

Issue Paper: RR Program Fees and Funding Sustainability (2/28/2024 DRAFT)

NR 700 EAG Subgroup

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TYPE OF RECOMMENDATION

This issue paper includes recommendations for revising DNR administrative rules, pursuing legislative changes to statutes affecting the RR program, creating or revising RR program guidance, and instituting changes to internal DNR processes.

BACKGROUND

The RR program is responsible for ensuring statewide consistency in decision-making, providing a broad range and depth of staff expertise, and delivering prompt and efficient reviews of fee submittals. Over time the cost of providing these services has continued to increase due to inflation and other factors; however, program revenues from fees are fixed and have remained unchanged for over a decade. This issue paper examines alternatives for providing funding sustainability and program capacity with a focus on DNR technical assistance/services fees under Wis. Admin. Code ch. NR 749.

This issue paper was developed by DNR staff and volunteer members of the NR 700 EAG Subgroup and External Advisory Group.

This issue paper identifies seven (7) topics for future consideration:

1. Increasing current ch. NR 749 Fees
2. Increasing the number of documents that must be submitted with fee for review
3. Charging a premium for expedited reviews
4. Restructure fees from flat rate to hourly rate
5. Developing a Long-Term Stewardship Fee
6. Developing a Delegated Environmental Professional Program to decrease staff workload
7. Smaller menu - streamlining the structure of ch. NR 749 fees

This issue paper summarizes results and recommendations; **Attachment A** provides full background and detailed proposals on each topic.

PROPOSAL

In summary, this paper identifies topics for administrative rule development, guidance or template development, and DNR internal process adjustments. **Attachment A** provides full background and detailed proposals on each topic.

RESOURCES NEEDED

Items identified within this issue paper for administrative rulemaking are, as a single rulemaking effort, estimated to take approximately 2,000 staff hours. Rulemaking also involves the support of an appointed rule advisory committee during rule development, and public support and involvement during the rule development, economic impact, and public hearing processes.

Guidance development also involves staff time and public input. The amount of staff time for these activities varies widely based on the type of the guidance (template, form, guidance) and whether it is new or revised.

Changes to internal DNR processes involve staff time and varies depending on the nature/impact of the change.

ENVIRONMENTAL JUSTICE EVALUATION

Changes proposed in this paper are intended to improve program sustainability, which would support DNR's ability to carry out statutory duties under the Hazardous Substance Spill Law, Wis. Stat. s. 292.11. Environmental justice communities, including low-income, tribal, indigenous, and communities of color, are more likely to live near contaminated sites. Generally, actions that support DNR's ability to carry out its duties in administering the Hazardous Substance Spill Law are anticipated to benefit these communities and Wisconsin residents through better protection of human health and the environment.

However, most proposals discussed in this paper include policy changes that would result in increased fees, which may have a disparate impact on small businesses that are cleaning up a contaminated site under Wis. Admin. Code chs. NR 700-799. During issue paper drafting, the group and/or meeting participants raised concerns regarding the impact of increased fees on smaller entities and EJ-affected parties.

Additionally, the group and/or meeting participants raised equity concerns with the identified approach allowing expedited reviews for an increased fee, such that regulated parties may pay a higher fee for faster review (under 3. *Charging a premium for expedited reviews*). Allowing deep-pocketed entities to purchase expedited DNR reviews would not only have a disparate impact on entities that are cleaning up contaminated sites under Wis. Admin. Code chs. NR 700-799, it would also have the effect of prioritizing DNR reviews according to economic circumstance of the regulated party rather than the potential health and environmental impacts from the contamination being addressed. Given the higher likelihood of impact from contamination on environmental justice communities, this approach may have a compounding negative impact on environmental justice goals.

COMMENTS

Notable comments from issue paper draft writing process and alternative approaches considered include:

- One way of reducing potential impact on affected Environmental Justice (EJ) parties is allowing parties paying the expedited fee to self-select as an EJ-affected party. The fee would then revert to the standard fee but the submittal would be treated as expedited. This self-selection is used in other areas (e.g., grant applications) and could be verified. EJ-party eligibility criteria could be adopted from an already established source that DNR recognizes, such as the Wisconsin Environmental Equity Tool (WEET) and the EPA EJScreen Environmental Justice Screening and Mapping Tool.
- Large companies may be more capable of adapting to fee increases than small businesses and individuals. Rulemaking that impacts small businesses in Wisconsin must seek the review of the must submit the rule to the DOA Small Business Regulatory Review Board (SBRRB).

ATTACHMENT A: BACKGROUND

1. Increasing current ch. NR 749 fees

Issue background:

Chapter NR 749, Wis. Adm. Code, "Fees for Providing Assistance; Remediation and Redevelopment Program," establishes fees for assistance requested by those undertaking cleanup and redevelopment of contaminated properties subject to NR 700. The fee amounts under s. NR 749.04, Table 1, were initially based on the average amount of time necessary to perform reviews. Review times are currently being reassessed. The fees under ch. NR 749 haven't been revised since 2013, meaning that the flat fees for program services listed in the schedule have not increased within the last 10 years. While RR program NR 749 fees have remained fixed, RR program's costs for providing services have continued to increase due external factors such as inflation and the labor market, and is further discussed below. The result is that customers are paying less, relatively, for these services over time while DNR's costs are steadily increasing.

Additionally, fees are not a stable source of revenue. Over the last three years, there's been significant fluctuation in fee revenues each year. Fiscal Year (FY) 2023 fees in total were higher than the last three years beforehand. Case closure fees decreased by 40% in FY2023 compared to FY2020, due to legislative changes to program structure (the sunset of the PECFA program in FY2020).

The RR program sets priorities to ensure that it uses limited resources to meet statutory and administrative responsibilities. Fee-based work, with established deadlines, is a high priority. RR program staff aim to provide timely customer service, clear, helpful, and consistent responses, with a greater amount and diversity of staff expertise. Several reasons exist why RR program's personnel costs have increased for fee-based work. For example, the program has begun using peer review groups to ensure consistency following the initial review by the project manager. Additionally, due to the complexity of some sites as well as the status of emerging contaminants, a staff specialist may become involved as needed for certain impacted media or substances (e.g., vapor intrusion, soil management, PCBs). The fee schedule establishes many of the fees at a flat \$700 or \$350 for time spent by two to three staff with high levels of experience and expertise. The cost of staff time exceeds the flat fee amount. If, as a matter of policy, customers should pay for the actual cost of services rendered by DNR staff, then an increase in the fee schedule is needed.

DNR input during the investigation, remediation and closure process is beneficial and the current fees are a good value, especially as compared with rates charged by regulators in other states. Continued quality and timely responses must be delivered by DNR if rates are increased.

Proposal(s):

Increasing ch. NR 749 fees is one potential path toward improving funding sustainability; fee increases would require administrative rule revisions. Options to explore include:

- An across-the-board one-time increase in fees, either by amount or percentage.
- A built-in percentage increase that is tied to inflation or another directly relevant external factor that increases "automatically" over time (without requiring additional rulemaking). For example, tying an annual escalation in fees to the Consumer Price Index.
- A combination of these approaches.
- Increase fees to adequately reflect the level of effort required for DNR review and response.

2. Increasing the number of documents that must be submitted with fee for review

Issue background:

Increasing the number and type of documents that must be submitted with fees for DNR review may improve funding sustainability and may secondarily benefit regulatory efficiency. The cleanup process under Wis. Admin. Code chs. NR 700-799 was designed to be independently implemented (“self-implementing”) by regulated parties. Generally, code does not require regulated parties to pay fees for DNR reviews; however, it does require regulated parties to submit certain reports and information to DNR.

DNR service fees typically apply only when a DNR technical or liability review is requested by a regulated party. Some DNR reviews may be required under code conditionally/occasionally, for example some remedial actions, if selected by the regulated party, will require a DNR fee-based review and approval. Case closure requests under Wis. Admin. Code ch. NR 726 require a fee; however, code does not require regulated parties to seek case closure.

Code does require regulated parties to submit certain reports regardless of whether regulated parties are requesting DNR review. Code requires the submission of a Site Investigation Workplan (SIWP) and a Site Investigation Report (SIR). Code may require a Remedial Action Plan, depending on the actions planned.

In addition to addressing funding sustainability, adding certain reports to the list of items that must be submitted with a fee may address a frequent issue that impede timely closure. Often, when sites get to closure, there’s a gap in the completeness of the site investigation. The code requires that regulated parties submit SIWPs and SIRs but does not require submission of a fee for DNR review. Requiring a fee review of the SIR may help catch incomplete site investigations early in the process rather than at the end of the process, helping regulated parties avoid unanticipated delays that could have been resolved ahead of the closure request. Alternatively, fees could be required for only submittals involving sites that present an acute risk (for example, a site with residents affected by TCE vapor contamination). This approach would promote the expenditure of staff time on the sites that present the highest risk to the public.

Proposal:

Administrative rule revisions recommended for consideration include a mix of the following:

- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to submit a Site Investigation Workplan for DNR review and approval.
- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to submit a Site Investigation Report for DNR review and approval.
- Revise code to require entities that are conducting cleanup under chs. NR 700-799 to submit a Remedial Action Plan for DNR review and approval.
- Revise code to allow fees to be charged for subsequent iterations of reports.
- Consider higher fees for more complex sites, with complex criteria to include sites with acute VI risk, groundwater contamination that migrates offsite, contaminant migration in fractured bedrock, free product and similar.
- Decline requiring fees for SIWP, SIR, RAP, and make use of the existing code that allow DNR to require fees on a site-specific basis.
- If SIWP, SIR, and RAP are required to be submitted with fee for review, consider instituting one fee per document that covers all revisions required to obtain approval, and consider identifying which additional documents would be subject to required reviews (to preserve expediency and promote certainty).

- Promote the use of technical assistance meetings and develop strategies for allowing these meetings to be held expeditiously.

3. Charging a premium for expedited reviews

Issue background:

Allowing for expedited reviews at an increased rate may provide increased funding sustainability. Allowing for expedited reviews, i.e., a faster review turnaround for a higher fee, would also provide a customer service improvement. Certain time-sensitive submittals that are frequently related to property transactions, such as a No Action Required (NAR) and No Further Action (NFA), could be prioritized for this type of policy and other reviews may also be considered. Factors for consideration prior to implementation include administrative considerations regarding staffing, costs and commensurate expectations, and fairness to responsible parties with limited resources.

Proposal:

Administrative rule revisions are recommended for consideration:

- Revise code to allow for expedited reviews at an increased rate for certain types of reviews such as NAR, NFA, and other submittals that can be evaluated quickly by technical staff.
- Require expedited reviews (and increased fees) for sites with acute risk concerns.
- Ensure fair and equitable expedited review of EJ sites financed partially through these increased rates.

4. Restructure fees from flat rate to hourly rate

Issue background:

Another option for structuring fees to increase fee revenue is allowing for a system of billing for project manager and/or document reviews directly. This approach may result in more equitable apportionment of costs for sites of varying size and complexity, by determining costs according to staff time spent on a review. The Voluntary Party Liability Exemption (VPLE) program is currently run on this type of system. VPLE allows for quarterly billing under a billing rate that is reviewed each fiscal year (July 1). Staff code time to site work and rates includes overhead costs. The VPLE rate for Fiscal Year 2024 is \$115 an hour.

A similar model could be used where the DNR bills the responsible party and/or applicant on a quarterly basis. Some states use this framework successfully; however, for the RR program, switching to this new system for all sites versus VPLE sites would require a significant change in the administrative structure of the program. Between 2020 and 2022, the VPLE program processed one or fewer VPLE certificates of completion per year, whereas the program processed approximately 260 site closures each year. Increased administrative workload would include staff time for invoicing, issuing reminders, cost tracking, and more. A cost-benefit analysis is needed prior to implementing this type of approach to ensure that benefits from increased program revenue outweigh the increased administrative costs.

Proposal:

Further discussion of this approach is recommended. Changing the fee structure may be achievable through changes in administrative code; however, administrative and staffing changes needed to implement this system may require approval through budgetary/legislative approval processes. Factors that may be considered for changes to an hourly fee structure include billing to reasonable and necessary staff, hourly rates as they may vary by staff level, yearly rate escalators, established maximums for services, and methods of estimating review costs.

5. Developing a Long-Term Stewardship Fee

Issue background:

Another option for improving funding sustainability through fees would be the development of long-term stewardship fees. The need to ensure protection for human health and the environment continues past closure for sites with residual contamination; however, the RR program does not impose fees past closure. Long term stewardship fees could be developed to apply to sites that close with residual contamination. Development of a long-term fee may be achieved through administrative rule reviews in most cases; however, some approaches may also require legislative approval (e.g., the liability protection approach).

Proposal:

Administrative rule revisions are recommended for consideration that could structure a post closure fee for sites closed with residual contamination. Several options for structuring this type of fee could include:

- Establish a five-year review/audit/assessment structure using a funding agreement, up-front payments on five-year increments, and an invoicing system for labor costs.
- Require financial assurance such as insurance – similar to the approach for the VPLE program.
- Require financial assurance similar to the engineered control contaminated sediment model.
- Raise soil and groundwater database/GIS fees to cover the post closure audits/long-term site monitoring.
- Develop a liability protection approach in which the state provides a “covenant not to sue” in exchange for the regulated party’s payment of a one-time fee for site that will have residual impacts. North Carolina allows for this type of covenant through a “Brownfields Agreement” with a developer, with the cost of the agreement tailored to the site conditions, the existing site data, and the proposed land use.
- Develop/implement a Risk Management Program (RMP) similar to the EPAs for sites that have residual contamination left in place. Fees paid for review and LT maintenance would be based on the degree of risk using EPA risk models or similar evaluation of risk (both human health and environmental).

Further discussion of this approach is recommended, along with an analysis of costs to responsible parties.

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

Issue background:

The group looked at the option of developing an Authorized Environmental Professional Program to approach funding sustainability through decreasing staff workload. An Authorized Professional Program would allow environmental professionals to administer certain reviews that are currently done by DNR staff after completing training and certification, similar to how the DNR Waterways Program allows private professionals to become Assured Wetland Delineators. Consultants could pay a fee and meet certain established professional requirements to be granted the authority to perform certain regulatory tasks, such as soil management plan approvals, historic fill approvals, and some types of site investigation approvals. This approach to funding sustainability benefits customers by expediting the affected regulatory processes. The DNR may provide peer review and oversight to ensure that decisions are consistent and statutory goals are met.

Proposal:

Further discussion of this approach is recommended, including evaluation of whether this program would present its participants (professional) with conflicts of interest and/or liability. Further research on the efficacy of similar programs in other states and consideration of costs to responsible parties is recommended prior to implementation.

This proposal would require a statutory change and an administrative rule change for implementation. The Wisconsin State Legislature has designated the Department of Natural Resources as the state agency responsible

for the state's duties under Wis. Stat. ch. 292. Many responsibilities are further delegated to the RR program under Wis. Admin. Code chs. NR 700-799.

7. Smaller Menu - Streamlining ch. NR 749 fees

Issue background

The table of fees within ch. NR 749 (s. NR 749.04, Table 1) establishes over twenty different fees of varying amounts for different types of assistance offered through the DNR RR program. This fee structure contemplates rare and exceptional circumstances, and the values in the chart are based on outdated calculations. Many of the fees could be combined, and the current fee schedule could be simplified and/or streamlined in a way that is easier to understand and administer.

One option for streamlining the fee structure would be to revise the structure of the entire table. A streamlined approach could entail a total of three to four items. One example of a restructure could be for fees to be redistributed into three categories of total value/amount: 1) pre-closure fees, 2) closure fees and liability clarification letter fees 3) post closure fees.

Another option for streamlining fees would be to focus on smaller streamlining adjustments. For instance, s. NR 749.04, Table 1. (d) lists fees for recording information on the DNR database (BRRTS). The list provides five fees that must be paid depending on the type of site and the type of database entry; however, four of the five fees are for similar actions and amounts. These fees could be simplified into fewer options, and database fees overall could be streamlined.

In either approach, streamlining fee structure for efficiency may help offset foreseeable concerns related to cost implementation of increasing fees across the board.

Proposal

Further discussion and examination of feasibility is recommended. Streamlining can be accomplished through administrative rule changes. Guidance development following administrative code changes is recommended.

Issue Paper: Conceptual Site Models and Site Investigations (2/28/2024 DRAFT)

NR 700 EAG Subgroup

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TYPE OF RECOMMENDATION

This issue paper includes recommendations for revising DNR administrative rules, creating or revising DNR guidance materials, and instituting changes to internal DNR processes.

BACKGROUND

The language in Wis. Admin. Code ch. NR 716 language can be ambiguous or confusing. The goal of this issue paper is to explore specific issues that arise under ch. NR 716 and identify solutions for improving clarity and regulatory efficiency. This issue paper was developed by DNR staff and volunteer members of the NR 700 EAG Subgroup and External Advisory Group.

This issue paper identifies seven (7) topics for future action:

- A. Conceptual Site Model
- B. Site Investigation Workplan Scoping
- C. DNR Technical Review Requests
- D. Groundwater
- E. Lab Data Interpretation
- F. Visual Aids
- G. Iterative SI & Comprehensive SIR

This issue paper summarizes results and recommendations; **Attachment A** provides full background and detailed proposals on each topic.

PROPOSAL

In summary, this issue paper identifies topics for administrative rule development, guidance template development, or for DNR internal process adjustments. **Attachment A** provides full background and detailed proposals on each topic.

RESOURCES NEEDED

Items identified within this issue paper for administrative rulemaking are, as a single rulemaking effort, estimated to take approximately 2,000 staff hours. Rulemaking also involves the support of an appointed rule advisory committee during rule development, public support and involvement during the rule development, economic impact, and public hearing processes.

Guidance development involves staff time and public input. The amount of staff time for these activities varies widely based on the type of the guidance (template, form, guidance) and whether it is new or revised.

Changes to internal DNR processes involve staff time and varies depending on the nature/impact of the change. In some cases, changes to internal DNR processes may involve the need for additional staff.

ENVIRONMENTAL JUSTICE EVALUATION

Changes proposed in this paper are intended to improve regulatory efficiency, which would benefit regulated parties through time/cost savings and improves the DNR's ability to carry out its statutory duties under Wis. Stat. ch. 292.11. Disadvantaged and underserved communities are more likely to live near contaminated sites and share a disproportionate burden of environmental pollution. Improvements are anticipated to benefit

disadvantaged and underserved communities as well as Wisconsin residents in general through better protection of human health and the environment by:

- Reducing responses to insufficient documentation (reports);
- Identifying potential exposures to receptors earlier in the cleanup process;
- Creating documents or diagrams that may be used to communicate with the public environmental issues at a site;
- Allowing more efficient responses more potential exposures to contamination; and
- Reducing the time spent on investigation (getting to cleanup faster).

Parts of this proposal contemplate administrative rule revisions would result in increased fees for DNR technical assistance, which may have a disparate impact on small businesses and organizations that are cleaning up a contaminated site under Wis. Admin. Code chs. NR 700-799. During issue paper drafting, the participants raised the following concerns:

- The impact of requiring DNR approvals for additional reports, along with DNR review fees, on smaller entities and disadvantaged parties (under *B. Site Investigation (SI) Scoping*)
- Equity concerns with the identified approach of instituting a graduated scale for expediting reviews, such that regulated parties may pay a higher DNR technical assistance fee for faster review (under *C. DNR technical review requests*)

Increased or graduated-scale DNR service fees could have a disparate impact on small businesses and organizations that are unable to compete with larger, better-resourced businesses and organizations. Residents of disadvantaged and underserved communities are unlikely to be impacted directly by increased DNR technical assistance fees; however, these communities would benefit broadly from better protection of human health and the environment, as stated above. .

COMMENTS

ATTACHMENT A: BACKGROUND

A. Conceptual Site Model (CSM)

Issue background (CSM):

Administrative code does not explicitly name a CSM as a requirement, although many components of a CSM necessary to complete a site investigation are included in ch. NR 716. A CSM is an ongoing/living model or diagram that starts during site investigation scoping and builds with each iteration of investigation as well as when remedial actions are taken. However, code does not define CSMs and does not clarify when CSM development should begin or how to present a CSM as part of the site investigation (SI) process, the remedial action options report (RAOR), the remedial action plan (RAP), or case closure request.

Wis. Admin. Code § NR 716.15(3)(a) requires the SI report to include the scoping information identified in § NR 716.07. Typically, RPs do not submit an SIWP to the DNR, nor is a presentation of the § NR 716.07 scoping information included in the SI report; therefore, it is difficult for the DNR to understand what is being investigated, how the history of the site is related to the reported contamination, potential receptors, etc.

The CSM is critical to developing a complete SI report. A CSM in a flexible format is needed with updates throughout the investigation, remedy and closure. Further, examples for simple vs. complex sites and well-defined parameters are needed. The results and data interpretation sections of the SI report should rely heavily on and reference the CSM.

With exception to scenarios when immediate or interim action is appropriate, the RP should demonstrate that the SI is complete before remediation/response action and before case closure is requested. Currently, this is often not the case. Many SI reports are submitted with or just prior to case closure and without enough information to demonstrate that the SI is complete. Also, frequently the case closure request is the first submittal received with a request for DNR technical assistance review (with fee) and response. Most cases are not closed following the initial case closure request, because additional SI work is needed.

Proposal (CSM):

Administrative code changes and guidance development are recommended.

- Code changes could implement the Interstate Technology and Regulatory Council (ITRC) definition of a CSM, which is “a three-dimensional visualization of site conditions that allows for evaluation of contaminant sources and affected media, migration pathways and potential receptors.” This definition, which specifically calls for a three-dimensional visualization, may require clarification so that regulated parties have the flexibility to present a CSM that is appropriate for the complexity of the site. Clarify that a plan view and a section view is required; however, a complex 3-D visual computer model is not required.
- Code changes could require a CSM to be developed and maintained as a communication and decision-making tool throughout the Wis. Admin. Code chs. NR 700-799 process. Code changes could outline the following potential CSM steps:
 - Begin developing a CSM when a hazardous substance discharge is reported.
 - Evolve the CSM as scoping information is gathered.
 - Include the initial CSM in the submittal of an SIWP and include updated CSMs with subsequent submittals throughout process, including closure.
 - As site investigation data are collected, update the CSM.
 - Include the CSM in the SIR and show the nature, degree and extent of contamination in all affected media, migration pathways, and receptors of contamination.

- The CSM directly supports the RAOR/RAP in evaluating remedial options.
- Include the CSM in the closure application to demonstrate that the site investigation is complete, how the response/remedial actions addressed the contamination, and that engineering controls address residual contamination in a manner that is protective of human health and the environment.
- Guidance could supplement code revisions to assist regulated parties. CSM examples as part of a guidance document could be created for simple and complex sites. Templates may be needed.

B. Site Investigation (SI) Scoping

Issue background (SI Scoping):

The Site Investigation Work Plan (SIWP) requires scoping information (NR 716.09). Responsible parties do not submit SIWPs to the DNR for most cases, although they are required. Regulated parties risk a delay in the cleanup process if they do not submit a SIWP. Regardless of SIWP submission, the DNR may request additional work. If no SIWP is submitted, it is difficult for the DNR to understand how and why an investigation was scoped and other DNR reviews can take longer. Work plans should be required for each iteration of site investigation. The SI can expand in detail and complexity over time. It is difficult and time-consuming to determine compliance based on multiple SIWP reviews that don't include previous scoping information and evolving understanding of the site conditions.

The Site Investigation Report (SIR) requires scoping information (NR 716.15, NR 716.07). SIWP and SIRs are difficult for the DNR to review without adequate background information and presentation of general site conditions.

The pace of the investigation should be considered when developing a SIWP. For investigations where the responsible party needs to move forward quickly, but multiple field iterations are anticipated, consider stepped or 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).

Phase I ESA /AAI or desktop ESA-like documents could provide background information. Other states like Minnesota and Indiana require a Phase I ESA as part of entry into some programs.

Proposal (SI Scoping): (note – outline and ppt seem different here):

Administrative code revisions are recommended:

- Require submission of SIWPs and scoping information, including CSM info, and potential resolution. Leave flexibility in code to add certain scoping information only when relevant to the site.
- Require SIWPs to be submitted for DNR technical assistance/review (with fees) when additional SI field work is proposed.
- Require subsequent SIWPs to be submitted with a DNR technical assistance fee (per plan) when additional investigation steps are proposed.
- Enable the DNR to direct the content of SIWPs (e.g., SIWP checklist) which may include quality assurance information or sampling and analysis schemes.
- Enable DNR to require iterative SIWPs to contain all previous background data and evolving understanding of site conditions based on field investigation results and/or clarify whether additional SIWPs require all previous background data that was submitted as part of previous SIWP.

Further research and potential inclusion as administrative rule changes is recommended for the following:

- For required scoping information, consider requiring information the history of site, the receptors, and its status as a wetland (not archeological or climatologic information).

- Research requirements regarding “sensitive receptors” in other states and consider these approaches for inclusion in administrative rule changes.
- Consider inclusion of a requirement to submit Sampling and Analysis Plans (SAPs).
- Consider inclusion of a requirement to submit Standard Operating Procedures (SOPs).
- Consider including the ability for DNR to request Quality Assurance Project Plans (QAPPs) at specific sites in addition to the the quality assurance and control information currently required under NR 716.13.
- Consider establishing a combined DNR technical assistance fee for SI/RAORs and RAOR/RAPs.

C. DNR technical review requests

Issue background (DNR technical review requests):

The DNR receives very few technical assistance requests (with fee) for SIWPs, SIRs, or RAORs. The lack of DNR technical oversight for these submittals may result in compounding issues and delays and reduce efficiency in cleanup.

When an RP requests the DNR’s technical assistance (with fee) for an SIWP, the RP may need to wait 60 days before beginning field work. However, if no technical assistance (with fee) is requested, the timeframe is shortened to half that time, 30 days. This regulatory scheme results in a disincentive for RPs to seek technical assistance from the DNR.

Requiring technical assistance (with fee) for all SIWP submittals is likely to result in feedback to the RP that ensures compliance with administrative code early on and keeps the project on track. However, under the current requirements the RP may experience delays in field work because the regulatory scheme outlines that field work may not begin for up to 60 days after submittal.

Requiring a graduated fee for expediting technical assistance reviews (i.e., paying a higher fee provides faster turnaround time from the DNR) may partially address the efficiency issue. However, a graduated fee may not be the best method to prioritize technical assistance and may result in prioritizing RPs that can afford a higher fee, which is inequitable to disadvantaged parties. For example, an individual property owner may not have means to pay a fee, much less a larger fee, to expedite technical assistance for their case, whereas a large real estate developer may be able to do so.

Consideration for expedited technical assistance based on human health risk may be more appropriate. For example, a faster turnaround for a site with TCE contamination and human receptors, for example, is more equitable and is likely to result in better health outcomes.

Proposal (DNR technical review requests):

Administrative rule revisions are recommended for consideration:

- Provide a consistent timeframe (60 days) for submissions that request DNR technical assistance (with fee) and those that do not request DNR technical assistance (with fee)
- Incentivize submittal of a technical assistance request (with fee) by reversing the current waiting period to begin field work (e.g., set review time to 90/180 days without a DNR technical assistance request and 30/60 days with a DNR technical assistance request).
- Require DNR technical assistance for SIWPs, SIRs, RAORs, and RAPs.
- Allow a graduated scale for expediting DNR turnaround time (i.e., pay higher fee provides faster DNR review, or higher risk sites receive priority DNR turnaround time). Consider either the inclusion of certain

environmental justice and/or high risk prioritization criteria to allow sites to have priority, or an exemption to allow such sites to receive priority without an increased fee.

- Establishing (or maintaining) the payment of fees on a payment-per-report basis.
- Consider available strategies for addressing documents that are submitted to the DNR without a fee (for example, declining to review these documents, or requiring all document fees be paid prior to closure.

D. Groundwater

Issue background (Groundwater):

MNA: Section NR 716.13(13) requires MNA parameters to be collected during the SI with analysis and interpretation of geochemical indicators and parameters. Often when Monitored Natural Attenuation (MNA) is a potential a remedy or partial remedy, the consultant's justification of MNA as a remedy is limited to decreasing contaminant concentrations and does not include interpretation of geotechnical indicators and parameters. This issue occurs frequently enough to merit addressing. If MNA will likely be a component of the remedial action (which is true in many cases), the SIWP should include collection of MNA parameters. The SI report should summarize the MNA parameters and the sub-surface conditions that are present to support contaminant degradation. Field parameters at a minimum should be included, along with slug and conductivity information.

Temp wells: It is unclear that the correct use of temporary wells (i.e., wells that do not comply with NR 141 construction requirements) and grab samples is for field screening purposes. These results are generally not considered to be representative of groundwater conditions and are not sufficient for regulatory compliance (i.e., the results may not be used to demonstrate that concentrations of contaminants in groundwater are below an enforcement standard). Administrative code requires DNR approval for a temp well variance (for wells not complying with ch. NR 141) prior to use in a site investigation.

Also note that industry terms and DNR definition of temporary wells differ.

There is opportunity to define temp wells and clarify time frames in ch. NR 141. Also, this issue affects the SIWP, which should include methods or standard operating procedures prior to significant implementation of work. Whether permanent or temporary, the focus for wells in this context should be on collection of groundwater samples that are free of sediment and representative of the water unit.

Proposal (Groundwater):

Administrative rule revisions are recommended for consideration:

- Clarify when field monitoring of DO, ORP, pH, temp, alkalinity is required under state administrative code and clarify that it must be submitted as part of SI report.
- Require that certain MNA parameters be included in the SIWP based on contaminants identified during discharge notice. Require field parameters along with slug and conductivity information.
- Add clarity regarding temporary groundwater monitoring wells and grab samples; clarify terminology to be consistent with industry terms.
- Further clarify types of temporary wells used by industry and when pre-approval is required for use of monitoring points that are not compliant with ch. NR 141.

Guidance may also be considered in addition or as an alternative for the following items:

- Temp well guidance could be reestablished (possibly following respective changes in ch. NR 141).
- Further clarify types of temporary wells used by industry and when pre-approval is required for use of monitoring points that are not appropriate for comparison with groundwater quality standards (non-compliant with ch. NR 141).

- Address this topic in a guidance document?

DNR internal procedure recommendations may be considered:

- MNA shortcomings could be addressed during DNR response to SIWP (in addition to other approaches). Based on contaminant identified during discharge notice, certain MNA parameters could be identified.

E. Lab Data Interpretation

Issue background (lab data interpretation):

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 nature, degree and extent has been defined in all environmental media and impacts to receptors, or how field conditions, laboratory results, data gaps and other limiting conditions affect the data interpretation.

J-flagged lab data: If lab results are estimated or "J-flagged," those lab results require interpretation; however, there is typically no discussion of how the RP/consultant considered the J-flagged data to be representative of site conditions. At times when they are discussed, the consultant dismisses the results due to the J-flag (i.e., misinterprets that they are non-detect due to the flag or that the flag renders the results as low concentrations, without consideration to either the laboratory's detection and reporting limits or the regulatory standards).

Method Detection Limits: Increased method detection limits (e.g., due to dilution or interference) that result in "no detect" (or J-flags) of a contaminant of concern when the method detection limit is at or above the residual contaminant level (RCL) or enforcement standard.

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 (e.g., sediment in water, air in VOC vial, outside temperature limits). Many times when the lab identifies that the environmental samples have been received in a condition that may affect the results, it is 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. Many other states require a QAQC discussion and evaluation in reports.

Proposal (lab data interpretation):

Data interpretation: Further discussion of the issue, causes, and potential resolutions for lack of interpretation of data required under NR 716.15 (3)(h) is needed. Some approaches that have been identified for consideration are:

- Consider whether administrative review for completeness applies (DNR internal process change)
- Define status report in ch. NR 700 and expectations (rule change)
- Use the SI outline and dictate results interpretation
- If no interpretation is made, DNR may state that the site will be considered "out of compliance" and a template response letter is generated stating a standard time frame to come back into compliance and assess a fee on parcel based on this.

J-flagged lab data: Further discussions of issues ("J-flagged" interpretation and discussion of how data is representative of site conditions), causes, and potential resolutions is needed.

- What would data interpretation include? Compare laboratory detection and reporting limits to regulatory standards (RCLs, ESs).

Some approaches identified are:

- Consider administrative rule changes requiring a data interpretation section in SI Report.
- Consider administrative rule changes defining a "j-flag" to not qualify as such (i.e., be the same as non-j-flag) until evidence is given in the contrary (e.g., not detected anywhere else, no source, and not in groundwater and soil, both lab detection and reporting limits are below cleanup standards).
- This would all be part of a SAP and QAPP. Define a QAQC process.

Method Detection Limits: Further discuss this issue, causes, and potential resolution.

- Direct the RR program to work with DNR's lab certification program to define how this information is managed by the lab in their Quality Assurance and Quality Control (QAQC) program.
- Incorporate this information into a QAQC document submitted with initial site report.
- Include in report of elevated detection limits
- Clarify whether this will be interpreted as above the RCL standard (see NR 720.07(2))
- Consider requiring data validation section in SI Report

Exceptions noted by the lab during analysis of environmental samples: Administrative rule revisions are recommended:

- Require QA/QC report discussion and data validation section in SIR

F. Visual Aids

Issue background (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. Lack of data is often related to lack of MNA information.

Isoconcentration Maps. Maps should include data to support illustration/depiction of the 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 (§ NR 716.15(4)(f)).

Occasionally, DNR staff have learned through site visits that site work was reported inaccurately. Photos may assist in documenting completed work.

Proposal (Visual Aids):

Further discussion of issues, causes, and potential resolution(s) is needed. Some approaches identified are:

Administrative rule changes:

- Clarify exactly what DNR wants for visual aids and update "visual aids" and other terms to be consistent with current federal and state usage.
- Clarify when photographs are appropriate and what types of photos DNR is requesting.
- Require a figure and table numbering scheme similar to the requirement for closure submittals. Updates to these figures would be required as the SI expands.
- Grant monies for a database for laboratory data, similar to the GEMS monitoring well network, for which the date of event and lab data are uploaded based on Facility ID and associated with a single monitoring well to allow swift downloading and plating.
- DNR may be able to provide a consistent list of visual aids and items to include, but site variability and complexity needs to be considered if additional/other information is needed.
- Put the data on the map.
- Data is required at least 4 in different seasons.

DNR internal process changes:

- Consider whether administrative review for completeness applies.
- In combination with an administrative rule requirement (listed above) for a figure and table numbering scheme, consider whether grant monies may be available for implementing a GEM-style data portal

where data is uploaded based on Facility ID. Borings on SI that expand over one acre would be geocoded to the state plane.

G. Iterative Nature of SI & Comprehensive SIR

Issue background (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 must 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 (Iterative Nature of SI & Comprehensive SIR):

Further discussion of issues, causes, and potential resolutions is needed. Some approaches identified include the following administrative rule revisions:

- Revise administrative code to clarify the requirement for submission of a comprehensive SI that consists of all relevant data and visual aids, considering the time gap between sampling events, as applicable.
- Consider code revisions that would allow for hourly assessed DNR technical assistance fees at a “cost not to exceed” for any submittal. Base on established submittal templates.

Consider clarification in guidance of the following:

- Issues surrounding contamination crossing property lines, including entry permissions and liability issues.