

**Continuing Obligation Rule Changes (RR-14-23) First Draft
July 19, 2024, Rule Advisory Committee Meeting**

RULE TEXT

SECTION 1. NR 700.03 (1e) (Note) is amended to read:

NR 700.03 (1e) Note: ~~Section 292.12 (1) (a), Stats., reads: Under s. 292.12 (1) (a), Stats.,~~
“Agency with administrative authority” means “the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2), Stats., or the department of natural resources with respect to a site over which it has jurisdiction under ~~s. 292.11~~ (~~7~~) chs. 289, 291, or 292, Stats.”

SECTION 2. NR 700.03 (5m) is created to read:

NR 700.03 (5m) “Commissioning” means the process of verifying and documenting that an installed vapor mitigation system, point of entry treatment system, or other remedial system that requires commissioning is operating and performing according to the objectives set out in the design plan.

SECTION 3. NR 700.03 (8m) is created to read:

NR 700.03 (8m) “Continuing obligation” means any responsibility, requirement, limitation, or combination thereof, that an agency with administrative authority imposes as a condition of approving an interim action, approving a remedial action, or issuing a case closure letter for a site or facility at which residual contamination remains after the conclusion of an interim action or a remedial action at the site or facility, that is imposed under ch. 292, Stats., or any agreements or contracts authorized under ch. 292, Stats.

SECTION 4. NR 700.03 (17) (Note) is amended to read:

NR 700.03 (17) Note: Under s. 292.01 (3m), Stats., “engineering control” means an “object or action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap, soil cover, or in-place stabilization, but not including a sediment cover.”²²

SECTION 5. NR 700.03 (39s) is created to read:

NR 700.03 (39s) “Occupant” means any individual living in or using a premise, building, or property for any length of time, including an owner, tenant, lessee, licensee, or other individual with a recognized legal interest to possess or use the premise, building, or property.

SECTION 6. NR 700.03 (45e) is repealed.

SECTION 7. NR 700.03 (66w) is revised to read:

NR 700.03 (66w) “Vapor risk screening level” means the concentration of vapors in samples collected outside a building to estimate indoor vapor concentrations. The vapor risk screening level is equal to the vapor action level ~~multiplied [divided]~~ divided by an appropriate attenuation factor.

SECTION 8. NR 700.03 (66w) Note 1 is repealed.

SECTION 9. NR 700.15 is created to read:

NR 700.15 **Notifications.** Written notifications to property owners and occupants under chs. NR 700 to 799 shall be provided in a clear and conspicuous manner that is likely to be read, observed, or heard, and understood, by the intended recipients. For occupants, required notifications shall be provided regardless of the length and nature of the occupant’s tenancy.

SECTION 10. NR 708.05 (3) (c) 4., Note 1 and Note 2 are created to read:

NR 708.05 (3) (c) 4. To confirm that contamination has been adequately removed by a non-emergency immediate action such that additional response action is not needed.

Note: The department is not able to make a determination regarding additional response actions without adequate sampling data.

Note: The appropriate time to provide sampling results with the department is following data review, verification, and validation.

SECTION 11. NR 708.05 (6) (c) 7. is created to read:

NR 708.05 (6) (c) 7. Test results of any samples that were collected as part of the immediate action.

SECTION 12. NR 708.11 (1) (a) is amended to read:

NR 708.11 (1) (a) Responsible parties shall evaluate the need for interim action prior to initiating a site investigation and during a site investigation. Interim action shall be taken ~~where~~ if it is necessary to contain or stabilize a discharge of a hazardous substance or environmental pollution, in order to minimize any threat to public health, safety, or welfare or the environment. When an interim action is warranted, responsible parties shall implement an interim action as soon as facility or site- related information makes it possible to do so, in compliance with the requirements of this chapter. The responsible party shall submit written documentation of the responsible party's evaluation of interim actions either on or off-site for any site or facility that has not received case closure.

SECTION 13. NR 708.11 (1) (a) Note 2 is created to read:

NR 708.11 (1) (a) Note: The department will review the responsible party's evaluation of interim actions if a fee under ch. NR 749 is submitted.

SECTION 14. NR 708.11 (2m) and Note are created to read:

NR 708.11 (2m) SPECIFIC ACTIONS; VAPOR MITIGATION SYSTEMS AND POINT OF ENTRY TREATMENT SYSTEMS. A response action that includes installation or operation of a vapor mitigation system or a point of entry treatment system is an interim action.

Note: Air sampling for vapor mitigation systems is required under ch. NR 716.

SECTION 15. NR 708.11 (4) is amended to read:

NR 708.11 (4) DESIGN AND IMPLEMENTATION REQUIREMENTS. For the types of interim actions listed in pars. (a) through (c), responsible parties shall prepare and submit to the department all reports and plans required by ch. NR 724 for department review and approval, along with any fee required under ch. NR 749, prior to proceeding to the next step in design, implementation or operation of an interim action under ch. NR 724, unless otherwise directed.

SECTION 16. NR 708.11 (4) (b) is amended to read:

NR 708.11 (4) (b) ~~On-site~~ On-site engineering control or barrier, including a landfill cover or groundwater barrier system, or a vapor mitigation system other than a single family residence radon-type sub-slab depressurization system, unless otherwise directed by the department.

SECTION 17. NR 708.11 (4m) (title), (a), (b), and Note are created to read:

NR 708.11 (4m) CONSTRUCTION DOCUMENTATION REQUIREMENTS. (a) Responsible parties shall submit a construction documentation report under s. NR 724.15 to the department for review and approval, with any ch. NR 749 fees, for any vapor mitigation system, including a single family radon type sub-slab vapor mitigation system, and any point of entry treatment system.

(b) The department may require a responsible party to submit a construction documentation report under s. NR 724.15 to the department for review and approval, with any ch. NR 749 fees, for any interim action for which the department will impose a continuing obligation.

Note: The department may require a construction documentation report regardless of whether the interim action report is submitted as a stand-alone document or as part of another report, such as a site investigation or remedial action documentation report.

SECTION 18. NR 708.15 (1) is repealed and recreated to read:

NR 708.15 (1) GENERAL. (a) Responsible parties shall prepare and submit an interim action report to the department for department review and approval, along with any fee required under ch. NR 749, within 60 days of completion of the interim action, except if any of the following circumstances apply:

1. The interim action was pre-approved by the department under s. NR 708.11 (4);
2. The interim action was conducted to remove free product discharged from a UST as described under sub. (2); or
3. The department directs in writing that an interim action report is not required for the interim action.

(b) Responsible parties may submit an interim action report as either an independent interim action report under this section, part of a site investigation report under s. NR 716.15, or part of a remedial action documentation report under s. NR 724.15, unless the department requires separate interim action reports under par. (c).

(c) Responsible parties may submit a single interim action report for multiple interim actions, except for interim actions relating to vapor mitigation systems and point of entry treatment systems, the department may require a responsible party to submit an interim action report separately from other reports, and may require a responsible party to submit a separate interim action report for each interim action.

(d) Interim action reports for interim actions listed under s. NR 708.11 (4) (b), shall meet the requirements under s. NR 724.15 for documentation of construction and completion.

SECTION 19. NR 708.15 (3) (j) is created to read:

NR 708.15 (3) (j) Commissioning completion documentation for any vapor mitigation systems or point of entry treatment systems.

SECTION 20. NR 708.15 (3) (k) is amended to read:

NR 708.15 (3) (k) An operation ~~and~~, maintenance, and monitoring plan for any engineering control or barrier employed, including a cover, a groundwater barrier system, a point of entry treatment system, or a vapor mitigation system.

SECTION 21. NR 708.15 (3) (l) is created to read:

NR 708.15 (3) (l) Any sampling results that have been collected as part of an interim action.

SECTION 22. NR 708.15 (4) is created to read:

NR 708.15 (4) CONTINUING OBLIGATIONS. If the interim action includes any actions that would necessitate the need for a continuing obligation, the responsible party shall do all of the following:

- (a) Provide the documentation required under s. NR 708.16 with the interim action report.
- (b) Provide any technical assistance fee and any database recording fee required under ch. NR 749.

SECTION 23. NR 708.16 is created to read:

NR 708.16 Interim action continuing obligations. (1) For sites or facilities where the department has approved an interim action that includes a continuing obligation, the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats., for the approval of an interim action, any information required under s. 292.12 (2) (d), Stats., for the approval of an interim action, and any agreements submitted to the department under s. 292.12 (5) and (5m), Stats.

(2) For sites or facilities where the department has approved an interim action that includes use of an engineering control, the department shall require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database.

(3) The responsible party shall submit the fees required under ch. NR 749 to the department.

(4) A responsible party shall comply with requirements for continuing obligations, including:

1. Notifications and documentation required under ch. NR 725.

2. Requirements for continuing obligations under ss. NR 727.05, NR 727.065, and s. NR 727.06.

3. Requirements for any modification or removal of continuing obligations under s. NR 727.10.

4. Database documentation requirements for continuing obligations under s. NR 727.12.

(5) The department may impose a continuing obligation under s. NR 727.065 (4).

(6) Any approval letter issued by the department letter imposing continuing obligations for an interim action shall meet requirements under s. NR 727.15.

SECTION 24. NR 708.19 (1) and (2) are created to read:

NR 708.19 **Department response.** (1) GENERAL. In cases where department approval is required for the reports or plans submitted under this chapter, the department may request additional information, require revisions, approve, conditionally approve or disapprove of the reports or plans.

(2) METHOD OF RESPONSE. The department shall provide to the responsible parties, in writing, the reasons for any disapproval and the department may establish a deadline for providing revisions.

SECTION 25. NR 714.03 (2) is repealed.

SECTION 26. NR 714.05 (1) and Note are amended to read:

NR 714.05 (1) DEPARTMENT DATABASE. The department shall maintain a public database of contaminated sites that are known to the department, in accordance with s. 292.31 (1) (a), Stats. This database may include sites or facilities that have residual contamination, and shall include information about any continuing obligations to maintain structural or institutional safeguards in regard to the residual contamination, in accordance with ss. 292.12 (3) and 292.57, Stats., and shall include any agreements submitted to the department under s. 292.12 (5) and (5m), Stats.

Note: The department database may be accessed at ~~the following web site:~~
<https://apps.dnr.wi.gov/botw/> and the mapping application for the department database may be accessed at <http://dnr.wi.gov/topic/Brownfields/rrsm.html>.

SECTION 27. NR 714.07 (1) (a) is amended to read:

NR 714.07 (1) (a) *Threats*. Known or potential threats to public health, safety, or welfare or the environment, including any sensitive receptors, that may be reduced by providing information to the public.

SECTION 28. NR 714.07 (3) intro. is amended to read:

NR 714.07 (3) **METHODS OF PUBLIC NOTIFICATION**. Notice shall be provided to the public by means designed to reach those members of the public directly or indirectly affected by the discharge of a hazardous substance and the implementation and operation of any proposed or actual remedial action. The department may direct the responsible party to undertake any of the following public participation activities, and may require departmental approval of materials prepared by the responsible party ~~in order to conduct~~ for use in conducting these activities. The department may also undertake any of these activities, including personal contacts by department staff. The department may direct the responsible party to take additional methods following initial notification methods if additional methods are needed to verify that adequate notification occurs. Notice to the public may be provided by any of the following methods:

SECTION 29. NR 714.07 (3) (gm) is created to read:

NR 714.07 (3) (gm) If requested by the recipient receiving notification, providing paper copies of any information required under this chapter.

SECTION 30. NR 714.07 (3) (im) is created to read:

NR 714.07 (3) (im) For sites and facilities involving schools, daycares, and other land uses for which occupants and building users that are children may be affected, notification to parents and legal guardians in cooperation with the school, business, daycare, or other institution.

SECTION 31. NR 714.09 is created to read:

NR 714.09 **Documentation of notification**. Responsible parties providing notification under this chapter shall provide documentation to the department of any notification delivered or posted within 30 days of the notification delivery or posting unless otherwise directed by the department.

SECTION 32. NR 714.11 is created to read:

NR 714.11 **Other participation and notification requirements for responsible parties.**

(1) LANDOWNERS OF CONTAMINATED PROPERTIES. In addition to other requirements under chs. NR 700-799 regarding notification and participation, at contaminated properties for which the responsible party conducting a response to contamination is not the property owner, the responsible party shall conduct all of the following participation and notification activities:

(a) Provide technical reports, including work plans, commissioned by the responsible party for the site or facility to the landowner within 30 days of the date that the respective reports and plans are submitted to the department.

(b) Provide a plain language summary of response actions and activities at the site or facility within 30 days of the date that the respective actions and activities are proposed to the department.

(c) Provide the landowner a reasonable opportunity to provide input on response activities at the site or facility prior to undertaking such activities and document whether input from the landowner was incorporated into response activities.

(2) OFF-SITE LANDOWNERS. Unless otherwise directed by the department, when site investigation information indicates that any property that is not possessed or controlled by the responsible party has been impacted by a discharge of a hazardous substance that originated from a source property, the responsible party shall provide notifications and participation opportunities under s. NR 714.07 to owners and occupants of any properties that are within or adjacent to properties within the contaminated site boundary. The responsible party shall notify owners and occupants of properties that are within or adjacent properties within the contaminated site boundary within 30 days of receiving any site investigation information under ch. NR 716 that indicates that any off-site impact is occurring.

Note: Under s. NR 700.03 (59m), “source property” means “the property on which the hazardous substance discharge which is under investigation or cleanup, originally occurred.” Under s. NR 700.03 (6m), “contaminated site boundary” means “any area within which a hazardous substance has been discharged such that the air, land, or waters have been affected by a discharge or where environmental pollution exists”. Both the source property and other properties affected by the discharge may be included within the “contaminated site boundary.”

SECTION 33. NR 722.13 (2) (e) 4m. is created to read:

NR 722.13 (2) (e) 4m. The anticipated continuing obligations for the selected remedial action option.

SECTION 34. NR 722.17 (1) and (3) are amended to read:

NR 722.17 (1) For sites or facilities where the department has approved a remedial action that includes a continuing obligation which meets any of the criteria ~~in~~ under ss. NR 722.15 (2) (e) and 725.05 (2), the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats. for the approval of a remedial action, any information required under s. 292.12 (2) (d), Stats., for the approval of a remedial action, and any agreements submitted to the department under s. 292.12 (5) and (5m), Stats.

(3) The fees required ~~by~~ under ch. NR 749 shall be submitted to the department, in accordance with ch. NR 749.

SECTION 35. NR 722.17 (5) and (6) are created to read:

NR 722.17 (5) If another person has entered into a legally enforceable agreement for complying with continuing obligations under s. 292.12 (5) or (5m), Stats., the responsible party or other party to the agreement may provide to the department a copy of the agreements for inclusion in the department's database.

(6) A responsible party that is subject to a remedial action continuing obligation under this chapter shall comply with requirements for continuing obligations, including:

1. Notifications and documentation required under ch. NR 725.
2. Requirements for continuing obligations under ss. NR 727.05, NR 727.065, and s. NR 727.06.
4. Requirements for any modification or removal of continuing obligations under s. NR 727.10.
5. Database documentation requirements for continuing obligations under s. NR 727.12.

(5) The department may impose a continuing obligation under s. NR 727.065 (4).

(6) Any approval letter issued by the department letter imposing continuing obligations for a remedial action shall meet requirements under s. NR 727.15.

SECTION 36. NR 724.02 (1) is repealed and recreated to read:

NR 724.02 (1) This chapter applies to all remedial actions and to the following types of interim actions taken by responsible parties, at sites, facilities or portions of a site or facility that are subject to regulation under ch. 292, Stats., regardless of whether there is direct involvement or oversight by the department:

(a) Interim actions under ss. NR 708.11 (4) and (4m).

(b) Any other type of interim action when the department determines, on a case-by-case basis, that a design report required under s. NR 724.09 is necessary prior to implementation.

Note: This chapter does not apply to emergency or non-emergency immediate actions or to those types of interim actions that are not listed in s. NR 724.02 (1).

SECTION 37. NR 724.05 (2) (b) and Note are amended to read:

NR 724.05 (2) (b) One ~~paper copy and one~~ electronic copy of each plan or report shall be submitted to the department, ~~in accordance with s. NR 700.11 (3g).~~

Note: Paper copies are accepted; however, electronic copies are strongly preferred. Electronic copies ~~should~~ may be submitted ~~in the Adobe Portable Document Format (PDF) on optical disk media. Guidance on electronic submittals can be accessed at~~ <http://dnr.wi.gov/files/PDF/pubs/rr/RR690.pdf> through the online submittal portal at <https://dnr.wisconsin.gov/topic/Brownfields/Submittal.html>.

SECTION 38. NR 724.06 is created to read:

NR 724.06 **Department database requirements and fees for remedial actions with continuing obligations.** (1) For sites or facilities where the department has approved a remedial action that includes a continuing obligation, the department may require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database. At a minimum, the department shall include on the database any requirements, limitations, or conditions imposed under s. 292.12 (2) (a) to (c), Stats., for the approval of a remedial interim action and any information required under s. 292.12 (2) (d), Stats., for the approval of a remedial action.

(2) For sites or facilities where the department has approved a remedial action at a site or facility with residual contamination the department shall require that the site or facility, including all properties and rights-of-way within the contaminated site boundaries, be included on the department database.

(3) The responsible party shall submit the fees required under ch. NR 749 to the department.

(4) A responsible party shall comply with requirements for continuing obligations, including:

1. Notifications and documentation required under ch. NR 725.

2. Requirements for continuing obligations under ss. NR 727.05, NR 727.065, and s. NR 727.06.

4. Requirements for any modification or removal of continuing obligations under s. NR 727.10.

5. Database documentation requirements for continuing obligations under s. NR 727.12.

(5) The department may impose a continuing obligation under s. NR 727.065 (4).

(6) Any approval letter issued by the department imposing continuing obligations for a remedial action shall meet requirements under s. NR 727.15.

SECTION 39. NR 724.07 (3) and note are created to read:

NR 724.07 (3) The department may, as a condition of approving the interim or remedial action, do any of the following:

(a) Require operation and maintenance of an engineering control on the site.

(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.

(c) Require that the department be notified prior to a change in land use, if the proposed land use change would be such that any of the exposure assumptions on which a continuing obligation are based would no longer be protective of human health, safety, or welfare or the environment.

(d) Require vapor control technologies be used for any new construction on the site, or require interim actions to limit or prevent vapor intrusion be installed, operated and maintained.

(e) Require site-specific actions or continuing obligations to adequately protect human health, safety, or welfare or the environment.

(f) Require the submittal of the information necessary for listing the site on the department database.

Note: Under ch. NR 749, the appropriate review fee must accompany any request for the department to review a specific document.

SECTION 40. NR 724.09 (12) is created to read:

NR 724.09 (12) Discussion of any continuing obligations and any plan and schedule to implement, monitor, inspect, and maintain the continuing obligations.

SECTION 41. NR 724.11 (7) is amended to read:

NR 724.11 (7) Include descriptions, specifications and performance criteria necessary for procurement, construction and ~~start-up~~ start-up of all features and units, including key components

and all instrumentation. Performance curves or criteria published by equipment suppliers or manufacturers may be utilized if they provide sufficient information. For any vapor mitigation system or point of entry treatment system, include the commissioning testing plan, performance criteria, and report.

SECTION 42. NR 724.13 (title) is amended to read:

NR 724.13 **Operation, monitoring, and maintenance.**

SECTION 43. NR 724.13 (1) (a) is amended to read:

NR 724.13 (1) (a) Unless otherwise directed by the department, responsible parties shall conduct all necessary operation, monitoring, and maintenance activities in accordance with this section and in compliance with all applicable state or federal public health and environmental laws, whichever are more stringent, until all applicable public health and environmental laws are complied with as required in chs. NR 700 to ~~754~~ 799.

SECTION 44. NR 724.13 (1) (d) is amended to read:

NR 724.13 (1) (d) Vapor mitigation systems and remedial actions designed to address vapor migration shall be monitored annually at minimum, at a frequency and schedule determined by the department, to measure whether the action taken has been effective in meeting the vapor action level. For active vapor mitigation systems, an active alarm system with an audible, visual, or telemetry-based method for notification, or a combination thereof, shall be used to notify property owners and occupants of any condition or circumstance impacting the ability of the system to operate as designed. Notifications to the department shall be performed at a frequency and schedule established by the operation, monitoring and maintenance plan required under sub. (2). The department may require the use of a telemetry-based method if the department determines that a telemetry-based method is needed to protect human health.

SECTION 45. NR 724.13 (2) (g) (Note) is amended to read:

NR 724.13 (2) (g) Note: Engineering controls may include a cap, soil cover, barrier, or vapor mitigation system. A sediment cover is not an engineering control under s. 292.01 (3m), Stats.

SECTION 46. NR 724.13 (2) (k) is amended to read:

NR 724.13 (2) (k) For vapor mitigation systems; a diagram and photographs showing piping, venting, fans and ~~manometer~~ alarm system locations, vent height and location, a description of how proper operation of the vapor mitigation system will be verified, identification of prohibited activities to ensure the continued effectiveness of the vapor mitigation system, and direction to notify the department before any action is taken which would disturb operation of the vapor mitigation system.

SECTION 47. NR 724.13 (2) (k) Note is created to read:

NR 724.13 (2) (k) Note: A vapor mitigation alarm system is considered to be part of the vapor mitigation system, such that operations, monitoring and maintenance requirements apply to the alarm system.

SECTION 48. NR 724.13 (2) (m) is repealed and recreated to read:

NR 724.13 (2) (m) For active vapor mitigation systems, all of the following:

1. An active alarm with an audible, visual, or telemetry-based method for notification or a combination thereof, as applicable, for the monitoring frequency required for the system.
2. A schedule that indicates the method and frequency by which notification to property owners, occupants, and the department will occur.
3. A contingency plan for system failures, including timeframes for identifying corrective measures and conducting additional testing to verify system effectiveness.

SECTION 49. NR 724.13 (2) (o) is created to read:

NR 724.13 (2) (o) Information on continuing obligations imposed at the site or facility, including any communication and notification requirements for operations, monitoring, and maintenance relating to any current and future owners and occupants of contaminated properties.

SECTION 50. NR 724.13 (2) (p) is created to read:

NR 724.13 (2) (p) At sites with vapor mitigation systems that have residential occupancy, and for which the department determines continuous monitoring is required for the system under sub. (1) (d), a plan for use of backup power for the vapor mitigation system, including when and how backup power will be instituted following a lapse in the main power supply.

SECTION 51. NR 724.13 (2) (q) is created to read:

NR 724.13 (2) (q) At sites with point of entry treatment systems, all of the following:

1. A testing and maintenance schedule.
2. A schedule that indicates the method and frequency by which notification to owners, occupants, and the department will occur.
3. A contingency plan for system failures, including timeframes for identifying corrective measures and conducting additional testing to verify system effectiveness.

SECTION 52. NR 724.13 (2) (r) is created to read:

NR 724.13 (2) (r) At sites with point of entry treatment systems, a plan for use of backup power for the point of entry treatment system, including when and how backup power will be instituted following a lapse in the main power supply.

SECTION 53. NR 724.15 (3) (i) is created to read:

NR 724.15 (3) (i) The results of commissioning for any vapor mitigation system or point of entry treatment system.

SECTION 54. NR 724.16 and NR 724.165 are created to read:

NR 724.16 **Decommissioning; vapor mitigation systems.** A responsible party that is decommissioning a vapor mitigation system such that a related continuing obligation will no longer apply at a property shall meet the requirements under this section.

(1) PLAN. Prior to decommissioning, a responsible party shall submit a decommissioning plan report that includes all of the following:

- (a) A description of the basis for decommissioning.
- (b) A verification sampling plan for any applicable media and system monitoring to demonstrate decommissioning will not result in harm to human health or the environment.
- (c) The procedures for notifying any affected property owners and occupants of intent to decommission the vapor mitigation system and request release of any applicable continuing obligation.

(2) DECOMMISSIONING. During decommissioning, a responsible party shall do all of the following:

- (a) Submit the results of media sampling and system monitoring to the department and affected property owners and occupants within 10 business days of sampling completion.
- (b) Cease the decommissioning process if any exceedance of a vapor risk screening level or vapor action level occurs.

(c) Notify the department and any affected owners and occupants of any cessation in the decommissioning process.

(3) NOTIFICATION. The responsible party shall notify any affected property owners and occupants of the final removal or modification of any vapor mitigation system and intent to request removal or modification of continuing obligations, as applicable.

Note: Section NR 727.10 sets forth the process for seeking modification or termination of an interim action or remedial action continuing obligation. Decommissioning documentation may be submitted to the department with the documentation required under s. NR 727.10.

(4) FINAL REPORT. Following decommissioning, a responsible party shall submit a decommissioning final report for each property within 60 days of completion of decommissioning for department review and approval, including ch. NR 749 fee, that includes all of the following:

(a) All data collected during decommissioning.

(b) Documentation of removal or modification of vapor mitigation system components, active notifications and monitoring points, as applicable, including diagrams and photographs.

(c) Any modifications to any approved operation, monitoring and maintenance plan.

(d) Copies of notifications required to owners and occupants under sub. (3).

NR 724.165 **Decommissioning; point of entry treatment systems.** A responsible party that is decommissioning a point of entry treatment system such that a related continuing obligation will no longer apply at a property shall meet the requirements of this section:

(1) PLAN. Prior to decommissioning, a responsible party shall submit to the department a decommissioning plan that includes all of the following:

(a) A description of the basis for decommissioning.

(b) A verification sampling plan for any applicable media and system monitoring to demonstrate decommissioning will not result in harm to human health or the environment.

(c) Testing plan and results.

(d) The procedures for notifying any affected property owners and occupants of intent to decommission the point of entry treatment system and request release of any applicable continuing obligation.

(2) NOTIFICATION. The responsible party shall notify any affected property owners and occupants of the final removal or modification of any point of entry treatment system and intent to request removal or modification of continuing obligations, as applicable.

(3) FINAL REPORT. Following decommissioning, a responsible party shall submit a decommissioning final report for each property within 60 days of completion of decommissioning for department review and approval, including ch. NR 749 fee, that includes all of the following:

(a) All data collected during decommissioning.

(b) Documentation of removal or modification of point of entry system components, including diagrams and photographs.

(c) Any modifications to any approved operation, monitoring and maintenance plan.

(d) Copies of notifications required to owners and occupants under sub. (2).

Note: Section NR 727.10 sets forth the process for seeking modification or termination of an interim action or remedial action continuing obligation. Decommissioning documentation may be submitted to the department with the documentation required under s. NR 727.10.

SECTION 55. NR 725.01 is amended to read:

NR 725.01 **Purpose.** The purpose of this chapter is to specify the minimum notification requirements that shall be met before the agency with administrative authority may determine that a specific site or facility may be closed under ch. NR 726 with a continuing obligation or residual contamination, to approve an interim action that includes a continuing obligation or to approve a remedial action ~~plan which~~ that includes a continuing obligation, and to identify which sites shall be included on a department database. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

SECTION 56. NR 725.02 (1) and (2) are amended to read:

NR 725.02 (1) This chapter applies to persons seeking case closure ~~for a case~~ that includes a property with residual contamination or where a continuing obligation may be applied on a property that is not owned by that person, regardless of whether there is direct involvement or oversight by the department. This chapter also applies to local governmental units or economic development corporations that are required to take action under ch. NR 708 or persons receiving approval of a an interim action under ch. NR 708 or remedial action plan under ch. NR 722, ~~when the department determines that notification is necessary.~~

(2) In addition to being applicable to sites or facilities specified ~~in~~ under sub. (1), this chapter also applies to the proposed closure of solid waste facilities and hazardous waste facilities where remedial action is required by the department.

SECTION 57. NR 725.05 (2) (bm) is created to read:

NR 725.05 (2) (bm) Continuing obligations apply to a property.

SECTION 58. NR 725.05 (2) (L) (Note 2) is amended to read:

NR 725.05 (2) (L) Note: The department may also require notification for site-specific reasons upon review of a case closure request in accordance with s. NR 726.13 and, prior to case closure, upon review of an interim action plan or report under ch. NR 708 or upon review of a remedial action plan in accordance with s. NR 722.15 (2) (e). Responsible parties are encouraged to contact the department project manager with questions about tailoring the notification for site-specific circumstances.

SECTION 59. NR 725.05 (2m) is created to read:

NR 725.05 (2m) NOTIFICATION CONTENTS. Written notifications shall include any of the following contents that are applicable to a specific property:

- (a) Responsible party and any selected representative's name, address, and phone number.
- (b) Site name, source property address, and department database tracking number.
- (c) Department contact person name and phone number.
- (d) A list and map of residual contaminant types and locations.
- (e) A list, description, and map of continuing obligations.
- (f) A monitoring well location map.
- (g) A site location map.
- (h) Maps and tables that show the extent of the known contamination.
- (i) A maintenance plan for any engineering control or any engineered system.
- (j) A plain language summary of the contamination, source, and any health and environmental impacts.

SECTION 60. NR 725.07 (1) is amended to read:

NR 725.07 **General notification requirements.** (1) NOTIFICATION FORM. The responsible party, or other party required to provide notification by the department, shall provide the notification of contamination and continuing obligations on a form provided by the department, that contains the standard provisions in the form. All notifications shall also include the provisions about the

applicable continuing obligations on the affected properties or rights-of-way. The ~~closure-related paragraphs language~~ shall be altered to fit the situation, as applicable.

SECTION 61. NR 725.07 (1m) is created to read:

NR 725.07 (1m) DEPARTMENT DIRECTION ON TIMING AND ADDITIONAL STEPS. The department may require notifications under this chapter to be completed within a specified timeframe with a copy provided to the department, and may require additional steps to ensure adequate notification occurs.

SECTION 62. NR 725.09 is created to read:

NR 725.09 **Situations where additional information is required; requirements.**

(1) For properties at which continuing obligations apply, responsible parties shall provide information to owners and occupants regarding the purpose of continuing obligations, how the continuing obligations work, and the need for any long term operation, monitoring, and maintenance.

(2) For properties at which vapor mitigation systems and point of entry treatment systems apply, responsible parties shall do all of the following:

(a) Provide immediate notification to owners, occupants, and the department when a system fails.

(b) Notify local health officials if failure of the system will cause or threatens to cause acute or chronic human health impacts.

(3) For sites and facilities involving schools, daycares, and other land uses for which occupants and building users that are children may be affected, responsible parties shall provide notification to parents and legal guardians in cooperation with the school, business, daycare, or other institution.

SECTION 63. NR 726.05 (3) (b) is amended to read:

NR 726.05 (3) (b) ~~[For sites or facilities contaminated with petroleum products discharged from a petroleum storage tank for which the department of safety and professional services has administrative authority under s. 101.144, Stats., and]~~ Sites or facilities for which department of agriculture, trade and consumer protection has administrative authority under s. 94.73, Stats., that are required ~~by~~ under s. NR 726.07 to be entered onto the department database, the fee or fees listed ~~in~~ under ch. NR 749 for adding a site to the department database shall be submitted to the department before a case closure request is submitted to the appropriate agency. For these sites or facilities, a

case closure request may not be considered complete until proof of payment of the required fees has been entered onto the department's bureau for remediation and redevelopment tracking system, which is available on the department's internet site.

SECTION 64. NR 726.05 (3) (b) Note 2 is repealed.

SECTION 65. NR 726.07 (2) Note is amended to read:

NR 726.07 (2) Note: A continuing obligation can be imposed within a general liability clarification letter for a local governmental unit directed to take an action under s. NR 708.17, in an interim action approval under chs. NR 708 or ch. NR 724, a remedial action plan approval under ~~NR 722.15~~ chs. NR 722 or NR 724, or ~~in~~ a case closure approval under ch. NR 726.

SECTION 66. NR 726.09 (1) and Note 1 are amended to read:

NR 726.09 (1) CASE CLOSURE REQUEST FORM. A request for case closure shall be submitted on a form supplied by the agency and shall be accompanied by documentation that the requirements and criteria in under s. NR 726.05 (1) to (8) are satisfied. ~~One paper copy and one~~ electronic copy of the complete closure request shall be submitted to the department, unless otherwise directed by the department. All information submitted shall be legible. Providing illegible information may result in a submittal being considered incomplete until corrected.

Note: ~~Copies of the WDNR~~ The case closure request form (form 4400-202) and the associated impacted property notification information form (4400-246) for sites or facilities over which the department has administrative authority may be accessed at: <http://dnr.wi.gov/files/PDF/forms/4400/4400-202.pdf>, or may be obtained from any regional office of the department, or by writing to the Department of Natural Resources, Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, Wisconsin 53707 accessed and submitted electronically through the submittal portal. Guidance on electronic submittals may be found by visiting dnr.wi.gov and searching "RR program submittal portal" in the search bar.

SECTION 67. NR 726.09 (1) Note 2 is repealed.

SECTION 68. NR 726.11 (3m) and Note are created to read:

NR 726.11 (3m) LEGALLY ENFORCEABLE AGREEMENT FOR CONTINUING OBLIGATIONS AT SITES OR FACILITIES. The responsible party may provide to the department a copy of any legally enforceable agreements entered into under s. 292.12 (5) or (5m), Stats., for inclusion on the department's database.

Note: Under s. 292.12 (5) (c) and (5m) (am), Stats., if another person has entered into and is complying with a legally enforceable agreement to comply with continuing obligations that are applicable to the property and the agreement is included in the department database, the person initially responsible under s. 292.12, Stats., for continuing obligations is not required to comply with the requirements, limitations, or conditions included in that agreement.

SECTION 69. NR 726.15 (2) is amended to read:

NR 726.15 (2) For specific continuing obligations, the closure letters shall contain the following: language provided under s. NR 727.15 (2).

SECTION 70. NR 726.15 (1) (b) is amended to read:

NR 726.15 (1) (b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the case closure letter that apply to the property. The case closure letter ~~may also~~ shall require the property owner to notify affected occupants ~~of the need for specific continuing obligations that interference with the continuing obligations is prohibited.~~

SECTION 71. NR 727.01 is amended to read:

NR 727.01 Purpose. The purpose of this chapter is to specify the minimum responsibilities of responsible parties and owners and occupants of properties with residual contamination, where continuing obligations have been imposed in a closure approval letter ~~or in~~, a remedial action plan approval, or an interim action approval, or for local government units where continuing obligations have been imposed by the department under ch. NR 708; to specify the process for updating closure conditions, continuing obligations and information included in the department database; and to specify the criteria for reopening a closed case. This chapter is adopted pursuant to ss. 227.11 (2), 287.03, and 289.06, Stats., and ch. 292, Stats.

SECTION 72. NR 727.02 is amended to read:

NR 727.02 Applicability. This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under ch. 292, Stats., ~~regardless of whether there is direct involvement or oversight by the department~~ and at solid waste facilities where remedial action is required by the department and hazardous waste facilities at which corrective action is required by the department under chs. 289 and 291, Stats. This chapter applies to the responsibilities for continuing obligations and related actions at sites or facilities that are subject to regulation under chs. 289, 291, and 292, Stats., regardless of whether there is direct involvement or oversight by the department.

SECTION 73. NR 727.02 Note is created to read:

NR 727.02 Note: Section 292.12, Stats., sets forth requirements and responsibilities for sites with residual contamination and continuing obligations. This section uses the term “agency with administrative authority”, which is defined to mean “the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2) or the department of natural resources with respect to a site over which it has jurisdiction under ch. 289, 291, or 292.”

SECTION 74. NR 727.05 (1) (intro.) is amended to read:

NR 727.05 (1) A ~~party or~~ person who owns or occupies a property ~~where~~ at which a continuing obligation has been imposed under either ~~s. NR 708.17 or 722.15~~ chs. NR 708, NR 722, NR 724 or ch. NR 726, a person responsible for certain continuing obligations under 292.12 (5m), Stats., or a person who has entered into a legally enforceable agreement recorded on the database, to comply with continuing obligations under s. 292.12 (5) or (5m), Stats., shall, for any applicable continuing obligations except as stated under sub. (5), do all of the following:

SECTION 75. NR 727.05 (1) (a) (Note) is repealed.

SECTION 76. NR 727.05 (1) (b) is repealed and recreated to read:

NR 727.05 (1) (b) Perform the following actions in compliance with the conditions specified by the agency, as applicable:

1. Operate and maintain the response required.

2. Maintain an inspection log and keep it on the premises or at the location specified in the maintenance plan until the continuing obligation has been satisfied or removed.

3. Submit the inspection log electronically, on a form provided by the department, to the agency at the frequency required.

4. Conduct long-term monitoring.

5. Allow a responsible party that is responsible for continuing obligations under this section to have reasonable access to property for the purpose of complying with any requirements or responsibilities relating to the continuation obligations.

SECTION 77. NR 727.05 (2) and (3) are amended to read:

NR 727.05 (2) For cases where a continuing obligation is required under either ~~s. NR 708.17, or 722.15, or ch. NR 708, NR 722, NR 724, or NR 726~~, the property owner shall notify anyone purchasing the property of the responsibility to comply with the continuing obligation.

(3) For cases where occupants are responsible for maintenance of a continuing obligation under either ~~s. NR 708.17, or 722.15 or ch. NR 708, NR 722, NR 724, or NR 726~~, the property owner shall include the continuing obligation in the lease agreement.

SECTION 78. NR 727.05 (5) and (6) are created to read:

NR 727.05 (5) Owners and occupants of properties with continuing obligations are not responsible for compliance with a continuing obligation if any of the following apply:

(a) Another person assumes responsibility for the continuing obligation under a legally enforceable agreement under s. 292.12 (5) (c), Stats., and the person is complying with the agreement, provided that this agreement meets requirements under s. NR 727.06 and is recorded on the department database;

(b) A responsible party is responsible for the continuing obligation under s. 292.12 (5m) (a), Stats.; or

(c) The owner is exempt from compliance with the continuing obligation under s. 292.12 (5m) (b), Stats.

(6) A responsible party retains responsibility for compliance with continuing obligations at both source properties and off-site properties unless any of the following apply:

(a) Another person assumes responsibility for the continuing obligation under a legally enforceable agreement under s. 292.12 (5m) (am), Stats., and the person is complying with the

agreement, provided that this agreement meets requirements under s. NR 727.06 and is recorded on the department database.

Note: Agreements under s. 292.12 (5m) (am), Stats., pertain only to sites or facilities where a person required to take action under s. 292.11 (3), (4), or (7) (b), Stats., with respect to contaminated sediment takes action that includes the use of an engineering control.

(b) Another person assumes responsibility as a result of noncompliance with requirements under s. 292.13, Stats.

Note: Section 292.13, Stats., provides the conditions under which persons that possess or control property with a hazardous substance in groundwater or soil, including sediments, or in vapor emitted from the soil or groundwater may be exempt from ss. s. 292.11 (3), (4) and (7) (b) and (c), Stats.

(c) The agency otherwise directs in writing.

SECTION 79. NR 727.06 is created to read:

NR 727.06 **Continuing obligations agreements. (1) CONTINUING OBLIGATIONS AGREEMENTS.** (a) A person may submit an agreement to comply with continuing obligations under ss. 292.12 (5) (c) or (5m) (am), Stats., to the department, and the department may record the agreement in the database.

(b) An agreement submitted under par. (a) shall at a minimum include all of the following:

1. A description of the site or facility, and its location, including the department database activity or site name and identification number, physical address, and parcel identification numbers.

2. A listing of all the parties to the agreement.

3. Identification of the person transferring responsibility for continuing obligations and their contact information, including mailing address and telephone number.

4. Identification of the person accepting responsibility for continuing obligations and their contact information, including mailing address and telephone number, and identify their relationship to the property if any.

5. Identification and description of the continuing obligations, including operation, monitoring, and maintenance requirements, that are subject to the agreement.

6. Identify the party responsible for complying with each continuing obligation, including timelines for the transfer of responsibility.

7. Provisions for property ownership changes.

8. Provisions for notification to the department in the event of changes in ownership, including corporate transfers.

9. Statement or representation that compensation or consideration was received.
10. Provisions stating the agreement is governed by Wisconsin law.
11. Certification of compliance with continuing obligations.
12. Timeframe for when the agreement is in effect.
13. Date and signature of all parties to the agreement.
14. Notarization by notary public under Wisconsin law.

(c) The department may require the use of a form for the submission of a legally enforceable agreement on the department database and the department may decline to record an agreement until the information under par. (b) is provided.

(2) CONTINUING OBLIGATIONS AGREEMENTS; OWNERS AND OCCUPANTS. In addition to the requirements under (1), if a person submits an agreement for recording in the department database and the agreement includes the transfer responsibilities to an owner or occupant for maintenance of any engineering control, engineered system, cover, cap, or other system or item under a continuing obligation, the responsible party shall provide, as part of the agreement, a maintenance plan for the site, with a plain-language description of any risks to human health that may occur if the any engineering control, engineered system, cover, cap, or other system or item under a continuing obligation is not maintained, fails to operate, underperforms, or otherwise fails to meet performance objectives.

SECTION 80. NR 727.065 is created to read:

NR 727.065 Continuing obligations for interim and remedial actions.

(1) CONDITIONS OF APPROVAL. The agency may require any other condition for an approval of an interim action or remedial action that is necessary to protect public health, safety, or welfare or the environment. The agency may require a site-specific condition of approval, and notification of any parties affected by that condition, including situations where contamination remains in media other than soil, groundwater, or vapors, or exposure or migration pathways are not otherwise addressed, that make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment.

(2) CONTINUING OBLIGATION MAINTENANCE PLAN. (a) A maintenance plan for any engineering control, engineered system, cover, cap, or other system or item that is the subject of a continuing obligation shall be submitted to the department. The maintenance plan shall include the following information:

1. A location map which shows the location and extent of the structure or feature to be maintained, in relation to other structures or features on the site. The map shall also include the extent and type of existing contamination, and include property boundaries.
2. A brief description of the type, depth and location of contamination.
3. A description of the maintenance actions required for maximizing effectiveness of the engineered control, feature, or other action for which maintenance is required.
4. An inspection log, to be maintained on site, or at a location specified in the maintenance plan or approval letter.
5. A contact name, address, and phone number of the individual or facility who will be conducting the maintenance.
6. A plan for disposal of any wastes generated.
7. A plan for any anticipated repairs.

(b) Unless otherwise directed by the department, the maintenance plan shall specify whether the inspection log will be submitted to the department and the frequency of submittal, or maintained on site or at the location identified in the maintenance plan.

Note: The inspection log is reviewed by the department during audits conducted of sites with continuing obligations.

(3) CONTINUING OBLIGATION NOTIFICATIONS.

(a) Where written notification is required under ch. NR 725, the notification requirements shall be satisfied prior to submitting a plan or report to the agency that identifies conditions that warrant continuing obligation imposition.

(b) Responsible parties or other persons requesting approval for an interim or remedial action that will include a continuing obligation shall submit a copy of all the notifications required under ch. NR 725 with written proof of the date on which the written notifications were received.

(c) The department shall provide written notice of the department's response to a request for approval for an interim or remedial action that will include a continuing obligation to the owners of any property required to receive notification relating to continuing obligations under s. NR 725.05.

(d) Approval letters shall be associated with the site or facility record in the department database.

(4) CONTINUING OBLIGATIONS FOR INTERIM OR REMEDIAL ACTION. The department may impose a continuing obligation at a property following an interim or remedial action if there is an existing or anticipated threat to public health, safety, or welfare or the environment.

SECTION 81. NR 727.07 (intro.) is amended to read:

NR 727.07 Notification of the agency with administrative authority regarding continuing obligations. For situations where a continuing obligation has been imposed under either ~~s. NR 708.17, 722.15, or 726.13~~ chs. NR 708, NR 724, NR 724, or NR 726, the property owner shall notify the agency with administrative authority in writing within 45 days prior to taking any of the following actions and receive the approval of the agency with administrative authority prior to proceeding with any of the following actions, to determine whether further action may be necessary to protect human health, safety, or welfare or the environment:

SECTION 82. NR 727.09 (1) is amended to read:

NR 727.09 (1) COMPLIANCE WITH CONTINUING OBLIGATIONS. The agency may require additional response actions be taken at sites or facilities closed with deed restrictions or where continuing obligations have been imposed under either ~~s. NR 708.17, 722.15, or 726.13~~ chs. NR 708, NR 722, NR 724, or NR 726, in cases where compliance with the restriction, condition, or continuing obligation has not been maintained.

SECTION 83. NR 727.09 (1) and Note are amended to read:

NR 727.09 (3) UPDATING A DEED RESTRICTION. For cases that have been closed with a deed restriction that has since been satisfied, the responsible party or property owner may, at any time after the conditions necessitating a deed restriction have been either eliminated or satisfied and the restriction is no longer needed, request that the agency issue a written determination that can be referenced in an affidavit, confirming this situation. ~~An affidavit can be then recorded~~ agency may record an affidavit at the county register of deeds office to give notice that some or all of the conditions, as applicable, in the previously recorded deed restriction are no longer required.

Note: Prior to June 3, 2006, cases meeting certain conditions were closed with a deed restriction in accordance with ch. NR 726. Since that time, the use of deed restrictions for closure have been replaced with ~~conditions~~ continuing obligations in a closure letter under ch. NR 726 or in a remedial action approval under ch. NR 722.

SECTION 84. NR 727.09 (4) is repealed.

SECTION 85. NR 727.09 (5) (intro.) is amended to read:

NR 727.09 (5) MODIFICATION OF THE DEPARTMENT DATABASE. For cases that have been included on the department database under ~~s. NR 708.17, 722.15, or 726.13~~ chs. NR 708, NR 722, NR 724, or NR 726, the responsible party, property owner or other party may request that the department modify information on the department database at any time after any of the following have been achieved:

SECTION 86. NR 727.09 (6) is repealed.

SECTION 87. NR 727.10 is created to read:

NR 727.10 **Updating continuing obligations imposed during an interim or remedial action.** (1) CONTINUING OBLIGATION SUMMARY. (a) For continuing obligations imposed at interim or remedial action approval, a responsible party seeking to modify or remove continuing obligations may submit a continuing obligation summary to the agency at any time prior to submitting a case closure request.

(b) As part of the continuing obligation summary, the responsible party shall list each continuing obligation that applies at the site or facility, reference the respective approval letter imposing each continuing obligation, and confirm whether the property parcel and boundary information previously submitted for the property remains current.

(c) For each continuing obligation, the responsible party shall indicate whether the responsible party intends to propose modification or removal, and shall provide justification for any proposed modification or removal, including any decommissioning information required under NR 724.16 and NR 724.165.

Note: Sections NR 724.16 and 724.165 set forth requirements for decommissioning vapor mitigation systems and point of entry treatment systems, respectively

(d) The responsible party shall submit the continuing obligation summary with a request for agency review and the fee under ch. NR 749.

(e) The agency may require use of a form supplied by the agency to submit the continuing obligation summary.

(2) AGENCY REVIEW. If a continuing obligation summary is submitted with a request for review, the agency may request additional information, require revisions, approve, conditionally approve or disapprove. The department shall provide to the responsible parties, in writing, the reasons for any disapproval and the department may establish a deadline for providing revisions.

SECTION 88. NR 727.12 is created to read:

NR 727.12 Department database requirements; continuing obligations.

(1) GENERAL. All sites or facilities subject to the imposition of a continuing obligation, including all public street and highway rights-of-way and railroad rights-of-way, shall be entered onto the department database. All properties within or partially within the contaminated site or facility boundaries, including all public street and highway rights-of-way and railroad rights-of-way, shall be included.

(2) APPROVAL LETTER. The site or facility plan or report approval letter, and the information required under this section, shall be associated with the site or facility record in the department database.

(3) SUBMISSION. One electronic copy of documentation required under this section shall be submitted to the department, unless otherwise authorized by the department.

Note: Paper copies may be accepted with department authorization; however, electronic copies are strongly preferred. Electronic copies may be submitted through the online submittal portal at <https://dnr.wisconsin.gov/topic/Brownfields/Submittal.html>.

(4) DOCUMENTATION FOR CONTINUING OBLIGATIONS. Unless otherwise directed by the department, in order to provide information on the location and nature of any residual contamination at the site or facility where a continuing obligation will be imposed, the person who is requesting an approval for which a continuing obligation will be imposed shall submit all of the following information, that is applicable, as attachments to the request for approval, in the format that is specified by the department.

(a) Documentation showing that a ch. NR 716 site investigation has confirmed contamination is present; or a description of the interim and remedial actions planned or taken at the site or facility. Include information on nature and extent of areas where contaminated media exceeds applicable standards.

(b) Applicable maps and cross sections to document the conditions at the site and the actions taken.

(c) For sites or facilities where soil excavation or active soil remediation is planned or has occurred:

1. A table of soil analytical results with collection dates identified. Soil analytical data tables shall clearly indicate depth of sample, soil type and whether the sample represents pre-remedial or post-remedial conditions. At sites or facilities where soil excavation occurred, the soil analytical data

tables shall indicate whether the soil data point represents soil that was removed or soil that remains in place.

2. A map that shows the locations of all soil samples collected.

Note: At a site or facility where soil excavation or active soil remediation occurred and a soil performance standard cover was the only action taken, the department will not consider the soil performance standard cover to be active soil remediation.

(d) For sites or facilities with sediment contamination or soil vapor contamination, sampling data demonstrating that the site conditions are protective of public health, safety, and welfare and the environment.

(e) Any applicable maintenance plan information under ch. NR 724 and this chapter.

(f) Any other information that the department specifically requests.

(5) PHOTOGRAPHS. For sites or facilities where a continuing obligation will be imposed with a cover or other performance standard, a structural impediment or a vapor mitigation system, include one or more photographs documenting the condition and extent of the feature at the time the continuing obligation is imposed. Pertinent features shall be visible and discernable. Photographs shall be submitted with a title related to the site name and location, and the date on which it was taken.

(6) DEED AND PARCEL INFORMATION. Responsible parties or other persons requesting approval at a site or facility where a continuing obligation will be imposed shall submit all of the following items, for each property within or partially within the contaminated site boundaries other than public street or highway rights-of-way or railroad rights-of-way:

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

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

(b) A copy of the certified survey map or the relevant portion of the recorded plat map for those properties where the legal description in the most recent deed or land contract refers to a certified survey map or a recorded plat map. In cases where the certified survey map or recorded plat map are not legible or are unavailable, a copy of a parcel map from a county land information office may be substituted. A copy of a parcel map from a county land information office shall be legible, and the parcels identified in the legal description shall be clearly identified and labeled with the applicable parcel identification number.

(c) A statement signed by the responsible party or other person requesting approval affirming that legal descriptions for all of the properties within or partially within the boundaries of the contaminated site or facility for which inclusion on a department database is required under this section, at the time that approval is requested, other than public street or highway rights-of-way or railroad rights-of-way, have been submitted to the agency as part of a department database attachment to the request.

(d) A list of addresses of all properties affected by residual contamination or a continuing obligation.

(e) The parcel identification number for each property.

(f) Geographic position data for each property in compliance with the requirements of s. NR 716.15 (5) (d), unless the agency has directed that the responsible party or other person requesting closure does not need to provide geographic position data for a specific site.

Note: Geographic position data for properties can be found by using the department database that is available on the internet at <http://dnr.wi.gov/topic/Brownfields/rrsm.html>.

(7) MAPS AND CROSS SECTIONS. All the following information shall be included in a department database attachment to the request for approval at a site or facility at which continuing obligations will be imposed:

(a) A site location map that outlines all properties within the contaminated site boundaries on a United States Geological Survey topographical map or plat map in sufficient detail to permit the parcels to be located easily. This map shall identify the location of all municipal and potable wells within 1200 feet of the site. If there is only one parcel, this map may be combined with the map required in par. (b).

(b) A detailed site map of all contaminated properties within the contaminated site boundaries, showing buildings, roads, property boundaries, contaminant sources, utility lines, monitoring wells, and potable wells. This map shall also show the location of all contaminated public

street and highway rights-of-way and railroad rights-of-way in relation to the source property and in relation to the boundaries of contamination exceeding applicable standards.

(c) For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that an approval is requested:

1. A map that shows the location where all soil samples were collected and identifies, with a single contour, the horizontal extent of each area of contiguous residual soil contamination that exceeds residual contaminant levels, as determined under ch. NR 720, within the contaminated site boundaries.

2. A minimum of two geologic cross sections intersecting the contaminated area and showing the vertical extent of residual soil contamination that exceeds residual contaminant levels as determined under ch. NR 720, if cross sections were required as a part of the site investigation report. If there is groundwater contamination on the site that attains or exceeds any ch. NR 140 enforcement standard in addition to residual soil contamination, a minimum of two geologic cross sections intersecting the contaminated area may be submitted to show the vertical extent of both soil and groundwater contamination.

(d) For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that case closure is requested:

1. A geologic cross section, if one was required under ch. NR 716, that includes the vertical extent of residual contamination in soil and groundwater, the location and extent of the source of the contamination, isoconcentrations for all groundwater contamination attaining or exceeding ch. NR 140 preventive action limits that remains when case closure is requested, water table and piezometric elevations, location and elevation of geologic units, bedrock and confining units, if any.

2. An isoconcentration map of the contaminated properties within the contaminated site boundaries, if such a map was required under ch. NR 716. An isoconcentration map shall show the areal extent of groundwater contamination attaining or exceeding ch. NR 140 preventive action limits and the areal extent of groundwater contamination attaining or exceeding ch. NR 140 enforcement standards, with the groundwater flow direction indicated, using the most recent data, with sample collection dates identified. If an isoconcentration map was not required under ch. NR 716, submit a map showing the horizontal extent of contamination exceeding applicable standards based on the most recent data; or where standards have not been promulgated, the horizontal extent of contamination remaining after the remedial action.

3. A groundwater flow map, representative of groundwater movement at the site. If groundwater flow direction varies by more than 20 degrees over the history of water level

measurements at the site, 2 groundwater flow maps showing the maximum variation in groundwater flow direction shall be submitted.

(e) For sites or facilities where samples were collected other than soil or groundwater, include a map showing the sampling locations and results, with type of sample and collection date identified.

(8) DATA SUMMARY TABLES. For information submitted for the department database for sites or facilities at which a continuing obligation will be imposed, shading and cross-hatching may not be used on data summary tables unless prior approval is obtained from the department. All the following information shall be included in a department database attachment to the approval request:

(a) *Soil.* For sites or facilities where soil contamination exceeds residual contaminant levels as determined under ch. NR 720 at the time that the approval is requested include a table of the analytical results showing results for the most recent samples, for all contaminants found in pre-remedial sampling, with sample collection dates identified.

(b) *Groundwater.* For sites or facilities where groundwater attains or exceeds any ch. NR 140 enforcement standard at the time that the approval is requested, include:

1. A separate table of only the 8 most recent analytical results from all monitoring wells, and any potable wells for which samples have been collected, with sample collection dates identified.

2. A table including, at a minimum, the previous 8 water level elevation measurements from all monitoring wells, with the date measurements were made. If free product is present at the site, it shall be noted in the table.

3. A completed groundwater monitoring well information form.

Note: The Groundwater Monitoring Well Information Form is required in s. NR 716.15. It can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_89.pdf.

(c) *Other.* For sites or facilities where samples other than soil or groundwater were collected, include a table specifying the sample type, sample number or location, sample results, and collection date.

(9) DOCUMENTATION FOR MONITORING WELLS. For sites or facilities at which a continuing obligation will be imposed and a monitoring well has not been abandoned under ch. NR 141 at the time of an approval, the following information shall be included in a department database attachment to the approval request.

(a) A site location map with the surveyed locations identified on the map for those groundwater monitoring wells that have not yet been abandoned.

(b) The well construction report for each monitoring well that needs to be abandoned.

(c) The deed with legal description for each property on which a monitoring well is located.

Note: This would include wells that have not been located for abandonment, wells that the property owner has requested to keep and not abandon at this time, and those wells required by the agency under s. NR 726.05 (7) (a) for continued monitoring after closure. Proper abandonment is required once the wells are no longer used. The well construction report, form 4400-113A can be obtained at http://dnr.wi.gov/topic/Groundwater/documents/forms/4400_113_1_2.pdf.

SECTION 89. NR 727.15 is created to read:

NR 727.15 Approval letters and continuing obligations

(1) For sites or facilities at which an interim action or remedial action continuing obligation will be imposed, the approval letter shall include the following:

(a) A statement that the site will be included in the department database, and that if the property owner intends to construct or reconstruct a well, prior department approval is required, in accordance with s. NR 812.09 (4) (w).

(b) A requirement that the property owner shall inform any purchaser of the property about the continuing obligations identified in the closure letter that apply to the property. The closure letter may also require the property owner to notify affected occupants of the need for specific continuing obligations.

(c) For conditions of closure that restrict site conditions, occupancy or property use from what is conditioned or identified in the final approval or closure letter, a requirement that the property owner at the time that the condition changes shall notify the agency of the change in site condition, occupancy or land use, so that the agency can determine if further actions are necessary to maintain protection of public health, safety, or welfare or the environment.

(d) For conditions of approval that require maintenance, a requirement that the property owner operate and maintain the applicable system, cover or containment system in accordance with the operation and maintenance plan developed under ch. NR 724. The approval letter shall also include conditions regarding inspections, documentation, availability, and submittal of an inspection log, at a frequency determined by the agency.

(2) For specific continuing obligations imposed during an interim action, remedial action, or case closure, the approval letters shall contain the following:

(a) *Residual groundwater contamination.* If there is residual groundwater contamination at the time of an approval, the final approval letter shall include a description of the extent of groundwater contamination.

(b) *Residual soil contamination.* If there is residual soil contamination at the time of a request for approval, the final approval letter shall include a description of the extent of soil contamination, and shall state that any soil that is excavated in the future from an area that had residual soil contamination at the time of case closure shall be sampled, analyzed, handled, and disposed of as a solid waste in compliance with applicable state and federal laws.

(c) *Monitoring well abandonment.* 1. Where there is a monitoring well that has not been abandoned as required under ch. NR 141 at the time of an approval, the approval letter shall include a description of which wells still need to be abandoned, the surveyed location, and state that the property owner at the time the well is located shall properly abandon the well in accordance with the requirements of ch. NR 141.

2. Where either a request for retaining a monitoring well for continued monitoring has been approved, or continued monitoring is required by an agency with administrative authority, the approval letter shall also require the property owner to verify the integrity of the well at least annually until use of the well is discontinued and the well is properly abandoned. The approval letter shall require that an inspection log be maintained on-site, unless otherwise directed by the agency, and require that the responsible party or property owner make the inspection log available for review by agency staff upon request.

3. Where responsibility for continued monitoring of a well is being transferred to another responsible party, the approval letter shall also require that the responsible party or property owner not abandon the specified well at that time.

Note: Typically, when responsibility for a monitoring well is shifted to another responsible party, that party also becomes responsible for well abandonment in the future.

(d) *Building, cover or containment structure for protection of groundwater.* For sites or facilities where there is residual soil contamination beneath a building or a cover, such as concrete or asphalt pavement, a soil cover, or composite cover, or within an engineered containment structure, that exceeds residual contaminant levels based on protection of groundwater as determined under ch. NR 720, that would pose a threat to groundwater if the building, cover, or containment structure were removed, the approval letter shall include a description of the residual contamination and the location of the building, cover or containment structure, and shall require the property owner to take any steps necessary to ensure that the building, cover, or containment structure will function as intended, to protect the groundwater, as required by the applicable performance standard. The approval letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, cover, or containment structure with a structure of

similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect the groundwater, as determined under ch. NR 720.

(e) *Building, soil cover, cover or containment structure for prevention of direct contact with soils.* For sites or facilities where a building, or an engineering control, such as a soil cover, cover, or engineered containment structure is required to be maintained in order to prevent direct contact with contaminated soil within 4 feet of the ground surface that exceeds residual contaminant levels as determined under ch. NR 720, the approval letter shall include conditions which require the property owner to ensure that the building, soil cover, or cover such as concrete or asphalt pavement, or a composite cover, or engineered containment structure will be repaired and maintained until it is no longer needed. The approval letter shall include a description of the residual contamination and the location of the building, soil cover, cover, or engineered containment structure, and shall restrict the use of the land where the building, soil cover, cover, or engineered containment structure is located to ensure that the building, soil cover, or cover, will function as intended, to prevent direct contact, as required by the applicable performance standard. The approval letter shall also require the property owner to maintain and repair or shall require the property owner to notify the agency prior to replacing the building, soil cover, cover, or engineered containment structure with a structure of similar permeability or with a cover that is protective of the new use until such time as further investigation demonstrates that the concentration of contaminants no longer exceeds residual contaminant levels that protect human health from direct contact, as determined under ch. NR 720.

(f) *Structural impediment.* For sites or facilities where a building or other structural impediment at a site or facility has prevented the completion of an investigation to determine the degree and extent of residual contamination, or the completion of a remedial action, the approval letter shall include a description of the general location of the residual contamination and shall require the property owner to notify the agency and then conduct an investigation of the degree and extent of contamination at such time that the removal of structural impediments makes the formerly inaccessible contamination accessible.

(g) *Industrial residual contaminant levels.* For sites or facilities where industrial residual contaminant levels under ch. NR 720 have been applied for closure, the approval letter shall include a condition that restricts the use of that property to an industrial land use until non-industrial soil cleanup standards are achieved in the future through natural attenuation or additional remediation.

(h) *Vapor mitigation system for sites where sub-slab levels attain or exceed the vapor risk screening level.* The agency may require installation and operation of a vapor mitigation system for

sites or facilities where sub-slab levels attain or exceed the vapor risk screening level. The approval letter shall include conditions which require the property owner to maintain the system until it is no longer needed. The approval letter may include conditions which require maintenance of certain structural features of existing buildings. The approval letter shall include conditions which require the immediate repair and replacement of system components that fail.

(i) *Vapor mitigation system where compounds of concern are in use.* The agency may require installation and operation of a vapor mitigation system for sites or facilities where the site is using the compounds of concern in their daily operations, in accordance with par. (h). The agency may require restrictions on the use or occupancy of the property to ensure that closure will be protective. The approval letter shall require notification of the agency and evaluation of the vapor intrusion pathway prior to changing use to a residential setting. The approval letter shall include a description of the type and location of the residual contamination.

Note: This would include sites or facilities where closure was based on worker exposure conditions, which then change to a different use, with different exposure assumptions.

(j) *Vapor mitigation system for sites where vapor intrusion is of concern due to hydrogeologic conditions.* The agency may require installation and operation of a vapor mitigation system and any other systems necessary for the proper operation of the vapor mitigation system, for sites or facilities which present a vapor risk, based on site-specific hydrogeologic circumstances. The approval letter shall identify the specific hydrogeologic conditions and a description of any other system necessary for the proper operation of the vapor mitigation system.

Note: This may include sites where contaminated groundwater enters the structure, or sites where the moisture content of soils below the slab is high or sub-slab samples are difficult to obtain, but where other conditions indicate the potential for vapor intrusion.

(k) *Site-specific exposure conditions.* The agency may restrict the use or occupancy of the property for sites or facilities based on specific exposure assumptions for vapor intrusion, to ensure that human health is protected. The approval letter shall include the specific exposure assumptions on which the closure decision was based.

Note: This may include non-residential settings; sites or facilities where certain commercial or industrial exposures were applied at the time of closure, which later change to a residential setting, such as single or multiple family residences, or educational, child, or senior care facilities, where a residential exposure would apply.

(L) *Potential for future exposure to vapors.* For sites or facilities where residual soil or groundwater contamination from volatile compounds exists, but where no building is present, the

agency may require protective measures to eliminate or control vapor intrusion into a future building. The approval letter may include conditions requiring that the agency be notified prior to any building construction, and a requirement that appropriate vapor control technologies be used in the construction of any building, unless an assessment is conducted which shows that the residual contaminant levels are protective of the new use.

Note: The potential for vapor migration into a future building is dependent on the type of building and the planned use of the building. Building control technologies may include but are not limited to passive barriers, passive venting, sub-slab depressurization, sub-membrane depressurization, sub-slab pressurization, building pressurization, and indoor air treatment.

(m) *Site-specific conditions*. For sites or facilities where an approval is requested, and where the agency determines that there are site-specific circumstances that warrant site-specific closure conditions, the approval letter shall specify the exposure assumptions, use or occupancy restrictions, and necessary maintenance and notification of the agency if conditions change such that the exposure assumptions used no longer apply to the site, facility or property. Site-specific circumstances may include but are not limited to situations where contamination remains in media other than soil, groundwater, or vapors; or exposure and migration pathways not otherwise addressed make a continuing obligation necessary to adequately protect human health, safety, or welfare or the environment. If there is contamination remaining in media other than soil, groundwater, or vapor, the approval letter shall also state that any sediments or other solids excavated in the future from an area that had residual contamination at the time of closure shall be sampled, analyzed, handled, and disposed of in compliance with applicable state and federal laws.

SECTION 90. NR 727.17 is created to read:

NR 727.17 Continuing obligations; maintenance and audits.

(1) AUDITS. The department may conduct audits of continuing obligations at any time to review whether a person that is responsible for compliance with continuing obligations is meeting the requirements of any of the following:

- (a) Chapters NR 700 to 799 and chs. 289, 291, and 292, Stats.; and
- (b) Any reports, plans, and other submittals required under chs. NR 700-799 relating to the continuing obligations; and
- (c) Any conditions of approval issued by the department under chs. NR 700-799 relating to the continuing obligations.

(2) INSPECTIONS. (a) The department may, in writing, direct persons responsible for compliance with continuing obligations to inspect continuing obligations if any of the following criteria apply:

1. An engineering control is present;
2. A vapor mitigation system is present;
3. A point of entry treatment system is present; or
4. Any response action requiring an operations, monitoring, and maintenance plan was taken.

(b) Persons performing inspections under par. (a) shall complete an inspection within 90 days of a department request, unless otherwise directed by the department.

(c) Persons performing inspections under par. (a) shall submit a continuing obligation inspection report to the department within 60 days of the inspection and shall include all of the following in the report:

1. Photos.
2. An inspection log.
3. Any activities required of the owner, occupant, or responsible party under the operations, monitoring, and maintenance plan.
4. A description of the inspection findings including deficiencies, and any repairs or remedies that were made or will be made.

(d) Persons making repairs or remedies following a finding of deficiencies shall submit written documentation describing repairs or remedies to the department within 60 days of completion.

(3) DATABASE. The department may record information submitted under this section on the department database.

Note: Persons found by the department to be noncompliant under this section may be subject to enforcement and compliance provisions under ch. NR 728 and any fees, enforcement, and penalties provisions under ch. 292, Stats.