CHAPTER 292

REMEDIAL ACTION

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SUBCHAPTER I

DEFINITIONS

292.01 Definitions. In this chapter:

(1) "Approved facility" has the meaning given in s. 289.01 (3).

(1m) "Approved mining facility" has the meaning given in s. 289.01 (4) and includes a mining waste site, as defined in s. 295.41 (31).

(1s) "Contaminated sediment" means sediment that contains a hazardous substance.

(2) "Department" means the department of natural resources.

(3) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(3m) "Engineering control" means an object or action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap, soil cover, or in−place stabilization, but not including a sediment cover.

(4) "Environmental pollution" means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(5) "Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

(6) "Hazardous waste" means any solid waste identified by the department as hazardous under s. 291.05.

(7) "Landfill" means a solid waste facility for solid waste disposal.

(8) "Lender" means a bank, credit union, savings bank, savings and loan association, mortgage banker or similar financial institution, the primary business of which is to engage in lending activities or an insurance company, pension fund or government agency engaged in secured lending.

(9) "Lending activities" means advancing funds or credit to and collecting funds from another person; entering into security agreements, including executing mortgages, liens, factoring agreements, accounts receivable financing arrangements, conditional sales, sale and leaseback arrangements and installment sales contracts; conducting inspections of or monitoring a borrower's business and collateral; providing financial assistance; restructuring or renegotiating the terms of a loan obligation; requiring payment of additional interest; extending the payment period of a loan obligation; initiating foreclosure or other proceedings to enforce a security interest in property before obtaining title; requesting and obtaining the appointment of a receiver; and making decisions related to extending or refusing to extend credit.

(10) "Long−term care" means the routine care, maintenance and monitoring of a solid or hazardous waste facility following closing of the facility.

(11) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(12) "Nonapproved facility" has the meaning given in s. 289.01 (24).

(13) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(15) "Preventive measures" mean the installation or testing of equipment or devices, a designated way of performing a specified operation or the preparation of an emergency response plan.

(16) "Representative" means any person acting in the capacity of a conservator, guardian, court−appointed receiver, personal representative, testamentary trustee of a deceased person, trustee of a living trust, or fiduciary of real or personal property.

(17) "Secretary" means the secretary of natural resources.

(17g) "Sediment" means particles in the bed of a navigable water up to the ordinary high−water mark that are derived from the erosion of rock, minerals, soil, and biological materials and from chemical precipitation from the water column and that are transported or deposited by water.

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

(18) "Site or facility" means, except in s. 292.35, an approved facility, an approved mining facility, a nonapproved facility or a waste site.

(19) "Solid waste" has the meaning given under s. 289.01 (33).

(21) "Waste site" means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.

History: 1995 a. 227 s. 599, 600, 702, 993; 1997 a. 27; 2001 a. 102; 2013 a. 1; 2015 a. 204 ss. 2 to 4, 6.

SUBCHAPTER II

REMEDIAL ACTION

292.11 Hazardous substance spills. (2) NOTICE OF DISCHARGE. (a) A person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify the department immediately of any discharge not exempted under sub. (9).

(b) Notification received under this section or information obtained in a notification received under this section may not be used against the person making such a notification in any criminal proceedings.

(c) The department shall designate a 24−hour statewide toll free or collect telephone number whereby notice of any hazardous discharge may be made.

(d) The department shall report notifications that it receives under this subsection related to discharges of agricultural chemicals, as defined in s. 94.73 (1) (a), to the department of agriculture, trade and consumer protection. The department shall report notifications under this paragraph according to a memorandum of understanding between the department and the department of agriculture, trade and consumer protection under s. 94.73 (12).

(3) RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

(4) PREVENTION OF DISCHARGE. (a) The department may require that preventive measures be taken by any person possessing or having control over a hazardous substance if the department finds that existing control measures are inadequate to prevent discharges.

(b) The department shall specify necessary preventive measures by order. The order shall be effective 10 days after issuance, unless the person named requests a hearing, in which case no order may become effective until the conclusion of the hearing.

(5) CONTINGENCY PLAN. (a) After consultation with other affected federal, state and local agencies and private organizations, the department shall establish by rule criteria and procedures for the development, establishment and amendment of a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances.

(b) The contingency plan shall:

1. Provide for efficient, coordinated and effective action to minimize damage to the air, land and waters of the state caused by the discharge of hazardous substances;

2. Include containment, clean−up and disposal procedures;

3. Provide for restoration of the lands or waters affected to the satisfaction of the department;

4. Assign duties and responsibilities among state departments and agencies, in coordination with federal and local agencies;

5. Provide for the identification, procurement, maintenance and storage of necessary equipment and supplies;

6. Provide for designation of persons trained, prepared and available to provide the necessary services to carry out the plan; and

7. Establish procedures and techniques for identifying, locating, monitoring, containing, removing and disposing of discharged hazardous substances.

(6) HAZARDOUS SUBSTANCES SPILLS; APPROPRIATIONS AND RELATED PROVISIONS. (a) *Contingency plan; activities resulting from discharges.* The department may utilize moneys appropriated under s. 20.370 (2) (dv) and (my) in implementing and carrying out the contingency plan developed under sub. (5) and to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in identifying, locating, monitoring, containing, removing and disposing of discharged substances.

(b) *Limitation on equipment expenses.* No more than 25 percent of the moneys available under the appropriation under s. 20.370 (2) (dv) or (my) during any fiscal year may be used for the procurement and maintenance of necessary equipment during that fiscal year.

(c) *Reimbursements.* 1. Reimbursements to the department under sub. (7) (b) shall be credited to the environmental fund for environmental management.

2. Reimbursements to the department under section 311, federal water pollution control act amendments of 1972, P.L. 92−500, shall be credited to the appropriation under s. 20.370 (2) (my).

(7) REMOVAL OR OTHER EMERGENCY ACTION. (a) Subject to s. 94.73 (2m), in any case where action required under sub. (3) is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its authorized representative may identify, locate, monitor, contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

(b) 1. The person who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance shall reimburse the department for actual and necessary expenses incurred in carrying out its duties under this subsection.

2. If the department authorizes reimbursement under subd. 1. to be paid over time, it shall require monthly payments of interest, at a rate determined by the department, on the unpaid balance of the reimbursement.

(c) Subject to s. 94.73 (2m), the department, for the protection of public health, safety or welfare, may issue an emergency order or a special order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by sub. (3).

(d) 1. The department may negotiate and enter into an agreement containing a schedule for conducting nonemergency actions required under sub. (3) with a person who possesses or controls a hazardous substance that was discharged or who caused the discharge of a hazardous substance if the discharge does not endanger public health.

1m. The department may negotiate and enter into an agreement containing a schedule for conducting nonemergency actions required under sub. (3) with a local governmental unit, as defined in sub. (9) (e) 1., that is acting on behalf of owners of contaminated property within one of the following:

a. A business improvement district, as defined in s. 66.1109 (1) (b).

b. An area designated by the local governmental unit if the area consists of 2 or more properties affected by a contiguous

region of groundwater contamination or contains 2 or more properties that are brownfields, as defined in s. 238.13 (1) (a).

2. The department may charge fees, in accordance with rules that it promulgates, to offset the costs of negotiating and entering into an agreement under subd. 1. or 1m.

(e) If a person violates an order under par. (c) or an agreement under par. (d), the department may refer the matter to the department of justice for enforcement under s. 299.95.

(8) ACCESS TO PROPERTY AND RECORDS. Any officer, employee or authorized representative of the department, upon notice to the owner or occupant, may enter any property, premises or place at any time for the purposes of sub. (7) if the entry is necessary to prevent increased damage to the air, land or waters of the state, or may inspect any record relating to a hazardous substance for the purpose of ascertaining the state of compliance with this section and the management rules promulgated under this section. Notice to the owner or occupant is not required if the delay attendant upon providing it will result in imminent risk to public health or safety or the environment.

(9) EXEMPTIONS. (a) Any person holding a valid permit under ch. 283 is exempted from the reporting and penalty requirements of this section with respect to substances discharged within the limits authorized by the permit.

(b) Law enforcement officers or members of a fire department using hazardous substances in carrying out their responsibility to protect public health, safety and welfare are exempted from the penalty requirements of this section, but shall report to the department any discharges of a hazardous substance occurring within the performance of their duties.

(c) Any person discharging in conformity with a permit or program approved under chs. 281, 285 or 289 to 299 is exempted from the reporting and penalty requirements of this section.

(d) 1. In this paragraph:

a. "Fertilizer" has the meaning given in s. 94.64 (1) (e).

b. "Label" has the meaning given in s. 94.67 (19).

c. "Pesticide" has the meaning given in s. 94.67 (25).

d. "Registered" means registered under the federal insecticide, fungicide, and rodenticide act, as amended (7 USC 136 et seq.), and regulations issued under that act or registered under the rules of the department of agriculture, trade and consumer protection.

2. Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates, is exempted with respect to the application from the reporting and penalty requirements of this section.

(e) 1. In this paragraph, "local governmental unit" means a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority or a housing authority.

1m. Except as provided in subds. 2., 4., 6. and 7., a local governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to discharges of hazardous substances on or originating from property acquired by the local government unit before, on or after October 29, 1999, if any of the following applies:

a. The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

b. The local governmental unit acquired the property from a local governmental unit that is exempt under this subdivision with respect to the property.

c. The local governmental unit acquired the property through condemnation or other proceeding under ch. 32.

d. The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

e. The local governmental unit acquired the property through escheat.

f. The local governmental unit acquired the property using funds appropriated under s. 20.866 (2) (ta) or (tz).

1s. Except as provided in subds. 2. and 4. to 6., an economic development corporation described in section 501 (c) of the Internal Revenue Code, as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code, or an entity wholly owned and operated by such a corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property acquired before, on or after October 14, 1997, if the property is acquired to further the economic development purposes that qualify the corporation as exempt from federal taxation.

2. Subdivisions 1m. and 1s. do not apply to a discharge of a hazardous substance caused by any of the following:

a. An action taken by the local governmental unit or corporation.

b. A failure of the local governmental unit or corporation to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

c. A failure of the local governmental unit or corporation to sample and analyze unidentified substances in containers stored aboveground on the property.

d. A failure of the local governmental unit or corporation to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

4. Subdivisions 1m. and 1s. do not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit or corporation to take that necessary action and the local governmental unit or corporation does not take that action as directed.

5. Subdivision 1s. does not apply if the corporation fails to do any of the following:

a. Respond to a discharge of a hazardous substance that poses an imminent threat to public health, safety or welfare or to the environment, on or off of the property.

b. Enter into an agreement with the department to conduct any necessary investigation and remediation activities at the property no later than 3 years after acquiring the property.

6. Subdivisions 1m. and 1s. only apply if the local governmental unit or the economic development corporation agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.

7. Subdivision 1m. does not apply to property described in subd. 1m. f. unless the local governmental unit enters into an agreement with the department to ensure that the conditions in subds. 2. and 4. are satisfied.

(f) Any person discharging high−volume industrial waste used in a highway improvement project under s. 84.078 is exempted from the penalty requirements of this section.

(10) WAIVER. The department may waive compliance with any requirement of this section to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

(11) ENFORCEMENT EXCLUSIONS. (a) Any person proceeded against for a violation of this section shall not be subject to penalties under s. 291.97 for the same act or omission.

(b) Any person who discharges a hazardous substance, where the responsibilities for such a discharge are prescribed by statute other than ch. 291, shall be subject to the penalty under either this section or the other section but not both.

(12) APPLICABILITY. (a) Action by the department under this section is not subject to s. 292.31.

(b) This section applies to all releases of hazardous substances for which a notification must be made under s. 323.60 (5) (b).

(13) LIEN. Any expenditures made by the department under sub. (4), (6) or (8) shall constitute a lien upon the property for which the expenses are incurred, as provided in s. 292.81.

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 30; 2007 a. 20; 2009 a. 28, 42; 2011 a. 32; 2013 a. 20.

Cross−reference: See also chs. NR 702, 706, 708, 714, 716, 718, 720, 722, 724, 726, and 747, Wis. adm. code.

The owner of property from which a hazardous substance seeped into neighboring properties was required to take remedial action. The seepage was a "discharge" even though it was not related to current human activity. State v. Mauthe, 123 Wis. 2d 288, 366 N.W.2d 871 (1985).

Sub. (11) (b) allows the imposition of both a monetary penalty and an administrative clean−up order against a violator of this section. When another regulatory statute is implicated, the penalty imposed may be the penalty under this section or the other section, but not both. State v. Block Iron & Supply Co. 183 Wis. 2d 357, 515 N.W.2d 332 (Ct. App. 1994).

Sub. (3) is not a safety statute. A violation is not negligence *per se*. Grube v. Daun, 210 Wis. 2d 681, 563 N.W.2d 523 (1997), 95−2353.

This section is applicable in actions by the state to compel remediation of, and to impose penalties for, hazardous waste spills, which although initially caused by actions preceding the 1978 effective date of this section, continue to discharge after that date. State v. Chrysler Outboard Corp. 219 Wis. 2d 130, 580 N.W.2d 203 (1998), 96−1158.

292.12 Sites with residual contamination. (1) DEFINITIONS. In this section:

(a) "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2) or the department of natural resources with respect to a site over which it has jurisdiction under ch. 289, 291, or 292.

(b) "Case closure" means a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site.

(d) "Remedial action" means action that is taken in response to a discharge of a hazardous substance and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands, and waters of this state.

(e) "Site" means a waste site or any area where a hazardous substance has been discharged.

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

(a) Require maintenance of an engineering control on the site.

(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.

(c) Impose limitations or other conditions related to property, in accordance with rules promulgated by the department, to ensure that conditions at the site remain protective of public health, safety, and welfare and the environment, and, as applicable, to promote economic development.

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

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

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

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

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

2. If the department has directed that a local governmental unit or economic development corporation take action under s. 292.11 (9) (e) 4. for a site, the department shall list the site, and the action that the department has directed, in the database maintained by the department under par. (a) and require the local governmental unit or the corporation to pay a fee established by the department for the listing.

(4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies for case closure for a site that includes any property that has residual contamination and is not owned by the person, the person shall provide written notification of the residual contamination to the owner of that property. The person shall include in the notice, at a minimum, a description of the type of residual contamination and the location and description of any engineering control or sediment cover on the site.

(5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS AND PROHIBITION ON INTERFERENCE. (a) Except as provided in par. (c) and sub. (5m) (a) and (b), a person who owns property, including a property or site that is listed under sub. (3) (b), shall comply with the requirements described in sub. (2) (a) and (b) that are imposed by an agency with administrative authority without regard to when the person obtained the property.

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

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

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

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

1. Except as provided in par. (am), comply with the requirements, limitations, and conditions described in sub. (2) (a) to (d)

that are imposed by an agency with administrative authority without regard to whether the person owns or occupies the property on which the engineering control is used.

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

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

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

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

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

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

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

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

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

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

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

History: 2005 a. 418; 2011 a. 32; 2013 a. 20; 2015 a. 204.

292.13 Property affected by off−site discharge. (1) EXEMPTION FROM LIABILITY FOR GROUNDWATER CONTAMINATION. A person is exempt from s. 292.11 (3), (4) and (7) (b) and (c) with respect to the existence of a hazardous substance in the groundwater on property possessed or controlled by the person if all of the following apply:

(a) The discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person.

(b) The person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge.

(c) The person conducts an investigation or submits other information, that the department determines is adequate, to substantiate that pars. (a) and (b) are satisfied.

(d) The person agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.

(f) The person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

(g) The person agrees to any other condition that the department determines is reasonable and necessary to ensure that the department or other person described in par. (d) can adequately respond to the discharge.

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

(a) The discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person.

(b) The person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge.

(c) The person conducts an investigation or submits other information, that the department determines is adequate, to substantiate that pars. (a) and (b) are satisfied.

(d) The person agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.

(e) The person agrees to take one or more of the following actions at the direction of the department if, after the department has made a reasonable attempt to notify the party who caused the discharge of the hazardous substance about the party's responsibilities under s. 292.11, the department determines that the action or actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment:

1. Limit public access to the property.

2. Identify, monitor and mitigate fire, explosion and vapor hazards on the property.

3. Visually inspect the property and install appropriate containment barriers.

(f) The person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

(g) The person agrees to any other condition that the department determines is reasonable and necessary to ensure that the department or other person described in par. (d) can adequately respond to the discharge.

(2) DETERMINATIONS CONCERNING LIABILITY. The department shall, upon request, issue a written determination that a person who possesses or controls property on which a hazardous substance exists in the soil or groundwater is exempt from s. 292.11 (3), (4) and (7) (b) and (c) if the person satisfies the applicable requirements in subs. (1) and (1m). The department may revoke its determination if it determines that any of the requirements in sub. (1) or (1m) cease to be met.

(3) FEES. The department may, in accordance with rules that it promulgates, assess and collect fees to offset the costs of issuing determinations under sub. (2).

History: 1997 a. 27; 1999 a. 9; 2001 a. 16.

Cross−reference: See also ch. NR 749, Wis. adm. code.

292.15 Voluntary party remediation and exemption from liability. (1) DEFINITIONS. In this section:

(a) "Enforcement standard" has the meaning given in s. 160.01 (2).

(am) "Natural attenuation" means 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.

(b) "Owner of a business or entity" means any person who owns or who receives direct or indirect consideration from the operation of a business or entity regardless of whether the business or entity remains in operation and regardless of whether the person owns or receives consideration at the time any discharge of a hazardous substance occurs. "Owner of a business or entity" includes a subsidiary or parent corporation.

(d) "Release" means the original discharge.

(e) "Subsidiary or parent corporation" means any business entity, including a subsidiary, parent corporation or other business arrangement that has elements of common ownership or control or uses a long−term contractual arrangement with any person that has the effect of avoiding direct responsibility for conditions on a parcel of property.

(f) "Voluntary party" means a person who submits an application to obtain an exemption under this section and pays any fees required under sub. (5).

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

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

2. The environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharges are minimized in accordance with rules promulgated by the department and any contract entered into under those rules.

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

4. If the voluntary party owns or controls the property, the voluntary party maintains and monitors the property as required under rules promulgated by the department and any contract entered into under those rules.

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

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

(ae) *Natural attenuation.* Except as provided in sub. (6) or (7), if there exists a hazardous substance in groundwater on or originating from a property in a concentration that exceeds an enforcement standard and the department determines that natural attenuation will restore groundwater quality in accordance with rules promulgated by the department, a voluntary party is exempt from ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with respect to discharges of hazardous substances on or originating from the property, if the release of those hazardous substances occurred prior to the date on which the department approves the environmental investigation of the property under subd. 1. and if all of the following occur at any time before or after the date of acquisition:

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

2. The environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharges are minimized in accordance with rules promulgated by the department and any contract entered into under those rules, except that this requirement does not apply with respect to the hazardous substance in groundwater that the department has determined will be brought into compliance with rules promulgated by the department through natural attenuation.

3. The voluntary party obtains a certificate of completion from the department stating that the environment has been satisfactorily restored to the extent practicable with respect to the discharges and that the harmful effects from the discharges have been minimized, except with respect to the hazardous substance in groundwater that the department has determined will be brought into compliance with rules promulgated by the department through natural attenuation.

3m. If required by the department, the voluntary party obtains and maintains insurance to cover the costs of complying with s. 292.11 (3) with respect to the hazardous substance that the department has determined will be brought into compliance with rules promulgated by the department through natural attenuation, in case natural attenuation fails, and the insurance complies with rules promulgated by the department and names this state as the insured.

4. If the voluntary party owns or controls the property, the voluntary party maintains and monitors the property as required under rules promulgated by the department and any contract entered into under those rules.

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

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

7. If the voluntary party owns or controls the property, the voluntary party allows 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.

(af) *Contaminated sediment.* Except as provided in sub. (6), (6m), or (7), if there exists contaminated sediment on a property from a release of a hazardous substance on or originating from a property, the voluntary party is exempt from ss. 289.05 (1), (2), (3), and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4), and (7) (b) and (c), and 292.31 (8) and rules promulgated under those provisions, with respect to discharges of hazardous substances on or originating from the property, if the release of those hazardous substances occurred before the date on which the department approves the environmental investigation of the property under subd. 1., and if all of the following occur at any time before or after the date of acquisition:

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

2. The voluntary party removes all or part of the contaminated sediment and addresses any remaining contaminated sediment in a manner approved by the department, such that the environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharges are minimized in accordance with rules promulgated by the department and any

contract entered into under those rules, except that with respect to contaminated sediment the environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharges are minimized as determined by the department by monitoring or sampling and in accordance with any contract entered into with the department's approval.

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

3m. The voluntary party obtains and maintains insurance to cover the cost of complying with s. 292.11 (3) with respect to the contaminated sediment in the event that additional remedial action is necessary, unless additional action is not required under par. (b). The insurance shall conform with rules promulgated by the department and shall name the state as the insured. The department may waive the requirement to obtain and maintain insurance or accept a form of financial responsibility other than insurance if the hazardous substance contained in the contaminated sediment is not mercury, PCBs, as defined in s. 299.45 (1) (a), or dioxin and the department determines that insurance is not necessary.

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

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

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

7. If the voluntary party owns or controls the property, the voluntary party allows 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 those persons to enter the property to determine whether additional remedial action is necessary, subject to par. (b), and to take the necessary remedial action.

(ag) *Property affected by off−site discharge.* Except as provided in sub. (6) or (7), for a property on which there exists a hazardous substance for which a voluntary party is exempt from liability under s. 292.13 (1) or (1m), a voluntary party is exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with respect to discharges of hazardous substances on or originating from the property, if the release of those hazardous substances occurred prior to the date on which the department approves the environmental investigation of the property under par. (a) 1., if par. (a) 1. and 4. to 6. apply and all of the following occur at any time before or after the date of acquisition:

1. The environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharges are minimized in accordance with rules promulgated by the department and any contract entered into under those rules, except that this requirement does not apply with respect to the hazardous substance for which the voluntary party is exempt from liability under s. 292.13 (1) or (1m).

2. The voluntary party obtains a certificate of completion from the department stating that the environment has been satisfactorily restored to the extent practicable with respect to the discharges and that the harmful effects from the discharges have been minimized, except with respect to the hazardous substance for which the voluntary party is exempt from liability under s. 292.13 (1) or (1m).

3. The voluntary party obtains a written determination from the department under s. 292.13 (2) with respect to the hazardous substance for which the voluntary party is exempt from liability under s. 292.13 (1) or (1m).

4. The voluntary party continues to satisfy the conditions under s. 292.13 (1) (d) to (g) or (1m) (d) to (g).

(am) *Partial cleanup.* 1m. Except as provided in subd. 2m., the department may approve a partial cleanup and issue a certificate of completion as provided in par. (a), (ae), (af), or (ag) that states that not all of the property has been satisfactorily restored or that not all of the harmful effects from a discharge of a hazardous substance have been minimized. Approval of a partial cleanup exempts a voluntary party from ss. 291.37 (2) and 292.11 (3), (4) and (7) (b) and (c) with respect to the portion of the property or hazardous substances cleaned up under this paragraph. In addition to meeting the requirements of par. (a), (ae), (af), or (ag), a certificate for a partial cleanup under this paragraph may be issued only if:

a. Public health, safety or the environment will not be endangered by any hazardous substances remaining on or originating from the property after the partial cleanup, given the manner in which the property will be developed and used and any other factors that the department considers relevant to the endangerment of public health, safety or the environment.

b. The activities associated with any proposed use or development of the property will not aggravate or contribute to the discharge of a hazardous substance and will not unduly interfere with, or increase the costs of, restoring the property and minimizing the harmful effects of the discharge of a hazardous substance.

c. The owner of the property agrees to cooperate with the department to address problems caused by hazardous substances remaining on the property. Such cooperation shall include allowing access to the property or allowing the department or its authorized representatives to undertake activities on the property, including placement of borings, equipment and structures on the property.

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

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

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

c. The voluntary party or the person who has entered into a legally enforceable agreement under subd. 2m. b. provides financial assurance to the department, in the manner required by the department, in the event that the voluntary party or the person who has entered into a legally enforceable agreement under subd. 2m. b. fails to restore the environment to the extent practicable and minimize the harmful effects from the contaminated sediment on the property or the discharges resulting in contaminated sediment.

(ar) *Condition.* The department may require the owner of the property to grant an easement or other interest in the property for any of the purposes specified in par. (am) as a condition of issuing a certificate under par. (am).

(av) *Withdrawal by department.* 1. If at any time after a voluntary party submits an application to obtain an exemption under this section the voluntary party fails to make reasonable progress

toward completion of an environmental investigation and environmental restoration of the property identified in the application, the department may withdraw the voluntary party from the process of obtaining an exemption under this section.

2. If a voluntary party fails to provide to the department requested reports or updates on the status of an environmental investigation and environmental restoration of the property identified in the voluntary party's application for one year or longer, the department may request a written status update from the applicant. If the voluntary party does not submit the status update within 60 days or submits a status update that does not show that reasonable progress is being made, the department may withdraw the voluntary party from the process of obtaining an exemption under this section.

3. If the department decides to withdraw a voluntary party under this paragraph, the department shall provide a written notice of its decision to the voluntary party and shall return any unused portion of any advance deposit made by the voluntary party, unless otherwise directed by the voluntary party.

4. A voluntary party may not reenter the process of obtaining an exemption under this section after being withdrawn under this paragraph unless the voluntary party pays the fees under sub. (5) and enters into an agreement with the department containing a schedule for conducting the environmental investigation and environmental restoration of the property identified in the voluntary party's application.

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

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

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

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

4. If the voluntary party does not own or control the property, the person who owns or controls the property fails to maintain and monitor the property as required under rules promulgated by the department or any contract entered into under those rules.

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. or (af) 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, or to determine whether additional remedial action is necessary and to take the necessary remedial action, unless additional action is not required under this paragraph.

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

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

(e) *Contract with insurer.* If the department requires insurance under par. (ae) 3m. or (af) 3m., the department may contract with an insurer to provide insurance required under par. (ae) 3m. or (af) 3m. and may require voluntary parties to obtain coverage under the contract.

(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., 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.

(5) FEES. The department may, in accordance with rules that it promulgates, assess and collect fees from a voluntary party to offset the cost of the department's activities under sub. (2). The fees may include an advance deposit, from which the department shall return the amount in excess of the cost of the department's activities under sub. (2).

(6) LIENS. This section does not exempt property from any lien filed under s. 292.81 (3) for costs incurred by the department prior to the date that certification is issued under sub. (2) (a) 3., (ae) 3. or (ag) 2.

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

(7) APPLICABILITY. This section does not apply to any of the following:

(a) A hazardous waste treatment, storage or disposal facility that first begins operation after the date on which the voluntary party acquired the property.

(b) A licensed hazardous waste treatment, storage or disposal facility operated on the property before the date on which the voluntary party acquired the property and that is operated after the date on which the voluntary party acquired the property.

(c) Any hazardous waste disposal facility that has been issued a license under s. 144.441 (2), 1995 stats., or s. 289.41 (1m), or rules promulgated under those sections, for a period of long−term care following closure of the facility.

(d) A solid waste facility that is an approved facility.

(e) A solid waste facility or waste site at which active remedial operation or treatment is required, including a site or facility where groundwater monitoring; leachate or groundwater collection or treatment; or active gas extraction is required as all or part of the remedial action.

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

History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237; 1999 a. 9, 185; 2001 a. 16; 2005 a. 418; 2007 a. 96; 2011 a. 103; 2015 a. 204.

The Land Recycling Act. Borchert & Burke. Wis. Law. Aug. 1994.

Cross−reference: See also chs. NR 714, 716, 718, 720, 722, 724, 726, 750, and 754, Wis. adm. code.

292.16 Responsibility of certain municipalities acquiring closed landfills. (1) DEFINITION. In this section:

(a) "Generator" has the meaning given in s. 292.35 (1) (b).

(b) "Transporter" has the meaning given in s. 292.35 (1) (g).

(2) APPLICATION. A municipality may apply to the department for an exemption from liability with respect to property that con-

tains a closed landfill and that is acquired by the municipality before, on or after October 14, 1997.

(3) CONDITIONS FOR APPROVAL. The department shall approve an application under sub. (2) if all of the following apply:

(a) The landfill is closed when the municipality acquires the property.

(b) The landfill closure complies with all rules of the department at the time of the application under sub. (2).

(c) The municipality did not have an ownership interest in the landfill while the landfill was in operation.

(d) The municipality enters into an agreement with the department that contains requirements for the municipality to maintain the property.

(e) The department determines that an exemption from liability under this section is in the public interest.

(f) The landfill was privately owned while it was in operation.

(g) The landfill has caused groundwater contamination.

(h) A steering committee of local public and private representatives was formed to address the contamination caused by the landfill in a cooperative effort with the department that prevented the landfill from being listed on the national priority list under 42 USC 9605 (a) (8) (B).

(i) The remedial action approved by the department authorized a recreational use for the property and was completed by December 31, 1995.

(4) SCOPE OF EXEMPTION. An approval by the department under sub. (3) exempts the municipality from liability imposed under ss. 289.05, 289.41, 289.46, 289.95, 291.37, 291.85 (2), 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, based on the municipality's ownership of the property. The exemption does not apply to any liability based on hazardous substances for which the municipality is responsible as a generator or transporter.

(5) REQUIREMENTS. If the department approves a municipality's application under sub. (3), the municipality shall do all of the following:

(a) Obtain the prior approval of the department for any proposed uses of the property, for any physical disturbance of the soil and for any construction on the property.

(b) Allow access to the property by any person who is required to conduct monitoring, to operate and maintain equipment or to undertake remedial action in connection with the closed landfill.

History: 1997 a. 27; 2013 a. 173 s. 33.

Cross−reference: See also ch. NR 708, Wis. adm. code.

292.19 Responsibility of persons conducting investigations. (1) For purposes of this chapter, a person who conducts an investigation of property to determine the existence of, or to obtain information about, a discharge of a hazardous substance does not possess or control the hazardous substance or cause the discharge of the hazardous substance as the result of conducting the investigation.

(2) If the person who conducts the investigation physically causes a discharge, sub. (1) does not apply with respect to the portion of the property on which the person causes the discharge.

History: 1997 a. 27.

292.21 Responsibility of lenders and representatives. (1) RESPONSIBILITY OF LENDERS; LENDING ACTIVITIES; ACQUISITION OF PROPERTY. (a) *Lending*. 1. Subject to subd. 2. and par. (b), for purposes of this chapter, a lender does not possess or control a hazardous substance or cause the discharge of a hazardous substance as a result of engaging in lending activities.

2. Subdivision 1. does not apply in any of the following situations:

a. A lender physically causes a discharge.

b. The lender through tortious conduct with respect to lending activities causes a discharge of a hazardous substance or exacerbates an existing discharge of a hazardous substance.

3. The department may, by rule, designate as lending activities other activities, in addition to those listed in s. 292.01 (9), that are related to undertaking appropriate actions to preserve and protect property or are related to the advancing of funds or credit or the collecting of funds.

(b) *Preacquisition inspections of real property.* For purposes of this chapter, a lender does not possess or control a hazardous substance or cause the discharge of a hazardous substance as the result of inspecting real property for compliance with environmental laws, conducting any portion of an environmental assessment of the property in the manner specified in par. (c) 2., conducting an investigation to determine the degree and extent of contamination or performing remedial action to clean the discharge of a hazardous substance. This paragraph applies to a lender only if all of the following conditions are satisfied:

1. The activities described in this paragraph occur before the date on which the lender acquires title to, or possession or control of, real property through enforcement of a security interest.

2. The lender notifies the department, in accordance with s. 292.11 (2), of any discharge of a hazardous substance identified as the result of activities described in this paragraph.

3. If the lender conducts an investigation or performs remedial action, the lender does so in accordance with department rules.

4. The lender does not physically cause a discharge.

5. The lender through tortious conduct with respect to the activities described in this paragraph does not cause a new discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.

(c) *Acquisition of real property.* 1. A lender that acquires title to, or possession or control of, real property through enforcement of a security interest is not subject to s. 292.11 (3), (4) and (7) (b) and (c) and is not liable under this chapter or chs. 281, 285, 289, 291 or 293 to 299 for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

a. The lender, through action or inaction, does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.

c. The lender notifies the department, in accordance with s. 292.11 (2), of any known discharge of a hazardous substance.

d. The lender conducts an environmental assessment of the real property in accordance with subd. 2. at any time, but not more than 90 days after the date the lender acquires title to, or possession or control of, the real property. The lender shall file a complete copy of the environmental assessment with the department not more than 180 days after the date the lender acquires title to, or possession or control of, the real property. If an environmental assessment is conducted more than one year before the date on which the lender acquires title to, or possession or control of, the real property, the exemption under this subd. 1. d. applies only if the lender does all of the following: visually inspects the property in accordance with subd. 2. a. and b. after the date on which the lender acquires title to, or possession or control of, the real property to verify the environmental assessment; submits a complete copy of the environmental assessment and the results of the visual inspection to the department not later than 90 days after the lender acquires title to, or possession or control of, the real property; receives notice from the department that the department determines that the environmental assessment is adequate or that the department directs the lender to address any inadequacies in the environmental assessment; corrects, to the satisfaction of the department, any inadequacies of an environmental assessment; and reimburses the department for the cost to the department of reviewing materials submitted under this subd. 1. d.

e. For a hazardous substance released on or after the date on which the lender acquires title to, or possession or control of, the real property, the lender is not engaged in the operation of a business at the property, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business.

f. If the discharge of a hazardous substance occurs on or after the date on which the lender acquires title to, or possession or control of, the real property, the lender implements an emergency response action in response to the discharge of the hazardous substance.

g. The lender agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the real property to take action to respond to the discharge.

h. The lender agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

i. The lender agrees to any other condition that the department determines is reasonable and necessary to ensure that the department or other person described in subd. 1. g. can adequately respond to the discharge.

2. The environmental assessment under subd. 1. d. shall be performed by a qualified environmental technician or consultant and shall include all of the following:

a. A visual inspection of the real property.

b. A visual inspection and description of the personal property located on the real property that may constitute a hazardous waste or hazardous substance or that has a significant risk of being discharged.

c. A review of the ownership and use history of the real property, including a search of title records showing prior ownership of the real property for a period of 80 years previous to the date of the visual inspection under subd. 2. b.

d. A review of historic and recent aerial photographs of the real property, if available.

e. A review of the environmental licenses, permits or orders issued with respect to the real property.

f. An evaluation of the results of any environmental sampling and analysis that has been conducted.

g. A review to determine if the real property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment, including the national priorities list under 42 USC 9605 (a) (8) (B); the federal environmental protection agency's information system for the comprehensive environmental response, compensation and liability act, 42 USC 9601 to 9675, (CERCLIS); and the department's database of sites or facilities and other properties that are environmentally contaminated required by s. 292.31 (1) (a).

h. The collection and analysis of representative samples of soil or other materials in the ground that are suspected of being contaminated based on observations made during a visual inspection of the real property or based on aerial photographs, or other information available to the lender, including stained or discolored soil or other materials in the ground and including soil or materials in the ground in areas with dead or distressed vegetation. The collection and analysis shall identify contaminants in the soil or other materials in the ground and shall quantify concentrations.

i. The collection and analysis of representative samples of unknown wastes or potentially hazardous substances found on the real property and the determination of concentrations of hazardous waste and hazardous substances found in tanks, drums or other containers or in piles or lagoons on the real property.

3. An environmental assessment filed under subd. 1. d. does not constitute notice required under s. 292.11 (2).

(d) *Personal property and fixtures.* A lender that enforces a security interest in personal property or fixtures at a particular location, filed under ch. 409, and that does not acquire title to, or possession or control of, the real property at that location, except for purposes of protecting and removing personal property or fixtures, is not subject to s. 292.11 (3), (4) and (7) (b) and (c) and is not liable under this chapter for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

1. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender notifies the department and the borrower of any decision not to accept specific personal property or fixtures.

2. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender provides the department with a written general description of the personal property or fixtures, the location of the personal property or fixtures on the real property and the location of the real property by street address.

3. The lender, within its ability to do so, permits reasonable access to the personal property or fixtures to the department or the borrower or others acting on the borrower's behalf.

4. The lender does not engage in the operation of a business at the location of the personal property or fixtures, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business except for actions that are undertaken to protect the property and are approved by the department in writing.

(e) *Rules; approvals.* The department may promulgate rules further specifying the activities to be carried out by a lender for the environmental assessment required under par. (c) 1. d. The department may not, by rule, require a lender to undertake sampling and analysis beyond that required under par. (c) 2. h. and i. in order to determine the degree and extent of contamination or require a lender to perform any remedial action to clean any discharge. The department may approve, by rule or in a site−specific approval, the use of reliable methods of identification other than the collection and laboratory analysis of samples.

(2) RESPONSIBILITY OF REPRESENTATIVES. (a) A representative who acquires title to, or possession or control of, real or personal property is not personally liable under this chapter for a discharge of a hazardous substance if all of the following circumstances apply:

1. The representative acquires title to, or possession or control of, the real or personal property in the capacity of a representative.

2. The representative, through action or inaction, does not knowingly, willfully or recklessly cause a discharge of a hazardous substance.

3. The representative does not physically cause a discharge of a hazardous substance.

4. The representative does not have a beneficial interest in a trust, estate or similar entity that owns, possesses or controls the real or personal property.

5. The representative does not knowingly, willfully or recklessly fail to notify the department in accordance with s. 292.11 (2) of the discharge of a hazardous substance.

(b) Paragraph (a) does not apply to any of the following:

1. A representative that knew or should have known that the trust, estate or similar entity for which the representative is acting as a representative was established, or that assets were transferred to the trust, estate or similar entity, in order to avoid responsibility for a discharge of a hazardous substance.

2. A representative that fails to act in good faith to cause the trust, estate or similar entity for which the representative is acting as a representative to take the actions described in s. 292.11 (3) or to reimburse the department under s. 292.11 (7) (b). It is not a lack of good faith for a representative to resign as representative, to seek a court order directing the representative to act or refrain from acting or to challenge the department by any legal means.

(c) This subsection does not limit the responsibility of any trust, estate or similar entity to take the actions required under s. 292.11 (2), (3), (4) or (7) (c) or any other provision of this chapter or to reimburse the department under s. 292.11 (7) (b).

History: 1995 a. 227 s. 708, 709, 993; 1997 a. 27; 1999 a. 9; 2005 a. 418.

Cross−reference: See also ch. NR 749, Wis. adm. code.

292.23 Responsibility of local governmental units; solid waste. (1) DEFINITION. In this section:

(a) "Local governmental unit" means a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority, or a housing authority.

(b) "Solid waste facility" has the meaning given in s. 289.01 (35).

(c) "Waste site" has the meaning given in s. 289.01 (41).

(2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local governmental unit is exempt from s. 289.05, and rules promulgated under that section, with respect to property acquired by the local governmental unit before, on, or after June 3, 2006, if any of the following applies:

(a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

(b) The local governmental unit acquired the property from a local governmental unit that is exempt under this subsection with respect to the property.

(c) The local governmental unit acquired the property through a condemnation or other proceeding under ch. 32.

(d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

(e) The local governmental unit acquired the property through escheat.

(f) The local governmental unit acquired the property using funds appropriated under s. 20.866 (2) (ta) or (tz).

(3) EXCEPTIONS. (a) Subsection (2) does not apply with respect to environmental pollution or a discharge of a hazardous substance caused by any of the following:

1. An action taken by the local governmental unit.

2. A failure of the local governmental unit to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

3. A failure of the local governmental unit to sample and analyze unidentified substances in containers stored aboveground on the property.

4. A failure of the local governmental unit to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

(b) Subsection (2) does not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit to take that necessary action, and the local governmental unit does not take that action as directed.

(c) Subsection (2) only applies if the local governmental unit agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled a hazardous substance that was discharged or that caused environmental pollution or the discharge of a hazardous substance, and any consultant or contractor of such a party to enter the property to take action to respond to the environmental pollution or discharge.

(d) Subsection (2) does not apply to property described in sub. (2) (f) unless the local governmental unit enters into an agreement with the department to ensure that the conditions in pars. (a) and (b) are satisfied.

(e) Subsection (2) does not apply to any solid waste facility or waste site that was operated by the local governmental unit or was owned by the local governmental unit while it was operated.

(f) Subsection (2) does not apply to a solid waste facility that was licensed under s. 144.44, 1993 stats., or s. 289.31.

(g) Subsection (2) does not apply to property at which the local governmental unit disposed of waste that caused environmental pollution or a discharge of a hazardous substance at the property.

(h) Subsection (2) does not apply to waste generated on the property by the local governmental unit, its agents, or its contractors.

(i) Subsection (2) does not apply if the local governmental unit undertakes or authorizes construction on the property without the approval of the department or if the local government unit undertakes an activity that interferes with a closed solid waste facility or waste site and that causes a threat to public health, safety, or welfare.

(j) Subsection (2) only applies to property with respect to which, before the local governmental unit acquired the property, the department imposed requirements related to health or safety for the maintenance of an active leachate or methane collection system, of a cap over waste on the property, or of a groundwater or gas monitoring system if the local governmental unit complies with those requirements.

(k) Subsection (2) does not exempt a local governmental unit from land use restrictions required by the department, including those that are necessary to prevent damage to a cap over waste on the property or to otherwise prevent uses of the property that may cause a threat to public health or safety.

History: 2005 a. 418; 2007 a. 96.

292.24 Responsibility of local governmental units; hazardous waste. (1) DEFINITION. In this section, "local governmental unit" has the meaning given in s. 292.11 (9) (e) 1.

(2) EXEMPTION FROM LIABILITY. Except as provided in sub. (3), a local governmental unit is exempt from ss. 291.25 (1) to (5), 291.29 and 291.37, and rules promulgated under those provisions, with respect to the existence of a hazardous waste discharge on property acquired in a way or for a purpose described in s. 292.11 (9) (e) 1m., if all of the following occur at any time before or after the date of acquisition:

(a) An environmental investigation of the property is conducted that is approved by the department and that identifies any hazardous waste discharges that occurred on the property.

(b) The hazardous waste discharges identified by the investigation under par. (a) are cleaned up by restoring the environment to the extent practicable with respect to the discharges and minimizing the harmful effects from the discharges in accordance with rules promulgated by the department and any contract entered into under those rules.

(c) The local governmental unit obtains an approval from the department stating that the property has been satisfactorily restored to the extent practicable with respect to the hazardous waste discharges and that the harmful effects from the discharges have been minimized.

(d) The local governmental unit maintains and monitors the property as required under rules promulgated by the department and any contract entered into under those rules.

(e) The local governmental unit does not engage in activities that are inconsistent with the maintenance of the property.

(f) The local governmental unit has not obtained the certification under par. (c) by fraud or misrepresentation, by the knowing failure to disclose material information or under circumstances in which the local governmental unit knew or should have known about more discharges of hazardous waste than were revealed by the investigation conducted under par. (a).

(g) The local governmental unit did not cause the discharge of any hazardous waste identified on the property.

(3) APPLICABILITY. Subsection (2) does not apply to any of the following:

(a) A hazardous waste treatment, storage or disposal facility that first begins operation after the date on which the local governmental unit acquired the property.

(b) A licensed hazardous waste treatment, storage or disposal facility operated on the property before the date on which the local governmental unit acquired the property and that is operated after the date on which the local governmental unit acquired the property.

(c) Any hazardous waste disposal facility that has been issued a license under s. 144.441 (2), 1995 stats., or s. 289.41 (1m), or rules promulgated under those sections, for a period of long−term care following closure of the facility.

History: 1999 a. 9.

292.25 Report on impact of exemptions from liability. **(1)** The department shall biennially determine all of the following:

(a) The number of sites for which a person is seeking to qualify for an exemption under s. 292.15.

(b) The number of sites for which a certificate of completion was issued under s. 292.15.

(c) The number of sites for which a certificate of completion was issued under s. 292.15 at which it is discovered that the cleanup failed or at which additional hazardous substances are found after the certificate of completion was issued.

(d) The number of sites described in par. (b) at which the department has determined that it is necessary to conduct remedial action using moneys from the environmental fund and the estimated costs of performing that remedial action.

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

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

(2) No later than September 15 of each even−numbered year, the department shall submit a report describing its determinations under sub. (1) to the legislature under s. 13.172 (2), to the governor and to the department of administration.

(3) The department may require a person to provide information necessary for the department to make the determinations under sub. (1).

History: 1999 a. 9; 2015 a. 204.

292.255 Report on brownfield efforts. The department of natural resources, the department of administration, and the Wisconsin Economic Development Corporation shall submit a report evaluating the effectiveness of this state's efforts to remedy the contamination of, and to redevelop, brownfields, as defined in s. 238.13 (1) (a).

History: 1999 a. 9, 84; 2007 a. 20; 2011 a. 32.

292.26 Civil immunity; local governmental units. **(1)** In this section, "local governmental unit" has the meaning given in s. 292.11 (9) (e) 1.

(2) Except as provided in sub. (3), a local governmental unit is immune from civil liability related to the discharge of a hazardous substance on or from property formerly owned or controlled by the local governmental unit if the property is no longer owned by the local governmental unit at the time that the discharge is discovered and if any of the following applies:

(a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

(b) The local governmental unit acquired the property from a local governmental unit that acquired the property under a method described in par. (a).

(c) The local governmental unit acquired the property through condemnation or other proceeding under ch. 32.

(d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

(3) Subsection (2) does not apply with respect to a discharge of a hazardous substance caused by an activity conducted by the local governmental unit while the local governmental unit owned or controlled the property.

History: 1997 a. 27.

292.31 Environmental repair. **(1)** DATABASE; ANALYSIS. (a) *Database.* 1. The department shall compile, maintain, and make available to the public a database of all sites or facilities and other properties at which the discharge of a hazardous substance or other environmental pollution has been reported to the department. The department shall update the database regularly.

3. The decision of the department to include a site or facility or other property on the database under subd. 1. or exclude a site or facility or other property from the database is not subject to judicial review.

4. Notwithstanding s. 227.01 (13) or 227.10 (1), the database under subd. 1. is not a rule.

(b) *Investigation; analysis.* 1. The department may take direct action under subd. 2. or 3. or may enter into a contract with any person to take the action.

2. The department may conduct an investigation, analysis and monitoring of a site or facility and areas surrounding the site or facility to determine the existence and extent of actual or potential environmental pollution from the site or facility including, but not limited to, monitoring by means of installing test wells or by testing water supplies. The department may conduct an investigation to identify persons who are potentially responsible for actual or potential environmental pollution from a site or facility. If the department conducts an investigation to identify persons who are potentially responsible for actual or potential environmental pollution from a site or facility, the department shall make a reasonable effort to identify as many persons as possible responsible for the environmental pollution.

3. The department may determine whether a site or facility presents a substantial danger to public health or welfare or the environment and evaluate the magnitude of the danger.

(d) *Access to information.* Upon the request of any officer, employee or authorized representative of the department, any person who generated, transported, treated, stored or disposed of solid or hazardous waste which may have been disposed of at a site or facility under investigation by the department shall provide the officer, employee or authorized representative access to any records or documents in that person's custody, possession or control which relate to:

1. The type and quantity of waste generated, transported, treated or stored which was disposed of at the site or facility and the dates of these activities.

2. The identity of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

3. The identity of subsidiary or parent corporations, as defined in sub. (8) (a) 3., of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

(2) ENVIRONMENTAL RESPONSE RULES. The department shall promulgate rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution, including all of the following provisions:

(a) Methods for investigating the degree and extent of contamination for actions under sub. (3).

(b) Methods for remedial action under sub. (3).

(c) Methods and criteria for determining the appropriate extent of remedial action under sub. (3).

(d) Means of ensuring that the costs of remedial action are appropriate in relation to the associated benefits over the period of potential human exposure to substances released by the site or facility.

(e) Appropriate roles and responsibilities under this section for federal, state and local governments and for interstate and nongovernmental entities.

(3) ENVIRONMENTAL REPAIR. (b) *Department authority.* 1. The department may take direct action under subds. 2. to 9. or may enter into a contract with any person to take the action.

2. The department may take action to avert potential environmental pollution from the site or facility.

3. The department may repair the site or facility or isolate the waste.

4. The department may abate, terminate, remove and remedy the effect of environmental pollution from the site or facility.

5. The department may restore the environment to the extent practicable.

6. The department may establish a program of long−term care, as necessary, for a site or facility which is repaired or isolated.

7. The department may provide temporary or permanent replacements for private water supplies damaged by a site or facility. In this subdivision, "private water supply" means a well which is used as a source of water for humans, livestock, as defined in s. 95.80 (1) (b), or poultry.

8. The department may assess the potential health effects of the occurrence, not to exceed $10,000 per occurrence.

9. The department may take any other action not specified under subds. 2. to 8. consistent with this subsection in order to protect public health, safety or welfare or the environment.

(c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider the significance to public health, the community, and the environment of each site or facility, the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator, or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors. The department shall give the highest priority to remedial action at sites or facilities which have caused contamination of a municipal water system.

(d) *Emergency responses*. Notwithstanding rules promulgated under this section or the considerations for taking action under par. (c), the department may take emergency action under this subsection and subs. (1) and (7) at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

(e) *Access to property.* Any officer, employee or authorized representative of the department may enter onto any site or facility and areas surrounding the site or facility at reasonable times and upon notice to the owner or occupant to take action under this section. Notice to the owner or occupant is not required if the delay required to provide this notice is likely to result in an imminent risk to public health or welfare or the environment.

(f) *Notice; hearing*. The department shall publish a class 1 notice, under ch. 985, shall publish the notice on its Internet Web site, and, upon request, shall provide the notice to interested members of the public, prior to taking remedial action under this subsection and subs. (1) and (7). The department's notice to interested members of the public may be given through an electronic notification system established by the department. The notice shall describe the proposed remedial action, the amount and purpose of any proposed expenditure, the name and address of the facility that is the subject of the proposed remedial action, a brief description of the proposed remedial action, and information indicating where more information regarding the proposed remedial action may be viewed on the department's Internet Web site. For the purpose of determining the date on which notice is provided under this paragraph, the date on which the department first publishes the notice on its Internet Web site shall be considered the date of notice. Except as provided under par. (d), the department shall provide a hearing to any person who demands a hearing within 30 days after the notice is published for the purpose of determining whether the proposed remedial action and any expenditure is within the scope of this section and is reasonable in relation to the cost of obtaining similar materials and services. The department is not required to conduct more than one hearing for the remedial action proposed at a single site or facility. Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case. The decision of the department to take remedial action under this section is a final decision of the agency subject to judicial review under ch. 227.

(4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY MUNICIPALITIES. Notwithstanding the environmental response rules under sub. (2) or the environmental repair authority, remedial action sequence and emergency response requirements under sub. (3), the department shall pay that portion of the cost of any monitoring requirement which is to be paid under s. 289.31 (7) (f) from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

(6) PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND. The department may expend moneys received from the investment and local impact fund for the purposes specified under sub. (3) only for approved mining facilities and only if moneys in the environmental fund that are available for environmental repair are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the environmental fund that is available for environmental repair at the beginning of that fiscal year or 50 percent of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(7) IMPLEMENTING THE FEDERAL SUPERFUND ACT. (a) The department may advise, consult, assist and contract with other interested persons to take action to implement the federal comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601, et seq., in cooperation with the federal environmental protection agency. These actions include all of the actions under subs. (1) to (3). The department may enter into agreements with the federal environmental protection agency.

(am) 1. The department may accept the transfer of an interest in property that was acquired by the federal environmental protection agency as part of a remedial action under the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 to 9675.

2. The department may acquire an interest in property from any person as part of a remedial action conducted in cooperation with the federal environmental protection agency if the acquisition is necessary to implement the remedy. Under this subdivision, the department may acquire an interest in property that is necessary to ensure that restrictions on the use of land or groundwater are enforceable. The department may expend moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg) if necessary to compensate a person for an interest in property acquired by the department under this subdivision.

3. The department may enforce the terms of any interest in property that it acquires under this paragraph.

(b) The department may expend moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg) as required under 42 USC 9601, et seq. The department shall promulgate by rule criteria for the expenditure of moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg). The criteria shall include consideration of the amount of moneys available in the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg), the moneys available from other sources for the required sharing of

costs, the differences between public and private sites or facilities, the potential for cost recovery from responsible parties and any other appropriate factors.

(c) 1. The department may require a municipality to pay a reasonable share of the amount expended by the department for a project under par. (b). The department shall base any share charged to a municipality for a project under par. (b) on the following factors:

a. The municipality's responsibility for the site or facility affected by the project.

b. The benefit that the municipality receives from the project.

c. The municipality's ability to pay for the project.

2. The total amount charged to all municipalities who are charged for the project may not exceed 50 percent of the amount expended by the department under par. (b) for the project.

3. The department shall promulgate rules establishing criteria for determining the responsibility, for the purposes of this subsection, of a municipality for a site or facility affected by the project under par. (b); the benefit a municipality receives from a project under par. (b); and the ability of a municipality to pay for a project under par. (b).

4. All moneys received under this paragraph shall be credited to the environmental fund for environmental management.

(d) The department may enter into an agreement with a responsible party under the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 to 9675, to provide management and technical support for a remedial action under the act. A responsible party shall reimburse the department for the costs the department incurs under an agreement, using the hourly billing rate calculated under s. NR 750.07 (2), Wis. Adm. Code.

(8) RECOVERY OF EXPENDITURES. (a) *Definitions*. In this subsection:

1. "Operator" means any person who operates a site or facility or who permits the disposal of waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits disposal of waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

2. "Owner" means any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

3. "Subsidiary or parent corporation" means any business entity, including a subsidiary, parent corporation or other business arrangement which has elements of common ownership or control or uses a long−term contractual arrangement with any person to avoid direct responsibility for conditions at a site or facility.

(b) *Applicability.* 1. This subsection does not apply to the release or discharge of a substance which is in compliance with a permit, license, approval, special order, waiver or variance issued under this chapter or ch. 30, 31 or 283, or under corresponding federal statutes or regulations.

2. This subsection applies to an owner who purchases the land where a site or facility is located only if the owner knew or should have known of the existence of the site or facility at the time of purchase.

3. This subsection does not apply to the release or discharge of high−volume industrial waste used in a highway improvement project under s. 84.078.

(c) *Persons responsible.* 1. An owner or operator is responsible for conditions at a site or facility which presents a substantial danger to public health or welfare or the environment if the person knew or should have known at the time the disposal occurred that the disposal was likely to result in or cause the release of a substance into the environment in a manner which would cause a substantial danger to public health or welfare or to the environment.

2. Any person, including an owner or operator and including a subsidiary or parent corporation which is related to the person, is responsible for conditions at a site or facility which present a substantial danger to public health or welfare or the environment if:

a. The person violated any applicable statute, rule, plan approval or special order in effect at the time the disposal occurred and the violation caused or contributed to the condition at the site or facility; or

b. The person's action related to the disposal caused or contributed to the condition at the site or facility and would result in liability under common law in effect at the time the disposal occurred, based on standards of conduct for that person at the time the disposal occurred.

(d) *Right of action.* A right of action shall accrue to the state against any person responsible under par. (c) if an expenditure is made for environmental repair at the site or facility or if an expenditure is made under sub. (7).

(e) *Interest payment.* If the department authorizes an amount that the state is entitled to recover under this subsection to be paid over time, it shall require monthly payments of interest, at a rate determined by the department, on the unpaid balance of that amount.

(f) *Action to recover costs.* The attorney general shall take action as is appropriate to recover expenditures to which the state is entitled.

(g) *Disposition of funds.* If the original expenditure was made from the environmental repair fund, under s. 25.46, 1987 stats., or the environmental fund, the net proceeds of the recovery shall be paid into the environmental fund for environmental management. If the original expenditure was made from the investment and local impact fund, the net proceeds of the recovery shall be paid into the investment and local impact fund.

(h) *Cleanup agreements; waiver of cost recovery.* The department and any person who is responsible under par. (c) may enter into an agreement regarding actions which the department is authorized to take under sub. (3). In the agreement, the department may specify those actions under sub. (3) which the responsible person may take. As part of the agreement, the department may agree to reduce the amount which the state is entitled to recover under this subsection or to waive part or all of the liability which the responsible person may have under this subsection.

(i) *Lien.* Any expenditures made by the department under sub. (1), (3) or (7) shall constitute a lien upon the property for which the expenses are incurred, as provided in s. 292.81.

(9) RELATION TO OTHER LAWS. The department shall coordinate its efforts under this section with the federal environmental protection agency acting under the comprehensive environmental response, compensation and liability act, 42 USC 9601, et seq. The department may not duplicate activities or efforts of the federal environmental protection agency if such duplication is prohibited under 42 USC 9601, et seq.

(10) LIABILITY. (a) No common law liability, and no statutory liability which is provided in other statutes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

(b) If a person takes any remedial action at a site or facility, whether or not an agreement is entered into with the department under sub. (8) (h), any agreement and the action taken are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

History: 1995 a. 227 ss. 605 to 610, 612; 1995 a. 378 s. 45; 1997 a. 27; 2001 a. 16; 2005 a. 418; 2009 a. 28; 2011 a. 167; 2013 a. 20; 2015 a. 197 s. 51.

Cross−reference: See also chs. NR 708, 714, 716, 718, 720, 722, 724, 726, and 747, Wis. adm. code.

292.33 Local government cost recovery cause of action. (1) DEFINITION. In this section "local governmental unit" has the meaning given in s. 292.11 (9) (e) 1.

(2) CAUSE OF ACTION. Except as provided in sub. (6), a local governmental unit may recover costs as provided in sub. (4) from a responsible person described in sub. (3) if the costs are incurred in connection with a property acquired as provided in s. 292.11 (9) (e) 1m. on which a hazardous substance has been discharged.

(3) RESPONSIBLE PERSONS. (a) Except as provided in par. (b), a local governmental unit may recover costs in an action under this section from any of the following:

1. A person who, at the time that the local governmental unit acquired the property, possessed or controlled the hazardous substance that was discharged on the property.

2. A person who caused the discharge of the hazardous substance on the property.

(b) A local governmental unit may not recover costs in an action under sub. (2) from a person listed in par. (a) if any of the following applies:

1. The person is exempt from liability under s. 292.11 (9) (e), 292.13, 292.15, 292.16, 292.19 or 292.21 with respect to the discharge that is the subject of the action.

2. The person has entered into a consent order under this chapter or ch. 289 or 291 or an agreement under s. 292.11 (7) (d) or 292.31 (8) (h) with respect to the discharge that is the subject of the action and the person is in compliance with the consent order or agreement.

3. The person is exempt from liability under s. 292.35 (9) (e) with respect to the discharge that is the subject of the action.

4. The discharge that was caused by the person and that is the subject of the action was in compliance with a permit, license, approval, special order, waiver or variance issued under ch. 283 or 285 or under corresponding federal statutes or regulations.

(4) RECOVERABLE COSTS. (a) Except as provided in par. (b), in an action under this section a local governmental unit may recover the reasonable and necessary costs that it incurs for all of the following:

1. Investigating environmental contamination on the property and planning remedial activities described in subd. 2.

2. Conducting remedial activities to restore the property for its intended future use.

3. Administering the activities under subds. 1. and 2. and bringing the action under this section, including costs, disbursements and engineering fees but excluding attorney fees.

(b) The costs determined under par. (a) shall be reduced by the fair market value of the property after completion of the activities under par. (a) 2.

(c) Recoverable costs under this subsection may not be reduced by the amount of any state or federal moneys received by the local governmental unit for any of the activities under par. (a).

(d) 1. In an action under this section, the liability of a responsible person described in sub. (3) (a) 2. is limited to the amount that bears the same proportion to the total costs under par. (a), adjusted as provided in par. (b), as the amount of the environmental pollution on the property from the discharge caused by the responsible person bears to all of the environmental pollution on the property from discharges of hazardous substances.

2. In an action under this section, the liability of a responsible person described in sub. (3) (a) 1. is limited to the amount of the total costs under par. (a), adjusted as provided in par. (b), that the local governmental unit is unable to recover from responsible parties described in sub. (3) (a) 2. less the amount that the local governmental unit is unable to recover because of the exemptions in sub. (3) (b) 3. and 4.

(5) REPAYING STATE ASSISTANCE. If a local governmental unit that recovers costs under this section received money from this state, other than under s. 292.11 (7) or 292.31 (1), (3) or (7), for any of the activities under sub. (4) (a), the local governmental unit shall reimburse to the state an amount that bears the same proportion to the total amount recovered under this section as the amount received from the state, other than under s. 292.11 (7) or 292.31 (1), (3) or (7), bears to the total costs under sub. (4) (a) adjusted as provided in sub. (4) (b).

(6) EXCEPTION. A local governmental unit may not recover costs under this section for remedial activities conducted on a property or portion of a property with respect to a discharge after the department of natural resources, the department of safety and professional services, or the department of agriculture, trade and consumer protection has indicated that no further remedial activities are necessary on the property or portion of the property with respect to the discharge.

(7) LIMITATION OF ACTION. An action under this section shall be commenced within 6 years after the date that the local governmental unit completes the activities under sub. (4) (a) 2. or be barred.

History: 1999 a. 9; 2011 a. 32.

292.35 Local governmental unit negotiation and cost recovery. (1) DEFINITIONS. In this section:

(am) "Financial assistance" means money, other than a loan, provided by a governmental unit that is not a responsible party to pay a portion of the cost of investigation and remedial action for a site or facility.

(b) "Generator" means a person who, by contract, agreement or otherwise, either arranges or arranged for disposal or treatment, or arranges or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, if the disposal or treatment is done by another person at a site or facility owned and operated by another person and the site or facility contains the hazardous substance.

(bm) "Local governmental unit" means a municipality, a redevelopment authority created under s. 66.1333 or a public body designated by a municipality under s. 66.1337 (4).

(c) "Owner or operator" means any of the following:

1. If the property is taken for tax delinquency, a person who owns or operates a site or facility at the time that the site or facility is taken for tax delinquency.

2. A person who owns or operates a site or facility at the time that the disposal or discharge of a hazardous substance at the site or facility occurs.

(e) "Responsible party" means a generator, an owner or operator, a transporter or a person who possesses or controls a hazardous substance that is discharged or disposed of or who causes the discharge or disposal of a hazardous substance.

(f) "Site or facility" means an approved facility, an approved mining facility, a nonapproved facility, a waste site or any site where a hazardous substance is discharged on or after May 21, 1978.

(g) "Transporter" means a person who accepts or accepted a hazardous substance for transport to a site or facility.

(2) APPLICABILITY. This section only applies to a site or facility if one of the following criteria is satisfied:

(a) The site or facility is owned by a local governmental unit.

(b) A local governmental unit that owns a portion of the site or facility commits itself, by resolution of its governing body, to paying more than 50 percent of the amount equal to the difference between the cost of investigation and remedial action for the site or facility and any financial assistance received for the site or facility.

(2g) IDENTIFICATION OF RESPONSIBLE PARTIES. (a) A local governmental unit that intends to use the cost recovery procedures in this section shall attempt to identify all responsible parties. All information obtained by the local governmental unit regarding responsible parties is a public record and may be inspected and copied under s. 19.35.

(b) Upon the request of an employee or authorized representative of the local governmental unit, or pursuant to a special inspec-

tion warrant under s. 66.0119, any person who generated, transported, treated, stored or disposed of a hazardous substance that may have been disposed of or discharged at the site or facility or who is or was an owner or operator shall provide the employee or authorized representative access to any records or documents in that person's custody, possession or control that relate to all of the following:

1. The type and quantity of hazardous substance that was disposed of or discharged at the site or facility and the dates of the disposal or discharge.

2. The identity of any person who may be a responsible party.

3. The identity of subsidiary or parent corporations, as defined in s. 292.31 (8) (a) 3., of any person who may be a responsible party.

(c) The local governmental unit shall maintain a single repository that is readily accessible to the public for all documents related to responsible parties, the investigation, the remedial action and plans for redevelopment of the property.

(2r) PRELIMINARY REMEDIAL ACTION PLAN. (a) The local governmental unit shall, in consultation with the department, prepare a draft remedial action plan.

(b) Upon completion of the draft remedial action plan, the local governmental unit shall send written notice to all responsible parties identified by the local governmental unit, provide public notice and conduct a public hearing on the draft remedial action plan. The notice to responsible parties shall offer the person receiving the notice an opportunity to provide information regarding the status of that person or any other person as a responsible party, notice and a description of the public hearing and a description of the procedures in this section. At the public hearing, the local governmental unit shall solicit testimony on whether the draft remedial action plan is the least costly method of meeting the standards for remedial action promulgated by the department by rule. The local governmental unit shall accept written comments for at least 30 days after the close of the public hearing.

(c) Upon the conclusion of the period for written comment, the local governmental unit shall prepare a preliminary remedial action plan, taking into account the written comments and comments received at the public hearing and shall submit the preliminary remedial action plan to the department for approval. The department may approve the preliminary remedial action plan as submitted or require modifications.

(3) OFFER TO SETTLE; SELECTION OF UMPIRE. (a) Upon receiving the department's approval of the preliminary remedial action plan, the local governmental unit shall serve an offer to settle regarding the contribution of funds for investigation and remedial action at the site or facility on each of the responsible parties identified by the local governmental unit, using the procedure for service of a summons under s. 801.11 and shall notify the department that the offer to settle has been served. The local governmental unit shall include in the offer to settle all of the following information:

1. The amount of the offer and a rationale for the amount.

2. The names, addresses and contact persons, to the extent known, for all of the responsible parties identified by the local governmental unit.

3. The location and availability of documents that support the claim of the local governmental unit against the responsible party.

4. The location of the public repository where documents relating to the site or facility are maintained, the times during which the repository is open and the name and telephone number of the contact person at the repository.

5. A description of the procedures under this section.

(b) The department shall maintain a list of competent and disinterested umpires qualified to perform the duties under subs. (4) to (6). None of the umpires may be employees of the department. Upon receiving notice from a local governmental unit under par. (a), the secretary or his or her designee shall select an umpire from the list and inform the local governmental unit and responsible parties of the person selected.

(c) Within 10 days after receiving notice of the umpire selected by the department under par. (b), the local governmental unit may notify the department that the umpire selected is unacceptable. Within 10 days after receiving notice of the umpire selected by the department under par. (b), a responsible party may notify the department that the umpire selected is unacceptable or that the responsible party does not intend to participate in the negotiation. Failure to notify the department that the umpire is unacceptable shall be considered acceptance. If all responsible parties identified by the local governmental unit indicate that they do not intend to participate in the negotiation, the department shall inform the local governmental unit and the local governmental unit shall cease further action under this section.

(d) Upon receiving notice under par. (c) that the selected umpire is unacceptable, the secretary or his or her designee shall select 5 additional umpires from the list and inform the local governmental unit and responsible parties of the persons selected.

(e) Within 10 days after receiving notice of the umpires selected by the department under par. (d), the local governmental unit or a responsible party may notify the department that one or more of the umpires selected are unacceptable. Failure to notify the department shall be considered acceptance. The secretary or his or her designee shall select an umpire from among those umpires not identified as unacceptable by the local governmental unit or a responsible party or, if all umpires are identified as unacceptable, the secretary or his or her designee shall designate a person to be umpire for the negotiation.

(4) NEGOTIATION PROCESS. (a) The umpire, immediately upon being appointed, shall contact the department, the local governmental unit and the responsible parties that received the offer to settle and shall schedule the negotiating sessions. The umpire shall schedule the first negotiating session no later than 20 days after being appointed. The umpire may meet with all parties to the negotiation, individual parties or groups of parties. The umpire shall facilitate a discussion between the local governmental unit and the responsible parties to attempt to reach an agreement on the design and implementation of the remedial action plan and the contribution of funds by the local governmental unit and responsible parties.

(b) The umpire shall permit the addition to the negotiation, at any time, of any responsible party or any other person who wishes to be a party to the negotiated agreement.

(c) Negotiations may not continue for more than 60 days after the first negotiating session, unless an extension is approved by the department for cause, at the request of any party to the negotiation. The department shall approve an extension if necessary to settle insurance claims.

(d) The local governmental unit and the responsible parties that participate in negotiations shall pay for the costs of the umpire, whether or not an agreement among the parties is reached under sub. (5) or the parties accept the recommendation of the umpire under sub. (6). The umpire shall determine an equitable manner of paying for the costs of the umpire, which is binding.

(5) AGREEMENT IN NEGOTIATION. The local governmental unit and any of the responsible parties may enter into any agreement in negotiation regarding the design and implementation of the remedial action plan and the contribution of funds by the local governmental unit and responsible parties for the investigation and remedial action. The portion of the agreement containing the design and implementation of the remedial action plan shall be submitted to the department for approval. The department may approve that portion of the agreement as submitted or require modifications.

(6) FAILURE TO REACH AGREEMENT IN NEGOTIATION. (a) If the local governmental unit and any responsible parties are unable to reach an agreement under sub. (5) by the end of the period of negotiation, the umpire shall make a recommendation regarding the

design and implementation of the remedial action plan and the contribution of funds for investigation and remedial action by the local governmental unit and all responsible parties that were identified by the local governmental unit and that did not reach an agreement under sub. (5), whether or not the responsible parties participated in negotiations under sub. (4). The umpire shall submit the recommendation to the department for its approval within 20 days after the end of the period of negotiation under sub. (4) (c). The department may approve the recommendation as submitted or require modifications. The umpire shall distribute a copy of the approved recommendation to the local governmental unit and all responsible parties identified by the local governmental unit.

(b) The local governmental unit and the responsible parties that did not reach an agreement under sub. (5) shall accept or reject the umpire's recommendation within 60 days after receiving it. Failure to accept or reject the recommendation within 60 days shall be considered rejection of the recommendation. If the local governmental unit rejects the recommendation with respect to any responsible party, the recommendation does not apply to that responsible party. If a responsible party rejects the recommendation, it does not apply to that responsible party.

(7) RESPONSIBLE PARTIES SUBJECT TO AN AGREEMENT OR RECOMMENDATION. A responsible party that enters into an agreement under sub. (5) with a local governmental unit or that accepts the umpire's recommendation under sub. (6), if the local governmental unit does not reject the recommendation, is required to comply with the agreement or recommendation. When the responsible party has complied with the agreement or recommendation, the responsible party is not liable to the state, including under s. 292.11 (7) (b) or 292.31 (8), or to the local governmental unit for any additional costs of the investigation or remedial action; the responsible party is not liable to any other responsible party for contribution to costs incurred by any other responsible party for the investigation or remedial action; and the responsible party is not subject to an order under s. 292.11 (7) (c) for the discharge that is the subject of the agreement or recommendation.

(8) RESPONSIBLE PARTIES NOT SUBJECT TO OR NOT COMPLYING WITH AN AGREEMENT OR RECOMMENDATION. (a) In this subsection:

1. "Interest" means interest at the annual rate of 12 percent, commencing on the date of the umpire's recommendation under sub. (6) or, if there is no umpire's recommendation, on the date of the agreement under sub. (5).

2. "Litigation expenses" means the sum of the costs, disbursements and expenses, including engineering fees and, notwithstanding s. 814.04 (1), reasonable attorney fees necessary to prepare for or participate in proceedings before any court.

(b) A local governmental unit is entitled to recover litigation expenses and interest on the judgment against a responsible party if any of the following occurs:

1. The local governmental unit accepts the recommendation of an umpire under sub. (6), the responsible party rejects it and the local governmental unit recovers a judgment under sub. (9) against that responsible party that equals or exceeds the amount of the umpire's recommendation.

2. The local governmental unit and the responsible party enter into an agreement under sub. (5) or accept the umpire's recommendation under sub. (6), the responsible party does not comply with the requirements of the agreement or recommendation and the local governmental unit recovers a judgment against that responsible party based on the agreement or recommendation.

(c) A responsible party is entitled to recover litigation expenses from a local governmental unit if the responsible party accepts the recommendation of an umpire under sub. (6), the local governmental unit rejects the recommendation of the umpire under sub. (6) with respect to the responsible party, the local governmental unit institutes an action under sub. (9) against the responsible party and the local governmental unit recovers a judgment under sub. (9) against the responsible party that is equal to or less than the amount of the umpire's recommendation.

(9) LIABILITY FOR REMEDIAL ACTION COSTS. (a) This subsection applies only to a site or facility that satisfies the applicability provisions of sub. (2) and for which the remedial action specified in an agreement under sub. (5) or a recommendation under sub. (6) is completed.

(b) Except as provided in pars. (bm), (br) and (e), sub. (7) and s. 292.21, a responsible party is liable for a portion of the costs, as determined under pars. (c) to (e), incurred by a local governmental unit for remedial action in an agreement under sub. (5) or a recommendation under sub. (6) and for any related investigation. A right of action shall accrue to a local governmental unit against the responsible party for costs listed in this paragraph.

(bm) Paragraph (b) does not apply with respect to a discharge if the discharge was in compliance with a permit license, approval, special order, waiver or variance issued under ch. 283 or 285 or under corresponding federal statutes or regulations.

(br) Paragraph (b) applies with respect to a transporter only if the transporter does any of the following:

1. Selects the site or facility where the hazardous substance is disposed of without direction from the generator.

2. Violates an applicable statute, rule, plan approval or special order in effect at the time the disposal occurred and the violation causes or contributes to the condition at the site or facility.

3. Causes or contributes to the condition at the site or facility by an action related to the disposal that would result in liability under common law in effect at the time the disposal occurred, based on standards of conduct for the transporter at the time the disposal occurred.

(c) The liability of each party to the action to recover costs under par. (b) is limited to a percentage of the cost of the remedial action that is determined by dividing the percentage of that party's contribution to the environmental pollution resulting from the disposal or discharge of a hazardous substance at the site or facility by the percentage of contribution of all responsible parties to the environmental pollution resulting from the disposal or discharge of a hazardous substance at the site or facility. Section 895.045 does not apply to this paragraph.

(cm) Notwithstanding par. (c), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for the total contribution of all parties involved in the common scheme or plan.

(d) The finder of fact shall apportion the contribution of each responsible party to the environmental pollution resulting from the disposal or discharge of hazardous substances at the site or facility for the purposes of par. (c), using the following criteria, and any other appropriate criteria:

1. The ability of the responsible parties to demonstrate that their contribution to the environmental pollution resulting from the disposal or discharge of hazardous substances can be distinguished from the contribution of other responsible parties.

2. The amount of hazardous substances involved.

3. The degree of toxicity of the hazardous substances involved.

4. The degree of involvement by the responsible parties in the generation, transportation, treatment, storage, disposal or discharge of the hazardous substances.

5. The degree of cooperation by the responsible parties with federal, state or local officials to prevent or minimize harm to the public health or the environment.

6. The degree of care exercised by the parties with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.

(e) A responsible party is not liable under par. (b) if the responsible party establishes by a preponderance of the evidence that the responsible party's contribution to the environmental pollution resulting from the disposal or discharge of hazardous substances was caused solely by any of the following:

1. An act of God.

2. An act of war.

3. An act or omission of a 3rd party, other than an officer, director, employee or agent of the responsible party, or other than a person whose act or omission occurs in connection with a direct or indirect contractual relationship with the responsible party if all of the following apply:

a. The responsible party establishes by a preponderance of the evidence that the responsible party exercised due care with respect to the hazardous substances that caused environmental pollution.

b. In exercising due care under subd. 3. a., the responsible party took into consideration the characteristics of the hazardous substances, in light of all relevant facts and circumstances.

c. The responsible party took precautions against foreseeable acts or omissions of the 3rd party and the consequences that could foreseeably result from those acts or omissions.

(f) Any responsible party may seek contribution from any other responsible party. Such a contribution claim may be brought as a separate action or may be brought in the action commenced against the responsible party under this section.

(10) TECHNICAL ASSISTANCE. The department shall provide technical assistance to an umpire at the request of the umpire. The department may limit the amount of staff time allocated to each negotiation.

(11) LIABILITY. Except as provided in sub. (7), no common law liability, and no statutory liability that is provided in other statutes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

(13) FEES. The department may, by rule, assess and collect fees to offset the cost of the department's activities under this section. The fees may include an advance deposit, from which the department shall return the amount in excess of the cost of the department's activities under this section.

History: 1995 a. 227 s. 613 to 616; 1997 a. 27; 1999 a. 150 s. 672; 2001 a. 16, 103.

Cross−reference: See also ch. NR 749, Wis. adm. code.

292.37 Confidentiality of records. (1) RECORDS. Except as provided under sub. (2), any records or other information furnished to or obtained by the department in the administration of ss. 292.31 and 292.35 are public records subject to s. 19.21.

(2) CONFIDENTIAL RECORDS. (a) *Application.* An owner or operator of a solid waste facility may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of ss. 292.31 and 292.35.

(b) *Standards for granting confidential status.* Except as provided under par. (c), the department shall grant confidential status for any records or information received by the department and certified by the owner or operator of the solid waste facility as relating to production or sales figures or to processes or production unique to the owner or operator of the solid waste facility or which would tend to adversely affect the competitive position of the owner or operator if made public.

(c) *Emission data; analyses and summaries.* The department may not grant confidential status for emission data. Nothing in this subsection prevents the department from using records and other information in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific owner or operator or the analyses or summaries do not reveal records or other information granted confidential status.

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of ss. 292.31 and 292.35. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency, or its authorized representative, records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency, or its authorized representative, to protect the confidentiality of the records or other information.

History: 1995 a. 227 s. 993.

292.41 Abandoned containers. (1) DEFINITION. In this section, "abandoned container" means any container which contains a hazardous substance and is not being monitored and maintained.

(2) APPLICABILITY. (a) This section does not apply to abandoned containers which are located in an approved facility or a nonapproved facility.

(b) Action by the department under this section is not subject to s. 292.31.

(3) CONTINGENCY PLAN. (a) After consultation with other affected federal, state and local agencies and private organizations, the department shall establish by rule criteria and procedures for the development, establishment and amendment of a contingency plan for the taking of emergency actions in relation to abandoned containers.

(b) The contingency plan shall establish procedures and techniques for locating, identifying, removing and disposing of abandoned containers.

(4) REMOVAL OR OTHER EMERGENCY ACTION. The department or its authorized representative may contain, remove or dispose of abandoned containers or take any other emergency action which it deems appropriate under the circumstances.

(5) ACCESS TO PROPERTY AND RECORDS. Any officer, employee or authorized representative of the department, upon notice to the owner or occupant, may enter onto any property, premises or place at any time for the purposes of sub. (3) if the entry is necessary to prevent increased damage to the air, land or waters of the state, or may inspect any record relating to abandoned container management for the purpose of ascertaining the state of compliance with this section and the rules promulgated under this section. Notice to the owner or occupant is not required if the delay in providing the notice is likely to result in imminent risk to public health or welfare or the environment.

(6) ABANDONED CONTAINERS; APPROPRIATIONS. (a) The department may utilize moneys appropriated under s. 20.370 (2) (dv) and (my) in taking action under sub. (4). The department shall utilize these moneys to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in locating, identifying, removing and disposing of abandoned containers.

(b) No more than 25 percent of the total of all moneys available under the appropriation under s. 20.370 (2) (dv) and (my) may be used annually for the procurement and maintenance of necessary equipment during that fiscal year.

(c) The department is entitled to recover moneys expended under this section from any person who caused the containers to be abandoned or is responsible for the containers. The funds recovered under this paragraph shall be deposited into the environmental fund for environmental management.

History: 1983 a. 410; 1985 a. 29 ss. 1957, 3202 (39); 1987 a. 27, 384; 1989 a. 31; 1991 a. 39; 1993 a. 453; 1995 a. 27; 1995 a. 227 s. 716; Stats. 1995 s. 292.41; 1995 a. 378 s. 46; 1997 a. 27.

Cross−reference: See also ch. NR 714, Wis. adm. code.

292.51 Cooperative remedial action. (1) In this section, "costs of remedying environmental contamination" means costs

determined by the department to be necessary to reduce or eliminate environmental contamination and restore the environment, including costs of investigation and of providing public information and education related to reducing or eliminating environmental contamination and restoring the environment.

(2) The department may seek and receive voluntary contributions of funds from a municipality or any other public or private source for all or part of the costs of remedying environmental contamination if the activities being funded are part of a cooperative effort, by the department and the person providing the funds, to remedy that environmental contamination. All contributions received under this subsection shall be deposited in the environmental fund.

(2m) Any person engaged in a cooperative effort with the department that is described in sub. (2) may seek and receive voluntary contributions of funds on behalf of the effort.

(3) Provision of funding under sub. (2) or (2m) is not evidence of liability or an admission of liability for any environmental contamination.

(4) In carrying out its regulatory and enforcement duties, the department may not base its treatment of a person on whether the person did or did not provide funding under sub. (2).

History: 1995 a. 27; 1995 a. 227 s. 824; Stats. 1995 s. 292.51; 1997 a. 27.

292.53 Availability of environmental insurance. The department, in cooperation with the department of administration, may undertake activities to make private environmental insurance products available to encourage and facilitate the cleanup and redevelopment of contaminated property. The department of natural resources may negotiate with, select, and contract with one or more insurers to provide insurance products under this section, subject to the approval of the department of administration under s. 16.865 (5).

History: 2003 a. 315.

292.55 Requests for liability clarification and technical assistance. (1) (a) The department may, upon request, assist a person to determine whether the person is or may become liable for the environmental pollution of a property.

(b) The department may, upon request, assist in, or provide comments on, the planning and implementation of an environmental investigation of a property or the environmental cleanup of a property.

(c) The department may determine whether further action is necessary to remedy environmental pollution of a property.

(d) The department may issue a letter to a person seeking assistance under this subsection concerning any of the following:

1. The liability of a person owning or leasing a property for environmental pollution of the property.

2. The type and extent of environmental pollution of a property.

3. The adequacy of an environmental investigation.

4. Any other matter related to the request for assistance under this subsection.

(2) The department may assess and collect fees from a person to offset the costs of providing assistance under sub. (1). The department shall promulgate rules for the assessment and collection of fees under this subsection. Fees collected under this subsection shall be credited to the appropriation account under s. 20.370 (2) (dh).

History: 1997 a. 27.

Cross−reference: See also ch. NR 749, Wis. adm. code.

292.57 Database of properties with residual contamination. (1) In this section, "groundwater standard" means an enforcement standard, as defined in s. 160.01 (2), or a preventive action limit, as defined in s. 160.01 (6).

(2) (a) The department may promulgate a rule specifying a fee for placing information into a database concerning a property on which a groundwater standard is exceeded, a property on which residual contamination is present in soil, or a property that is subject to s. 292.12 (3) (b). The department may also specify a fee for modifying information in the database.

(b) Any moneys collected under this subsection shall be credited to the appropriation account under s. 20.370 (2) (dh).

History: 1999 a. 9; 2005 a. 25, 418.

292.63 Petroleum storage remedial action; financial assistance. (1) DEFINITIONS. In this section:

(ad) "Bodily injury" does not include those liabilities which are excluded from coverage in liability insurance policies for bodily injury other than liabilities excluded because they are caused by a petroleum product discharge from a petroleum product storage system.

(bm) "Enforcement standard" has the meaning given in s. 160.01 (2).

(c) "Groundwater" has the meaning designated under s. 281.75 (1) (c).

(cm) "Home oil tank system" means an underground home heating oil tank used for consumptive use on the premises together with any on−site integral piping or dispensing system.

(cq) "Natural attenuation" means the reduction in the concentration and mass of a substance, and the products into which the substance breaks down, due to naturally occurring physical, chemical and biological processes.

(cs) "Occurrence" means a contiguous contaminated area resulting from one or more petroleum products discharges.

(d) "Operator" means any of the following:

1. A person who operates a petroleum product storage system, regardless of whether the system remains in operation and regardless of whether the person operates or permits the use of the system at the time environmental pollution occurs.

2. A subsidiary or parent corporation of the person specified under subd. 1.

(e) "Owner" means any of the following:

1. A person who owns, or has possession or control of, a petroleum product storage system, or who receives direct or indirect consideration from the operation of a system regardless of whether the system remains in operation and regardless of whether the person owns or receives consideration at the time environmental pollution occurs.

2. A subsidiary or parent corporation of the person specified under subd. 1.

3. A person who formerly owned a farm tank and who satisfies the criteria in sub. (4) (ei) 1m. b.

(f) "Petroleum product" means gasoline, gasoline−alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.

(fg) "Petroleum product storage system" means a storage tank that is located in this state and is used to store petroleum products together with any on−site integral piping or dispensing system. The term does not include pipeline facilities; tanks of 110 gallons or less capacity; residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale; farm tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, except as provided in sub. (4) (ei); tanks used for storing heating oil for consumptive use on the premises where stored, except for heating oil tanks owned by school districts and heating oil tanks owned by technical college districts and except as provided in sub. (4) (ei); or tanks owned by this state or the federal government.

(g) "Program year" means the period beginning on August 1, and ending on the following July 31.

(gm) "Property damage" does not include those liabilities that are excluded from coverage in liability insurance policies for property damage, other than liability for remedial action associated with petroleum product discharges from petroleum product

storage systems. "Property damage" does not include the loss of fair market value resulting from contamination.

(gs) "Service provider" means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for which a claim for reimbursement has been or will be filed under this section, or a subcontractor of such a person.

(h) "Subsidiary or parent corporation" means a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long−term contractual arrangement with a person to avoid direct responsibility for conditions at a petroleum product storage system site.

(hm) "Terminal" means a petroleum product storage system that is itself connected to a pipeline facility, as defined in 49 USC 60101 (18) or is one of a number of connected petroleum product storage systems at least one of which is connected to a pipeline facility, as defined in 49 USC 60101 (18).

(i) "Underground petroleum product storage tank system" means an underground storage tank used for storing petroleum products together with any on−site integral piping or dispensing system with at least 10 percent of its total volume below the surface of the ground.

(1m) RULES CONCERNING 3RD–PARTY COMPENSATION. The commissioner of insurance shall promulgate rules defining "liabilities which are excluded from coverage in liability insurance policies for bodily injury" and "liabilities which are excluded from coverage in liability insurance policies for property damage" for the purposes of sub. (1) (ad) and (gm). The definitions shall be consistent with standard insurance industry practices.

(2) POWERS AND DUTIES OF THE DEPARTMENT. (b) The department shall promote the program under this section to persons who may be eligible for awards under this section.

(c) The department shall keep records and statistics on the program under this section and shall periodically evaluate the effectiveness of the program.

(d) The department shall reserve a portion, not to exceed 20 percent, of the amount annually appropriated under s. 20.370 (6) (fr) for awards under this section to be used to fund emergency remedial action and claims that exceed the amount initially anticipated.

(e) The department shall promulgate rules, with an effective date of no later than January 1, 1996, specifying the methods the department will use under sub. (3) (ae), (ah), (am) and (ap) to identify the petroleum product storage system or home oil tank system which discharged the petroleum product that caused an area of contamination and to determine when a petroleum product discharge that caused an area of contamination occurred. The department shall write the rule in a way that permits a clear determination of what petroleum product contamination is eligible for an award under sub. (4) after December 31, 1995.

(em) 1. The department may promulgate rules that specify a fee that must be paid by a service provider as a condition of submitting a bid to conduct an activity under sub. (3) (c) for which a claim for reimbursement under this section will be submitted. Any fees collected under the rules shall be deposited into the petroleum inspection fund.

2. If the department promulgates rules under subd. 1., the department may purchase, or provide funding for the purchase of, insurance to cover the amount by which the costs of conducting activities under sub. (3) (c) exceed the amount bid to conduct those activities.

(f) The department shall promulgate a rule establishing a priority system for paying awards under sub. (4) for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

(g) The department may promulgate, by rule, requirements for the certification or registration of persons who provide consulting services to owners and operators who file claims under this section. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.

(h) The department shall promulgate rules designed to facilitate effective and cost−efficient administration of the program under this section that specify all of the following:

1. Information that must be submitted under this section, including quarterly summaries of costs incurred with respect to a discharge for which a claim is intended to be submitted under sub. (3) but for which a final claim has not been submitted.

2. Formats for submitting the information under subd. 1.

3. Review procedures that must be followed by employees of the department in reviewing the information submitted under subd. 1.

(i) The department shall promulgate rules specifying procedures for evaluating remedial action plans and procedures to be used by employees of the department while remedial actions are being conducted. The department shall specify procedures that include all of the following:

1. Annual reviews that include application of the method in the rules promulgated under sub. (2e) (a) to determine the risk posed by discharges that are the subject of the remedial actions.

2. Annual reports by consultants estimating the additional costs that must be incurred to comply with sub. (3) (c) 3. and with enforcement standards.

3. A definition of "reasonable time" for the purpose of determining whether natural attenuation may be used to achieve enforcement standards.

4. Procedures to be used to measure concentrations of contaminants.

(j) The department shall promulgate rules specifying all of the following:

1. The conditions under which employees of the department must issue approvals under sub. (3) (c) 4.

2. Training and management procedures to ensure that employees comply with the requirements under subd. 1.

(2e) RISK–BASED ANALYSIS. (a) The department shall promulgate rules that specify a method, which shall include individualized consideration of the routes for migration of petroleum product contamination at each site, for determining the risk to public health, safety and welfare and to the environment posed by discharges for which the department receives notification under sub. (3) (a) 3.

(c) The department shall apply the method in the rules promulgated under par. (a) to determine the risk posed by a discharge for which the department receives notification under sub. (3) (a) 3.

(3) CLAIMS FOR PETROLEUM PRODUCT INVESTIGATION, REMEDIAL ACTION PLANNING AND REMEDIAL ACTION ACTIVITIES. (a) *Who may submit a claim.* Subject to pars. (ac), (ae), (ah), (am) and (ap), an owner or operator or a person owning a home oil tank system may submit a claim to the department for an award under sub. (4) to reimburse the owner or operator or the person for the eligible costs under sub. (4) (b) that the owner or operator or the person incurs because of a petroleum products discharge from a petroleum product storage system or home oil tank system if all of the following apply:

1. The owner or operator or the person is able to document that the source of a discharge is from a petroleum product storage system or home oil tank system.

3. The owner or operator or the person notifies the department, before conducting a site investigation or remedial action activity, of the discharge and the potential for submitting a claim under this section, except as provided under par. (g).

4. The owner or operator registers the petroleum product storage system or the home oil tank system is registered with the department of agriculture, trade and consumer protection under s. 168.23.

5. The owner or operator or the person reports the discharge in a timely manner to the division of emergency management in the department of military affairs or to the department, according to the requirements under s. 292.11.

6. The owner or operator or the person investigates the extent of environmental damage caused by the petroleum product storage system or home oil tank system.

7. The owner or operator or the person recovers any recoverable petroleum products from the petroleum products storage system or home oil tank system.

8. The owner or operator or the person disposes of any residual solid or hazardous waste in a manner consistent with local, state and federal laws, rules and regulations.

9. The owner or operator or the person follows standards for groundwater restoration in the groundwater standards in the rules promulgated by the department under ss. 160.07 and 160.09 and restores the environment, to the extent practicable, according to those standards at the site of the discharge from a petroleum product storage system or home oil tank system.

(ac) *Claim deadline; sunset.* 1. An owner or operator or person owning a home oil tank system is not eligible for an award under this section for costs for which the owner or operator or person does not submit a claim within 180 days after incurring the costs, or by February 1, 2016, whichever is later.

2. An owner or operator or person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge if the owner or operator or person does not provide notification under par. (a) 3. concerning the discharge before July 20.

3. An owner or operator or person owning a home oil tank system is not eligible for an award under this section if the owner or operator or person does not submit a claim for the costs before July 1, 2020.

(ae) *New systems.* An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from an underground petroleum product storage tank system or a home oil tank system that meets the performance standards in 40 CFR 280.20 or in rules of the department of agriculture, trade and consumer protection relating to underground petroleum product storage tank systems installed after December 22, 1988, if the discharge is confirmed after December 31, 1995.

(ah) *New aboveground systems.* An owner or operator is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system that is not an underground petroleum product storage tank system and that meets the performance standards in rules of the department of agriculture, trade and consumer protection relating to petroleum product storage systems that are not underground petroleum product storage tank systems and that are installed after April 30, 1991, if the discharge is confirmed after December 22, 2001.

(am) *Upgraded underground systems.* 1. An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from an underground petroleum product storage tank system or a home oil tank system if the discharge is confirmed after December 31, 1995, and the discharge is confirmed, or activities under par. (c) or (g) are begun with respect to that discharge, after the day on which the underground petroleum product storage tank system or home oil tank system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or in rules of the department of agriculture, trade and consumer protection relating to the upgrading of existing underground petroleum product storage tank systems, except as provided in subd. 2.

2. If an underground petroleum product storage tank system or home oil tank system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or in rules of the department of agriculture, trade and consumer protection relating to the upgrading of existing underground petroleum product storage tank systems, after December 31, 1993, and the owner or operator or person owning the home oil tank system applies for private pollution liability insurance covering the underground petroleum product storage tank system or home oil tank system within 30 days after the day on which the underground petroleum product storage tank system or home oil tank system first meets those upgrading requirements, then the owner or operator or person remains eligible for an award for costs incurred because of a petroleum product discharge, from that underground petroleum product storage tank system or home oil tank system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before the 91st day after the day on which the underground petroleum product storage tank system or home oil tank system first meets those upgrading requirements.

(ap) *Upgraded aboveground systems.* An owner or operator is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system that is not an underground petroleum product storage tank system if the discharge is confirmed after December 22, 2001, and the discharge is confirmed, or activities under par. (c) or (g) are begun with respect to that discharge, after the day on which the petroleum product storage system first meets the upgrading requirements in rules of the department of agriculture, trade and consumer protection relating to the upgrading of existing petroleum product storage systems that are not underground petroleum product storage tank systems.

(av) *Claims submitted for petroleum product storage systems on tribal trust lands.* The owner or operator of a petroleum product storage system located on trust lands of an American Indian tribe may submit a claim for an award under sub. (4) if the owner or operator otherwise satisfies par. (a) and complies with the rules promulgated under this section and any rules of the department of agriculture, trade and consumer protection concerning petroleum product storage systems.

(b) *Claims submitted by owners or operators who were not owners or operators, or a person owning a home oil tank system when a petroleum product discharge occurred.* An owner or operator who was not the owner or operator, or a person who owns a home oil tank system who did not own the home oil tank system, when a petroleum product discharge occurred and who meets the requirements of this section may submit a claim for an award under sub. (4) unless the owner or operator or the person knew or should have known of the ineligibility of the previous owner or operator or of the person who previously owned the home oil tank system as a result of actions under sub. (4) (g) 4., 5. or 6.

(bm) *Agents.* Except as provided in par. (bn), an owner or operator or a person owning a home oil tank system may enter into a written agreement with a county or any other person under which that county or other person acts as an agent for the owner or operator or person owning a home oil tank system in conducting the activities required under par. (c). The owner or operator or person owning a home oil tank system and the agent shall jointly submit the claim for an award under sub. (4).

(bn) *Department of transportation as agent.* With the prior approval of the department and the owner or operator or person owning a home oil tank system, the department of transportation may act as an agent for an owner or operator or a person owning a home oil tank system whose petroleum product storage system or home oil tank system is located on property that is or may be affected by a transportation project under the jurisdiction of the department of transportation. The scope of the department of transportation's agency shall be limited to conducting the activities required under par. (c) and submitting the claim for an award under sub. (4) to be jointly paid to the owner or operator or person and the department of transportation for the eligible costs incurred by the department of transportation in conducting the activities required under par. (c).

(c) *Investigations, remedial action plans and remedial action activities.* Before submitting an application under par. (f), except

as provided under par. (g), an owner or operator or the person shall do all of the following:

1. Complete an investigation to determine the extent of environmental damage caused by a discharge from a petroleum product storage system or home oil tank system.

2. Prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted under subd. 3. and submit the remedial action plan to the department.

3. Conduct all remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11.

4. Receive written approval from the department that the remedial action activities performed under subd. 3. meet the requirements of s. 292.11.

(cm) *Monitoring as remedial action.* An owner or operator or person owning a home oil tank system may, with the approval of the department, satisfy the requirements of par. (c) 2. and 3. by proposing and implementing monitoring to ensure the effectiveness of natural attenuation of petroleum product contamination.

(cp) *Bidding process.* 1. Except as provided in subds. 2. and 5., if the department estimates that the cost to complete a site investigation, remedial action plan and remedial action for an occurrence exceeds $60,000, the department shall implement a competitive public bidding process to obtain information to assist in making the determination under par. (cs).

2. The department may waive the requirement under subd. 1. if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption.

5. The department may waive the requirement under subd. 1. after providing notice to the secretary of administration.

6. The department may disqualify a bid received under subd. 1. if, based on information available to the department and experience with remedial action at other sites, the bid is unlikely to establish an amount to sufficiently fund remedial action that will comply with par. (c) 3. and with enforcement standards.

7. The department may disqualify a person from submitting bids under subd. 1. if, based on past performance of the bidder, the department determines that the person has demonstrated an inability to complete remedial action within established cost limits.

(cs) *Determination of least costly method of remedial action.* 1. The department shall review the remedial action plan for a site and shall determine the least costly method of complying with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement for remedial action under this section is limited to the amount necessary to implement that method.

3. In making determinations under subd. 1., the department shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions.

(cw) *Annual reviews.* 1. The department shall conduct the annual review required under sub. (2) (i) 1. for a site and shall determine the least costly method of completing remedial action at the site in order to comply with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement under this section for any remedial action conducted after the date of the notice is limited to the amount necessary to implement that method.

3. In making determinations under subd. 1., the department shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions.

(d) *Final review of remedial action activities.* The department shall complete a final review of the remedial action activities within 60 days after the claimant notifies the department that the remedial action activities are completed.

(f) *Application.* A claimant shall submit a claim on a form provided by the department. The claim shall contain all of the following documentation of activities, plans and expenditures associated with the eligible costs incurred because of a petroleum products discharge from a petroleum product storage system:

1. A record of investigation results and data interpretation.

2. A remedial action plan.

3. Contracts for eligible costs incurred because of the discharge and records of the contract negotiations.

4. Accounts, invoices, sales receipts or other records documenting actual eligible costs incurred because of the discharge.

5. The written approval of the department under par. (c) 4.

6. Other records and statements that the department determines to be necessary to complete the application.

(g) *Emergency situations.* Notwithstanding pars. (a) 3. and (c) 1. and 2., an owner or operator or the person may submit a claim for an award under sub. (4) after notifying the department under par. (a) 3., without completing an investigation under par. (c) 1. and without preparing a remedial action plan under par. (c) 2., if an emergency existed which made the investigation under par. (c) 1. and the remedial action plan under par. (c) 2. inappropriate and, before conducting remedial action, the owner or operator or person notified the department of the emergency and the department authorized emergency action.

(h) *Initial eligibility review.* When an owner or operator or the person notifies the department under par. (a) 3., the department shall provide the owner or operator or the person with information on the program under this section and the department's estimate of the eligibility of the owner or operator or of the person for an award under this section.

(4) AWARDS FOR PETROLEUM PRODUCT INVESTIGATION, REMEDIAL ACTION PLANNING AND REMEDIAL ACTION ACTIVITIES. (a) *Awards.* 1. If the department finds that the claimant meets all of the requirements of this section and any rules promulgated under this section, the department shall issue an award to reimburse a claimant for eligible costs incurred because of a petroleum products discharge from a petroleum product storage system or home oil tank system.

2. The department may not issue an award before all eligible costs have been incurred and written approval is received under sub. (3) (c) 4., except as follows:

a. The department may issue an award before all eligible costs have been incurred and written approval is received under sub. (3) (c) 4. if the department determines that the delay in issuing the award would cause a financial hardship to the owner or operator or the person.

b. The department shall issue an award if the owner or operator or the person has incurred at least $50,000 in unreimbursed eligible costs and has not submitted a claim during the preceding 12 months.

5. The department shall review claims related to home oil tank discharges as soon as the claims are received. The department shall issue an award for an eligible home oil tank discharge as soon as it completes the review of the claim.

5m. The department shall review claims related to discharges from farm tanks described in par. (ei) as soon as the claims are received. The department shall issue an award for an eligible discharge from a farm tank described in par. (ei) as soon as it completes the review of the claim.

6. In any fiscal year, the department may not award more than 5 percent of the amount appropriated under s. 20.370 (6) (fr) as awards for petroleum product storage systems described in par. (ei).

7. In any fiscal year, the department may not award more than 5 percent of the amount appropriated under s. 20.370 (6) (fr) as awards for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

8. If an owner or operator or person owning a home oil tank system is conducting approved remedial action activities that were necessitated by a petroleum product discharge from a petroleum product storage system or home oil tank system and those remedial action activities have not remedied the discharge, then the department may approve financial assistance under this section for enhancements to the approved remedial action activities or different remedial action activities that the department determines will remedy the discharge without increasing the overall costs of remedying the discharge. The total amount of an original award under this section plus additional financial assistance provided under this subdivision is subject to the limits in pars. (d) to (e), (ei) and (em) on amounts of awards.

(b) *Eligible costs.* Except as provided in par. (c) or (cc), eligible costs for an award under par. (a) include actual costs or, if the department establishes a usual and customary cost under par. (cm) for an item, usual and customary costs for the following items:

1. Testing to determine tightness of tanks and lines if the method used is approved by the department.

2. Removal of petroleum products from surface waters, groundwater or soil.

3. Investigation and assessment of contamination caused by a petroleum product storage system or a home oil tank system.

4. Preparation of remedial action plans.

5. Removal of contaminated soils.

6. Soil treatment and disposal.

7. Environmental monitoring.

8. Laboratory services.

9. Maintenance of equipment for petroleum product recovery or remedial action activities.

10. Restoration or replacement of a private or public potable water system.

11. Restoration of environmental quality.

12. Contractor costs for remedial action activities.

13. Inspection and supervision.

14. Other costs identified by the department as necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of s. 292.11.

15. For an owner or operator only, compensation to 3rd parties for bodily injury and property damage caused by a petroleum products discharge from an underground petroleum product storage tank system.

Cross−reference: See also s. Ins 6.35, Wis. adm. code.

(c) *Exclusions from eligible costs.* Eligible costs for an award under par. (a) do not include the following, regardless of whether a competitive bidding process is used:

1. Costs incurred before August 1, 1987.

2. Costs of retrofitting or replacing a petroleum product storage system or home oil tank system.

3. Other costs that the department determines to be associated with, but not integral to, the eligible costs incurred because of a petroleum products discharge from a petroleum product storage system or home oil tank system.

4. Costs, other than costs for compensating 3rd parties for bodily injury and property damage, which the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the remedial action plan.

5. Costs for investigations or remedial action activities conducted outside this state.

6. Costs for remedial action activities funded under 42 USC 6991, unless the owner or operator or the person repays the funds provided under 42 USC 6991.

7. Costs of emptying, cleaning and disposing of the tank and other costs normally associated with closing or removing any petroleum product storage system or home oil tank system unless those costs were incurred before November 1, 1991, or unless the claimant had signed a contract for services for activities required under sub. (3) (c) or a loan agreement, note or commitment letter for a loan for the purpose of conducting activities required under sub. (3) (c) before November 1, 1991.

8. Interest costs incurred by an applicant that exceed interest at the following rate:

a. If the applicant has gross revenues of not more than $25,000,000 in the most recent tax year before the applicant submits a claim, 1 percent under the prime rate.

d. If the applicant has gross revenues of more than $25,000,000 in the most recent tax year before the applicant submits a claim, 4 percent.

9. Loan origination fees incurred by an applicant that exceed 2 percent of the principal amount of the loan.

10. Fees charged under s. 292.55 (2).

11. Costs that exceed the amount necessary to comply with sub. (3) (c) 3. and with enforcement standards using the least costly method.

12. Costs that are incurred after the date of a notice under sub. (3) (cw) 1. and that exceed the amount necessary to comply with sub. (3) (c) 3. and with enforcement standards using the method specified in the notice.

(cc) *Ineligibility for interest reimbursement.* 1. a. Except as provided in subd. 1m. or 2., if an applicant's final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60th day after receiving that notification are not eligible costs.

c. Except as provided in subd. 2., if an applicant does not complete the investigation of the petroleum product discharge by the first day of the 61st month after the month in which the applicant notified the department under sub. (3) (a) 3. or October 1, 2003, whichever is later, interest costs incurred by the applicant after the later of those days are not eligible costs.

1m. If an applicant received written notification that no further remedial action is necessary with respect to a discharge before September 1, 2001, and the applicant's final claim is submitted more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120th day after September 1, 2001, are not eligible costs.

2. Subdivision 1. does not apply to any of the following:

a. An applicant that is a local unit of government, if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment.

b. An applicant that is engaged in the expansion or redevelopment of brownfields, as defined in s. 238.13 (1) (a), if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment.

(ce) *Eligible cost; service providers.* The department may promulgate rules under which the department selects service providers to provide investigation or remedial action services in specified areas. The rules may provide that the costs of a service for which the department has selected a service provider in an area are not eligible costs under par. (b), or that eligible costs are limited to the amount that the selected service provider would have

charged, if an owner or operator of a petroleum product storage system located in that area, or a person owning a home oil tank system located in that area, uses a service provider other than the service provider selected by the department to perform the services. If the department selects service providers under this paragraph, it shall regularly update the list of service providers that it selects.

(cm) *Usual and customary costs.* The department shall establish a schedule of usual and customary costs for items under par. (b) that are commonly associated with claims under this section. The department shall use that schedule to determine the amount of eligible costs for an occurrence for which a competitive bidding process is not used, except in circumstances under which higher costs must be incurred to comply with sub. (3) (c) 3. and with enforcement standards. For an occurrence for which a competitive bidding process is used, the department may not use the schedule. In the schedule, the department shall specify the maximum number of reimbursable hours for particular tasks and the maximum reimbursable hourly rates for those tasks. The department shall use methods of data collection and analysis that enable the schedule to be revised to reflect changes in actual costs.

(d) *Awards for claims; underground systems.* 1. The department shall issue an award under this paragraph for a claim filed after July 31, 1987, for eligible costs, under par. (b), incurred on or after August 1, 1987, and before December 22, 2001, by the owner or operator of an underground petroleum product storage tank system and for eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of an underground petroleum product storage tank system if the petroleum product discharge on which the claim is based is confirmed and activities under sub. (3) (c) or (g) are begun before December 22, 2001.

2. The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds the deductible amount under par. (dg). An award issued under this paragraph may not exceed the following for each occurrence:

a. For an owner or operator of an underground petroleum product storage tank system that is located at a facility at which petroleum is stored for resale or an owner or operator of an underground petroleum product storage tank system that handles an annual average of more than 10,000 gallons of petroleum per month, $1,000,000.

b. For an owner or operator other than an owner or operator under subd. 2. a., c. or d., $500,000.

c. For an owner or operator of a petroleum product storage system described in par. (ei), $100,000.

d. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, $190,000.

3. The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than the following:

a. For an owner or operator of 100 or fewer underground petroleum product storage tank systems, $1,000,000.

b. For an owner or operator of more than 100 underground petroleum product storage tank systems, $2,000,000.

4. The department shall recalculate all awards issued under this paragraph, or under s. 101.143 (4) (e), 1987 stats., before May 3, 1990, according to all of the requirements of those provisions at the time that the award was made, except that the award shall be based on 100 percent of the eligible costs and except that the award shall be subject to the maximum amounts under subds. 2. and 3. The department shall issue an award under this subdivision for the difference between the award as recalculated under this subdivision and the award issued before May 3, 1990.

(dg) *Deductible; underground systems.* The amount of the deductible for an award under par. (d) is as follows for each occurrence:

2. For a school district or a technical college district with respect to a discharge from an underground petroleum product storage tank system that is used for storing heating oil for consumptive use on the premises, 25 percent of eligible costs.

4. For an owner or operator other than an owner or operator described in subd. 2., $2,500, plus 5 percent of eligible costs.

(di) *Rules concerning deductible for underground systems.* The department may promulgate rules describing a class of owners and operators of underground petroleum product storage tank systems otherwise subject to par. (dg) for whom the deductible is based on financial hardship.

(dm) *Awards for aboveground systems for a specified period.* 1. The department shall issue an award under this paragraph for a claim for eligible costs, under par. (b), incurred on or after August 1, 1987, and before December 22, 2001, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system and for eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system if the petroleum product discharge on which the claim is based is confirmed and activities under sub. (3) (c) or (g) are begun before December 22, 2001.

2. The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds the following deductible:

a. For the owner or operator of a terminal, $15,000 plus 10 percent of the amount by which eligible costs exceed $200,000.

b. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, 25 percent of eligible costs.

c. For the owner or operator of a petroleum product storage system that is described in par. (ei), $2,500 plus 5 percent of eligible costs per occurrence.

d. For an owner or operator other than an owner or operator under subd. 2. a., b. or c., $15,000 plus 2 percent of the amount by which eligible costs exceed $200,000.

3. An award issued under this paragraph may not exceed the following for each occurrence:

a. For an owner or operator of a petroleum product storage system that is located at a facility at which petroleum is stored for resale or an owner or operator of a petroleum product storage system that handles an annual average of more than 10,000 gallons of petroleum per month, $1,000,000.

b. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, $190,000.

c. For an owner or operator of a petroleum product storage system described in par. (ei), $100,000.

d. For an owner or operator other than an owner or operator under subd. 3. a., b. or c., $500,000.

4. The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than the following:

a. For an owner or operator of 100 or fewer petroleum product storage systems that are not underground petroleum product storage tank systems, $1,000,000.

b. For an owner or operator of more than 100 petroleum product storage systems that are not underground petroleum product storage tank systems, $2,000,000.

5. The department shall recalculate all awards issued under par. (e) before July 29, 1995, for eligible costs incurred before May 7, 1994, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system according to the eligibility requirements at the time that the awards were made except that the awards shall be subject to the deductible amounts under subd. 2. and the maximum amounts under subds. 3. and 4. The department shall issue an award under this subdivision for the difference between the award as recalculated under this subdivision and the award issued before July 29, 1995.

(dr) *Deductible in certain cases.* If a person is the owner or operator of an underground petroleum product storage tank system and a petroleum product storage system that is not an underground petroleum product storage tank system, both of which have discharged resulting in one occurrence, and if the person is eligible for an award under pars. (d) and (dm), the department shall calculate the award using the deductible determined under par. (d) 2. if the predominant method of petroleum product storage at the site, measured in gallons, is underground petroleum product storage tank systems or using the deductible determined under par. (dm) 2. if the predominant method of petroleum product storage at the site is not underground petroleum product storage tank systems.

(e) *Awards for certain owners or operators.* 1. The department shall issue an award under this paragraph for a claim for any of the following:

b. Eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage system if those costs are not reimbursable under par. (dm) 1.

c. Eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of an underground petroleum product storage tank system if those costs are not reimbursable under par. (d) 1.

2. The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount of $10,000, except that the deductible amount for a petroleum product storage system that is owned by a school district or a technical college district and that is used for storing heating oil for consumptive use on the premises where stored is 25 percent of eligible costs and except that the deductible for a petroleum product storage system that is described in par. (ei) is $2,500 plus 5 percent of the eligible costs, but not more than $7,500 per occurrence without regard to when the eligible costs are incurred.

2m. An award issued under this paragraph may not exceed $190,000 for each occurrence, except that an award under this paragraph to the owner or operator of a petroleum product storage system described in par. (ei) may not exceed $100,000 per occurrence.

3. The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than $190,000.

(ee) *Waiver of deductible.* Notwithstanding par. (d) 2., (dm) 2. or (e) 2., the department may waive the requirement that an owner or operator pay the deductible amount if the department determines that the owner or operator is unable to pay. If the department waives the requirement that an owner or operator pay the deductible, the department shall record a statement of lien with the register of deeds of the county in which the petroleum product storage system is located. If the department records the statement of lien, the department has a lien on the property on which the petroleum product storage system is located in the amount of the deductible that was waived. The property remains subject to the lien until that amount is paid in full.

(ei) *Awards for certain farm tanks.* A farm tank of 1,100 gallons or less capacity storing petroleum products that are not for resale, together with any on−site integral piping or dispensing system, is a petroleum product storage system for the purposes of this section, if all of the following apply:

1m. One of the following conditions is satisfied:

a. The owner or operator of the farm tank owns a parcel of 35 or more acres of contiguous land, on which the farm tank is located, which is devoted primarily to agricultural use, as defined in s. 91.01 (2), including land designated by the department as part of the ice age trail under s. 23.17, which during the year preceding submission of a first claim under sub. (3) produced gross farm profits, as defined in s. 71.58 (4), of not less than $6,000 or which, during the 3 years preceding that submission produced gross farm profits, as defined in s. 71.58 (4), of not less than $18,000, or a parcel of 35 or more acres, on which the farm tank is located, of which at least 35 acres, during part or all of the year preceding that submission, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

b. The claim is submitted by a person who, at the time that the notification was made under sub. (3) (a) 3., was the owner of the farm tank and owned a parcel of 35 or more acres of contiguous land, on which the farm tank is or was located, which was devoted primarily to agricultural use, as defined in s. 91.01 (2), including land designated by the department as part of the ice age trail under s. 23.17, which during the year preceding that notification produced gross farm profits, as defined in s. 71.58 (4), of not less than $6,000 or which, during the 3 years preceding that notification, produced gross farm profits, as defined in s. 71.58 (4), of not less than $18,000, or a parcel of 35 or more acres, on which the farm tank is located, of which at least 35 acres, during part or all of the year preceding that notification, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

2m. The owner or operator of the farm tank has received a letter or notice from the department indicating that the owner or operator must conduct a site investigation or remedial action because of a discharge from the farm tank or an order to conduct such an investigation or remedial action.

(em) *Awards for claims for home oil tank system discharges.* 1. The department shall issue an award for a claim filed after May 17, 1988, for eligible costs, under par. (b), incurred on or after August 1, 1987, by a person who owns a home oil tank system.

2. The department shall issue the award under this paragraph without regard to fault for each home oil tank system in an amount equal to 75 percent of the amount of the eligible costs, except that, if the home oil tank system is owned by a nonprofit organization that provides housing assistance to families with incomes below 80 percent of the median family income, as determined annually by the U.S. department of housing and urban development for each county in the state, of the county in which the home oil tank system is located, then the award shall equal 100 percent of the amount of the eligible costs. The department shall recalculate any award made to such a nonprofit organization under this paragraph before May 7, 1994, based on 100 percent of eligible costs and shall issue an award for the difference between the award as recalculated and the award issued before May 7, 1994.

3. An award issued under this paragraph may not exceed $7,500.

(es) *Awards for claims for investigations.* 1. The department shall issue an award for a claim filed after August 9, 1989, for eligible costs, under par. (b), incurred on or after August 1, 1987, by an owner or operator or a person owning a home oil tank system in investigating the existence of a discharge or investigating the presence of petroleum products in soil or groundwater if the investigation is undertaken at the written direction of the department and no discharge or contamination is found.

2. The department shall issue the award under this paragraph without regard to fault for each petroleum product storage system or home oil tank system in an amount equal to the eligible costs incurred.

3. If an award has been made under this paragraph and a discharge or contamination is found in a subsequent investigation,

the department shall reduce the award under par. (d) or (e) by the amount paid under this paragraph.

(f) *Contributory negligence.* Contributory negligence shall not be a bar to submitting a claim under this section and no award under this section may be diminished as a result of negligence attributable to the claimant or any person who is entitled to submit a claim.

(g) *Denial of claims, limits on awards.* The department shall deny a claim under par. (a) if any of the following applies:

1. The claim is not within the scope of this section.

2. The claimant submits a fraudulent claim.

3. The claimant has been grossly negligent in the maintenance of the petroleum product storage system or home oil tank system.

4. The claimant intentionally damaged the petroleum product storage system or home oil tank system.

5. The claimant falsified storage records.

6. The claimant willfully failed to comply with laws or rules of this state concerning the storage of petroleum products.

7. The petroleum product discharge was caused by a person who provided services or products to the claimant or to a prior owner or operator of the petroleum product storage system or home oil tank system.

(h) *Reductions of awards.* 1. Notwithstanding pars. (d) 2. (intro.), (dm) 2. (intro.), (e) 2. and (em) 2., if an owner or operator or person owning a home oil tank system prepares and submits a claim that includes ineligible costs that are identified under subd. 2., the department shall calculate the award by determining the amount that the award would otherwise be under par. (d), (dm), (e) or (em) based only on the eligible costs and then by reducing that amount by 50 percent of the amount of the ineligible costs identified under subd. 2. that are included in the claim.

1m. If a consultant prepares a claim that is submitted by a claimant and that includes ineligible costs that are identified under subd. 2., the consultant shall pay to the department an amount equal to 50 percent of the ineligible costs identified under subd. 2. that are included in the claim. A consultant may not charge the owner or operator for any amount that the consultant is required to pay under this subdivision. Payments made under this subdivision shall be deposited in the petroleum inspection fund.

2. The department shall promulgate a rule identifying the ineligible costs to which subds. 1. and 1m. apply.

(4e) PAYMENTS TO LENDERS. (a) Notwithstanding sub. (4) (g), when the department denies a claim under sub. (3) because of fraud, gross negligence or willful misconduct on the part of an owner or operator, the department shall pay, to a person who loaned money to the owner or operator for the purpose of conducting activities under sub. (3) (c), an amount equal to the amount that would have been paid under sub. (4) for otherwise eligible expenses actually incurred, but not more than the amount specified under par. (b), if all of the following conditions are satisfied:

1. The lender assigns to the department an interest in the collateral pledged by the owner or operator for the sole purpose of securing the loan that was made to finance the activities under sub. (3) (c). If the amount of the payment under this subsection is less than the amount of the loan, the lender shall assign to the department that fraction of the lender's interest in the collateral that equals the ratio of the amount of the payment under this subsection to the amount of the loan.

2. For a loan that is made after July 29, 1995, before the lender made any disbursement of the loan the department provided a letter indicating its preliminary determination that the owner or operator was eligible for an award under sub. (4).

3. For a loan that is made after July 29, 1995, claims for payment under sub. (3) are made after completion of the site investigation and remedial action plan, after completion of the remedial action and annually for any continuing maintenance, monitoring and operation costs.

(b) Payment under this section may not exceed the amount of the loan. If the loan is made after July 29, 1995, payment under this section may not exceed the amount of the loan disbursements made before the department notifies the lender that the claim may be denied.

(c) Assignment of an interest in collateral to the department under par. (a) 1. does not deprive a lender of its right to any cause of action arising out of the loan documents.

(d) Any payments made by the department under this subsection constitute a lien upon the property on which the remedial action is conducted if the department records the lien with the register of deeds in the county in which the property is located.

(4m) ASSIGNMENT OF AWARDS. The filing by a claimant with the department of an assignment of an award under sub. (4) to a person who loans money to the claimant for the purpose of conducting activities required under sub. (3) (c) creates and perfects a lien in favor of the assignee in the proceeds of the award. The lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this subsection has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

(5) RECOVERY OF AWARDS. (a) *Sale of remedial equipment or supplies.* If a person who received an award under this section sells equipment or supplies that were eligible costs for which the award was issued, the person shall pay the proceeds of the sale to the department. The proceeds shall be paid into the petroleum inspection fund.

(am) *Right of action.* A right of action under this section shall accrue to the state against an owner, operator or other person only if one of the following applies:

1. The owner, operator or other person submits a fraudulent claim or does not meet the requirements under this section and an award is issued under this section to the owner, operator or other person for eligible costs under this section or payment is made to a lender under sub. (4e).

2. A person fails to make a payment required under par. (a).

(b) *Action to recover awards.* The attorney general shall take action as is appropriate to recover moneys to which the state is entitled under par. (am). The department shall request that the attorney general take action if the department discovers a fraudulent claim after an award is issued.

(c) *Disposition of funds.* The net proceeds of a recovery under par. (b) shall be paid into the petroleum inspection fund.

(6) REQUIREMENT FOR PROOF OF FINANCIAL RESPONSIBILITY. (a) An owner or operator covered under sub. (4) (d) shall provide to the department proof of financial responsibility for the first $5,000 of eligible costs incurred because of a petroleum products discharge. The proof of financial responsibility shall be in a form determined by the department to provide assurance equal to that provided under 40 CFR 280.97 (b) (1) 2. b. that may include a bond, an irrevocable letter of credit, a deposit or an escrow account made payable to or established for the benefit of the department.

(b) The department shall determine whether proof of financial responsibility submitted under par. (a) satisfies par. (a).

(6s) ARBITRATION. Upon the request of a person who files an appeal of a decision of the department under this section, if the amount at issue is $100,000 or less, the appeal shall be heard by one or more individuals designated by the department to serve as arbitrator under rules promulgated for this purpose by the department. In such an arbitration, the arbitrator shall render a decision at the conclusion of the hearing, or within 5 business days after the conclusion of the hearing if the arbitrator determines that additional time is needed to review materials submitted during the hearing, affirming, modifying or rejecting the decision of the department. The arbitrator shall promptly file his or her decision with the department. The decision of the arbitrator is final and

shall stand as the decision of the department. An arbitrator's decision may not be cited as precedent in any other proceeding before the department or before any court. A decision under this subsection is subject to review under ss. 227.53 to 227.57 only on the ground that the decision was procured by corruption, fraud or undue means. The record of a proceeding under this subsection shall be transcribed as provided in s. 227.44 (8).

(7) LIABILITY. (a) No common law liability, and no statutory liability which is provided in a statute other than this section, for damages resulting from a petroleum product storage system or home oil tank system is affected by this section. Except as provided in par. (am), the authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any statute other than this section or provided at common law.

(am) An award under this section is the exclusive method for the recovery of the amount of eligible costs equal to the amount of the award that may be issued under this section.

(b) If a person conducts a remedial action activity for a discharge at a petroleum product storage system or home oil tank system site, whether or not the person files a claim under this section, the claim and remedial action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

(7m) INTERVENTION IN 3RD−PARTY ACTIONS. An owner or operator of an underground petroleum product storage tank system shall notify the department of any action by a 3rd party against the owner or operator for compensation for bodily injury or property damage caused by a petroleum products discharge from the underground petroleum product storage tank system if the owner or operator may be eligible for an award under this section. The department may intervene in any action by a 3rd party against an owner or operator for compensation for bodily injury or property damage caused by a petroleum products discharge from an underground petroleum product storage tank system if the owner or operator may be eligible for an award under this section for compensation awarded in the action.

(9) RECORDS. (a) The department shall promulgate rules prescribing requirements for the records to be maintained by an owner or operator, person owning a home oil tank system or service provider and the periods for which they must retain those records.

(b) The department may inspect any document in the possession of an owner or operator, person owning a home oil tank system or service provider or any other person if the document is relevant to a claim for reimbursement under this section.

(9m) REVENUE OBLIGATIONS. (a) For purposes of subch. II of ch. 18, the petroleum storage remedial action program is a special fund program, and the petroleum inspection fund is a special fund. The petroleum inspection fund is a segregated fund created by the imposition of fees, penalties or excise taxes. The legislature finds and determines that a nexus exists between the petroleum storage remedial action program and the petroleum inspection fund in that fees imposed on users of petroleum are used to remedy environmental damage caused by petroleum storage.

(b) Deposits, appropriations or transfers to the petroleum inspection fund for the purposes of the petroleum storage remedial action program may be funded with the proceeds of revenue obligations issued subject to and in accordance with subch. II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV of ch. 18.

(e) The department shall have all other powers necessary and convenient to distribute the special fund revenues and to distribute the proceeds of the revenue obligations in accordance with subch. II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV of ch. 18, and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection.

(f) The department may enter into agreements with the federal government or its agencies, political subdivisions of this state, individuals or private entities to insure or in any other manner provide additional security for the revenue obligations issued under this subsection.

(g) 1. Subject to the limitation under subd. 2., the building commission shall contract revenue obligations under this subsection, as soon as practicable after October 29, 1999, in the maximum amount that the building commission believes can be fully paid on a timely basis from moneys received or anticipated to be received.

2. Revenue obligations issued under this subsection may not exceed $386,924,000 in principal amount, excluding any obligations that have been defeased under a cash optimization program administered by the building commission. In addition to this limit on principal amount, the building commission may contract revenue obligations under this subsection as the building commission determines is desirable to fund or refund outstanding revenue obligations, to pay issuance or administrative expenses, to make deposits to reserve funds, to pay accrued or capitalized interest, and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection.

(h) Unless otherwise expressly provided in resolutions authorizing the issuance of revenue obligations or in other agreements with the owners of revenue obligations, each issue of revenue obligations under this subsection shall be on a parity with every other revenue obligation issued under this subsection and in accordance with subch. II of ch. 18 and, if designated a higher education bond, in accordance with subch. IV of ch. 18.

(i) Recognizing its moral obligation to do so, the legislature expresses its expectation and aspiration that, if the legislature reduces the rate of the petroleum inspection fee and if the funds in the petroleum inspection fund are insufficient to pay the principal and interest on the revenue obligations issued under subch. II or IV of ch. 18 pursuant to this subsection, the legislature shall make an appropriation from the general fund sufficient to pay the principal and interest on the obligations.

(10) PENALTIES. (a) Any owner or operator, person owning a home oil tank system or service provider who fails to maintain a record as required by rules promulgated under sub. (9) (a) may be required to forfeit not more than $5,000. Each day of continued violation constitutes a separate offense.

(b) Any owner or operator, person owning a home oil tank system or service provider who intentionally destroys a document that is relevant to a claim for reimbursement under this section is guilty of a Class G felony.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75; 2007 a. 20, 145; 2009 a. 28, 240; 2011 a. 32; 2013 a. 20 ss. 1634 to 1706; Stats. 2013 s. 292.63; 2013 a. 173 s. 33; 2015 a. 55.

Cross−reference: See also ch. NR 747, Wis. adm. code.

That the commingling of contaminants from separate tanks was below DNR clean−up levels did not eliminate the fact that commingling can still occur resulting in one occurrence under sub. (1) (cs). Mews v. Department of Commerce, 2004 WI App 24, 269 Wis. 2d 641, 676 N.W.2d 160, 03−0055.

The proceeds of general obligation bonds may be used to fund awards under this section. 81 Atty. Gen. 114.

292.64 Removal of abandoned underground petroleum storage tanks. (1) In this section:

(a) "Backfill" does not include landscaping or replacing sidewalk, asphalt, fence, or sod or other vegetation.

(b) "Underground petroleum product storage tank system" has the meaning given in s. 292.63 (1) (i).

(2) The department may contract with a person registered or certified under s. 168.23 to empty, clean, remove, and dispose of an underground petroleum product storage tank system; to assess the site on which the underground petroleum product storage tank

system is located; and to backfill the excavation if all of the following apply:

(a) The department determines that the underground petroleum product storage tank system is abandoned.

(b) Using the method that the department uses to determine inability to pay under s. 292.63 (4) (ee), the department determines that the owner of the underground petroleum product storage tank system is unable to pay to empty, clean, remove, and dispose of the underground petroleum product storage tank system; to assess the site on which the underground petroleum product storage tank system is located; and to backfill the excavation.

(3) If the department incurs costs under sub. (2), the department shall record a statement of lien with the register of deeds of the county in which the underground petroleum product storage tank system was located. Upon recording the statement of lien, the department has a lien on the property on which the underground petroleum product storage tank system was located in the amount of the costs incurred. The property remains subject to the lien until that amount is paid in full to the department. The department shall deposit payments received under this subsection into the petroleum inspection fund.

History: 2009 a. 28; 2013 a. 20 s. 1707; Stats. 2013 s. 292.64; 2013 a. 173.

292.65 Dry cleaner environmental response program.

(1) DEFINITIONS. In this section:

(b) "Case closure letter" means a letter provided by the department that states that, based on information available to the department, no further remedial action is necessary with respect to a dry cleaning product discharge.

(d) "Dry cleaning facility" means a facility for cleaning apparel or household fabrics for the general public using a dry cleaning product, other than a facility that is one of the following:

1. A coin−operated facility.
2. A facility that is located on a U.S. military installation.
3. An industrial laundry.
4. A commercial laundry.
5. A linen supply facility.
6. A facility that is located at a prison or other penal institution.
7. A facility that is located at a nonprofit hospital or at another nonprofit health care institution.
8. A facility that is located on property that is owned by the federal government or by this state or that is located on property that was owned by the federal government or by this state when the facility was operating.
9. A formal wear rental firm.

(e) "Dry cleaning product" means a hazardous substance used to clean apparel or household fabrics, except for a hazardous substance used to launder apparel or household fabrics.

(ek) "Formal wear" includes tuxedos, suits and dresses, but does not include costumes, table linens and household fabrics.

(em) "Formal wear rental firm" means a facility that rents formal wear to the general public and dry cleans only the formal wear that it rents to the general public.

(g) "Groundwater" has the meaning given in s. 281.75 (1) (c).

(gm) "Immediate action" means a remedial action that is taken within a short time after a discharge of dry cleaning product occurs, or after the discovery of a discharge of dry cleaning product, to halt the discharge, contain or remove discharged dry cleaning product, or remove contaminated soil or water in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands, and waters of the state and to eliminate any imminent threat to public health, safety, or welfare.

(gs) "Interim action" means a remedial action that is taken to contain or stabilize a discharge of a dry cleaning product, in order to minimize any threats to public health, safety, or welfare or to the environment, while other remedial actions are being planned.

(gv) "Launder" means to use water and detergent as the main process for cleaning apparel or household fabrics.

(h) "Operator" means any of the following:

1. A person who holds the license under s. 77.9961 (2) for a dry cleaning facility.
2. A subsidiary or parent corporation of the person specified under subd. 1.
3. A person who operated a dry cleaning facility that ceased operating before October 14, 1997.
4. A person who operated a dry cleaning facility that ceased operation after October 13, 1997, but that was licensed under s. 77.9961 (2) before it ceased operation.

(i) "Owner" means any of the following:

1. A person who owns, or has possession or control of, and who receives or received direct or indirect consideration from the operation of, any of the following:
   a. A dry cleaning facility that is licensed under s. 77.9961 (2).
   b. A dry cleaning facility that has ceased operation but that, if it ceased operation on or after October 14, 1997, was licensed under s. 77.9961 (2) before it ceased operation.
2. A subsidiary or parent corporation of the person specified under subd. 1.
3. A person who owns the property on which one of the following is located:
   a. A dry cleaning facility that is licensed under s. 77.9961 (2).
   b. A dry cleaning facility that has ceased operation but that was licensed under s. 77.9961 (2) before it ceased operation and was licensed and operating while the person owned the property.

(j) "Program year" means the period beginning on July 1, and ending on the following June 30.

(L) "Service provider" means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor or any other person who provides a product or service for which an application for reimbursement has been or will be filed under this section, or a subcontractor of such a person.

(m) "Subsidiary or parent corporation" means a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long−term contractual arrangement with a person to avoid direct responsibility for conditions at a dry cleaning facility.

(3) DUTIES OF THE DEPARTMENT. (a) The department shall promulgate rules for the administration of the program under this section.

(am) 1. The department shall establish a method for determining the order in which it pays awards under this section. Except as provided in subd. 2., the method shall be based on environmental factors and on the order in which applications are received.

2. The department shall pay an award for immediate action activities before it pays other awards.

(b) The department shall promote the program under this section to persons who may be eligible for awards.

(c) The department shall allocate 9.7 percent of the funds appropriated under s. 20.370 (6) (eq) in each fiscal year for awards for immediate action activities and applications that exceed the amount anticipated.

(d) The department shall keep records and statistics on the program under this section and shall periodically evaluate the effectiveness of the program.

(e) No later than January 1, 2002, the department shall complete a review of the program under this section and shall submit a report on the results of the review to the joint committee on finance and to the appropriate standing committees of the legislature, as determined by the speaker of the house and the president of the senate, under s. 13.172 (3). The report shall include the department's recommendations for changes to the program. The review shall include consideration of whether the program should be expanded or ended, whether the program should be incorpo-

rated into a broader program of financial assistance for the remediation of environmental contamination and whether private insurance coverage should be required for any dry cleaning facilities.

(4) PROCESS; ELIGIBILITY. (a) *General requirements.* To be eligible for an award under this section, the owner or operator of a dry cleaning facility shall comply with pars. (b), (c), (e), (f) and (j) and the other requirements of this section applicable to the owner or operator.

(b) *Report.* An owner or operator shall report a dry cleaning product discharge to the department in a timely manner, as provided in s. 292.11.

(c) *Notification of potential claim.* 1. An owner or operator shall notify the department, before conducting a site investigation or any remedial action activity, of the potential for submitting an application for an award under this section, except as provided in subd. 2.

2. Subdivision 1. does not apply to an owner or operator who began a site investigation or remedial action activity before October 14, 1997.

(d) *Information from department.* When an owner or operator notifies the department under par. (c) 1., the department shall provide the owner or operator with information on the program under this section and the department's estimate of the eligibility of the owner or operator for an award under this section.

(e) *Investigation.* After notifying the department under par. (c) 1., if applicable, and before conducting remedial action activities, an owner or operator shall complete an investigation to determine the extent of environmental impact of the dry cleaning product discharge, except as provided in pars. (g) and (h).

(f) *Remedial action plan.* After completing the investigation under par. (e) and before conducting remedial action activities, an owner or operator shall prepare a remedial action plan, based on the investigation under par. (e), that identifies specific remedial action activities proposed to be conducted, except as provided in pars. (g) and (h).

(g) *Immediate action.* An owner or operator is not required to complete an investigation or prepare a remedial action plan before conducting an immediate action activity if the department determines that an immediate action is necessary.

(h) *Interim action.* An owner or operator is not required to complete an investigation or prepare a remedial action plan before conducting an interim action activity if the department determines that an interim action is necessary.

(i) *Review of site investigation and remedial action plan.* The department shall, at the request of an owner or operator, review the site investigation results and the remedial action plan and advise the owner or operator on the adequacy of the proposed remedial action activities in meeting the requirements of this section. The department shall complete the review of the site investigation and remedial action plan within 45 days. The department shall also provide an estimate of when funding will be available to pay an award for remedial action conducted in response to the dry cleaning product discharge.

(j) *Remedial action.* The owner or operator shall conduct all remedial action activities that are required under this section in response to the dry cleaning product discharge, including all of the following:

1. Recovering any recoverable dry cleaning product from the environment.

2. Managing any residual solid or hazardous waste in a manner consistent with local, state and federal law.

3. Restoring groundwater according to the standards promulgated by the department under ss. 160.07 and 160.09.

(k) *Agents.* An owner or operator may enter into a written agreement with another person under which that other person acts as an agent for the owner or operator in conducting the activities under pars. (e) to (j). If an agreement is entered into under this paragraph, all requirements applicable to an owner or operator under par. (m) and subs. (8) (a), (8m), and (12) apply to the agent. The owner or operator or the agent may submit the application for an award under this section.

(L) *Awards for dry cleaning facilities on tribal trust lands.* The owner or operator of a dry cleaning facility located on trust lands of an American Indian tribe may be eligible for an award under this section if the owner or operator otherwise satisfies the requirements of this subsection and complies with the rules promulgated under this section and any other rules promulgated by the department concerning dry cleaning facilities.

(m) *Notification of applications and receipt of funds.* An owner or operator shall notify the department of any application, including any insurance claim, made to obtain funds to cover eligible costs or to obtain a tax credit based on eligible costs, the status of the application, and, if the owner or operator has received any funds or any tax credit arising from the application, the amount of funds or tax credit received.

(5) ENHANCED POLLUTION PREVENTION MEASURES. (a) 1. The owner or operator of a dry cleaning facility on which construction begins after October 14, 1997, is not eligible for an award under this section unless the owner or operator has implemented the enhanced pollution prevention measures described in par. (b).

2. The owner or operator of a dry cleaning facility on which construction began on or before October 14, 1997, is ineligible for an award under this section with respect to a discharge that occurs on or after the 91st day after the day on which the department issues a case closure letter with respect to an earlier discharge of dry cleaning solvent from the dry cleaning facility, unless the owner or operator has implemented the enhanced pollution prevention measures described in par. (b).

(b) An owner or operator who is required to implement enhanced pollution prevention measures under par. (a) shall demonstrate all of the following:

3. That each machine or other piece of equipment in which dry cleaning product is used, or the entire area in which those machines or pieces of equipment are located, is surrounded by a containment dike or other containment structure that is able to contain any leak, spill, or other release of dry cleaning product from the machines or other pieces of equipment.

4. That the floor within any area surrounded by a dike or other containment structure under subd. 3. is sealed or is otherwise impervious to dry cleaning product.

(c) The owner or operator of a dry cleaning facility is not eligible for an award under this section unless the owner or operator has implemented the following enhanced pollution prevention measures:

1. That the owner or operator manages all wastes that are generated at the dry cleaning facility and that contain dry cleaning product as hazardous wastes in compliance with ch. 291 and 42 USC 6901 to 6991i.

2. That the dry cleaning facility does not discharge dry cleaning product or wastewater from dry cleaning machines into any sanitary sewer or septic tank or into the waters of this state.

3. That any perchloroethylene delivered to the dry cleaning facility is delivered by means of a closed, direct−coupled delivery system.

(7) ELIGIBLE COSTS. (a) *General.* Subject to pars. (c), (ce), (cm), and (d), eligible costs for an award under this section include reasonable and necessary costs incurred by the owner or operator of a dry cleaning facility because of a discharge of dry cleaning product at the dry cleaning facility for the following items only:

1. Removal of dry cleaning solvents from surface waters, groundwater or soil.

2. Investigation and assessment of contamination caused by a dry cleaning product discharge from a dry cleaning facility.

3. Preparation of remedial action plans.

4. Removal of contaminated soils.

5. Soil and groundwater treatment and disposal.

6. Environmental monitoring.

7. Laboratory services.

8. Maintenance of equipment for dry cleaning product recovery performed as part of remedial action activities.

9. Restoration or replacement of a private or public potable water supply.

10. Restoration of environmental quality.

11. Contractor costs for remedial action activities.

12. Inspection and supervision.

14. Other costs identified by the department as reasonable and necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of s. 292.11.

(b) *Costs incurred by 3rd parties.* 1. In this paragraph, "3rd party" means a person who is not an owner or operator or the agent of an owner or operator.

2. Eligible costs for an award under this section include reasonable and necessary costs, up to $15,000, incurred by a 3rd party in the discovery of a discharge of dry cleaning product from an eligible owner's or operator's dry cleaning facility before the eligible owner or operator discovered the discharge, notwithstanding noncompliance with the procedural requirements of sub. (4) in relation to the costs incurred by the 3rd party.

(c) *Exclusions from eligible costs.* Eligible costs for an award under this section do not include the following:

1. Costs incurred before October 14, 1997.

2. Costs of retrofitting or replacing dry cleaning equipment.

3. Other costs that the department determines to be associated with, but not integral to, the investigation and remediation of a dry cleaning product discharge from a dry cleaning facility.

4. Costs that the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the remedial action plan.

5. Costs for investigations or remedial action activities conducted outside this state.

6. Costs of financing eligible activities.

(ce) *Usual and customary costs.* The department may establish a schedule of usual and customary costs for any items under par. (a) and may use that schedule to determine the amount of an applicant's eligible costs.

(cm) *Eligible cost; service providers.* The department may promulgate rules under which the department selects service providers to provide investigation or remedial action services in specified areas. The rules may provide that the costs of a service for which the department has selected a service provider in an area are not eligible costs under par. (a), or that eligible costs are limited to the amount that the selected service provider would have charged, if an owner or operator of a dry cleaning facility located in that area uses a service provider other than the service provider selected by the department to perform the services. If the department selects service providers under this paragraph, it shall regularly update the list of service providers that it selects.

(d) *Discharges from multiple activities.* If hazardous substances are discharged at a dry cleaning facility as a result of dry cleaning operations and as a result of other activities, eligible costs under this section are limited to activities necessitated by the discharge of dry cleaning product.

(8) AWARDS. (a) *Application.* An owner or operator shall submit an application on a form provided by the department. An owner or operator may not submit an application if the owner or operator submits the notification of potential claim under sub. (4)(c) after August 30, 2008. The department shall authorize owners and operators to apply for awards at stages in the process under sub. (4) that the department specifies by rule. An application shall include all of the following documentation of activities, plans, and expenditures associated with the eligible costs incurred because of a dry cleaning product discharge from a dry cleaning facility:

1. A record of investigation results and data interpretation.

2. A remedial action plan.

3. Contracts for eligible costs incurred because of the discharge and records of the contract negotiations.

4. Accounts, invoices, sales receipts or other records documenting actual eligible costs incurred because of the discharge.

4m. If the owner or operator receives any funds arising from an application, including an insurance claim, for any eligible costs or a tax credit based on eligible costs, a record of the payment.

5. Other records and statements that the department determines to be necessary to complete the application.

(b) *Acknowledgement.* The department shall acknowledge, in writing, the receipt of an application under par. (a).

(c) *Approval.* Subject to par. (d), if the department finds that an applicant meets the requirements of this section and rules promulgated under this section, the department shall make an award as provided in this subsection to the applicant for eligible costs. The department may not make an award for an investigation before it approves the investigation. The department may not make an award for remedial action activities before it approves the remedial action activities.

(d) *Denial of applications.* The department shall deny an application under this section if any of the following applies:

1. The application is not within the scope of this section.

2. The applicant submits a fraudulent application.

3. The applicant has been grossly negligent in the maintenance of the dry cleaning facility.

4. The applicant intentionally damaged the dry cleaning equipment.

5. The applicant falsified records.

6. The applicant willfully failed to comply with laws or rules of this state concerning the use or disposal of dry cleaning solvents.

7. All of the fees, interest, and penalties due under ss. 77.9961, 77.9962, and 77.9964 have not been paid unless an agreement has been entered into with the department of revenue establishing a payment schedule for all of the fees, interest, and penalties due.

8. The dry cleaning product discharge was caused on or after October 14, 1997, by a person who provided services or products to the owner or operator or to a prior owner or operator of the dry cleaning facility, including a person who provided perchloroethylene to the owner or operator or prior owner or operator of a dry cleaning facility using a system other than a closed, direct−coupled delivery system.

(e) *Deductible.* The department may make an award to the owner or operator of a dry cleaning facility only for eligible costs incurred at each dry cleaning facility that exceed the following deductible:

1. If eligible costs are $200,000 or less, $10,000.

2. If eligible costs exceed $200,000 but do not exceed $400,000, $10,000 plus 8 percent of the amount by which eligible costs exceed $200,000.

3. If eligible costs exceed $400,000, $26,000 plus 10 percent of the amount by which eligible costs exceed $400,000.

(f) *Maximum awards.* The department may not issue financial assistance under this section for reimbursement for costs incurred at a single dry cleaning facility that totals more than $500,000.

(g) *Waiver of deductible.* Notwithstanding par. (e), the department may waive the requirement that an owner or operator pay the deductible amount if the department determines that the owner or operator is unable to pay. If the department waives the requirement that an owner or operator pay the deductible, the department shall record a statement of lien with the register of deeds of the county in which the dry cleaning facility is located. If the department records the statement of lien, the department has a lien on the property on which the dry cleaning facility is located in the

amount of the deductible that was waived. The property remains subject to the lien until that amount is paid in full.

(h) *Contributory negligence.* The department may not diminish or deny an award under this section as a result of negligence attributable to the applicant or any person who is entitled to submit an application, except as provided in par. (d) 3.

(i) *Assignment of awards.* The filing by an applicant with the department of an assignment of an award under this section to a person who loans money to the applicant for the purpose of conducting activities required under sub. (4) creates and perfects a lien in favor of the assignee in the proceeds of the award. The lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this paragraph has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

(j) *Reduction of awards.* 1. If an owner or operator prepares and submits an application that includes ineligible costs that are identified under subd. 3., the department shall calculate the award by determining the amount that the award would otherwise be under pars. (e) and (f) based only on the eligible costs and then by reducing that amount by 50 percent of the ineligible costs under subd. 2. that are included in the application.

2. If a person other than an owner or operator prepares an application that is submitted by the owner or operator and that includes ineligible costs that are identified under subd. 3., the person shall pay to the department an amount equal to 50 percent of the ineligible costs identified under subd. 3. that are included in the application. A person, other than an owner or operator, who prepares an application may not charge the owner or operator for any amount that the person is required to pay under this subdivision. Payments made under this subdivision shall be deposited in the dry cleaner environmental response fund.

3. The department shall promulgate a rule identifying the ineligible costs to which subds. 1. and 2. apply.

3m. If a person other than an owner or operator prepares a statement that is submitted by the owner or operator to obtain payment for costs incurred by a 3rd party under sub. (7) (b) and the statement includes ineligible costs, the person shall pay to the department an amount equal to 50 percent of the amount of ineligible costs included in the statement. Payments made under this subdivision shall be deposited in the dry cleaner environmental response fund.

4. If, prior to receiving an award under this section, an owner or operator receives payment from another person, including an insurance company, arising out of an application for payment of any eligible costs or receives a tax credit based on any eligible costs, the department may not reimburse the owner or operator any amount that exceeds the difference between the amount of the award calculated under subd. 1. or 2. and pars. (e) and (f) and the amount by which the payment exceeds the sum of the deductible and the amount by which the amount calculated under par. (e) exceeds the maximum award under par. (f).

(8m) REIMBURSEMENT OF PAYMENTS AND TAX CREDITS. If, after an owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out of an application for payment of any eligible costs or receives a tax credit based on any eligible costs, the owner or operator shall pay to the department any amount by which the payment or tax credit exceeds the difference between the total amount of eligible costs and the amount of the award, but not more than the amount of the award. The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund.

(9) RECOVERY OF AWARDS. (a) *Right of action.* A right of action under this section shall accrue to the state against an owner or operator only if the owner or operator submits a fraudulent application or does not meet the requirements under this section and if an award is issued under this section to the owner or operator for eligible costs under this section.

(b) *Action to recover awards.* The attorney general shall take appropriate actions to recover awards to which the state is entitled under par. (a). The department shall request that the attorney general take action if the department discovers a fraudulent application after an award is issued.

(c) *Disposition of funds.* The net proceeds of the recovery under par. (b) shall be paid into the dry cleaner environmental response fund.

(10) LIABILITY. (a) No common law liability, and no statutory liability that is provided in a statute other than this section, for damages resulting from a dry cleaning facility is affected by this section. Except as provided in par. (b), the authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any statute other than this section or provided at common law.

(b) An award under this section is the exclusive method for the recovery of the amount of eligible costs equal to the amount of the award that may be issued under this section.

(c) If a person conducts a remedial action activity for a discharge at a dry cleaning facility site, whether or not the person files an application under this section, the remedial action activity conducted and any application filed under this section are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

(11) ENVIRONMENTAL FUND REIMBURSEMENT. If the department expends funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because of a discharge of dry cleaning product at a dry cleaning facility and there is a person who would be an eligible owner or operator under this section for the dry cleaning facility, the department shall transfer from the appropriation account under s. 20.370 (6) (eq) to the environmental fund an amount equal to the amount expended under s. 292.11 (7) (a) or 292.31 (3) (b) less the applicable deductible under sub. (8) (e). The department shall make transfers under this subsection when the department determines that sufficient funds are available in the appropriation account under s. 20.370 (6) (eq).

(12) RECORDS. (a) The department shall promulgate rules prescribing requirements for the records to be maintained by an owner, operator or service provider and the periods for which they must retain those records.

(b) The department may inspect any document in the possession of an owner, operator or service provider or any other person if the document is relevant to an application for reimbursement under this section.

(12m) PROHIBITION. No person may knowingly make or cause to be made a false or misleading statement in any document submitted to the department under this section.

(13) COUNCIL. The dry cleaner environmental response council shall advise the department concerning the program under this section. The dry cleaner environmental response council shall evaluate the program under this section at least every 5 years, using criteria developed by the council.

(14) SUNSET. This section does not apply after June 30, 2032.

History: 1997 a. 27; 1999 a. 9, 185 ss. 143 to 145, 188 to 190; 2001 a. 16; 2003 a. 312.

Cross−reference: See also ch. NR 169, Wis. adm. code.

292.68 Reimbursement for disposal of PCB contaminated sediment. (1) DEFINITIONS. In this section:

(a) "Disposal costs" means the costs of transporting PCB contaminated sediment to a hazardous waste disposal facility, the fees for disposing of the PCB contaminated sediment in the hazardous waste disposal facility, and the cost of any permits that an applicant is required to obtain in order to transport and dispose of the PCB contaminated sediment.

(b) "PCB contaminated sediment" means sediment that contains polychlorinated biphenyls in a concentration of 50 parts per

million or greater and that is dredged from a navigable water in this state.

(2) PROGRAM. The department shall administer a program to provide reimbursement to certain responsible parties for a portion of costs incurred for disposing of PCB contaminated sediment at an out−of−state hazardous waste disposal facility, as provided in this section.

(3) ELIGIBLE PERSON. A person is eligible for the program under this section if the person is a responsible party, under s. 292.11 or 42 USC 9601 to 9675, for the remediation of PCB contaminated sediment or has entered into a consent decree with the department or the federal environmental protection agency under which the person undertakes the remediation of PCB contaminated sediment.

(4) APPLICATION. A person may seek reimbursement under this section by submitting an application to the department that contains all of the following:

(a) Test results that show that the sediment on which the application is based contains polychlorinated biphenyls in a concentration of 50 parts per million or greater.

(b) Documentation showing that the applicant is an eligible person under sub. (3).

(c) Documentation showing that the PCB contaminated sediment was transported to and disposed of at a licensed hazardous waste disposal facility outside of this state and that disposal occurred on or after May 1, 2007.

(d) Documentation showing the disposal costs, including information concerning the length and other terms of any contract for the disposal of the PCB contaminated sediment, and showing any other costs that the department determines to be reasonably necessary and attributable to the out−of−state disposal.

(e) An estimate, in accordance with sub. (5), of what the disposal costs would be using a facility in this state that is approved for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater.

(5) ESTIMATE OF IN−STATE DISPOSAL COSTS. (a) If there is a facility in this state that is approved for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater, an applicant shall make the estimate required by sub. (4) (e) using the disposal costs for that facility.

(b) Except as provided in par. (c), if there is no facility in this state that is approved for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater, an applicant shall make the estimate required by sub. (4) (e) in one of the following ways:

1. Based on the costs of disposing of PCB contaminated sediment at facilities in other states, other than the facility that the applicant uses for disposal of the contaminated sediments, that are comparable to a facility that, if constructed in this state, would meet the applicable state and federal requirements for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater.

2. Based on the costs of constructing and operating a facility in this state that would meet the applicable state and federal requirements for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater.

(c) If there is no facility in this state that is approved for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater and if the department has accepted, within 2 years of the date that an applicant submits an application, an estimate required by sub. (4) (e) using the method under par. (b) 1., the applicant may use that estimate to satisfy sub. (4) (e).

(d) If an applicant is required to make an estimate under par. (b), the applicant shall include in the application an explanation of the method used to estimate the cost of transporting the PCB contaminated sediment to a facility in this state.

(6) NOTIFICATION OF COMPLETENESS. When the department receives an application under sub. (4), the department shall notify the claimant whether the application is complete and, if the application is not complete, the information that the applicant must submit to complete the application.

(7) DECISION ON APPLICATION. (a) Subject to pars. (b) and (c), the department shall approve a complete application that complies with sub. (4) and the rules promulgated under sub. (11) if the department determines that the disposal costs incurred by the applicant and any other costs that the department determines to be reasonably necessary and attributable to the out−of−state disposal exceed what the disposal costs would be using a facility in this state that meets the applicable state and federal requirements for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater.

(b) The department may only approve reimbursement for costs incurred on or after the first day of the 24th month before the month in which the application is submitted, except that the department may approve reimbursement for costs incurred between May 1, 2007, and June 30, 2009, if the application is submitted before July 1, 2011.

(c) The department shall deny an application if the department determines that the application is fraudulent.

(8) REIMBURSEMENT. (a) Except as provided in par. (b), if the department approves an application under sub. (4), the department shall, within 60 days of receiving the complete application, pay the applicant an amount equal to 95 percent of the amount by which the sum of the approved costs exceeds what the disposal costs would be using a facility in this state that meets the applicable state and federal requirements for the disposal of sediment that contains polychlorinated biphenyls in a concentration of 50 parts per million or greater.

(b) If the amount determined under par. (a) exceeds the amount available in the appropriation account under s. 20.370 (6) (ev), the department shall pay the excess when additional funds become available.

(9) REVIEW OF DECISION. (a) No later than the 30th day after the day on which the department approves or denies an application under sub. (4), the applicant may submit a petition for reconsideration to the secretary. The secretary shall issue a decision on whether to grant the petition no later than the 20th day after the day on which the applicant submits the petition. If the secretary grants the petition, the secretary shall meet with the applicant and employees of the department and shall issue a decision on the reconsideration no later than the 30th day after the day of the meeting.

(b) No later than the 30th day after the day on which the department approves or denies an application under sub. (4) or, if the applicant petitioned for reconsideration under par. (a), no later than the 30th day after the day on which the secretary denied the petition or issued a decision on reconsideration, the applicant may request a contested case hearing under ch. 227.

(c) No later than the 30th day after the day on which the department approves or denies an application under sub. (4) or, if the applicant petitioned for reconsideration under par. (a), no later than the 30th day after the day on which the secretary denied the petition or issued a decision on reconsideration, or, if the applicant requested a contested case hearing under ch. 227, no later than the 30th day after the day on which the final decision on the contested case is issued, an applicant may petition for judicial review of the department's decision on the application.

(10) EFFECT OF PROGRAM. (a) The availability of reimbursement under this section is not a bar to any other statutory or common law remedy for a responsible party to recover costs of disposing of PCB contaminated sediment. A responsible party is not required to seek reimbursement under this section before seeking any other statutory or common law remedy.

(b) Findings and conclusions under this section are not admissible in any civil action.

(11) RULES. The department shall promulgate rules specifying procedures for the submission, review, and approval of claims under this section.

History: 2007 a. 20; 2009 a. 28; 2015 a. 197 s. 51; 2015 a. 204.

292.70 Indemnification for disposal of polychlorinated biphenyls. (1) DEFINITION. In this section, "PCBs" has the meaning given in s. 299.45 (1) (a).

(2) INDEMNIFICATION AGREEMENTS CONCERNING DISPOSAL OF CONTAMINATED SEDIMENTS. Subject to sub. (4), the department may enter into an agreement with a municipality under which this state agrees to indemnify the municipality and its agencies, officials, employees and agents against liability for damage to persons, property or the environment resulting from the municipality's acceptance for disposal of sediments that are from the Great Lakes basin and are contaminated with PCBs, if the sediments are disposed of in a manner approved by the department.

(3) INDEMNIFICATION AGREEMENTS CONCERNING TREATMENT OF CONTAMINATED LEACHATE. Subject to sub. (4), the department may enter into an agreement with a municipality under which this state agrees to indemnify the municipality and its agencies, officials, employees and agents against any liability for damage to persons, property or the environment resulting from the municipality's conveyance or treatment of leachate that is contaminated with PCBs and that is from a landfill that accepts sediments contaminated with PCBs, if the leachate is treated in a manner approved by the department.

(4) REQUIREMENTS. The department may enter into an agreement under sub. (2) or (3) only if all of the following apply:

(a) The agreement is approved by the governor and the governing body of the municipality.

(b) The agreement specifies a method for determining whether the municipality is liable for damage described in sub. (2) or (3).

(c) The agreement requires the municipality to notify the department and the attorney general when a claim or lawsuit to which the agreement may apply is filed against the political subdivision.

(d) The agreement authorizes the attorney general to intervene on behalf of the municipality and this state in any lawsuit to which the agreement may apply.

(e) The agreement requires the operator of the solid waste disposal facility or wastewater treatment facility to minimize risks related to PCBs.

(f) The agreement authorizes the department to require the operator of the solid waste disposal facility or wastewater treatment facility to operate in a manner specified by the department in order to minimize risks related to PCBs.

(6) IMMUNITY. This section and any agreement entered into under sub. (3) or (4) may not be construed as consent to sue this state.

(7) REVIEW AND PAYMENT. If a claim is filed under an agreement under sub. (2) or (3), the department shall review the claim to determine whether it is valid. A valid claim shall be paid from the appropriation under s. 20.370 (2) (fq).

History: 1999 a. 9.

292.72 Brownfields revolving loan program. (1) The department may enter into an agreement with the federal environmental protection agency under which the department receives funds under 42 USC 9604 (k) (3) (A) (i) to establish and administer a brownfields revolving loan program. If the department receives funds under this subsection, it may make loans or grants for the remediation of brownfield sites, as defined in 42 USC 9601 (39), in accordance with the agreement.

(2) At the request of another governmental entity, the department may administer funds received under 42 USC 9604 (k) (3) (A) (i) by the other governmental entity for the establishment of a brownfields revolving loan program.

History: 2003 a. 314.

292.81 Notice; lien. (1) In this section, "valid prior lien" means a purchase money real estate mortgage that is recorded before the lien is filed under this section, including any extension or refinancing of that purchase money mortgage, or an equivalent security interest, or a 2nd or subsequent mortgage for home improvement or repair that is recorded before the lien is filed under this section, including any extension or refinancing of that 2nd or subsequent mortgage.

(2) (a) Before incurring expenses under s. 292.11 or 292.31 (1), (3) or (7) with respect to a property, the department shall provide to the current owner of the property and to any mortgagees of record a notice containing all of the following:

1. A brief description of the property for which the department expects to incur expenses under s. 292.11 or 292.31 (1), (3) or (7).

2. A brief description of the types of activities that the department expects may be conducted at the property under s. 292.11 or 292.31 (1), (3) or (7).

3. A statement that the property owner could be liable for the expenses incurred by the department.

4. A statement that the department could file a lien against the property to recover the expenses incurred by the department.

5. An explanation of whom to contact in the department to discuss the matter.

(b) The department shall provide notice under par. (a) by certified mail, return receipt requested, to the property owner and to each mortgagee of record at the addresses listed on the recorded documents. If the property owner is unknown or if a mailed notice is returned undelivered, the department shall provide the notice by publication thereof as a class 3 notice under ch. 985.

(c) The failure to provide the notice or include information required under this subsection does not impair the department's ability to file a lien or to seek to establish the property owner's liability for the expenses incurred by the department.

(d) No notice under this subsection is necessary in circumstances in which entry onto the property without prior notice is authorized under s. 292.11 (8).

(3) Any expenditures made by the department under s. 292.11 or 292.31 (1), (3) or (7) shall constitute a lien upon the property for which expenses are incurred if the department files the lien with the register of deeds in the county in which the property is located. A lien under this section shall be superior to all other liens that are or have been filed against the property, except that if the property is residential property, as defined in s. 895.52 (1) (i), the lien may not affect any valid prior lien on that residential property.

(4) (a) Before filing a lien under sub. (3), the department shall give the owner of the property for which the expenses are incurred a notice of its intent to file the lien, as provided in this subsection.

(b) The notice required under par. (a) shall provide all of the following:

1. A statement of the purpose of the lien.

2. A brief description of the property to be affected by the lien.

3. A statement of the expenses incurred by the department.

4. The date on or after which the lien will be filed.

(c) The department shall serve the notice required in par. (a) on the property owner at least 60 days before filing the lien. The notice shall be provided by certified mail, return receipt requested, to the property owner and to each mortgagee of record at the addresses listed on the recorded documents. If the property owner is unknown or if a mailed notice is returned undelivered, the department shall provide the notice by publication thereof as a class 3 notice under ch. 985.

(d) In the foreclosure of any lien filed under this subsection, ch. 846 shall control as far as applicable unless otherwise provided in this subsection. All persons who may be liable for the expenses incurred by the department may be joined as defendants. The judgment shall adjudge the amount due the department, and shall direct that the property, or so much of the property as is necessary,

be sold to satisfy the judgment, and that the proceeds be brought into court with the report of sale to abide the order of the court. If the sum realized at the sale is insufficient after paying the costs of the action and the costs of making the sale, the court shall determine the liability of the defendants for the remaining unreimbursed expenses and costs.

(e) This subsection does not apply if the lien is filed after the department obtains a judgment against the property owner and the lien is for the amount of the judgment.

History: 1995 a. 227 s. 711; 1997 a. 27.

SUBCHAPTER III

ENFORCEMENT; PENALTIES

292.93 Orders. The department may issue orders to effectuate the purposes of ss. 292.31 and 292.35 and enforce the same by all appropriate administrative and judicial proceedings.

History: 1995 a. 227.

292.94 Fees related to enforcement actions. The department may assess and collect fees from a person who is subject to an order or other enforcement action for a violation of s. 292.11 or 292.31 to cover the costs incurred by the department to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct. The department shall promulgate rules for the assessment and collection of fees under this section. Fees collected under this section shall be credited to the appropriation account under s. 20.370 (2) (dh).

History: 2003 a. 33.

292.95 Review of alleged violations; environmental repair and cost recovery. Any 6 or more citizens or any municipality may petition for a review of an alleged violation of s. 292.31 or 292.35 or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under those sections in the following manner:

(1) They shall submit to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of the petitioners and the name and address of a person authorized to appear at a hearing in behalf of the petitioners.

(2) Upon receipt of a petition under this section, the department may:

(a) Conduct a hearing in the matter within 60 days of receipt of the petition. A hearing under this paragraph shall be a contested case under ch. 227. Within 60 days after the close of the hearing, the department shall either:

1. Serve written notice specifying the law or rule alleged to be violated, containing findings of fact, conclusions of law and an order, which shall be subject to review under ch. 227; or

2. Dismiss the petition.

(b) Initiate action under s. 292.98.

(3) If the department determines that a petition was filed maliciously or in bad faith, it shall issue a finding to that effect, and the person complained against is entitled to recover expenses on the hearing in a civil action.

History: 1995 a. 227.

292.98 Violations and enforcement; environmental repair and cost recovery. (1) (a) If the department has reason to believe that a violation of s. 292.31 or 292.35 or any rule promulgated or special order, plan approval, or any term or condition of a license issued under those sections occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the law or rule alleged to be violated, and contain the findings of fact on which the charge of violation is based, and may include an order that necessary corrective action be taken within a reasonable time. This order shall become effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. Instead of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or

2. Initiate action under s. 299.95.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of other corrective action as may be appropriate. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating or controlling the violation.

History: 1995 a. 227.

292.99 Penalties. (1) Except as provided under sub. (1m) and s. 292.63 (10), any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

(1m) Any person who violates s. 292.65 (12m) shall forfeit not less than $10 nor more than $10,000.

(2) In addition to the penalties provided under subs. (1) and (1m), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

History: 1995 a. 227; 1999 a. 9; 2001 a. 16, 109; 2003 a. 309; 2013 a. 20.