

## ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original     Updated     Corrected

Administrative Rule Chapter, Title and Number

Chs. NR 700 to 754, Environmental Protection - Investigation and Remediation of Environmental Contamination, Order RR-04-11.

Subject

Proposed revisions to rules for the investigation and cleanup of Brownfield's and other contaminated properties.

Fund Sources Affected

GPR     FED     PRO     PRS     SEG     SEG-S

Chapter 20 , Stats. Appropriations Affected

s. 20.370(2)(dh)

Fiscal Effect of Implementing the Rule

No Fiscal Effect  
 Indeterminate

Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs  
 Could Absorb Within Agency's Budget  
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes     No

Policy Problem Addressed by the Rule

The rule revisions are not addressing a policy problem. Rather, the process for evaluating and remediating contaminated sites has changed due to a number of statutory, policy and technical revisions that have occurred since the rule was originally promulgated over 15 years ago. The changes would make the rules complete, easier to comply with, and consistent with the approach currently being used to address contaminated sites.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The majority of changes being proposed to the existing rules will not result in a new fiscal impact. The portion of the rule that has the potential to fiscally impact businesses, utilities and local governments are the proposed fee increases set out in ch. NR 749. These fees have not been increased since they were originally established in 1998. The proposed increases are based on cost-of-living changes and the additional revenue would be used to ensure that the 9 positions currently funded by fees could be maintained. It is estimated that the increase in fees will result in approximately \$170,000/year of additional state revenue being received.

The \$170,000/year was calculated by taking the amount of revenue received in FY '11, reducing it by 10% based on average annual decreases in revenue and then applying a 40% increase to account for the new fees. How these fee increases would potentially affect a typical site was determined by reviewing past history of fee related requests. This evaluation indicated that most sites do not request DNR review of any documents besides case closure and that most sites have some contamination remaining at the completion of the cleanup. It was therefore assumed that most parties responsible for completing a cleanup would request DNR review of case closure for a site that has both residual soil and groundwater contamination. In this scenario, the total increase in fee related costs would be \$500. This example illustrates the most common situation and the actual cost increase will be dependent on the specific needs and requests of the Responsible Party.

The proposed fee increases should not affect most businesses or local units of government for several reasons. First, only those persons that possess or control a hazardous substance which is discharged or who cause the discharge must take action to restore the environment. Most businesses and many local governments do not have to address this situation. Second, the NR 700 rule series is largely self implementing which means that the Responsible Party typically decides whether or not they want regulatory agency review of the documents they prepare and only pay a review fee if DNR assistance is requested. Finally, the fees are often one-time expenditures and generally are only a small percentage of the overall cost for completing the cleanup.

#### Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing the proposed revisions include: 1) making the rule language more complete, easier to comply with and consistent with the process currently being used; 2) incorporating statutory changes that have occurred since the rules were originally promulgated, 3) removing language that is out of date or no longer necessary; 4) incorporating technical and policy changes that have occurred; and 5) fixing editorial and typographical errors that can make certain sections confusing.

Some of the most significant rule changes are related to the vapor intrusion migration pathway. Vapor intrusion occurs when volatile chemicals are released to the subsurface and then migrate in vapor form through soil or rock into the breathing space of buildings. Currently, the rules require that the potential for vapor intrusion be evaluated and that remedial action be taken, if appropriate. The proposed revisions are intended to provide Responsible Parties with additional direction and assistance for evaluating and addressing the vapor intrusion pathway. While new rule language is being proposed, these provisions do not affect the economic impact of the proposed rulemaking effort since the requirement to address vapor intrusion is already set forth in the current rule and would continue even if the proposed language was not included.

The primary alternative to pursuing the proposed changes would be to leave the rule as it currently exists. With the exception of several targeted revisions, no other significant changes have occurred since the rule was originally promulgated. Many interested parties are aware of the how the cleanup process works, in part due to the substantial amount of outreach provided by the Department to our stakeholders. Although not as efficient, cleanups would continue to occur without implementing the proposed changes.

#### Long Range Implications of Implementing the Rule

In general, the long-range implications of implementing the proposed rule changes should be positive in that the rules will be more straightforward, consistent and ultimately easier to comply with. The long-range fiscal implications for Responsible Parties that need to complete the cleanup of contamination should be neutral to positive. For those sites where the cleanup is completed and case closure is obtained, no future work (or additional costs) should be necessary. If the Responsible Party ultimately plans to sell the property, having a letter from the Department indicating that the cleanup was properly completed can make the property more marketable and valuable.

#### Compare With Approaches Being Used by Federal Government

With respect to the overall approach to cleanups of contamination, Wisconsin has a unique approach that was developed in cooperation with an external advisory committee. The basic concept is that regardless of which Federal program may be applicable, Wisconsin uses the same approach and same cleanup standards to address the site. EPA has multiple regulatory programs (Superfund, RCRA Corrective Action, Leaking Underground Storage Tanks, and Toxic Substance Control Act) that all follow a somewhat different approach which can result in confusion for Responsible Parties. Because Wisconsin has comprehensive rules that set out this approach, the Department was able to negotiate a comprehensive One Cleanup Program Memorandum of Agreement with EPA. The MOA provides comfort to Responsible Parties that if they cleanup the site in accordance with the state cleanup provisions, EPA won't come back and ask for additional work.

#### Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Two of the neighboring states (Illinois and Michigan) use an approach that is similar to Wisconsin's in that they tend to follow a comprehensive approach where all sites are subject to the same cleanup standards. Conversely, Minnesota and Iowa are more closely aligned with EPA in that the standards can vary based on the applicable Federal program. However, Minnesota generally uses the same groundwater standards for all sites and is currently in the process of evaluating the merits of moving to a consolidated program similar to Wisconsin's.

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