

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to create ch. NR 754 related to environmental insurance requirements for liability exemptions for voluntary remediation.

RR-06-01

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 227.11(2), Stats.

Statutes interpreted: s. 292.15, Stats.

Section 292.15(2)(ae)(3m), Stats., directs the department to promulgate rules to describe the requirements that must be met by a voluntary party seeking a Certificate of Completion, where natural attenuation is employed as the remedial action. The 1999-2001 State Budget (1999 Wisconsin Act 9) created s. 292.15(2)(ae), Stats., which allows parties to use natural attenuation as a remedy to obtain the voluntary party liability exemption. This section includes a provision where the DNR may require a voluntary party to obtain environmental insurance if the voluntary party wants to receive a Certificate of Completion before the groundwater enforcement standards are met through natural attenuation. This rule requires that all voluntary parties who apply for the liability exemption under this section obtain environmental insurance to cover the cost to cleanup the environment if natural attenuation fails.

SECTION 1. Chapter NR 754 is created to read:

NR 754.01 Purpose. This chapter establishes rules and procedures promulgated under s. 292.15(2)(ae)3m. and (e), Stats., that the department shall use to determine if voluntary parties have met the requirements under s. 292.15(2)(ae), Stats., related to environmental insurance for voluntary parties seeking liability exemptions using natural attenuation.

NR 754.03 Applicability. This chapter applies to voluntary parties seeking an exemption from liability for voluntary party remediation under s. 292.15(2)(ae), Stats., where groundwater contamination is in concentrations that exceed enforcement standards and the department determines that natural attenuation will restore groundwater quality in accordance with rules promulgated by the department.

NR 754.05 Definitions. In this chapter:

(1) "Department" has the meaning specified in s. 292.01(2), Stats.

Note: Section 292.01(2), defines "department" to mean the department of natural resources.

(2) "Natural attenuation" has the meaning specified in s. 292.15(1)(am), Stats.

Note: Section 292.15(1)(am), Stats., defines "natural attenuation" to mean the reduction in the mass and concentration in groundwater of a substance, and the products into which the substance breaks down, due to naturally occurring physical, chemical and biological processes, without human intervention.

(3) "Voluntary party" has the meaning specified in s. 292.15(1)(f), Stats.

Note: Section 292.15(1)(f), Stats., defines "voluntary party" to mean a person who submits an application to obtain an exemption under s. 292.15, Stats., and pays any fees required under s. 292.15(5), Stats.

NR 754.07 Insurance requirement. A voluntary parties seeking a liability exemption under s. 292.15(2)(ae), Stats., shall pay the department the one-time insurance fee, submit an application form and comply with the requirements and procedures described in this chapter for the property to obtain coverage under the state's master insurance contract.

NR 754.11 Insurance application and fees. (1) GENERAL. A voluntary party seeking insurance under this chapter shall apply to the department on a form provided by the department and submitted to the following address: VPLE Coordinator - Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707-7921.

Note: The VPLE Environmental Insurance Application Form is available by telephoning the Remediation and Redevelopment Information Line at 1-800-367-6076 or (608) 264-6020 or by writing the Remediation and Redevelopment Program, Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921 or from the web site: <http://www.dnr.state.wi.us/org/aw/rr/>

(2) APPLICATION CONTENTS. An insurance application form, shall include, but is not limited to:

- (a) Name, address and designated contact person.
- (b) Information on site conditions.
- (c) Groundwater monitoring data.
- (d) Alternative remedies that may be necessary if natural attenuation fails.
- (e) Such additional information required as necessary by the State's insurance underwriter in order to provide insurance under s. 292.15(2)(ae), Stats.

(3) FEE PUBLICATION. The department shall establish and publish the insurance fees on an annual basis.

(4) FEE CALCULATION. The insurance fee shall be based on the following:

- (a) The cost of the insurance premium.
- (b) A contribution towards the state's deductible.
- (c) Other direct expenses which are necessary to administer the program.

(5) FEE PAYMENT. The insurance fee is non-refundable.

NR 754.13 Certificate of completion. The department shall issue the voluntary party a certificate of completion pursuant to s. 292.15(2)(ae), Stats., if the department determines that all the following requirements have been met:

(1) The voluntary party has submitted to the department a request for case closure pursuant to ch. NR 726 or 746, whichever is applicable.

(2) The department has approved the request for case closure for the property.

(3) The voluntary party has submitted to the department a completed insurance application form.

(4) The voluntary party has paid the department the appropriate insurance fee as specified in this chapter.

(5) The voluntary party has reimbursed the department for any department costs incurred under ch. NR 749 or 750.

(6) All of the conditions in s. 292.15(2)(ae) 1. to 6., Stats., have been met.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on February 28, 2001.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

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