

2001 DRAFTING REQUEST

Bill

Received: 12/04/2000

Received By: traderc

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 6-7597

By/Representing: Wong

This file may be shown to any legislator: NO

Drafter: traderc

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Alt. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Liability exemption for sediment

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Date: November 29, 2000
To: Steve Miller, LRB
From: Manyee Wong, DOA
266-7595
Subject: Brownfields Statutory Language

I'm forwarding statutory language requests based on the Brownfields Study Group recommendations for inclusion in the budget. Attached is a draft of the Brownfields Study Group Report.

- ✓ 1. **Stewardship Liability Exemption:** Substitute statutory reference to the stewardship appropriation under the LGU liability exemption provision with the phrase stewardship program funds.

Reason for change: 1999 Wisconsin Act 9 allowed LGUs to qualify for liability exemption if they purchased a property using stewardship funds. However, s. 292.11(9)(e)1m.f., Wis. Stats., referenced the incorrect appropriation.

- ✓ 2. **Solid Waste Liability Exemption:** Expand the voluntary party solid waste liability exemption to include local government units.
- ✓ 3. **Interim Liability Protection:** Remove the interim liability protection exemption from current law.
- ✓ 4. **Off-site liability exemption:** Expand off-site liability exemption coverage to soil and sediments.
- ✓ 5. **Voluntary Party Liability Exemption:** Clarify that liability exemptions continue to apply to a voluntary party who no longer owns the property, even if the current property owner fails to maintain and monitor the property in accordance with DNR rules.
- ✓ 6. **Use of Natural Attenuation:** Require the voluntary party using natural attenuation as a remedial strategy to provide DNR, the responsible party, the insurance company, or any authorized representative access to the property in order to determine whether natural attenuation has failed and to conduct cleanup if necessary.
- ✓ 7. **Environmental Remediation Tax Increment Financing (ER TIF):** Make technical changes to various definitions under the provision:

- a. Create a definition for "environmental remediation tax incremental tax district" similar to the definition of regular TIFs
- b. Change the definitions of "environmental remediation tax increment", "environmental remediation tax increment base", and "taxable property" as suggested by DOR.
- c. Modify certain provisions of the program to ensure eligible application to both contiguous parcels and individual parcel of property.
- d. Require that a certified audit be done once after the final expenditure is completed.
- e. Change the application due date for environmental remediation tax increment base certification from April 1st to December 31st of the year the ER TIF is created.

Note: For a, b, and c, please refer to LRB 4239/2 created under the 1999 legislative session.

- ✓ 8. Negotiated Sale in Lieu of Bidding: Allow a county or a city to transfer tax delinquent properties it owns without using the competitive bid process if the purchaser agrees to conduct a site assessment and cleanup the property in accordance with DNR rules.
- ✓ 9. Assign Judgement of a Tax Deed: Allow a county to transfer a tax deed to an individual at the time of judgement if the individual agrees to conduct a site assessment and cleanup the property.
- ✓ 10. Liens and Back Taxes: Exclude EPA and DNR liens and back taxes from eligibility under the grant.
- ✓ 11. Vehicle Environmental Impact Fee - Extend the repeal date to June 30, 2003.
- ✓ 12. Land Recycling Loan Program: Allow the Land Recycling Loan Program to be used on contiguous parcels of properties so as to better address cleanup of area-wide groundwater contamination.

Issue: Clarify Liability Issues Related To Sediment Contamination

Background

Brownfields redevelopment along rivers is an important issue in Wisconsin. Due to the long industrial history of Wisconsin, which included many industrial operations that were located along rivers before environmental laws were in place or enforced, a wide range of waste materials exist in our waterways and present a tremendous challenge to brownfields cleanup and redevelopment.

Sediment contamination is one type of riverway contamination that is of concern to federal, state and local officials. In many cases, there may be sediment contamination in a river adjacent to a property targeted for redevelopment.

Under Wisconsin law, the property boundary along a river extends to the middle of the body of water (lakes are owned by the people of the state under the Public Trust Doctrine). This is a complex area of law and there are a number of questions regarding how to cleanup brownfields along rivers where there are impacts to sediment, and whether or not a new owner is responsible for past sediment contamination under both state and federal law.

Also, there may be limited actions that can be taken related to this issue because many sediment cleanup issues are directed by federal law. This issue greatly impacts areas throughout Wisconsin given there are significant sediment cleanup sites in Wisconsin with federal involvement. A 1998 congressional report by the U.S. Environmental Protection Agency (EPA) on sediment contamination identified 10 watersheds in Wisconsin that contained areas of probable concern.

Proposal

The Study Group recommends amending the off-site liability exemption law, s. 292.13, Wis. Stats., to clarify that it applies to sediments. Section 292.15(2)(ag), Wis. Stats., should also be revised to reflect this change.

This would clarify that property owners who have contaminated sediments on their property which resulted from an off-site source could not be held liable for cleanup under Wisconsin's Spill Law, as long as the property owner complies with the requirements of s.292.13, Wis. Stats.

This recommendation may not completely address this concern about liability related to contaminated sediments because there may also be federal and other state laws under which an owner could face liability. To address federal and state liability issues, one option that should be further explored is changing the Wisconsin riparian property ownership law to state that new property owners who buy land adjacent to a river do not have responsibility for contaminated sediments in the river adjacent to their property, as long as they are not otherwise responsible for the sediment contamination. If this change is possible, it could alleviate the concern that property owners would have if they own land adjacent to a river with contaminated sediments.

The Study Group proposes that the DNR's contaminated sediment advisory committee should take on the responsibility to address these policy issues. Department staff and the sediment advisory committee should also work with the EPA to clarify the federal position on this issue and to identify the tools available (i.e. comfort letters, prospective purchaser agreements, etc.) to assist parties who are concerned with federal liability for contaminated sediments.

Liability Exemption (VPLE)

Background

The first Brownfields Study Group recommended that the Voluntary Party Liability Exemption law be changed to allow Certificates of Completion (COC) to be issued for sites where there is contamination on a property that has migrated from off-site, if the voluntary party is exempt from liability under the off-site exemption, s. 292.13, Wis. Stats. (please see "Ensure Availability of a Full Certificate of Completion for Properties Impacted with Off-site Groundwater Contamination", pp. 66-67 in the 1999 Brownfields Study Group Final Report).

The 1999-2001 State Biennial Budget created s. 292.15(2)(ag), Wis. Stats., to allow COC's to be issued if there is contamination coming from off-site for which the voluntary party would be considered exempt under the off-site exemption statute. As currently written, the statute only applies to contamination from off-site in the groundwater and not soil.

Proposal

Change the statute s. 292.15(2)(ag), Wis. Stats., to allow a full COC to be issued for properties impacted by contamination from off-site in both soil and groundwater. The statute currently refers to s. 292.13(1); it should be changed to include s. 292.13(1m), Wis. Stats., or amended to just refer to s.292.13, Wis. Stats. This should also include sediment contamination if s. 292.13, Wis. Stats., is changed as recommended on page ???.

Type of Change

Statutory

Resources

None

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Comments

Done re: soil

- 0332/1



State of Wisconsin
2001 - 2002 LEGISLATURE

SO ON

LRB-1310/1

RCT...:...

JLD

DOA:.....Wong – Liability exemption for sediment

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP ✓

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Under current law, a person is exempt from the requirements to restore the environment and minimize the effects of the discharge of a hazardous substance on the environment with respect to the existence of a hazardous substance in soil on property possessed or controlled by the person if the discharge originated from a source off of the property and other specified conditions are satisfied, including that the person agrees to allow access to the property so that someone else can conduct a cleanup, the person agrees to avoid actions that worsen the discharge, and the person agrees to any other condition necessary to ensure that an adequate cleanup can be conducted.

This bill specifies that the liability exemption for soil contamination that originates off of the property applies to hazardous substances in sediments.

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

✓

1 **SECTION 1.** 292.13 (1m) (intro.) of the statutes is amended to read:

2 292.13 (1m) EXEMPTION FROM LIABILITY FOR SOIL CONTAMINATION. (intro.) A
3 person is exempt from s. 292.11 (3), (4) and (7) (b) and (c) with respect to the existence
4 of a hazardous substance in the soil, including sediments, on property possessed or
5 controlled by the person if all of the following apply:

6 History: 1997 a. 27; 1999 a. 9.

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1310/1

RCT:jld:km

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