

Summary of Proposed Revisions in the 8-19-13 Draft Compared to the 4/23/13 Draft of Chapter 133

The more noteworthy revisions are listed below. The most significant proposed revisions involve reporting requirements as are subsequently discussed in more detail.

- Elimination of the term “localized source”.
- Removal of all direct and indirect references to nitrate.
- Modification of definitions of “contaminant” and “contaminant of concern” in an attempt to eliminate circular issues with use of the terms.
- Elimination of the term “gross contamination”. Provisions in specified Subrules 133.3(9) “h” & “I” and 133.9(9) “f” address the concept of gross contamination, primarily in terms of non-aqueous phase liquids (NAPLs).
- Elimination of the definition of “hazardous condition”; instead including the statutorily defined hazardous condition as part of the definition of “condition warranting remedial action”.
- Revisions of the definitions of the terms “Hazardous Substance” and “Release” to primarily be their statutory definition.
- Elimination of the term “significantly contributed to” with the concept added to liability provisions under Subrule 133.5(1).
- Redefinition of problematic contamination with respect to drinking water in Subrule 133.3(1) to include more stringent standards (compared to MCLs) for synthetic organic contaminants (SOCs) only.
- Changing Rule 133.4 from “Reportable Conditions” to “Indeterminate Conditions” and making reporting of indeterminate conditions optional. The DNR could only *require* action if it receives evidence that demonstrates an indeterminate condition or a condition warranting remedial action.
- Elimination of the terms “applicable standard” and “relevant and appropriate standard”, instead just incorporating these provisions in a straightforward manner in Subrules 133.4(1) & (2).
- Changing criteria for acceptable concentrations in would-be contaminant look-up tables—now in proposed Subrules 133.4(10) & (11)—that would increase acceptable values by a factor of 2.
- Addition of Subrule 133.4(12) that allows uses of cumulative-risk assessment criteria to supersede chemical-specific look-up table values.
- Elimination of provisions that were previously in Subrule 133.7(2) “g” and Rule 133.8(2) that would have enabled imposition of Chapter 137 standards on off-site contamination. (These provisions were eliminated due to the proposed change in reporting requirements such that required reporting of most off-site contamination would no longer be mandatory.)

Reporting requirements.

At the stakeholder meetings mandatory reporting criteria was clearly an issue of concern. The previous draft rule released to stakeholders (dated 4/23/13) would have required substantially more stringent requirements for reporting of contamination than currently exists.

The attached revisions represent reporting requirements comparable to what currently exist. Essentially, it is being proposed that mandatory reporting of contamination be required only when a condition warranting remedial action (CWRA) is known to exist. Reporting evidence that a CWRA *might* exist (now proposed to be called an “indeterminate condition”) would be optional in accordance with the attached draft rules.

Upon receipt (by whatever means) of evidence of an indeterminate condition, the department could prescribe response actions to determine if the indeterminate condition is a CWRA. However, the response actions would be optional, except for situations where off-site contamination is likely and a viable responsible party exists. This would be consistent with the Iowa Supreme Court’s 1995 Blue Chip decision and the statutory definition of “release” in Iowa Code 455B.381.

These changes should relieve concerns that the department could impose costly requirements based on findings of contamination, yet still allow the department to assist the regulated public in resolving environmental concerns associated with properties, if the public desires such assistance.

Again, the net result would be reporting requirements not much different than currently exists, but the regulated public would have a clearer understanding of what the DNR considers problematic and potentially problematic contamination, i.e., a CWRA and indeterminate condition, respectively.

The DNR could require action based on evidence it receives that meets the criteria of an indeterminate condition, but would not *require* submittal of such evidence in the first place. The DNR could only require remedial action by a responsible party to address a confirmed CWRA involving off-site contamination.

Finally, changes in reporting requirements are proposed to include only property owners and responsible parties.