

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**

May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Voluntary party liability exemption, access to site with natural attenuation

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>
/1	traderc 12/08/2000	jdyer 12/11/2000	martykr 12/12/2000	_____	lrb_docadmin 12/12/2000		
/2	traderc 01/12/2001	jdyer 01/13/2001	pgreensl 01/14/2001	_____	lrb_docadmin 01/15/2001		

FE Sent For:

<END>

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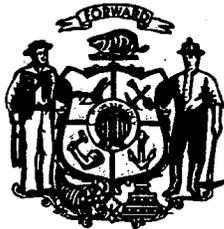
See Attached

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FE Sent For:

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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.

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Issue: Voluntary Party Liability Exemption - Clarify Access In The Use of Natural Attenuation

Background

The first Brownfields Study Group (please see pp. 68-69 of *the 1999 Brownfields Study Group Final Report*) recommended a statutory change to allow voluntary parties to obtain the liability exemption if they are using natural attenuation. Under this statute [s. 292.15(2)(ae), Wis. Stats.], the DNR may require the voluntary party to obtain environmental insurance to cover the cost of cleanup in case natural attenuation fails.

The DNR is required to promulgate rules which will describe the specific conditions to obtain this insurance. Once this rule is promulgated, a voluntary party using natural attenuation who obtains the necessary insurance will receive a Certificate of Completion (COC). If it is discovered that natural attenuation failed after the COC has been issued, then an insurance claim would need to be filed to pay for the necessary cleanup actions. The current statute does not explicitly provide access to the property for the DNR or the parties responsible for the contamination to conduct these cleanup actions.

Proposal

A statutory change to s. 292.15(2)(ae), Wis. Stats., should be made to require the voluntary party who currently owns the property to allow the DNR, a responsible party, the insurance company, and any of their authorized representatives, access to enter the property to take actions necessary to determine if natural attenuation has failed and to respond to the discharge in the event that natural attenuation has failed.

Type of Change

Statutory

Resources

None

Comments



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1312/1

RCT:.....

SOON

JLD

DOA:.....Wong - Voluntary party liability exemption, access to site with natural attenuation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

don't gen

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 who applies for a liability exemption is exempt from absolute requirements to restore the environment and minimize the harmful effects of a discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, except with respect to a substance in groundwater that DNR determines will naturally attenuate, DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge except with respect to the substance that DNR has determined will naturally attenuate, the voluntary party maintains and monitors the property as required by DNR, and, if required by DNR, the voluntary party obtains insurance to cover the costs of cleanup if ~~the~~ natural attenuation fails.

*

This bill provides that to qualify for the liability exemption for property on which DNR determines that natural attenuation will successfully complete the

allow someone else

cleanup, a voluntary party who owns the property must provide access to the property for the purpose of determining whether natural attenuation has failed and, if so, to clean up the property.

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

X

1 SECTION 1. 292.15 (2) (ae) 7. of the statutes is created to read:

2 292.15 (2) (ae) 7. If the voluntary party owns the property, the voluntary party
3 allows the department, [✓] any authorized representative of the department, a
4 representative of a company that has issued insurance required under subd. 3^m, any
5 party that possessed or controlled the hazardous substance or caused the discharge
6 of the hazardous substance, and any consultant or contractor of any of those persons
7 to enter the property to ~~take action~~ to determine whether natural attenuation has
8 failed and to ^{take action} respond to the discharge if natural attenuation has failed.

9

(END)

Tradewell, Becky

From: Wong, Manyee
Sent: Wednesday, January 10, 2001 6:03 PM
To: Tradewell, Becky
Subject: FW: Comments on LRB 1308/1, 1311/1, & 1312/1

Hi Becky,

Please review DNR's comments and make any appropriate changes. Thanks.

-----Original Message-----

From: Potter, Lance
Sent: Wednesday, January 10, 2001 4:18 PM
To: Wong, Manyee
Cc: Ebersberger, Eric K; Felker-Donsing, Susan
Subject: Comments on LRB 1308/1, 1311/1, & 1312/1

Manyee,

Here are comments by the program staff on statutory language - LRB 1308, 1311, and 1312:



LGU and SW 1308-1



1311&12 VPLE.doc

Because you are working under a tight deadline, I wanted to send the comments as soon as I had them. However - I just left you a voice mail about this - please keep in mind that legal services has not seen this language. I am requesting that legal services staff get in touch with Eric E. or Susan tomorrow (1/11) if they have additional comments.

Thanks,

Lance

DATE: January 10, 2001

FILE REF:

TO: Lance Potter, MB/5

FROM: Michael Prager, RR/3

SUBJECT: Comments on Proposed Statutory Language Changes – VPLE, Former Owners and Access to Sites with Natural Attenuation – LRB – 1311/1 and 1312/1

As requested, I have reviewed proposed language for statutory changes related to the Voluntary Party (VP) Liability Exemption Process. We have one specific concern with the language for both of these bill drafts as written. In particular, both bill drafts state: "If the voluntary party owns the property...". It appears that by using the term "voluntary party" (as defined in s. 292.15), the requirement to allow DNR access may be limited to only properties where the voluntary party still owns the site. For example, a VP is a person that fills out an application for the VPLE process and pays the appropriate fees. However, once a Certificate of Completion is issued, the VP may sell the property to others who do not fit the definition of VP in the statute. The bottom line is that DNR wants access to properties issued a Certificate of Completion, regardless of whether the VP still owns the property or not.

In addition, while s. 292.15(3), Stats., indicates that the liability exemptions apply to any successor or assignee of the voluntary party, it does not appear that the successor or assignee actually become the "voluntary party." As a result, the way the language was changed in both bill drafts is of concern to the DNR, in that it may not apply to future property owners who do not meet the statutory definition of voluntary party.

There may be two ways to address this issue. One option would be that the sections could be modified to apply not only to the voluntary party, but also the future owner of the property where a Certificate of Completion is issued. Another option would be to modify the definition of voluntary party to include successors and assignees. However, that option may have unintended consequences. The DNR prefers the first option to the second.

1311/1 – VPLE, former owners

The concern above only applies to Section 1 and Section 2 of the proposed language changes. The changes to Section 3 are fine.

Cc:

Darsi Foss
Judy Ohm

Tradewell, Becky

From: Wong, Manyee
Sent: Friday, January 12, 2001 4:04 PM
To: Tradewell, Becky
Subject: FW: LRB 1312

DNR's responses on draft 1312.

-----Original Message-----

From: Felker-Donsing, Susan
Sent: Friday, January 12, 2001 2:36 PM
To: Wong, Manyee
Cc: Ohm, Judith M; Potter, Lance; Foss, Darsi J; Prager, Michael A; Ebersberger, Eric K
Subject: FW: LRB 1312

Manyee, here is a suggested amendment to LRB 1312/1 prepared by Judy Ohm of DNR's Legal Services.--Susan

From: Ohm, Judith M
Sent: Friday, January 12, 2001 1:27 PM
To: Potter, Lance
Cc: Felker-Donsing, Susan; Ebersberger, Eric K; Foss, Darsi J; Prager, Michael A
Subject: RE: Follow-up to LRB - 1308, 1311, and 1312

As Michael Prager noted in his memo to Lance Potter, the program is concerned that DNR should have access to properties which were issued a Certificate of Completion regardless of whether the VP owns the property or not. The Brownfields Study Group Report states that the concern is that the current law "does not explicitly provide access to the property" to determine if natural attenuation has failed and to conduct cleanup actions if natural attenuation fails. I think the program's concern could be met by making the following changes to LRB-1312/1:

1. Change s. 292.15(2)(ae)7 to begin as follows: "The party who owns or controls the property allows the department, any authorized representative of the department," (note that the word "to" should be inserted between "action" and "respond" on line 8 of the draft).
2. Create s. 292.15(2)(b)5, to read as follows:
"If the voluntary party does not own or control the property, the person who owns or controls the property fails to allow the department, any authorized representative of the department, a representative of a company that has issued insurance required under subd. 3m., any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance, and any consultant or contractor of any of those persons to enter the property to determine whether natural attenuation has failed and to take action to respond to the discharge if natural attenuation has failed."
3. Amend s. 292.15(3) to include a cross-reference to s. 292.15(2)(ae)7.

If you have any questions, I will return to the office on Tues.

Judy
Judith M. Ohm
Bureau of Legal Services
(608) 266-9972
ohmj@dnr.state.wi.us

From: Potter, Lance
Sent: Wednesday, January 10, 2001 4:45 PM
To: Ohm, Judith M
Cc: Felker-Donsing, Susan; Ebersberger, Eric K; Foss, Darsi J
Subject: Follow-up to LRB - 1308, 1311, and 1312

Hello Judy,

I just sent the comments from the RR program staff on LRB - 1308, 1311, and 1312 over to DOA. The original drafts came to us on Monday (1/8) and DOA wanted remarks back by end of day Tuesday (1/9). DOA and LRB want to be finished with statutory language this week. I am sending these to you mainly out of the concern, given the quick turn-around requested, there has been no review of these drafts by legal services staff. I mentioned to Manyee at DOA that M&B still wants legal services to view these drafts. I am including the comments here for you along with the original drafts:

<<File: LGU and SW 1308-1.doc>><<File: 1311&12 VPLE.doc>><<File: 01-13081.pdf>><<File: 01-13111.pdf>><<File: 01-13121.pdf>>

Can you please review the drafts and the comments made by the program staff and get any remarks you have back to Eric Ebersberger (6-0818) or Susan Felker-Donsing (7-2769)? They will forward any remarks you have to Manyee at DOA.

Thanks,

Lance



State of Wisconsin
2001 - 2002 LEGISLATURE

SOON

LRB-1312/2
RCTjld:km ymY

DOA:.....Wong - Voluntary party liability exemption, access to site with natural attenuation

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This bill provides that to qualify for the liability exemption for property on which DNR determines that natural attenuation will successfully complete the

cleanup, a voluntary party who owns the property must provide access to the property for the purpose of determining whether natural attenuation has failed and, if so, to allow someone else clean up the property.

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

1 **SECTION 1.** 292.15 (2) (ae) 7. of the statutes is created to read:

2 292.15 (2) (ae) 7. If the voluntary party owns the property, the voluntary party
3 allows the department, any authorized representative of the department, a
4 representative of a company that has issued insurance required under subd. 3m.,
5 any party that possessed or controlled the hazardous substance or caused the
6 discharge of the hazardous substance, and any consultant or contractor of any of
7 those persons to enter the property to determine whether natural attenuation has
8 failed and to take action ^{to} respond [✓] to the discharge if natural attenuation has failed.

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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1312/2ins
RCT.....

Insert

SECTION 1. 292.15 (2) (b) 5.^x of the statutes is created to read:

292.15 (2) (b) 5. If the voluntary party does not own or control the property, the person who owns or controls the property fails to allow the department, any authorized representative of the department,[✓] any representative of a company that has issued insurance required under par. (ae) 3m.,[✓] any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance, or any consultant or contractor of any of those persons to enter the property to determine whether natural attenuation has failed and to take action to respond[✓] to the discharge if natural attenuation has failed.

SECTION 2. 292.15 (3)^x of the statutes is amended to read:

292.15 (3) SUCCESSORS AND ASSIGNS. An exemption provided in sub. (2) applies to any successor or assignee of the voluntary party if the successor or assignee complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. and[✓] 5., and 7.[✓] and, if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the voluntary party except that the exemption in sub. (2) does not apply if the successor or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag)2. or (am) was obtained by any of the means or under any of the circumstances specified in sub. (2) (a) 6.



DOA:.....Wong – Voluntary party liability exemption, access to site with natural attenuation

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6 discharge of the hazardous substance, and any consultant or contractor of any of
7 those persons to enter the property to determine whether natural attenuation has
8 failed and to take action to respond to the discharge if natural attenuation has failed.

9 **SECTION 2.** 292.15 (2) (b) 5. of the statutes is created to read:

10 292.15 (2) (b) 5. If the voluntary party does not own or control the property, the
11 person who owns or controls the property fails to allow the department, any
12 authorized representative of the department, any representative of a company that
13 has issued insurance required under par. (ae) 3m., any party that possessed or
14 controlled the hazardous substance or caused the discharge of the hazardous
15 substance, or any consultant or contractor of any of those persons to enter the
16 property to determine whether natural attenuation has failed and to take action to
17 respond to the discharge if natural attenuation has failed.

18 **SECTION 3.** 292.15 (3) of the statutes is amended to read:

19 292.15 (3) SUCCESSORS AND ASSIGNS. An exemption provided in sub. (2) applies
20 to any successor or assignee of the voluntary party if the successor or assignee

1 complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. ~~and 5.~~ and 7. and,
2 if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the
3 voluntary party except that the exemption in sub. (2) does not apply if the successor
4 or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag)2. or (am) was
5 obtained by any of the means or under any of the circumstances specified in sub. (2)
6 (a) 6.

7

(END)