

Dec. 18, 2012

RE: DNR Response to Comments, Proposed Revisions to chs. NR 700 to 754, Wis. Adm. Codes, Board Order RR-04-2011

Dear WI DNR Bureau for Remediation and Redevelopment:

Thank you for your responses to our comments and suggestions on the NR 700 rules. The development of proposed changes and the responses to comments clearly required a lot of time, attention, and collaboration. Though we disagree with many of the changes, we think some are in the right direction.

With all due respect, however, responses to most of our comments indicate that the Department is not aware of and/or does not understand substantial scientific research on environmental health risk disparities—and therefore does not understand the intent of our suggested language additions. Perhaps our language was not clear, and if so, we apologize. We further clarify below.

We wrote several comments suggesting that the Department add language related to the identification of risks to and/or communication/engagement with particularly vulnerable people (children, elderly, ill, etc), minorities, and low-income. In response to nearly all of these suggestions, the Department repeatedly responded as follows:

“The Department does not feel the rule should be revised to give priority to specific groups. Instead, the focus should be on providing all interested parties with the necessary information.”

It is scientifically well-established that fetuses, babies, children, elderly, and already ill are in many contexts more vulnerable to the effects of environmental toxins (if exposed to them), than healthy adults. It is also well-documented that people of color and low income people are more likely to be exposed to—or less likely to be able to avoid—environmental contaminants than white and more privileged people, and less likely to be aware of and engaged in decisions about these exposures and risks related to them (for a variety of economic, political and socio-cultural reasons). There is a substantial and growing body of scientific literature documenting these disparities—e.g., see: <http://ajph.aphapublications.org/toc/ajph/101/S1>.

The intent of our suggested language changes is to work towards reducing and/or eliminating these disparities to the extent possible when managing, remediating, and engaging/communicating about contaminated sites in Wisconsin. We think DNR NR 700 policy could play a central and critical role in this. The purpose of identifying exposures/risks to, communicating with, and engaging the most vulnerable people, minorities, and low income people near contaminated sites as early as possible is to help assure that these groups are included in subsequent risk assessments, communications, and

decisions they are usually left out of (which then further exacerbates exposure and risk disparities).

Further, the Department’s statement that “*Instead, the focus should be on providing all interested parties with the necessary information*” indicates a significant misunderstanding of some key causes of environmental health/communication disparities.

Firstly, our recommendation that the DNR should include policy language to make sure most vulnerable people are identified in risk assessments and included in communications is not suggesting that they *not* also identify the risks to, and communicate with, everyone else (including those who are not in the most vulnerable groups). Secondly, and critically, the term “interested parties” inherently requires prior awareness by these parties of the contamination/risk issues at hand. People cannot be “interested parties” (and in turn ask for information and/or involvement) if they are not aware of the contamination or their actual/potential exposures or risks related to them. Fetuses, babies, and children cannot be aware of their actual/potential contaminant exposures and therefore cannot become interested parties. People of color and low income people are often less (or not) aware of environmental risk issues than more privileged people because of cultural and language barriers, less access to education and resources, societal and institutional racism, work and life challenges, and more. It is the responsibility of those who know about and manage environmental contamination and risk issues—typically more educated, privileged people within government and/or academic institutions—to work to engage vulnerable and at-risk people and make them aware *before they can even become interested parties*.

Moreover, in the NR 716 Site Investigations section, the Department pasted the same response (cited above) for nearly all of our suggestions, even when this response was not relevant to our comments. Our suggestions to add additional language here were not about “providing information” to “interested parties” (as the DNR response states), but mainly to help assure that site investigations consider, *or at least note the location of*, the most vulnerable human “receptors” near contaminated sites. As above, this is not to say that all other potential receptors, human and environmental, should not also be identified as well.

Accurately identifying pathways of exposure to all human/environmental receptors during site investigation—a primarily technical endeavor—is not only the basis for developing appropriate and comprehensive risk assessment and remediation strategies, but also the basis for subsequent communications and engagement with the most vulnerable receptors and everyone who might be exposed. If the actual/potential pathways of exposure to the most vulnerable people (and everyone else near the site) are not identified accurately at the site investigation stage, or at all, then vulnerable groups are less likely to be included in subsequent risk assessments, communication, and remediation related to the site.

In the case of contaminated sites involving vapor intrusion, EPA’s *OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils* notes explicitly that the following people be considered in conceptual site models: “sensitive populations, including but not limited to: the elderly, pregnant or nursing women, infants, children, people suffering from chronic illnesses, people exposed

to particularly high levels of contaminants, circumstances where a disadvantaged population is exposed (Environmental Justice situation) (p. 102).

<http://www.epa.gov/osw/hazard/correctiveaction/eis/vapor/complete.pdf>

Finally, the Department implies in several places in the response to our comments that disparities such as those discussed above have not occurred with any contaminated sites in Wisconsin managed by the DNR. Unfortunately, we know of several cases the state in which we can find no evidence that potential/actual exposures to vulnerable groups and/or minorities/low income people near contaminated sites—or communication/engagement with these groups--were considered. For example, in the ongoing investigations around the serious contamination and vapor intrusion at/around Madison-Kipp Corporation, there is no indication in any DNR or Kipp consultant documents since 1994 that DNR or consultants have identified, considered, or even noted in documents potential pathways of exposures to children in nearby daycare facilities, schools, etc (several of which are very close the factory and easily identified). In late 2011, years after the serious contamination at Madison-Kipp Corporation was identified, the DNR project manager for the site was asked by a citizen at a public meeting about potential impacts of the contamination on Lowell School, a grade school (with a high poverty rate) a few hundred feet from the factory. His answer was, “Where is Lowell School?”

This suggests that it is not typical procedure for DNR site managers, even for a seriously contaminated site involving vapor intrusion in a dense urban setting, to even identify where vulnerable groups very near contaminated sites are located. Perhaps you may suggest that the Madison-Kipp Corp. situation is an anomaly, but our decades of experience and research in several cities in Wisconsin unfortunately suggest not.

In conclusion, we hope the Wisconsin DNR leaders and employees will do more to understand environmental health risk disparities related to contaminated sites (and all environmental pollution) in Wisconsin. Further, we hope the Department and other government agencies will work to make reducing and/or eliminating these disparities an integral part of future environmental monitoring, contaminated site management, communications and engagement with the public, and all environmental management policies.

Thanks for considering our comments,

Sincerely,

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