

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
- 
- Committee Hearings ... CH
- 
- Committee Reports ... CR
- 
- Executive Sessions ... ES
- 
- Hearing Records ... HR
- 
- Miscellaneous ... Misc
- 97hr\_JCR-AR\_Misc\_pt26a
- 
- Record of Comm. Proceedings ... RCP
-

JCRAR - HEARINGS - 12/29/98



P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-0751

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

**AMMENDED NOTICE**

**COMMITTEE HEARING**

The Joint Committee for Review of Administrative Rules will hold a public hearing and executive session in Room 417 North of the State Capitol, on the following at the time below:

**Tuesday, December 29, 1998 at 11:00 a.m.**

*The Joint Committee Will Hold an executive session on the following:*

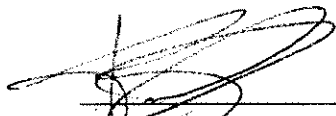
**NR 749.04, Wis. Adm. Code** *Relating to the assessment and collection of fees providing assistance on the remediation and redevelopment of contaminated lands. Suspension of the rule may be considered.*


**NR 300.06(2), Wis. Adm. Code.** *Relating to fees for activities related to water regulation. Suspension of the rule may be considered.*

**ILHR 47 PECFA, Wis. Adm. Code** *Pursuant to the motion adopted by the Joint Committee at its executive session on December 15, 1998, the Joint Committee requests the appearance of representatives of the Department of Commerce and the Department of Natural Resources to provide the members with an emergency rule meeting the strictures of the aforementioned motion. Suspension of ILHR 47 will be considered.*

*The Joint Committee Will Hold a PUBLIC HEARING and may hold an Executive Session on the following:*

**COMM 46, Wis. Adm. Code** *Relating to the PECFA program. Partial or total suspension of the Emergency rule may be considered.*

  
\_\_\_\_\_  
Senator Robert T. Welch  
Senate Co-Chair

  
\_\_\_\_\_  
Representative Glenn Grothman  
Assembly Co-Chair

**NR 300.06(2)**

# **Water Regulation Fees**

(5) If the department's action on a requested permit or approval is delayed or prevented by an order or decision of a court of law, the time limit specified in s. NR 300.04 shall be adjusted to conform to the court's decision or order.

(6) If the department's action on a requested permit or approval is delayed or prevented by the action or failure to act of an agency or private party other than the department or the applicant, the time limit specified in s. NR 300.04 shall be adjusted accordingly.

History: Cr., Register, October, 1998, No. 514, eff. 11-1-98.

**NR 300.06 Fee processing.** (1) **FEE REQUIRED.** The department shall charge a fee for permits or approvals. The permit or approval fee shall accompany the permit application or request for approval. Projects funded in whole or in part by any federal agency or state agency or any permits issued under s. 30.12(3)(a)2., 2m. or 3., Stats., are exempt from fees. Except for federal or state agency dam projects, any construction, alteration, change in operation, transfer or abandonment of a dam requires a fee pursuant to s. 31.39(3), Stats.

(2) **BASIC FEES.** For fees charged for permits and approvals under ss. 30.10 to 30.205 and 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38, and 281.22, Stats., the department shall classify the types of permits and approvals based on the estimated time spent by the department in reviewing, investigating and making determinations whether to grant the permits or approvals. The fees are established as follows:

(a) For a permit or approval with an estimated time of 3 hours or less, the fee shall be \$50.

(b) For a permit or approval with an estimated time of more than 3 hours but not more than 9 hours, the fee shall be \$300.

(c) For a permit or approval with an estimated time of more than 9 hours, the fee shall be \$500.

(3) **SUPPLEMENTAL FEES.** When the applicant requests in writing that the permit be issued in a shorter time interval than the total time interval allowed in s. NR 300.04, the department shall respond in writing within 20 business days to state whether it can comply with the request. If the request to expedite the permit review is accepted by the department, the applicant shall submit \$2000 in supplemental fees for each expedited permit request which is accepted by the department, in addition to the applicable fees in sub. (2). If the department fails to make a decision on the completed application within the time limits requested, the department shall refund the supplemental fee.

(4) **REFUNDS.** The department shall refund a permit or approval fee if the applicant withdraws the application before the department determines that the application for the permit or approval is complete. The department may not refund a permit or approval fee after the department determines that the application is complete.

(5) **LATE APPLICATION FEE.** If the applicant applies for a permit or requests an approval after the project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(6) **MULTIPLE FEES.** If more than one fee is applicable to a project, the department shall charge only the highest fee of those that are applicable.

History: Cr., Register, October, 1998, No. 514, eff. 11-1-98.

# OLD FEES

## NR 300.04 Fee processing procedures.

(1) Except as set forth herein every applicant for a permit or approval issued by the department shall include with the application the estimated project cost and a check for the amount of the fee required for that cost. An applicant receiving a permit pursuant to s. 31.05 or 31.07, Stats., shall be exempt from fee payment for approval of plans pursuant to s. 31.12, Stats.

(2) In determining estimated project cost, the applicant shall include both structural and nonstructural costs, such as, but not limited to the following costs. Municipalities shall estimate costs on the basis of total hourly rates and total hours when municipal equipment and labor are utilized.

- (a) Technical costs (i.e. surveying or architectural and engineering design),
- (b) Material costs (i.e. lumber, steel, concrete, riprap, pumps, pipes, sprinklers, etc.),
- (c) Labor costs,
- (d) Construction equipment rental or fees,
- (e) Monitoring costs required by permit or approval,
- (f) Landscaping costs required to prevent or minimize erosion,
- (g) Other costs necessary to complete the project.

(3) Certification of the estimated project cost shall be done on forms furnished by the department. An itemized list of estimated project costs need not be submitted if the applicant certified that the project cost will be in excess of \$10,000.

(4) The fee charged for permits and approvals includes a basic fee of \$10 per permit or approval plus a single supplemental fee based upon the estimated project cost according to the following schedule:

- (a) Five dollars for projects from \$1 to \$500.99 in value.
- (b) Ten dollars for projects from \$501 to \$2000.99 in value.
- (c) Twenty dollars for projects from \$2001 to \$5000.99 in value.
- (d) Fifty dollars for projects from \$5001 to \$10,000.99 in value.
- (e) Sixty-five dollars for projects in excess of \$10,000.99 in value.

(5) Upon receipt of the estimated project cost, the department shall evaluate the cost figure and supporting information. Processing of the permit or approval application shall not commence until an acceptable fee has been established and paid.

(6) If the applicant withdraws the application for any reason or should the permit or approval be denied, the department shall refund the fee submitted with the application.

(7) Payment of a fee to the department shall not be construed to imply department consent or approval of the proposed project or limit department regulatory or enforcement authority.

*History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.*

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**NR 300.05 Severability. (Repealed)**

*History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; r. under s. 13.93 (2m) (b) 16., Stats., Register, October, 1995, No. 478.*

**CHAPTER NR 301. RELATIONSHIP OF WATER  
REGULATION ENFORCEMENT AND PERMIT  
PROCEEDINGS**

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**NR 301.01 Purpose.**

The purpose of this chapter is to provide a uniform statewide procedure for the processing of enforcement actions for violations of chs. 30, 31 and 88, Stats., when after-the-fact permit applications have been filed by the alleged violator to legalize the activity. It is the natural resources board's policy to encourage timely permit applications so as to permit the department to properly review projects in order to discourage persons from engaging in activities affecting the waters of the state without obtaining prior approval when required by law.

*History: Cr. Register, April, 1977, No. 256, eff. 5-1-77.*

**NR 749.04**

**Remediation and  
Redevelopment Fees**



ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD CREATING RULES

SUSPENDED

The State of Wisconsin Natural Resources Board proposes an order to create NR 749 relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

RR-43-98(E)

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 227.11(2) and ch. 292, Stats.

Statutes interpreted: ch. 292, Stats.

This order creates ch. NR 749, Wis. Adm. Code which establishes a flat fee for persons requesting Department assistance under ch. 292, Stats. The 1997-99 Biennial Budget contained a major initiative in the area of Brownfields cleanup and redevelopment. The budget authorized the Department to collect fees, by rule, to offset the cost for much of the assistance currently provided and for the new services created in the budget.

In order to help successfully implement the Brownfields initiative, the budget allocated 7 new program revenue positions to the Remediation and Redevelopment Program which brings the total number of RR program revenue positions to 10. Promulgation of ch. NR 749 will allow the Department to devote these additional resources toward implementing this initiative.

SECTION 1. Chapter NR 749 is created to read:

CHAPTER NR 749  
FEES FOR PROVIDING ASSISTANCE; REMEDIATION AND REDEVELOPMENT PROGRAM

NR 749.01 PURPOSE. The purpose of this chapter is to establish fees to offset the department's costs of providing assistance under ch. 292, Stats. The department's authority to impose fees is found in ss. 292.11(7)(d)2., 292.13(3), 292.21(1)(c)1.d., 292.35(13) and 292.55(2), Stats.

NR 749.02 APPLICABILITY. This chapter applies to persons seeking department assistance under ch. 292, Stats., except that those persons seeking department assistance under s. 292.15, Stats., shall comply with ch. NR 750.

NR 749.04 FEES. (1) When a person requests the department to review a document listed in Table 1, the person requesting this assistance shall pay to the department the applicable fees. A person may request that department assistance be provided in either written form or in the form of oral comments. Appropriate fees shall accompany all requests for specific department assistance. Department assistance will not be provided unless the applicable fee accompanies the request for assistance. These fees are not proratable or refundable.

**Note:** If the NR 700 series rules require that a document be submitted to the department, such as in s. NR 716.09(1), but the person does not specifically request a department review of the document, then a review fee is not required.

**Note:** The department has prepared a document which provides additional information and

guidance for implementing this rule. A copy can be obtained by contacting the Bureau for Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707.

(2) If the department determines that a request for assistance does not contain enough information to render an opinion, or that the request is incomplete or inaccurate in some other manner, the department will notify the applicant of the reasons for this decision.

**TABLE 1 - FEE SCHEDULE**

Type of Letter or Assistance	Statutory Citation	Fee
Tax Cancellation Agreement	ss. 75.105(2)(d) and 292.55	\$ 500
Negotiated Agreements	s. 292.11(7)(d)2.	1000
Off-site Letters	s. 292.13(3)	500
Lender Assessments	s.292.21(1)(c)1.d.	500
Negotiation and Cost Recovery	s. 292.35(13)	(a)
General Liability Clarification Letters	s. 292.55	500
Lease Letters - Single Properties	s. 292.55	500
Lease Letters - Multiple Properties	s. 292.55	1000
Case Close-out Actions under ch. NR 726 (b)	s. 292.55	750
Site Investigation Workplan	s. 292.55	500
Site Investigation Report	s. 292.55	750
Site Specific Soil Cleanup Standards; NR 720.19 Reports	s. 292.55	750
Remedial Action Options Report	s. 292.55	750
Remedial Design Reports	s. 292.55	750
Operation and Maintenance Reports	s. 292.55	300
Construction Documentation Report	s. 292.55	250
Long-term Monitoring Plans	s. 292.55	300
No Further Action Letters under ch. NR 708 (c)	s. 292.55	250
Other Technical Assistance	s. 292.55	500

(a) Local governmental units in the negotiation and cost recovery process in s. 292.35, Stats., shall pay fees for each service requested.

(b) All requests for case closure need to be accompanied by the review fee in order to be considered complete.

(c) Immediate actions associated with spill cleanup activities, including department signoff on the spill reporting form, do not require a review fee.

Note: The department will not review Phase I or Phase II Environmental Assessments, unless they are part of the Voluntary Party Liability Exemption process in s. 292.15, Stats., or as part of a lender requesting this review in accordance with s. 292.21(1)(c)1.d., Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 26, 1998

The rules shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin September 1, 1998

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

**FISCAL ESTIMATE**  
DOA-2048 N(R10/94)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
NR 749  
Amendment No. if Applicable

**Subject**  
Fee Assessment Structure for Department Activities Under Wis. Stat. Ch. 292

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation     Increase Existing Revenues
- Decrease Existing Appropriation     Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

**Local:**  No local government costs

- |  |  |  |
|--|--|--|
| 1. <input checked="" type="checkbox"/> Increase Costs<br><input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory<br>2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory<br>4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:<br><input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities<br><input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others _____<br><input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|--|--|--|

**Fund Sources Affected**  
 GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**  
20.370 (2) (dh)

**Assumptions Used in Arriving at Fiscal Estimate**

**SUMMARY OF RULE** - The 1997-99 Biennial Budget (1997 Wisconsin Act 27) contained a major initiative in the area of Brownfields cleanup and redevelopment. To enable the Department to implement the Brownfields initiative, the Legislature authorized the Department to promulgate rules to collect fees to cover the costs for much of the Brownfields-related assistance currently provided and for the newly-created Brownfields services, and the Legislature authorized 7.0 program revenue FTE for the Remediation and Redevelopment (RR) Program, increasing to 10 the total RR program revenue FTE. Promulgating Ch. NR 749 will allow the Department to devote these authorized resources to implementing the Brownfields initiative.

**FISCAL IMPACT -**

I. Fiscal Impact to State Government - The impact to state government is estimated as follows:

- A. Revenues - Table A (attached) contains the Department's estimate of the annual number of requests for assistance and the associated annual revenues. Based on the projected number of requests and the associated fees, the annual revenue is estimated at \$993,250/year.
- B. Expenditures - There are no increased Departmental expenditures associated with this proposal. The associated position and expenditure authority were requested in 1997 Wisconsin Act 27. There may be a cost to other state agencies if they specifically request Department assistance.

II. Fiscal Impact to Local Government - The impact to local government is estimated as follows:

- A. Revenues - None.
- B. Expenditures - Based on experience and existing information, applications from local units of government are estimated to account for approximately 10% of the applications received annually. This results in a total projected cost to local units of government of \$99,325/year.

**Long-Range Fiscal Implications**  
None.

Agency/Prepared by: (Name & Phone No.)  
Joe Polasek, 266-2794

Authorized Signature/Telephone No.  
*Joe Polasek by EE*    266-2794

Date  
7/24/98

**FISCAL ESTIMATE WORKSHEET**

1997 Session

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.    Amendment No.  
NR 749

Subject  
Fee Assessment Structure for Department Activities Under Wis. Stat. Ch. 292

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
None.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)	( FTE)	(- FTE)
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	\$ 0	\$ 0
<b>B. State Costs by Source of Funds</b>	Increased Costs	Decreased Costs
GPR	\$	\$
FED		
PRO/PRS		
SEG/SEG-S		
<b>III. State Revenues:</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS	993,250	
SEG/SEG-S		
<b>TOTAL State Revenues</b>	\$ 993,250	\$ 0

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 99,325
NET CHANGE IN REVENUES	\$ 993,250	\$ 0

Agency/Prepared by: (Name & Phone No.)    Authorized Signature/Telephone No.    Date  
Joe Polasek, 266-2794    Joe Polasek by EE    266-2794    7/24/98

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TABLE A - ESTIMATED ANNUAL REVENUE GENERATION

Type of Letter or Assistance	Estimated Number of Submittals	Fee	Sub-total
Tax Cancellation Agreement	5	500	2500
Negotiated Agreements	5	1000	5000
Off-site Letters	75	500	37500
Lender Assessments	25	500	12500
Negotiation and Cost Recovery	2	1000(*)	2000
General Liability Clarification Ltrs.	50	500	25000
Lease Letters - Single Properties	20	500	10000
Lease Letters - Multiple Properties	5	1000	5000
Case Close-out Actions	1000	750	750000
Site Investigation Workplan	20	500	10000
Site Investigation Report	20	750	15000
Site Specific Soil Cleanup Standards; NR 720.19 Reports	40	750	30000
Remedial Action Options Report	30	750	22500
Remedial Design Reports	10	750	7500
Operation and Maintenance Reports	5	300	1500
Construction Documentation Rept.	5	250	1250
Long-term Monitoring Plans	20	300	6000
No Further Action Letters	100	250	25000
Other Technical Assistance	50	500	25000
<b>GRAND TOTAL:</b>			<b>\$993,250</b>

(\*) Estimated cost for the services requested.

## CORRESPONDENCE/MEMORANDUM

Publication No. RR-605

DATE: August 27, 1998

TO: All Remediation and Redevelopment Staff

FROM: R&R Management Team *Mark Gordon*

SUBJECT: Implementation Guidance for ch. NR 749.

The purpose of this memo is to provide you with guidance to help implement ch. NR 749, which was approved by the Natural Resources Board on August 26, 1998 and should become effective in early September. This guidance attempts to answer all of the major questions raised during the development of this rule. As issues come up that are not specifically addressed in this memo, we would encourage you to discuss them with your supervisor and if appropriate, please forward them to Mark Gordon who will be supplementing this guidance on an as needed basis. We are also working on a separate memo on how to process the checks we receive, which should be available shortly.

1. Question. When is a fee required?

Answer. In general, a fee is required anytime that a person specifically requests the Department's review of a document.

2. Question. Do we charge a fee when the code requires that a specific document be submitted?

Answer. No. A note was added to s. NR 749.04(1), which states that we do not intend to charge a fee if an applicant is simply submitting a document to satisfy a particular code provision.

3. Question. Do we charge a fee when the Department chooses to review a document?

Answer. No. If the Department decides to review a document, such as a site investigation workplan that was submitted to satisfy the requirements of s. NR 716.09, a review fee is not required.

4. Question. Do all requests for case close-out need to be accompanied by a review fee?

Answer. Yes. Section NR 726.05(1) indicates that: "...responsible parties or other interested parties may request that the Department close the case after compliance with all applicable State and Federal health and environmental laws has been achieved." Therefore, if a request for case close-out is submitted, the \$750 review fee must be included in order for the request to be considered complete. There is a note following the Table in s. NR 749.04 that specifically indicates all requests for case close-out must be accompanied by the appropriate fee.



5. Question. Does the Department charge a fee for technical assistance provided over the telephone?

Answer. In general we should not be charging people for the assistance we provide over the phone. For example, general questions on the scope or implementation of the RR Program, requests for information, interpretation of existing rules or guidance, as well as most site specific questions are the types of information we should continue to provide without the need for someone to first pay a fee.

However, the rule indicates that the person paying the fee can request that assistance be provided verbally. Therefore, if a responsible party submits a report and specifically requests a response by phone, we should provide our comments as requested after we have received the review fee. Under this scenario, a brief note should be sent to the file that generally summarizes our major comments.

6. Question. Should we charge for meetings and if so, under what conditions?

Answer. Consistent with the previous question, we should generally not be charging people for time spent in a meeting to discuss general program issues. If a meeting is requested in conjunction with our review of a document, or as the mechanism for the Department to provide their review comments and the review fee has been paid, then we should make an attempt to meet with the applicant as part of providing the assistance requested. We need to be careful not to allow an applicant to attempt to utilize one or more meetings to obtain formal Department review comments on a document for which they have not paid a review fee.

7. Question. When someone pays a review fee, what type of response should be provided?

Answer. In most cases, a letter should be sent to the applicant which contains the Department's specific comments on the document. The letter should provide an indication of whether the document is: 1) acceptable as submitted, 2) acceptable with the need to consider specific comments, 3) acceptable only if certain modifications are made or 4) unacceptable as submitted.

As discussed earlier, if the applicant specifically requests verbal comments (either by phone or through a meeting) we can provide our response in this manner although there should be documentation of the major comments provided with a note to the file. If the type of assistance is not specified we should consult with the applicant to determine the type of response they are expecting.



Implementation Guidance for ch. NR 749 - August 27, 1998

8. Question. If a submittal is rejected or needs a significant amount of additional information in order for us to approve the document or provide meaningful comments, do we charge another review fee?

Answer. This was one of the most controversial issues in developing the NR 749 fee rule. We had originally included a provision that allowed the Department to charge another fee each time a request for assistance did not contain the necessary information to allow a final decision to be made. The intent of this provision was to encourage applicants to submit complete documents the first time. Ultimately, we decided to drop this provision from the emergency rule in order to reduce the number of controversial issues. We did indicate to members of the NR 700 Focus Group that we would like to have additional discussions on the mechanism for obtaining complete and accurate submittals during development of the permanent rule. Given this change, if an applicant has already submitted a review fee, then Department review of any subsequent submittals is included in the original fee.

9. Question. How are requests for Department assistance handled if they are submitted prior to the effective date of the rule?

Answer. Those requests that are submitted prior to the time that the rule becomes effective are not required to include a review fee. If however, the request can not be approved without a significant amount of additional information, then the applicant should be notified that if the necessary information is submitted after NR 749 is effective the appropriate review fee must be included.

For example, there are currently a significant number of case close-out requests that, following our review, are determined to be incomplete or not approvable as submitted. If an applicant needs to gather a significant amount of additional information which is then submitted after NR 749 becomes effective, then the \$750 review fee would need to be included with the supplemental information.

10. Question. Should we waive the fees if a review takes less than a specified amount of time?

Answer. No. As part of the discussions leading to the development of the flat fee approach, it was recognized that there would be instances where the actual review time could be significantly less than the amount of time typically needed to process the type of application submitted. Utilizing a flat fee approach does not require that the specific number of hours for each case be tracked. As a result, a waiver of the fees for those projects that are processed more quickly is not included in the rule.

Implementation Guidance for ch. NR 749 - August 27, 1998

11. Question. Do we charge separate review fees if several reports are submitted concurrently?

Answer. If, for example, a site investigation report is submitted along with an evaluation of remedial alternatives or if a request for a site specific RCL is included along with a case close-out request then only the higher of the two fees must be submitted. In both of the examples cited above a single fee of \$750 would be required.

12. Question. Should we require that fees be paid when we need to issue an order to a responsible party to compel a cleanup?

Answer. If the Department needs to issue an order, we should include a provision that requires certain critical submittals receive Department review and concurrence before the responsible party proceeds ahead. The order should also specify that the submittals include the appropriate review fee. In general, we should be requiring that site investigation workplans, site investigation reports, remedial action options reports, and case close-out requests be submitted for Department review.

13. Question. Do the fees in NR 749 apply to requests for liability exemptions from voluntary parties?

Answer. NR 749.02 specifically indicates that persons seeking Department assistance under s. NR 292.15, Stats., which is the section entitled: "Voluntary party remediation and exemption from liability", shall comply with ch. NR 750. This means that as in the past with prospective purchasers, a voluntary party would need to submit an application along with the \$250 fee. If the Department determines that the applicant meets the definition of a voluntary party then a site specific activity code would be established, the appropriate advanced deposit would need to be submitted and the applicant would be billed on an hourly basis as set out in ch. NR 750.

14. Question. What fees does the Department of Commerce intend to reimburse to PECFA eligible sites?

Answer. On July 24, 1998 the Department of Commerce sent a memo to DNR which basically indicates they will reimburse fees associated with case close-out requests and potentially no further action requests under NR 708. They also stated that they may be willing to reimburse for two other options including: 1) requests for a reduction in monitoring, and 2) requests for a reduction in reporting frequency and complexity. The specific memo from Commerce is attached.

Implementation Guidance for ch. NR 749 - August 27, 1998

15. Question. How do the review fees apply to PECFA sites that are proceeding to complete their cleanup for under \$80,000?

Answer. We anticipate that only a very limited number of groundwater impacting sites will attempt to follow these provisions. If a site wishes to pursue this approach it is likely the only review fee we will charge for is their request for case close out. However, if they request Department assistance for other documents they would pay the appropriate fee.

16. Question. What happens if someone submits a Site Investigation Report and requests Department review, and then following our review we determine that the site should be handled by Commerce?

Answer. For the vast majority of cases, PECFA sites will not be requesting Department review of a site investigation report since the fee is not a PECFA eligible expense. If we encounter this scenario, we should return the fee and transfer the site to Commerce in accordance with the provisions in the PECFA MOU.

17. Question. Do we charge a fee for closing out a spill case under the provisions in NR 708?

Answer. If a responsible party implements an immediate action under ch. NR 708 and the Department determines that no further action is necessary through our signoff on the spill reporting form, then no review fee is required. If however, the responsible party requests a formal letter documenting our decision that no further action is needed then the \$250 fee must be submitted. Language covering this scenario is included as a footnote following the Table is s. NR 749.04.

18. Question. Do we charge a fee for requests for approval of a Landspreading Plan under ch. NR 718, or for infiltration/injection proposals under ch. NR 812.

Answer. Yes. The review time typically needed for both of these types of submittals can be significant. Therefore, if an applicant requests approval of either proposal we should indicate that the \$500 fee for "other technical assistance" should be submitted.

19. Question. Do we charge a fee for review of NR 141 exemption requests?

Answer. No. The time needed for review of these requests is typically not significant and as a result a fee should not be assessed.

**MEMORANDUM**

**DATE:** July 24, 1998

**TO:** Jay Hochmuth

**FROM:** John Alberts 

**SUBJECT:** PECFA Reimbursement of DNR Review Actions

You have presented the Department of Commerce with a question on the extent to which PECFA will reimburse for fees charged under the proposed DNR emergency rule for the "collection of fees for Department activities under ch. 292, Wis. Stats". I hope that this memo resolves at least some parts of your question.

A review of the fee package leads us to believe that only the fees for "case close out action" and "no further action letters" are potentially reimbursable under PECFA. I emphasize potentially eligible because, especially in the case of no further action letters, the claimant may not reach their deductible. Although they may have had a release, performed some remedial action, and paid a fee for a no further action letter, they may not have incurred enough cost to exceed their deductible. Consequently, a review fee would not end up being reimbursed. Additionally, we will only reimburse for one closure letter for an occurrence. If an owner receives one letter and then chooses to seek a second, less restrictive closure, the second review would not be reimbursable.

Although there is a fairly extensive list of fees presented, our overall conclusion is that the remaining items are not core to the PECFA program's efforts to control costs. In addition, the other reviews detailed are elective on the part of the claimant and, consequently, the owner should make the decision on whether the expenditure of personal funds balances against the value achieved through a review.

The potential for these remaining reviews, to be of assistance in controlling PECFA costs, is greatly reduced by the DNR's official position that you have no ability to require an owner to do less on a site than what they propose. (Assuming that what they propose will result in a remediation.) This acknowledgement that the remaining reviews will not be an avenue for cost control, leads us to the conclusion that they should not be part of the PECFA reimbursement schedule.

The list of fees, that the DNR has established, is extensive but we see areas that are, unfortunately, missed. Some of these could be of benefit to the PECFA program. Two examples of DNR reviews that we would like to see are:

- "Review of proposals for reduced sampling" a review where the number of sample points and the frequency of sampling is reduced based upon site specific conditions in order to reduce unnecessary work and cost.
- "Review of reporting frequency and complexity" a review where the frequency, detail and format of reporting are reduced to reflect true site conditions, timelines and real information needs.

The fee package being advanced by the DNR is the responsibility of your agency and, consequently, what is reimbursable by PECFA should not be the major issue in the creation of the package. I understand, however, your interest in information on which fees might be eligible for PECFA reimbursement. I hope that his memo has been helpful in answering your questions.

cc D. Schmiedicke

# Joint Committee Report

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The Joint Committee for Review of Administrative Rules Reports:

December 15, 1998

## EXECUTIVE SESSION HELD

Present (10): Representatives Grothman, Gunderson, Seratti, R. Young, and Kreuser; Senators Welch, Darling, Huelsman, Grobschmidt, And Breske.

Absent (0): None.

## PECFA Program

**Relating to proposed COMM 46, Wis. Adm. Code, Chapter ILHR 47, Wis. Adm. Code, and the PECFA program.**

Moved by Senator Welch, seconded by Representative Grothman

1) The Joint Committee for Review of Administrative Rules rescinds its December 15, 1998 motion relating to the conditional suspension of ILHR Chapter 47, Wis. Adm. Code.

2) The Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4)(d)6 and 227.26 (2) (d), stats., suspends Chapter ILHR 47, Wis. Adm. Code, at 5:00 p.m. on February 1, 1999, unless a risk assessment protocol includes all of the following:

- a. Requires the use of natural attenuation unless an environmental risk factor, as described in Comm 46.05, Wis. Adm. Code, is present.
- b. Consideration of the impacts of environmental risks factors.
- c. Consideration of the effect of a municipal water system on environmental risk factors.

Ayes: (9) Representatives Grothman, Gunderson, Seratti, and Kreuser; Senators Welch, Darling, Huelsman, and, Breske.

Noes: (1) Senator Grobschmidt.

Absent: (0) None.

Motion Carried: Rule is Suspended on Delay.  
8 Ayes, 2 Noes, 0 Absent.

**PECFA Program**

**Relating to proposed COMM 46, Wis. Adm. Code, Chapter ILHR 47, Wis. Adm. Code, and the PECFA program.**

Moved by Senator Welch, seconded by Representative Grothman that, the protocol as defined under proposed COMM 46.05, Wis. Adm. Code, shall also stipulate that any site which does not contain an environmental risk factor as defined in the protocol shall be considered a low or medium priority site.

Ayes: (8) Representatives Grothman, Gunderson, Seratti, and Kreuser; Senators Welch, Darling, Huelsman, and Breske.

Noes: (2) Representative Young; Senator Grobschmidt.

Absent: (0) None.

Motion Carried.  
8 Ayes, 2 Noes, 0 Absent.

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Senator Robert Welch  
Senate Co-Chair

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Representative Glenn Grothman  
Assembly Co-Chair

**NR 749.04**

**Remediation and  
Redevelopment Fees**



ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD CREATING RULES

SUSPEND

The State of Wisconsin Natural Resources Board proposes an order to create NR 749 relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

RR-43-98(E)

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 227.11(2) and ch. 292, Stats.

Statutes interpreted: ch. 292, Stats.

This order creates ch. NR 749, Wis. Adm. Code which establishes a flat fee for persons requesting Department assistance under ch. 292, Stats. The 1997-99 Biennial Budget contained a major initiative in the area of Brownfields cleanup and redevelopment. The budget authorized the Department to collect fees, by rule, to offset the cost for much of the assistance currently provided and for the new services created in the budget.

In order to help successfully implement the Brownfields initiative, the budget allocated 7 new program revenue positions to the Remediation and Redevelopment Program which brings the total number of RR program revenue positions to 10. Promulgation of ch. NR 749 will allow the Department to devote these additional resources toward implementing this initiative.

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SECTION 1. Chapter NR 749 is created to read:

CHAPTER NR 749  
FEES FOR PROVIDING ASSISTANCE; REMEDIATION AND REDEVELOPMENT PROGRAM

NR 749.01 PURPOSE. The purpose of this chapter is to establish fees to offset the department's costs of providing assistance under ch. 292, Stats. The department's authority to impose fees is found in ss. 292.11(7)(d)2., 292.13(3), 292.21(1)(c)1.d., 292.35(13) and 292.55(2), Stats.

NR 749.02 APPLICABILITY. This chapter applies to persons seeking department assistance under ch. 292, Stats., except that those persons seeking department assistance under s. 292.15, Stats., shall comply with ch. NR 750.

NR 749.04 FEES. (1) When a person requests the department to review a document listed in Table 1, the person requesting this assistance shall pay to the department the applicable fees. A person may request that department assistance be provided in either written form or in the form of oral comments. Appropriate fees shall accompany all requests for specific department assistance. Department assistance will not be provided unless the applicable fee accompanies the request for assistance. These fees are not proratable or refundable.

**Note:** If the NR 700 series rules require that a document be submitted to the department, such as in s. NR 716.09(1), but the person does not specifically request a department review of the document, then a review fee is not required.

**Note:** The department has prepared a document which provides additional information and

guidance for implementing this rule. A copy can be obtained by contacting the Bureau for Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707.

(2) If the department determines that a request for assistance does not contain enough information to render an opinion, or that the request is incomplete or inaccurate in some other manner, the department will notify the applicant of the reasons for this decision.

**TABLE 1 - FEE SCHEDULE**

Type of Letter or Assistance	Statutory Citation	Fee
Tax Cancellation Agreement	ss. 75.105(2)(d) and 292.55	\$ 500
Negotiated Agreements	s. 292.11(7)(d)2.	1000
Off-site Letters	s. 292.13(3)	500
Lender Assessments	s.292.21(1)(c)1.d.	500
Negotiation and Cost Recovery	s. 292.35(13)	(a)
General Liability Clarification Letters	s. 292.55	500
Lease Letters - Single Properties	s. 292.55	500
Lease Letters - Multiple Properties	s. 292.55	1000
Case Close-out Actions under ch. NR 726 <sup>(b)</sup>	s. 292.55	750
Site Investigation Workplan	s. 292.55	500
Site Investigation Report	s. 292.55	750
Site Specific Soil Cleanup Standards; NR 720.19 Reports	s. 292.55	750
Remedial Action Options Report	s. 292.55	750
Remedial Design Reports	s. 292.55	750
Operation and Maintenance Reports	s. 292.55	300
Construction Documentation Report	s. 292.55	250
Long-term Monitoring Plans	s. 292.55	300
No Further Action Letters under ch. NR 708 <sup>(c)</sup>	s. 292.55	250
Other Technical Assistance	s. 292.55	500

(a) Local governmental units in the negotiation and cost recovery process in s. 292.35, Stats., shall pay fees for each service requested.

(b) All requests for case closure need to be accompanied by the review fee in order to be considered complete.

(c) Immediate actions associated with spill cleanup activities, including department signoff on the spill reporting form, do not require a review fee.

Note: The department will not review Phase I or Phase II Environmental Assessments, unless they are part of the Voluntary Party Liability Exemption process in s. 292.15, Stats., or as part of a lender requesting this review in accordance with s. 292.21(1)(c)1.d., Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 26, 1998

The rules shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin September 1, 1998

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

LRB or Bill No./Adm. Rule No.  
NR 749

Amendment No. if Applicable

**FISCAL ESTIMATE**  
DOA-2048 N(R10/94)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**  
Fee Assessment Structure for Department Activities Under Wis. Stat. Ch. 292

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues
- Decrease Existing Appropriation       Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

Decrease Costs

**Local:**  No local government costs

- 1.  Increase Costs
  - Permissive     Mandatory
- 2.  Decrease Costs
  - Permissive     Mandatory

- 3.  Increase Revenues
  - Permissive     Mandatory
- 4.  Decrease Revenues
  - Permissive     Mandatory

5. Types of Local Governmental Units Affected:
- Towns       Villages       Cities
  - Counties     Others \_\_\_\_\_
  - School Districts     WTCS Districts

**Fund Sources Affected**  
 GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**  
20.370 (2) (dh)

**Assumptions Used in Arriving at Fiscal Estimate**

**SUMMARY OF RULE** - The 1997-99 Biennial Budget (1997 Wisconsin Act 27) contained a major initiative in the area of Brownfields cleanup and redevelopment. To enable the Department to implement the Brownfields initiative, the Legislature authorized the Department to promulgate rules to collect fees to cover the costs for much of the Brownfields-related assistance currently provided and for the newly-created Brownfields services, and the Legislature authorized 7.0 program revenue FTE for the Remediation and Redevelopment (RR) Program, increasing to 10 the total RR program revenue FTE. Promulgating Ch. NR 749 will allow the Department to devote these authorized resources to implementing the Brownfields initiative.

**FISCAL IMPACT** -

**I. Fiscal Impact to State Government** - The impact to state government is estimated as follows:

- A. Revenues - Table A (attached) contains the Department's estimate of the annual number of requests for assistance and the associated annual revenues. Based on the projected number of requests and the associated fees, the annual revenue is estimated at \$993,250/year.
- B. Expenditures - There are no increased Departmental expenditures associated with this proposal. The associated position and expenditure authority were requested in 1997 Wisconsin Act 27. There may be a cost to other state agencies if they specifically request Department assistance.

**II. Fiscal Impact to Local Government** - The impact to local government is estimated as follows:

- A. Revenues - None.
- B. Expenditures - Based on experience and existing information, applications from local units of government are estimated to account for approximately 10% of the applications received annually. This results in a total projected cost to local units of government of \$99,325/year.

**Long-Range Fiscal Implications**  
None.

Agency/Prepared by: (Name & Phone No.)  
Joe Polasek, 266-2794

Authorized Signature/Telephone No.  
*Joe Polasek* 266-2794

Date  
7/24/98

**FISCAL ESTIMATE WORKSHEET**

1997 Session

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. NR 749	Amendment No.
---	---------------

Subject  
Fee Assessment Structure for Department Activities Under Wis. Stat. Ch. 292

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
None.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)	( FTE)	( - FTE)
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	\$ 0	\$ 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$
FED		
PRO/PRS		
SEG/SEG-S		
III. State Revenues: <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS	993,250	
SEG/SEG-S		
<b>TOTAL State Revenues</b>	\$ 993,250	\$ 0

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 99,325
NET CHANGE IN REVENUES	\$ 993,250	\$ 0

Agency/Prepared by: (Name & Phone No.) Joe Polasek, 266-2794	Authorized Signature/Telephone No. <i>Joe Polasek by EE</i> 266-2794	Date 7/24/98
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TABLE A - ESTIMATED ANNUAL REVENUE GENERATION

Type of Letter or Assistance	Estimated Number of Submittals	Fee	Sub-total
Tax Cancellation Agreement	5	500	2500
Negotiated Agreements	5	1000	5000
Off-site Letters	75	500	37500
Lender Assessments	25	500	12500
Negotiation and Cost Recovery	2	1000 (*)	2000
General Liability Clarification Ltrs.	50	500	25000
Lease Letters - Single Properties	20	500	10000
Lease Letters - Multiple Properties	5	1000	5000
Case Close-out Actions	1000	750	750000
Site Investigation Workplan	20	500	10000
Site Investigation Report	20	750	15000
Site Specific Soil Cleanup Standards; NR 720.19 Reports	40	750	30000
Remedial Action Options Report	30	750	22500
Remedial Design Reports	10	750	7500
Operation and Maintenance Reports	5	300	1500
Construction Documentation Rept.	5	250	1250
Long-term Monitoring Plans	20	300	6000
No Further Action Letters	100	250	25000
Other Technical Assistance	50	500	25000
<b>GRAND TOTAL:</b>			<b>\$993,250</b>

(\*) Estimated cost for the services requested.

## CORRESPONDENCE/MEMORANDUM

Publication No. RR-605

DATE: August 27, 1998

TO: All Remediation and Redevelopment Staff

FROM: R&R Management Team *Mark Gordon*

SUBJECT: Implementation Guidance for ch. NR 749.

The purpose of this memo is to provide you with guidance to help implement ch. NR 749, which was approved by the Natural Resources Board on August 26, 1998 and should become effective in early September. This guidance attempts to answer all of the major questions raised during the development of this rule. As issues come up that are not specifically addressed in this memo, we would encourage you to discuss them with your supervisor and if appropriate, please forward them to Mark Gordon who will be supplementing this guidance on an as needed basis. We are also working on a separate memo on how to process the checks we receive, which should be available shortly.

1. Question. When is a fee required?

Answer. In general, a fee is required anytime that a person specifically requests the Department's review of a document.

2. Question. Do we charge a fee when the code requires that a specific document be submitted?

Answer. No. A note was added to s. NR 749.04(1), which states that we do not intend to charge a fee if an applicant is simply submitting a document to satisfy a particular code provision.

3. Question. Do we charge a fee when the Department chooses to review a document?

Answer. No. If the Department decides to review a document, such as a site investigation workplan that was submitted to satisfy the requirements of s. NR 716.09, a review fee is not required.

4. Question. Do all requests for case close-out need to be accompanied by a review fee?

Answer. Yes. Section NR 726.05(1) indicates that: "...responsible parties or other interested parties may request that the Department close the case after compliance with all applicable State and Federal health and environmental laws has been achieved." Therefore, if a request for case close-out is submitted, the \$750 review fee must be included in order for the request to be considered complete. There is a note following the Table in s. NR 749.04 that specifically indicates all requests for case close-out must be accompanied by the appropriate fee.



5. Question. Does the Department charge a fee for technical assistance provided over the telephone?

Answer. In general we should not be charging people for the assistance we provide over the phone. For example, general questions on the scope or implementation of the RR Program, requests for information, interpretation of existing rules or guidance, as well as most site specific questions are the types of information we should continue to provide without the need for someone to first pay a fee.

However, the rule indicates that the person paying the fee can request that assistance be provided verbally. Therefore, if a responsible party submits a report and specifically requests a response by phone, we should provide our comments as requested after we have received the review fee. Under this scenario, a brief note should be sent to the file that generally summarizes our major comments.

6. Question. Should we charge for meetings and if so, under what conditions?

Answer. Consistent with the previous question, we should generally not be charging people for time spent in a meeting to discuss general program issues. If a meeting is requested in conjunction with our review of a document, or as the mechanism for the Department to provide their review comments and the review fee has been paid, then we should make an attempt to meet with the applicant as part of providing the assistance requested. We need to be careful not to allow an applicant to attempt to utilize one or more meetings to obtain formal Department review comments on a document for which they have not paid a review fee.

7. Question. When someone pays a review fee, what type of response should be provided?

Answer. In most cases, a letter should be sent to the applicant which contains the Department's specific comments on the document. The letter should provide an indication of whether the document is: 1) acceptable as submitted, 2) acceptable with the need to consider specific comments, 3) acceptable only if certain modifications are made or 4) unacceptable as submitted.

As discussed earlier, if the applicant specifically requests verbal comments (either by phone or through a meeting) we can provide our response in this manner although there should be documentation of the major comments provided with a note to the file. If the type of assistance is not specified we should consult with the applicant to determine the type of response they are expecting.



Implementation Guidance for ch. NR 749 - August 27, 1998

8. Question. If a submittal is rejected or needs a significant amount of additional information in order for us to approve the document or provide meaningful comments, do we charge another review fee?

Answer. This was one of the most controversial issues in developing the NR 749 fee rule. We had originally included a provision that allowed the Department to charge another fee each time a request for assistance did not contain the necessary information to allow a final decision to be made. The intent of this provision was to encourage applicants to submit complete documents the first time. Ultimately, we decided to drop this provision from the emergency rule in order to reduce the number of controversial issues. We did indicate to members of the NR 700 Focus Group that we would like to have additional discussions on the mechanism for obtaining complete and accurate submittals during development of the permanent rule. Given this change, if an applicant has already submitted a review fee, then Department review of any subsequent submittals is included in the original fee.

9. Question. How are requests for Department assistance handled if they are submitted prior to the effective date of the rule?

Answer. Those requests that are submitted prior to the time that the rule becomes effective are not required to include a review fee. If however, the request can not be approved without a significant amount of additional information, then the applicant should be notified that if the necessary information is submitted after NR 749 if effective the appropriate review fee must be included.

For example, there are currently a significant number of case close-out requests that, following our review, are determined to be incomplete or not approvable as submitted. If an applicant needs to gather a significant amount of additional information which is then submitted after NR 749 becomes effective, then the \$750 review fee would need to be included with the supplemental information.

10. Question. Should we waive the fees if a review takes less than a specified amount of time?

Answer. No. As part of the discussions leading to the development of the flat fee approach, it was recognized that there would be instances where the actual review time could be significantly less than the amount of time typically needed to process the type of application submitted. Utilizing a flat fee approach does not require that the specific number of hours for each case be tracked. As a result, a waiver of the fees for those projects that are processed more quickly is not included in the rule.

Implementation Guidance for ch. NR 749 - August 27, 1998

11. Question. Do we charge separate review fees if several reports are submitted concurrently?

Answer. If, for example, a site investigation report is submitted along with an evaluation of remedial alternatives or if a request for a site specific RCL is included along with a case close-out request then only the higher of the two fees must be submitted. In both of the examples cited above a single fee of \$750 would be required.

12. Question. Should we require that fees be paid when we need to issue an order to a responsible party to compel a cleanup?

Answer. If the Department needs to issue an order, we should include a provision that requires certain critical submittals receive Department review and concurrence before the responsible party proceeds ahead. The order should also specify that the submittals include the appropriate review fee. In general, we should be requiring that site investigation workplans, site investigation reports, remedial action options reports, and case close-out requests be submitted for Department review.

13. Question. Do the fees in NR 749 apply to requests for liability exemptions from voluntary parties?

Answer. NR 749.02 specifically indicates that persons seeking Department assistance under s. NR 292.15, Stats., which is the section entitled: "Voluntary party remediation and exemption from liability", shall comply with ch. NR 750. This means that as in the past with prospective purchasers, a voluntary party would need to submit an application along with the \$250 fee. If the Department determines that the applicant meets the definition of a voluntary party then a site specific activity code would be established, the appropriate advanced deposit would need to be submitted and the applicant would be billed on an hourly basis as set out in ch. NR 750.

14. Question. What fees does the Department of Commerce intend to reimburse to PECFA eligible sites?

Answer. On July 24, 1998 the Department of Commerce sent a memo to DNR which basically indicates they will reimburse fees associated with case close-out requests and potentially no further action requests under NR 708. They also stated that they may be willing to reimburse for two other options including: 1) requests for a reduction in monitoring, and 2) requests for a reduction in reporting frequency and complexity. The specific memo from Commerce is attached.

Implementation Guidance for ch. NR 749 - August 27, 1998

15. Question. How do the review fees apply to PECFA sites that are proceeding to complete their cleanup for under \$80,000?

Answer. We anticipate that only a very limited number of groundwater impacting sites will attempt to follow these provisions. If a site wishes to pursue this approach it is likely the only review fee we will charge for is their request for case close out. However, if they request Department assistance for other documents they would pay the appropriate fee.

16. Question. What happens if someone submits a Site Investigation Report and requests Department review, and then following our review we determine that the site should be handled by Commerce?

Answer. For the vast majority of cases, PECFA sites will not be requesting Department review of a site investigation report since the fee is not a PECFA eligible expense. If we encounter this scenario, we should return the fee and transfer the site to Commerce in accordance with the provisions in the PECFA MOU.

17. Question. Do we charge a fee for closing out a spill case under the provisions in NR 708?

Answer. If a responsible party implements an immediate action under ch. NR 708 and the Department determines that no further action is necessary through our signoff on the spill reporting form, then no review fee is required. If however, the responsible party requests a formal letter documenting our decision that no further action is needed then the \$250 fee must be submitted. Language covering this scenario is included as a footnote following the Table in s. NR 749.04.

18. Question. Do we charge a fee for requests for approval of a Landspreading Plan under ch. NR 718, or for infiltration/injection proposals under ch. NR 812.

Answer. Yes. The review time typically needed for both of these types of submittals can be significant. Therefore, if an applicant requests approval of either proposal we should indicate that the \$500 fee for "other technical assistance" should be submitted.

19. Question. Do we charge a fee for review of NR 141 exemption requests?

Answer. No. The time needed for review of these requests is typically not significant and as a result a fee should not be assessed.

**MEMORANDUM**

**DATE:** July 24, 1998

**TO:** Jay Hochmuth

**FROM:** John Alberts 

**SUBJECT:** PECFA Reimbursement of DNR Review Actions

You have presented the Department of Commerce with a question on the extent to which PECFA will reimburse for fees charged under the proposed DNR emergency rule for the "collection of fees for Department activities under ch. 292, Wis. Stats". I hope that this memo resolves at least some parts of your question.

A review of the fee package leads us to believe that only the fees for "case close out action" and "no further action letters" are potentially reimbursable under PECFA. I emphasize potentially eligible because, especially in the case of no further action letters, the claimant may not reach their deductible. Although they may have had a release, performed some remedial action, and paid a fee for a no further action letter, they may not have incurred enough cost to exceed their deductible. Consequently, a review fee would not end up being reimbursed. Additionally, we will only reimburse for one closure letter for an occurrence. If an owner receives one letter and then chooses to seek a second, less restrictive closure, the second review would not be reimbursable.

Although there is a fairly extensive list of fees presented, our overall conclusion is that the remaining items are not core to the PECFA program's efforts to control costs. In addition, the other reviews detailed are elective on the part of the claimant and, consequently, the owner should make the decision on whether the expenditure of personal funds balances against the value achieved through a review.

The potential for these remaining reviews, to be of assistance in controlling PECFA costs, is greatly reduced by the DNR's official position that you have no ability to require an owner to do less on a site than what they propose. (Assuming that what they propose will result in a remediation.) This acknowledgement that the remaining reviews will not be an avenue for cost control, leads us to the conclusion that they should not be part of the PECFA reimbursement schedule.

The list of fees, that the DNR has established, is extensive but we see areas that are, unfortunately, missed. Some of these could be of benefit to the PECFA program. Two examples of DNR reviews that we would like to see are:

- "Review of proposals for reduced sampling" a review where the number of sample points and the frequency of sampling is reduced based upon site specific conditions in order to reduce unnecessary work and cost.
- "Review of reporting frequency and complexity" a review where the frequency, detail and format of reporting are reduced to reflect true site conditions, timelines and real information needs.

The fee package being advanced by the DNR is the responsibility of your agency and, consequently, what is reimbursable by PECFA should not be the major issue in the creation of the package. I understand, however, your interest in information on which fees might be eligible for PECFA reimbursement. I hope that his memo has been helpful in answering your questions.

cc D. Schmiedicke