSM to be maintained as a communication and decision-making tool throughout the NR 700 process (potentially through rule revisions and guidance).

A. Conceptual Site Model (CSM)

- Potential CSM steps:
  - Begins when a hazardous substance discharge is reported
  - Evolves as scoping information is gathered
  - The initial CSM should be included in the SIWP and updated CSMs included with subsequent submittals throughout process, including closure submittal
  - As site investigation data are collected, the CSM should be updated
  - Should be included in the submittal of an SIR and show the degree and extent of contamination in all affected media
  - CSM directly supports the RAOR/RAP in evaluating remedial options
  - Closure application should include the CSM to demonstrate that the site investigation is complete and how the response/remedial actions address any residual contamination and are protective
- CSM examples as part of a guidance document should be created for simple and complex sites

B. Site Investigation Work Plan (SIWP) Scoping

- **SIWP requires scoping information** per NR 716.09. DNR doesn't receive SIWPs for most cases, although they are required.
- **SIR requires scoping information** per NR 716.15, which references NR 716.07
- SIWP/SIRs are difficult for DNR to review without adequate **background information** and presentation of general site conditions
- **Work plans** should be required for each **iteration of site investigation.**

B. Site Investigation Work Plan (SIWP) Scoping

- SIWPs and scoping information, including CSM info, and potential resolution, should be submitted.
- Requirement for work plans to be submitted (with fees) when additional SI field work is proposed should be added.
- Would additional SIWP's require all previous background data that was submitted as part of previous SIWP?
- The pace of the investigation should be considered when requiring additional work plans.
- RP's understand that they are proceeding at their own risk if they do not submit a SIWP.
    - Regardless of approval of SIWP, DNR can request additional work.

C. DNR technical review requests

- Very **few fee review requests received** for SIWP, SIR, RAOR, which can result in compounding issues, less efficiency in cleanup.
- When fee review is requested for SIWP, the responsible party (RP) may need to wait 60 days before beginning field work. But if no technical review is requested, the timeframe is 30 days, resulting in a **disincentive for time-sensitive projects to seek fee review**.

C. DNR technical review requests

- Consider having a consistent timeframe (60 days) for both fee and non-fee SIWP (through rule revisions)
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- Consider having a graduated scale for expediting reviews. Larger the fee, the faster the review.

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- Further clarify types of temporary wells used by industry and when pre-approval is required for use of non NR 141 compliant monitoring points.

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J. Iterative Nature of SI & Comprehensive SIR

- Often, multiple SI reports are submitted to the DNR. The DNR recognizes that the SI is an iterative process; however, if multiple SIRs and technical reports with SI data have been submitted, a comprehensive report is needed to integrate and interpret all the data that has been collected to respond to the hazardous substance discharge.
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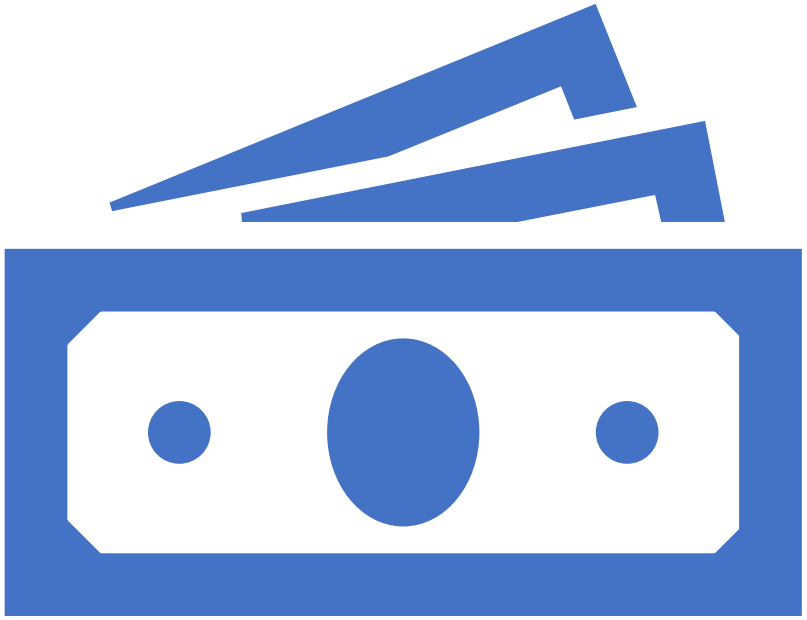

NR 700 EAG Subgroup

December 5, 2023

Solutions for Funding Sustainability

Possible Fee Related Options

1. Increase current NR 749 Fees
2. Increase documents that must be submitted with fee for review
3. Charge premium for expedited reviews
4. Bill Project Manager/document review fees directly (VPLE fee model)
5. Develop Long Term Stewardship Fee
6. Develop an Authorized Environmental Professional Program to decrease staff workload

1. Increase current NR 749 Fees

Fee Analysis

- FY23 had the highest fee collection total of the last 4 years.
- Significant fluctuation in amount of collection by fee type from year to year
- ~40% drop in case closure fee's collected in SFY23 compared to SFY20

There has been no increase in fees since 2013

2. Increase documents that must be submitted with fee for review

- NR 700 was designed to be self implementing.
  - Only the NR 726 closure fee is required
    - Closure is not required but meeting the requirements of closure is required.
  - Some remedial actions require approval and a fee is required for DNR review and approval.

- Should we require fees for other submittals?
  - Site Investigation Workplan is required
  - Site Investigation Report is required
  - Remedial Action Plan is required, depending on actions planned

3. Charge premium for expedited reviews

- Expedited reviews are a customer service improvement
- NAR and NFA focus? These tend to be property transaction related
- Evaluate if other reviews also could be prioritized

4. Bill Project Manager/document review fees directly (VPLE fee model)

VPLE Billing Model

- Quarterly billing
- Billing rate is reviewed with fiscal year (July 1) – Set rate is $115
  - Rate includes overhead cost
- Staff code time to site work
- RP/applicant/atty/municipality is billed quarterly
- Increased workload for Invoicing, reminders, cost tracking

5. Develop Long Term Stewardship Fee

LTS Fees would apply to sites that close with residual contamination

- Five-year review type audit/assessment
  1. funding agreement
  2. up-front payment on five year increment
  3. Invoice for labor cost
- Require insurance similar to VPLE
- Raise soil and gw GIS fees to cover the long term site monitoring
- Covenant not to sue - $30K one time fee for site that will have residual impacts (North Carolina example)

6. Develop an Authorized Environmental Professional Program to decrease staff workload

- Authorized Professional Program
  - Wetland example – delegated authority to consultants to take on some tasks
- Consultant pays a fee and meets set professional requirements to be granted this authority
- Identify tasks that could be managed by consultants acting in a regulatory parallel role
  - Soil management plan approvals
  - Historic fill approvals
  - Certain Site Investigation
- Expedites process
- DNR provides Peer review oversight to ensure consistency

Other Funding Needs

- Open petroleum sites – Replacement for PECFA or similar
- DERF/Dry cleaners and potential unknown chlorinated sites
- Innocent landowner issues
- Legacy sites – Long Term Stewardship, Maintaining protectiveness in the future.
- Nelson/Witte Proposal
- Insurance archeology

Economic Impact Analysis

EIA is required.

Rule impacts must be quantified and explained.

Since 2017, if the proposed change will result in an increased cost of greater than $10M in 2 years, further action is required for the rule to move forward.

Cumulative effect on regulated parties, communities, etc.

CONNECT WITH US

Thank you!

DNR RR Program Contacts:

dnr.wi.gov/topic/Brownfields/Contact.html

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