



2015 ASSEMBLY BILL 701

January 13, 2016 - Introduced by Representatives TITTL, GENRICH, BERCEAU, CZAJA, JACQUE, KAHL, MACCO, NYGREN, OHNSTAD, A. OTT, PETRYK, SHANKLAND, SINICKI, STEFFEN, SUBECK, SWEARINGEN and CONSIDINE, cosponsored by Senators COWLES, LASSA, HANSEN, LASEE, PETROWSKI, TIFFANY and LEMAHIEU. Referred to Committee on Environment and Forestry.

1 **AN ACT** *to renumber and amend* 292.12 (1) (c) and 292.15 (2) (am); *to amend*
2 289.31 (10), 292.12 (1) (a), 292.12 (2) (intro.), 292.12 (3) (a), 292.12 (3) (b) 1.,
3 292.12 (4), 292.12 (5) (title), 292.12 (5) (a), 292.12 (5) (b), 292.12 (6), 292.15 (2)
4 (a) (intro.), 292.15 (2) (b) (intro.), 292.15 (2) (b) 1., 292.15 (2) (b) 2., 292.15 (2)
5 (b) 3., 292.15 (2) (b) 5., 292.15 (2) (c), 292.15 (2) (e), 292.25 (1) (e) and 292.68 (1)
6 (b); and *to create* 292.01 (1s), 292.01 (17g), 292.01 (17m), 292.12 (2) (d), 292.12
7 (5) (c), 292.12 (5) (d), 292.12 (5m), 292.15 (2) (af), 292.15 (2) (am) 2m., 292.15
8 (2) (d), 292.15 (6m), 292.15 (7) (f) and 292.25 (1) (f) of the statutes; **relating to:**
9 action required to be taken in response to a discharge of hazardous substances,
10 exemption from liability for certain hazardous substance discharges, providing
11 an exemption from emergency rule procedures, and granting rule-making
12 authority.

Analysis by the Legislative Reference Bureau

This bill makes changes to the requirements that apply if residual contamination remains on a property after a hazardous substance cleanup is

ASSEMBLY BILL 701

completed. The bill also creates requirements for obtaining a liability exemption relating to contaminated sediment.

Current law generally requires a person who possesses or controls a hazardous substance that has been discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and minimize the harmful effects from the discharge. Generally, the Department of Natural Resources (DNR) is the agency that administers the laws with respect to discharges of hazardous substances, although the Department of Agriculture, Trade and Consumer Protection (DATCP) has authority to require a person who discharges an agricultural chemical to take necessary corrective action.

Sites with residual contamination after cleanup

This bill makes changes to the requirements that apply if residual contamination remains on a property after a hazardous substance cleanup is completed.

Under current law, DNR or DATCP may impose certain requirements as a condition of approving a cleanup of a hazardous substance discharge or issuing a case closure letter if residual contamination remains on a property after the conclusion of a cleanup. Under current law the agency may require 1) maintenance of an engineering control on the property; 2) investigation and, if necessary, additional remedial action if a structure is removed that had prevented a complete investigation or remedial action at the property; and 3) any other limitations or conditions related to the property to protect public health, safety, and welfare and the environment, and to promote economic development. An engineering control is an object or action that is designed to contain contamination or minimize the spread of contamination, such as a cap or a soil cover. Under the bill, an engineering control does not include a sediment cover, which is a layer of uncontaminated sand or similar material that is deposited on top of contaminated sediment. Under current law, the property owner is responsible for maintaining the engineering control and conducting additional investigation or remedial action, unless there is an agreement in place for someone else to do so. Either the property owner or a person who occupies the property is responsible for complying with any other limitations or conditions that the agency imposes on the property.

Under this bill, DNR or DATCP may impose additional requirements as a condition of approving remedial action or of issuing a case closure letter if a person is required to clean up contaminated sediment or a discharge of a hazardous substance that resulted in contaminated sediment, and the person uses an engineering control to address residual contamination remaining on the property. If the person uses an engineering control, the agency may require that the person submit a plan and schedule for complying with any of the requirements, limitations, or conditions imposed by the agency, and proof of financial responsibility sufficient to pay the costs of implementing that plan. In addition, under the bill a person who uses an engineering control in a contaminated sediment cleanup must comply with the requirements, limitations, or conditions imposed by the agency regardless of whether the person owns or occupies the property where the engineering control is located, unless there is an agreement in place for someone else to do so. If that person

ASSEMBLY BILL 701

does not own or occupy the property where the engineering control is located, the person must obtain access to that property to allow the engineering control to be inspected and maintained, and, if necessary, for the engineering control and any remaining contaminated sediment to be removed.

This bill also provides that, if a person owns property from which a hazardous substance discharge resulting in contaminated sediment originated, that person is not required to comply with any requirements imposed by DNR or DATCP in relation to any other property that is affected by that discharge if 1) the environment has been satisfactorily restored to the extent practicable and the harmful effects from the discharge have been minimized; 2) the person is a bona fide prospective purchaser; and 3) another person has entered into an agreement to comply with the requirements imposed by the agency for the affected property and demonstrates the financial ability to do so. A bona fide prospective purchaser is someone who did not own or control the property at the time of the discharge, and who is not affiliated in any way with the person who caused the discharge.

Voluntary party liability exemption for contaminated sediment cleanup

This bill creates requirements for obtaining a liability exemption relating to contaminated sediment.

Under current law, if there are hazardous substances on a property, or if a discharge of hazardous substances originated from a property, a person (voluntary party) may be exempt from liability for restoring the environment, and from the requirements of other laws relating to hazardous substances, with respect to those hazardous substances if the voluntary party complies with certain requirements. This exemption is known as a voluntary party liability exemption (VPLE). In general, to qualify for a VPLE 1) an environmental investigation of the property must be conducted; 2) the environment must be restored and the harmful effects of the discharge minimized according to rules promulgated by DNR; 3) DNR must issue a certificate of completion stating that the cleanup has been satisfactorily completed; and 4) if the voluntary party owns or controls the property, the voluntary party must maintain and monitor the property according to rules promulgated by DNR.

This bill creates a separate set of requirements for obtaining a VPLE if there is contaminated sediment on a property from a discharge of hazardous substances on or originating from a property. Under the bill, to qualify for a VPLE in that situation 1) an environmental investigation of the property must be conducted; 2) the voluntary party must remove all or part of the contaminated sediment and address any remaining contaminated sediment in a manner approved by the department, such that the environment is restored and the harmful effects of the discharge are minimized; 3) DNR must issue a certificate of completion stating that the cleanup has been satisfactorily completed; 4) if the voluntary party owns or controls the property, the voluntary party must maintain and monitor the property in a manner required by DNR; 5) the voluntary party must obtain insurance to cover the cost of the cleanup in the event that additional remedial action is necessary, unless DNR waives the insurance requirement; and 6) if the voluntary party owns or controls the property, the voluntary party must allow DNR and certain other interested parties to enter the property to determine whether additional remedial action is necessary.

ASSEMBLY BILL 701

Under the bill, a VPLE is not available for a property where an engineering control is used as a remedial action to address contaminated sediment.

Voluntary party liability exemption for partial cleanup

This bill creates additional requirements for obtaining a liability exemption for a partial cleanup relating to contaminated sediment.

Under current law, a voluntary party that conducts a partial cleanup of hazardous substances may be exempt from liability for restoring the environment with respect to those hazardous substances, but not from the requirements of other laws relating to hazardous substances. A voluntary party may qualify for this partial VPLE if 1) public health, safety, or the environment will not be endangered by the remaining hazardous substances; 2) the activities associated with any proposed use or development of the property will not aggravate the discharge; and 3) the owner of the property agrees to cooperate with DNR in addressing the remaining hazardous substances.

This bill provides that, if there is contaminated sediment in addition to contaminated soil or contaminated soil and groundwater on a property from a discharge of hazardous substances on or originating from a property, a partial VPLE may only be provided with respect to the hazardous substances in the soil, or in the soil and groundwater. The bill also creates additional requirements for obtaining a partial VPLE in this situation. In addition to the requirements listed above 1) an environmental investigation of the property must be conducted; 2) the voluntary party must agree to restore the environment to the extent practicable in relation to the contaminated sediment; and 3) the voluntary party must provide proof of financial responsibility sufficient to cover the cost of restoring the environment to the extent practicable in relation to the contaminated sediment.

Other

Current law prohibits the Department of Justice (DOJ) from initiating an action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) against a person who has obtained a VPLE to recover costs for which that person is exempt. This bill also prohibits DOJ from initiating an action under certain other federal regulations against a person who has obtained a VPLE to recover damages to natural resources resulting from a discharge for which that person is exempt.

In addition, the bill prohibits DNR from requiring a person who has obtained a VPLE relating to contaminated sediment from taking additional remedial action with respect to the contaminated sediment or discharge covered by the VPLE for the purpose of complying with a federally approved total maximum daily load (TMDL) requirement for a body of water. A TMDL is the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

ASSEMBLY BILL 701

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 289.31 (10) of the statutes is amended to read:

2 289.31 (10) VOLUNTARY PARTY CERTIFICATE OF COMPLETION. When the
3 department issues a certificate of completion under s. 292.15 (2) (a) 3., (ae) 3., (af) 3.,
4 or (ag) 2. for all or a portion of a solid waste facility with an operating license under
5 this section, the operating license for the solid waste facility or the portion of the solid
6 waste facility covered by the certificate of completion is terminated.

7 **SECTION 2.** 292.01 (1s) of the statutes is created to read:

8 292.01 (1s) “Contaminated sediment” means sediment that contains a
9 hazardous substance.

10 **SECTION 3.** 292.01 (17g) of the statutes is created to read:

11 292.01 (17g) “Sediment” means particles in the bed of a navigable water up to
12 the ordinary high-water mark that are derived from the erosion of rock, minerals,
13 soil, and biological materials and from chemical precipitation from the water column
14 and that are transported or deposited by water.

15 **SECTION 4.** 292.01 (17m) of the statutes is created to read:

16 292.01 (17m) “Sediment cover” means a layer of uncontaminated sand or
17 similar material that is deposited on top of contaminated sediment.

18 **SECTION 5.** 292.12 (1) (a) of the statutes is amended to read:

19 292.12 (1) (a) “Agency with administrative authority” means the department
20 of agriculture, trade and consumer protection with respect to a site over which it has

ASSEMBLY BILL 701

1 jurisdiction under s. 94.73 (2) or the department of natural resources with respect
2 to a site over which it has jurisdiction under ~~s. 292.11 (7)~~ ch. 289, 291, or 292.

3 **SECTION 6.** 292.12 (1) (c) of the statutes is renumbered 292.01 (3m) and
4 amended to read:

5 292.01 (3m) “Engineering control” means an object or action designed and
6 implemented to contain contamination or to minimize the spread of contamination,
7 including a cap ~~or~~, soil cover, or in-place stabilization, but not including a sediment
8 cover.

9 **SECTION 7.** 292.12 (2) (intro.) of the statutes is amended to read:

10 292.12 (2) AGENCY AUTHORITY. (intro.) The agency with administrative
11 authority may do any of the following as a condition of approving an interim action,
12 as defined by the agency with administrative authority by rule, or a remedial action
13 or of issuing a case closure letter if residual contamination remains on a site after
14 the conclusion of an interim action or a remedial action at the site:

15 **SECTION 8.** 292.12 (2) (d) of the statutes is created to read:

16 292.12 (2) (d) If the site is one for which a person is required to take action
17 under sub. (5m) (a), require submission to the agency with administrative authority
18 of any of the following:

19 1. A satisfactory plan and compliance schedule for satisfying any requirements
20 imposed under par. (a) or (b).

21 2. Proof of financial responsibility, as determined by the agency with
22 administrative authority by rule, sufficient to pay the costs of complying with a plan
23 approved under subd. 1.

24 **SECTION 9.** 292.12 (3) (a) of the statutes is amended to read:

ASSEMBLY BILL 701

1 292.12 (3) (a) The department shall maintain a database listing sites for which
2 an interim action that includes the use of an engineering control or a remedial action
3 has been approved or a case closure letter has been issued and that have residual
4 contamination and listing sites for which the department has directed that action be
5 taken under s. 292.11 (9) (e) 4. The department shall make the database available
6 to the public. The department shall include any requirements, limitations, or
7 conditions imposed under sub. (2) (a) to (c), and any information required under sub.
8 (2) (d), in the database, subject to modification under sub. (6), and shall include any
9 action that the department has directed to be taken under s. 292.11 (9) (e) 4.

10 **SECTION 10.** 292.12 (3) (b) 1. of the statutes is amended to read:

11 292.12 (3) (b) 1. If residual contamination remains on a site after the conclusion
12 of an interim action that includes the use of an engineering control or a remedial
13 action at the site, the agency with administrative authority shall request the
14 department to list the site, and any requirements, limitations, or conditions imposed
15 under sub. (2) (a) to (c), and any information required under sub. (2) (d), in the
16 database maintained by the department under par. (a) and, as a condition of
17 approving remedial action or of issuing a case closure letter, shall require the person
18 requesting approval of remedial action or case closure to provide the information
19 necessary for the listing and to pay a fee established by the department for the
20 listing.

21 **SECTION 11.** 292.12 (4) of the statutes is amended to read:

22 292.12 (4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies
23 for case closure for a site that includes any property that has residual contamination
24 and is not owned by the person, the person shall provide written notification of the
25 residual contamination to the owner of that property. The person shall include in the

ASSEMBLY BILL 701

1 notice, at a minimum, a description of the type of residual contamination and the
2 location and description of any engineering control or sediment cover on the site.

3 **SECTION 12.** 292.12 (5) (title) of the statutes is amended to read:

4 292.12 (5) (title) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS AND
5 PROHIBITION ON INTERFERENCE.

6 **SECTION 13.** 292.12 (5) (a) of the statutes is amended to read:

7 292.12 (5) (a) ~~A Except as provided in par. (c) and sub. (5m) (a) and (b), a person~~
8 who owns property, including a property or site that is listed under sub. (3) (b), shall
9 comply with the requirements described in sub. (2) (a) ~~or~~ and (b) that are imposed
10 by an agency with administrative authority without regard to when the person
11 obtained the property, ~~unless another person has a legally enforceable responsibility~~
12 ~~to comply with the requirements.~~

13 **SECTION 14.** 292.12 (5) (b) of the statutes is amended to read:

14 292.12 (5) (b) ~~A Except as provided in par. (c) and sub. (5m) (a) and (b), a person~~
15 who owns or occupies property, including a property or site that is listed under sub.
16 (3) (b), shall comply with the limitations or conditions described in sub. (2) (c) that
17 are imposed by an agency with administrative authority without regard to when the
18 person obtained or occupied the property.

19 **SECTION 15.** 292.12 (5) (c) of the statutes is created to read:

20 292.12 (5) (c) If another person has entered into and is complying with a legally
21 enforceable agreement to comply with any of the requirements, limitations, or
22 conditions described in sub. (2) (a) to (c) that are applicable to the property and the
23 agreement is included in the database maintained under sub. (3), the person who
24 owns or occupies the property is not required to comply with the requirements,
25 limitations, or conditions included in that agreement.

ASSEMBLY BILL 701

1 **SECTION 16.** 292.12 (5) (d) of the statutes is created to read:

2 292.12 (5) (d) A person who owns or occupies property, including a property or
3 site that is listed under sub. (3) (b), may not interfere with another person's actions
4 on the property that are required under sub. (2) (a) to (c).

5 **SECTION 17.** 292.12 (5m) of the statutes is created to read:

6 292.12 (5m) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS RELATED TO
7 CONTAMINATED SEDIMENT AND PROHIBITION ON INTERFERENCE. (a) Notwithstanding the
8 requirements under sub. (5) (a) and (b), and except as provided in par. (b), a person
9 who is required to take action under s. 292.11 (3), (4), or (7) (b) with respect to
10 contaminated sediment and who takes action that includes the use of an engineering
11 control shall do all of the following:

12 1. Except as provided in par. (am), comply with the requirements, limitations,
13 and conditions described in sub. (2) (a) to (d) that are imposed by an agency with
14 administrative authority without regard to whether the person owns or occupies the
15 property on which the engineering control is used.

16 2. If the person does not own or occupy the property on which the engineering
17 control is used, obtain access to the property that allows for the inspection,
18 maintenance, and reinstallation of the engineering control or the removal of the
19 engineering control and contaminated sediment.

20 (am) If another person has entered into and is complying with a legally
21 enforceable agreement to comply with any of the requirements, limitations, or
22 conditions described in par. (a) 1. and the agreement is included in the database
23 maintained under sub. (3), the person who is required to take action under par. (a)
24 is not required to comply with the requirements, limitations, or conditions included
25 in that agreement.

ASSEMBLY BILL 701

1 (ar) A person who owns or occupies property on which an engineering control
2 is used may not interfere with another person's actions on the property that are
3 required under par. (a).

4 (b) A person who owns property from which a hazardous substance was
5 discharged is not required to comply with sub. (2) (a) to (d) with respect to any other
6 property containing contaminated sediment as a result of that discharge if all of the
7 following apply:

8 1. The agency with administrative authority determines that the environment,
9 including sediment, has been satisfactorily restored to the extent practicable with
10 respect to the discharge and the harmful effects from the discharge have been
11 minimized.

12 2. The person is a bona fide prospective purchaser under 42 USC 9601 (40).

13 3. Another person has entered into and is complying with a legally enforceable
14 agreement to comply with any of the requirements, limitations, or conditions
15 described under sub. (2) (a) to (d) with respect to any other property containing
16 contaminated sediment as a result of that discharge.

17 4. The agreement under subd. 3. is included in the database maintained under
18 sub. (3).

19 5. The person submits information that the agency with administrative
20 authority determines is adequate to substantiate that subds. 1. to 4. are satisfied.

21 (c) The agency with administrative authority may negotiate and enter into an
22 agreement containing a schedule for conducting actions required under sub. (2) with
23 any person required to take action under sub. (2) with respect to contaminated
24 sediment.

25 **SECTION 18.** 292.12 (6) of the statutes is amended to read:

ASSEMBLY BILL 701

1 292.12 (6) MODIFICATION OF REQUIREMENTS. A person may request the agency
2 with administrative authority over a site to change or eliminate a requirement,
3 limitation, or condition that it imposed under sub. (2) (a) to ~~(e)~~ (d) with respect to a
4 site. If the agency with administrative authority agrees to change or eliminate a
5 requirement, limitation, or condition imposed under sub. (2) (a) to ~~(e)~~ (d), it shall
6 provide written approval to the person, shall request the department to change the
7 listing under sub. (3) (b) for the site accordingly, and shall require the person to pay
8 a fee established by the department for changing the listing.

9 **SECTION 19.** 292.15 (2) (a) (intro.) of the statutes is amended to read:

10 292.15 (2) (a) *General.* (intro.) Except as provided in sub. (6) or (7), and subject
11 to pars. (ae) to (ag), a voluntary party is exempt from the provisions of ss. 289.05 (1),
12 (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and
13 (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with
14 respect to discharges of hazardous substances on or originating from a property, if
15 the release of those hazardous substances occurred prior to the date on which the
16 department approves the environmental investigation of the property under subd.
17 1. and if all of the following occur at any time before or after the date of acquisition:

18 **SECTION 20.** 292.15 (2) (af) of the statutes is created to read:

19 292.15 (2) (af) *Contaminated sediment.* Except as provided in sub. (6), (6m),
20 or (7), if there exists contaminated sediment on a property from a release of a
21 hazardous substance on or originating from a property, the voluntary party is exempt
22 from ss. 289.05 (1), (2), (3), and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37,
23 292.11 (3), (4), and (7) (b) and (c), and 292.31 (8) and rules promulgated under those
24 provisions, with respect to discharges of hazardous substances on or originating from
25 the property, if the release of those hazardous substances occurred before the date

ASSEMBLY BILL 701

1 on which the department approves the environmental investigation of the property
2 under subd. 1., and if all of the following occur at any time before or after the date
3 of acquisition:

4 1. An environmental investigation of the property is conducted that is approved
5 by the department.

6 2. The voluntary party removes all or part of the contaminated sediment and
7 addresses any remaining contaminated sediment in a manner approved by the
8 department, such that the environment is restored to the extent practicable with
9 respect to the discharges and the harmful effects from the discharges are minimized
10 in accordance with rules promulgated by the department and any contract entered
11 into under those rules, except that with respect to contaminated sediment the
12 environment is restored to the extent practicable with respect to the discharges and
13 the harmful effects from the discharges are minimized as determined by the
14 department by monitoring or sampling and in accordance with any contract entered
15 into with the department's approval.

16 3. The voluntary party obtains a certificate of completion from the department
17 stating that the environment has been satisfactorily restored to the extent
18 practicable with respect to the discharges and that the harmful effects from the
19 discharges have been minimized.

20 3m. The voluntary party obtains and maintains insurance to cover the cost of
21 complying with s. 292.11 (3) with respect to the contaminated sediment in the event
22 that additional remedial action is necessary, unless additional action is not required
23 under par. (b). The insurance shall conform with rules promulgated by the
24 department and shall name the state as the insured. The department may waive the
25 requirement to obtain and maintain insurance or accept a form of financial

ASSEMBLY BILL 701

1 responsibility other than insurance if the hazardous substance contained in the
2 contaminated sediment is not mercury, PCBs, as defined in s. 299.45 (1) (a), or dioxin
3 and the department determines that insurance is not necessary.

4 4. If the voluntary party owns or controls the property, the voluntary party
5 maintains and monitors the property in a manner required by the department and
6 any contract entered into with the department's approval.

7 5. The voluntary party does not engage in activities that are inconsistent with
8 the maintenance of the property.

9 6. The voluntary party has not obtained the certificate under subd. 3. by fraud
10 or misrepresentation, by the knowing failure to disclose material information or
11 under circumstances in which the voluntary party knew or should have known about
12 more discharges of hazardous substances than were revealed by the investigation
13 conducted under subd. 1.

14 7. If the voluntary party owns or controls the property, the voluntary party
15 allows the department, any authorized representative of the department, a
16 representative of a company that has issued insurance required under subd. 3m.,
17 any party that possessed or controlled the hazardous substance or caused the
18 discharge of the hazardous substance, and any consultant or contractor of those
19 persons to enter the property to determine whether additional remedial action is
20 necessary, subject to par. (b), and to take the necessary remedial action.

21 **SECTION 21.** 292.15 (2) (am) of the statutes is renumbered 292.15 (2) (am) 1m.,
22 and 292.15 (2) (am) 1m. (intro.), as renumbered, is amended to read:

23 292.15 (2) (am) 1m. (intro.) The Except as provided in subd. 2m., the
24 department may approve a partial cleanup and issue a certificate of completion as
25 provided in par. (a), (ae), (af), or (ag) that states that not all of the property has been

ASSEMBLY BILL 701

1 satisfactorily restored or that not all of the harmful effects from a discharge of a
2 hazardous substance have been minimized. Approval of a partial cleanup exempts
3 a voluntary party from ss. 291.37 (2) and 292.11 (3), (4) and (7) (b) and (c) with respect
4 to the portion of the property or hazardous substances cleaned up under this
5 paragraph. In addition to meeting the requirements of par. (a), (ae), (af), or (ag), a
6 certificate for a partial cleanup under this paragraph may be issued only if:

7 **SECTION 22.** 292.15 (2) (am) 2m. of the statutes is created to read:

8 292.15 (2) (am) 2m. If there exists contaminated sediment in addition to a
9 hazardous substance in soil or soil and groundwater on a property from a release of
10 a hazardous substance on or originating from a property, the department may only
11 approve a partial cleanup of the property or discharge with respect to the soil or soil
12 and groundwater. The department may approve the partial cleanup only if, in
13 addition to the requirements under subd. 1m., all of the following apply:

14 a. An environmental investigation of the property or discharges is conducted
15 in a manner approved by the department.

16 b. The voluntary party, or a person who has entered into a legally enforceable
17 agreement with the department, agrees to restore the environment to the extent
18 practicable and minimize the harmful effects from the contaminated sediment on the
19 property or the discharges resulting in contaminated sediment.

20 c. The voluntary party or the person who has entered into a legally enforceable
21 agreement under subd. 2m. b. provides financial assurance to the department, in the
22 manner required by the department, in the event that the voluntary party or the
23 person who has entered into a legally enforceable agreement under subd. 2m. b. fails
24 to restore the environment to the extent practicable and minimize the harmful

ASSEMBLY BILL 701

1 effects from the contaminated sediment on the property or the discharges resulting
2 in contaminated sediment.

3 **SECTION 23.** 292.15 (2) (b) (intro.) of the statutes is amended to read:

4 292.15 (2) (b) *Extent of exemptions.* (intro.) The exemptions provided in pars.
5 (a), (ae), (af), (ag) and (am) continue to apply after the date of certification by the
6 department under par. (a) 3., (ae) 3., (af) 3., or (ag) 2., or approval by the department
7 under par. (am), notwithstanding the occurrence of any of the following:

8 **SECTION 24.** 292.15 (2) (b) 1. of the statutes is amended to read:

9 292.15 (2) (b) 1. Statutes, rules or regulations are created or amended that
10 would impose greater responsibilities on the voluntary party than those imposed
11 under par. (a) 2., (ae) 2., (af) 2., or (ag) 1.

12 **SECTION 25.** 292.15 (2) (b) 2. of the statutes is amended to read:

13 292.15 (2) (b) 2. The voluntary party fully complies with the rules promulgated
14 by the department and any contract entered into under those rules under par. (a) 2.,
15 (ae) 2. or (ag) 1., or fully complies with the requirements imposed by the department
16 and any contract entered into with the department's approval under par. (af) 2., but
17 it is discovered that the cleanup fails to fully restore the environment and minimize
18 the effects from a discharge of a hazardous substance.

19 **SECTION 26.** 292.15 (2) (b) 3. of the statutes is amended to read:

20 292.15 (2) (b) 3. The contamination from a hazardous substance that is the
21 subject of the cleanup under par. (a) 2., (ae) 2., (af) 2., or (ag) 1. is discovered to be more
22 extensive than anticipated by the voluntary party and the department.

23 **SECTION 27.** 292.15 (2) (b) 5. of the statutes is amended to read:

24 292.15 (2) (b) 5. If the voluntary party does not own or control the property, the
25 person who owns or controls the property fails to allow the department, any

ASSEMBLY BILL 701

1 authorized representative of the department, any representative of a company that
2 has issued insurance required under par. (ae) 3m. or (af) 3m., any party that
3 possessed or controlled the hazardous substance or caused the discharge of the
4 hazardous substance, or any consultant or contractor of any of those persons to enter
5 the property to determine whether natural attenuation has failed and to take action
6 to respond to the discharge if natural attenuation has failed, or to determine whether
7 additional remedial action is necessary and to take the necessary remedial action,
8 unless additional action is not required under this paragraph.

9 **SECTION 28.** 292.15 (2) (c) of the statutes is amended to read:

10 292.15 (2) (c) *Prohibition on action.* The department of justice may not
11 commence an action under 42 USC 9607, against any voluntary party meeting the
12 criteria of this subsection, under 42 USC 9607 to recover costs for which the
13 voluntary party is exempt or under 43 CFR Part 11 to recover damages to natural
14 resources resulting from a discharge for which the party is exempt under pars. (a),
15 (ae), (af), (ag), (am), and (b).

16 **SECTION 29.** 292.15 (2) (d) of the statutes is created to read:

17 292.15 (2) (d) *Prohibition on requiring additional action to comply with a total*
18 *maximum daily load.* If a voluntary party is exempt from liability under par. (af),
19 the department may not require the voluntary party to take additional action in
20 relation to the discharge for which the voluntary party is exempt under par. (af) for
21 the purpose of complying with a federally approved total maximum daily load under
22 33 USC 1313 (d) (1) (C), unless otherwise required under this section or s. 292.12.

23 **SECTION 30.** 292.15 (2) (e) of the statutes is amended to read:

24 292.15 (2) (e) *Contract with insurer.* If the department requires insurance
25 under par. (ae) 3m. or (af) 3m., the department may contract with an insurer to

ASSEMBLY BILL 701

1 provide insurance required under par. (ae) 3m. or (af) 3m. and may require voluntary
2 parties to obtain coverage under the contract.

3 **SECTION 31.** 292.15 (6m) of the statutes is created to read:

4 292.15 **(6m)** LIMITATION ON ELIGIBILITY. A voluntary party is not eligible for the
5 exemption provided in sub. (2) (af) if the remedial action taken by the voluntary party
6 relating to contaminated sediment includes an engineering control.

7 **SECTION 32.** 292.15 (7) (f) of the statutes is created to read:

8 292.15 **(7)** (f) A property that is listed or proposed to be listed on the national
9 priorities list under 42 USC 9605 (a) (8) (B).

10 **SECTION 33.** 292.25 (1) (e) of the statutes is amended to read:

11 292.25 **(1)** (e) The number of sites for which a claim was made against an
12 insurance policy required under s. 292.15 (2) (ae).

13 **SECTION 34.** 292.25 (1) (f) of the statutes is created to read:

14 292.25 **(1)** (f) The number of sites for which a claim was made against an
15 insurance policy required under s. 292.15 (2) (af).

16 **SECTION 35.** 292.68 (1) (b) of the statutes is amended to read:

17 292.68 **(1)** (b) "PCB contaminated sediment" means sediment that contains
18 polychlorinated biphenyls in a concentration of 50 parts per million or greater and
19 that is dredged from ~~the bed or bank~~ of a navigable water in this state.

20 **SECTION 36. Nonstatutory provisions.**

21 (1) Using the procedure under section 227.24 of the statutes, the department
22 of natural resources shall promulgate rules required under sections 292.12 (2) (d) 2.
23 and 292.15 (2) (af) 3m. of the statutes, as created by this act, for the period before the
24 effective date of the permanent rules promulgated under sections 292.12 (2) (d) 2.
25 and 292.15 (2) (af) 3m. of the statutes, as created by this act, but not to exceed the

ASSEMBLY BILL 701

1 period authorized under section 227.24 (1) (c) of the statutes, subject to extension
2 under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2)
3 (b), and (3) of the statutes, the department is not required to provide evidence that
4 promulgating a rule under this subsection as an emergency rule is necessary for the
5 preservation of the public peace, health, safety, or welfare and is not required to
6 provide a finding of emergency for a rule promulgated under this subsection.

7 **(END)**