

1999 DRAFTING REQUEST

Bill

Received: **11/18/98**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - solid haz. waste**

Extra Copies: **PEN**

Topic:

DOA:.....Wong - Certificates of completion for groundwater

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 12/14/98			_____			S&L
/1	traderc 12/17/98	wjackson 12/18/98	jfrantze 12/18/98	_____	lrb_docadmin 12/18/98		S&L
/2	traderc 01/26/99	wjackson 01/26/99	hhagen 01/26/99	_____	lrb_docadmin 01/26/99		S&L
/3	traderc 02/3/99	ygeller 02/3/99	hhagen 02/3/99	_____	lrb_docadmin 02/3/99		

FE Sent For:

<END>

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FE Sent For: *1/3 2/3 WJ* *1/2/3* *1/1/99 2/3*
1/3 2/3 JG **<END>**

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/1	traderc 12/17/98	wjackson 12/18/98	jfrantze 12/18/98	_____	lrb_docadmin 12/18/98		

FE Sent For: *12 WLj 1/26* *at 1/26* *4/15 1/26*
2 jlg 1/26
 <END>

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ONR**

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DOA:.....Wong - Certificates of completion for groundwater

Instructions:

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/?	nilsepe 12/14/98 traderc	1 WJ 12/17 1 JLG 12/18	Jb 12/18	Jb 12/18 12/18			

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<END>

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May Contact:

Alt. Drafters:

Subject: **Environment - solid haz. waste**

Extra Copies: **RCT**

Topic:

DOA:.....Wong - certificates of completion for groundwater

Instructions:

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/?	nilsepe			_____			

FE Sent For:

<END>

-0614



Wisconsin Department of Natural Resources
Bureau for Remediation & Redevelopment (RR/3)
101 S Webster Street
Madison, WI 53707-7921

TELEFAX COVER SHEET

FAX # (608)-267-7646

date: 10/21/98

to: Paul Nilson

agency/company: CRB

fax Number: 264-8522

subject: Budget Draft - needed by 10/28

comments: (any, I need the 29th & 30th to get comments)

from: Bill Ramsay

phone Number: 264-6007

number of Pages: 2 (Including Cover Sheet)

The Availability of a Full Certificate of Completion For Properties With Off-site Groundwater Contamination

Background:

Under current law, a voluntary party cannot receive a full certificate of completion at a property if the groundwater is contaminated from an off-site source. Currently, voluntary parties can receive a partial certificate of completion under s. 292.15(2)(am), Wis. Stats., and an off-site liability exemption for groundwater contamination migrating from an off-site source under s. 292.13, Wis. Stats.

Proposal:

The Study Group believes that a full certificate of completion, as opposed to a partial certificate and an off-site exemption, provides a more valuable incentive to encourage parties to purchase and redevelop brownfields. Section 292.15, Wis. Stats., should be amended to allow the DNR to issue full certificates of completion at sites with contamination coming from off-site, provided that the voluntary party obtains an off-site exemption under s. 292.13, Wis. Stats., for all of the off-site groundwater contamination present on the site and continues to comply with all of the requirements contained in s. 292.13, Wis. Stats.

A suggested method of accomplishing this proposal is to create an additional subsection in s. 292.15(2), Wis. Stats., that allows for the issuance of a full certificate of completion when a voluntary party otherwise satisfies all of the work necessary to obtain a full certificate of completion and is prevented from obtaining that full certificate of completion solely because of the existence of groundwater contamination that originates from an off-site source. The voluntary party would have to obtain an off-site exemption for that groundwater contamination under ss. 292.13(1) and (3), Stats., and comply with all of the requirements upon which that exemption is conditioned.

Suggested Language:

Type of Change: Statutory

Resources: None

Issue: Ensure availability of a Full Certificate of Completion For Properties Impacted with Off-site Groundwater Contamination

Background

Under s. 292.13, Stats., individuals are not responsible for cleaning up contamination that is coming on to their property from an off-site source. As a result, a voluntary party in the VPLE process can choose to not clean up contamination found on their property coming from off-site sources.

If the voluntary party chooses to clean up all the contamination coming from on-site sources and not the contamination coming from off-site, the law (s. 292.15, Stats.) does not allow them to receive a Certificate of Completion because they

have not cleaned up the property completely. Under current law, voluntary parties have a right to obtain an Off-site Liability Exemption (s. 292.13, Stats) for the groundwater contamination caused by an off-site source and a partial Certificate of Completion under s. 292.15(2)(am), Stats.

The Study Group believes that a full Certificate of Completion, as opposed to a partial certificate and an off-site exemption, provides a more valuable incentive for parties to purchase and redevelop brownfields.

Proposal

Amended section 292.15, Stats. to allow the DNR to issue full certificates of completion at sites with contamination coming from off-site, provided that the voluntary party meets the conditions of the off-site exemption under s. 292.13, Stats., for the off-site groundwater contamination present on the site and continues to comply with all of the requirements contained in s. 292.13, Stats.

To accomplish this proposal, an additional subsection could be created in s. 292.15(2), Stats., that allows for the issuance of a full Certificate of Completion when a voluntary party otherwise satisfies all of the work necessary to obtain a full Certificate of Completion but has been prevented from obtaining that full Certificate of Completion solely because of the existence of groundwater contamination originating from an off-site source. The voluntary party would have to obtain a written off-site exemption for the groundwater contamination under ss. 292.13(1) and (3), Stats. and comply with all of the requirements upon which that exemption is conditioned.

Drafting Instructions:

1. Create a subsection in s. 292.15(2), Stats., that states that in the event that a voluntary party has complied with all of the requirements for obtaining a certificate of completion for a property under s. 292.15(2)(a), Stats., except with respect to the existence of a hazardous substance in the groundwater on the property that originated from a source on property that is not possessed or controlled by the voluntary party, the voluntary party may obtain a certificate of completion for the property under s. 292.15(2)(a), Stats., if the voluntary party obtains an off-site liability exemption for the existence of all hazardous substances in the groundwater on the property under ss. 292.13, Stats., and continues to comply with the requirements in s. 292.13, Stats., for obtaining the exemption.

2. Amend s. 292.15(3), Stats., so that certificates of completion that are obtained with an off-site exemption as described above are applicable to successors and assigns so long as they continue to comply with the requirements for obtaining the off-site exemption contained in s. 292.13, Stats.

Type of Change: Statutory
Resources: None



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0614/1

RCT./:....

WLJ

+
JLg

SOON
D-NOTE

DOA:.....Wong - Certificates of completion for groundwater

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1 ^{Do Not Gen Cat} AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

ENVIRONMENT ✓

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP ✓

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Under current law, a person who did not intentionally or recklessly cause the original discharge of a hazardous substance on a property, called a voluntary party, is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, the department of natural resources (DNR) certifies that the cleanup restored the environment and minimized the harmful effects of the discharge and the voluntary party maintains and monitors the property as required by DNR. This exemption applies if later changes to the law would impose greater responsibilities on the voluntary party or if it is discovered that the cleanup failed to fully restore the environment or to minimize the harmful effects of the discharge. Also, under current law, a person is exempt from the requirements to restore the environment and minimize the effects of the discharge of a hazardous substance on the environment with respect to the existence of a hazardous substance in groundwater on property

possessed or controlled by the person if the discharge originated from a source off of the property, the person agrees to allow access to the property so that someone else can conduct a cleanup and the person agrees to any other condition necessary to ensure that an adequate cleanup can be conducted.

Under this bill, for a property affected by an off-site discharge that has contaminated the groundwater and by discharges of other hazardous substances, a voluntary party is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharges, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted; the property is cleaned up, except with respect to the discharge that originated off-site; ~~the department of natural resources (DNR)~~ certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, except with respect to the discharge that originated off-site; DNR determines in writing that the voluntary party qualifies for the off-site exemption; and the voluntary party maintains and monitors the property as required by DNR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 SECTION 1. 292.15 (2) (ag)[✓] of the statutes is created to read:
- 2 292.15 (2) (ag) Except as provided in sub. (6)[✓] or (7)[✓], for a property on which
- 3 there exists a hazardous substance for which a voluntary party is exempt from
- 4 liability under s. 292.13 (1)[✓], a voluntary party is exempt from the provisions of ss.
- 5 289.05 (1)[✓], (2)[✓], (3)[✓] and (4)[✓], 289.42 (1)[✓], 289.67[✓], 291.25 (1)[✓] to (5)[✓], 291.29[✓], 291.37[✓], 292.11
- 6 (3)[✓], (4)[✓] and (7) (b)[✓] and (c)[✓] and 292.31 (8)[✓], and rules promulgated under those
- 7 provisions, with respect to the existence of hazardous substances on the property, if
- 8 all of the following occur at any time before or after the date of acquisition:
- 9 1. An environmental investigation of the property is conducted that is approved
- 10 by the department.[✓]
- 11 2. The property is cleaned up by restoring the environment to the extent
- 12 practicable and minimizing the harmful effects from a discharge of the hazardous

1 substances on the property in accordance with rules promulgated by the department
2 and any contract entered into under those rules, except that this requirement does
3 not apply with respect to the hazardous substance for which the voluntary party is
4 exempt from liability under s. 292.13 (1).[✓]

5 3. The voluntary party obtains a certificate of completion from the department
6 stating that the property has been satisfactorily restored to the extent practicable
7 and that the harmful effects from a discharge of a hazardous substance have been
8 minimized, except with respect to the hazardous substance for which the voluntary
9 party is exempt from liability under s. 292.13 (1).[✓]

10 3g. The voluntary party obtains a written determination from the department
11 under s. 292.13 (2)[✓] with respect to the hazardous substance for which the voluntary
12 party is exempt from liability under s 292.13 (1).[✓]

13 3r. The voluntary party continues to satisfy the conditions under s. 292.13 (1)
14 (d)[✓] to (g).[✓]

15 4. The voluntary party maintains and monitors the property as required under
16 rules promulgated by the department and any contract entered into under those
17 rules.

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

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

25 **SECTION 2.** 292.15 (2) (b)[✓] of the statutes is amended to read:

1 292.15 (2) (b) The exemptions provided in pars. (a), (ag)^{✓✓} and (am) continue to
 2 apply after the date of certification by the department under par. (a) 3. or (am)^{ag} 3.[✓], or
 3 approval by the department under par. (am), notwithstanding the occurrence of any
 4 of the following:

5 1. Statutes, rules or regulations are created or amended that would impose
 6 greater responsibilities on the voluntary party than those imposed under par. (a) 2.[•]
 7 or (ag) 2.[✓] ↑

8 2. The voluntary party fully complies with the rules promulgated by the
 9 department and any contract entered into under those rules under par. (a) 2. or (ag)[✓]
 10 2.[✓] but it is discovered that the cleanup fails to fully restore the environment and
 11 minimize the effects from a discharge of a hazardous substance.

12 3. The contamination from a hazardous substance that is the subject of the
 13 cleanup under par. (a) 2. or (ag) 2.[✓] is discovered to be more extensive than anticipated
 14 by the voluntary party and the department.

History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237.

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

16 292.15 (3) SUCCESSORS AND ASSIGNS. The An exemption provided in sub. (2)[✓]
 17 applies to any successor or assignee of the voluntary party who qualifies as a
 18 voluntary party and who complies with the provisions of sub. (2) (a) 4. and 5. or (ag)
 19 3r.[✓], 4.[✓] and 5.^{✓✓}, whichever is applicable, unless the successor or assignee knows that
 20 a certificate under sub. (2) (a) 3. or (ag) 3.^{✓✓} or (am) was obtained by any of the means or
 21 under any of the circumstances specified in sub. (2) (a) 6. or (ag) 6.[✓]

History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237.

22 **SECTION 4.** 292.15 (6) of the statutes is amended to read:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0614/1dn

RCT:/:....

WJ
+
Jlg

This is the draft to allow certificates of completion[✓] to be issued for properties affected by groundwater contamination from off-site sources. Please review it carefully to ensure that it complies with the intent of the proposal.

Under current s. 292.15 (2) (a) 3.[✓], DNR issues a certificate of completion which states (basically) that the property is clean. The properties with which this proposal deals are not clean and is not possible to issue certificates ~~saying~~^{stating} that they are clean. I wonder whether it is worth making s. 292.15[✓] this much more complex given that it seems uncertain that this proposal provides an advantage over current law, under which a voluntary party with a property affected by an off-site discharge may obtain a certificate of partial completion and a determination that the voluntary party is not liable for the remaining contamination.

Rebecca C. Tradewell
Managing Attorney
266-7290

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0614/1dn
RCT:wlj&jlg:jf

December 18, 1998

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Under current s. 292.15 (2)(a) 3., DNR issues a certificate of completion which states (basically) that the property is clean. The properties with which this proposal deals are not clean and is not possible to issue certificates stating that they are clean. I wonder whether it is worth making s. 292.15 this much more complex given that it seems uncertain that this proposal provides an advantage over current law, under which a voluntary party with a property affected by an off-site discharge may obtain a certificate of partial completion and a determination that the voluntary party is not liable for the remaining contamination.

Rebecca C. Tradewell
Managing Attorney
266-7290

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: January 15, 1999

FILE REF: LRB-0614/1dn

TO: Brian Dranzik - MB/5

FROM: Darsi Foss - KR/3

SUBJECT: Response to Dec. 18, 1998, draft LRB-0614 re: off-site contamination and certificates of completion.

As an initial matter, while this proposal may not add much protection as compared to current law, members of the study group nevertheless believe that packaging the two exemptions as a single "certificate of completion" will make the exemption more attractive to potential purchasers of voluntary party sites and facilitate the transfer of these sites. This may be due, in part, to the fact that the voluntary party exemption is transferable to subsequent owners while the off-site exemption letter is not.

That said, does the draft have to independently re-iterate all of the conditions that are applied to the standard VPLE? Or is it possible that the off-site/partial combination could be better integrated into the current law? Please consider the following suggestion.

(suggested structure)

292.15(2)(a)2. Is amended as follows:

2. Except as provided in sub. (4) and (4m), . . .

292.15(2)(a)3. Is amended as follows:

3. Except as provided in sub. (4m), the voluntary party obtains . . .

Create 292.15(4m):

292.15(4m) PROPERTY AFFECTED BY OFF-SITE CONTAMINATION. If all the requirements for obtaining the exemption provided for in sub. (2)(a) or (am) have been satisfied on the property except that an off-site discharge described in s. 292.13(1) or (1m) remains on the property, the voluntary party may nevertheless obtain a certificate of completion from the department under sub. (2)(a)3. if all of the following apply:

- (a) The voluntary party obtains a written determination from the department under s. 292.13(2) with respect to all hazardous substance discharges on the property described in s. 292.13(1) or (1m).
- (b) The voluntary party continues to comply with the applicable requirements for obtaining the off-site exemption under s. 292.13(1) or (1m) for all off-site discharges that remain on the property.





State of Wisconsin
1999 - 2000 LEGISLATURE
SOA)

LRB-0614/2
RCT:wlj&jlg:jf

DOA:.....Wong - Certificates of completion for groundwater

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Note

1

Don't Gen Cat
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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possessed or controlled by the person if the discharge originated from a source off of the property, the person agrees to allow access to the property so that someone else can conduct a cleanup and the person agrees to any other condition necessary to ensure that an adequate cleanup can be conducted.

Under this bill, for a property affected by an off-site discharge that has contaminated the groundwater and by discharges of other hazardous substances, a voluntary party is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharges, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted; the property is cleaned up, except with respect to the discharge that originated off-site; DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, except with respect to the discharge that originated off-site; DNR determines in writing that the voluntary party qualifies for the off-site exemption; and the voluntary party maintains and monitors the property as required by DNR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Insert
2-1

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

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

Property affected by off-site discharge.

2 292.15 (2) (ag) Except as provided in sub. (6) or (7), for a property on which

3 there exists a hazardous substance for which a voluntary party is exempt from

4 liability under s. 292.13 (1), a voluntary party is exempt from the provisions of ss.

5 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11

6 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those

7 provisions, with respect to the existence of hazardous substances on the property, if

8 *par. (a) 1. and 4. to 6. apply and*
all of the following occur at any time before or after the date of acquisition:

9 ~~1. An environmental investigation of the property is conducted that is approved~~

10 ~~by the department.~~

11 ~~1.2~~ The property is cleaned up by restoring the environment to the extent

12 practicable and minimizing the harmful effects from ~~the~~ discharges ~~of the~~ hazardous

13 substances on the property in accordance with rules promulgated by the department

1 and any contract entered into under those rules, except that this requirement does
2 not apply with respect to the hazardous substance for which the voluntary party is
3 exempt from liability under s. 292.13 (1).

4 2. ~~3a~~ The voluntary party obtains a certificate of completion from the department
5 stating that the property has been satisfactorily restored to the extent practicable
6 and that the harmful effects from ~~#~~ discharges^s of ~~#~~ hazardous substance^s have been
7 minimized, except with respect to the hazardous substance for which the voluntary
8 party is exempt from liability under s. 292.13 (1).

9 3. ~~3g~~ The voluntary party obtains a written determination from the department
10 under s. 292.13 (2) with respect to the hazardous substance for which the voluntary
11 party is exempt from liability under s 292.13 (1).

12 4. ~~3r~~ The voluntary party continues to satisfy the conditions under s. 292.13 (1)
13 (d) to (g).

14 ~~4. The voluntary party maintains and monitors the property as required under~~
15 ~~rules promulgated by the department and any contract entered into under those~~
16 ~~rules.~~

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

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

✓
Insert 24
3-231

SECTION 2. 292.15 (2) (b) of the statutes is amended to read:

I Extend of exemptions.

1 292.15 (2) (b) The exemptions provided in pars. (a), (ag) and (am) continue to
2 apply after the date of certification by the department under par. (a) 3. or (ag) ², or
3 approval by the department under par. (am), notwithstanding the occurrence of any
4 of the following:

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

8 2. The voluntary party fully complies with the rules promulgated by the
9 department and any contract entered into under those rules under par. (a) 2. or (ag)
10 ~~1~~ but it is discovered that the cleanup fails to fully restore the environment and
11 minimize the effects from a discharge of a hazardous substance.

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

✓
Insert
4-14 ✓

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

16 292.15 (3) SUCCESSORS AND ASSIGNS. The An exemption provided in sub. (2)
17 applies to any successor or assignee of the voluntary party who qualifies as a
18 voluntary party and who complies with the provisions of sub. (2) (a) 4. and 5. ^{and} ~~or~~ (ag)
19 ~~on 4. and 5. whichever is applicable.~~ ^{if} unless the successor or assignee knows that
20 a certificate under sub. (2) (a) 3. ² ~~or~~ (am) was obtained by any of the means or
21 under any of the circumstances specified in sub. (2) (a) 6. ~~6~~

22 **SECTION 4.** 292.15 (6) of the statutes is amended to read:

1 292.15 (6) LIENS. This section does not exempt property from any lien filed
2 under s. 292.81 (3) for costs incurred by the department prior to the date that
3 certification is issued under sub. (2) (a) 3. ²⁰or (ag) ~~the~~ plain

4

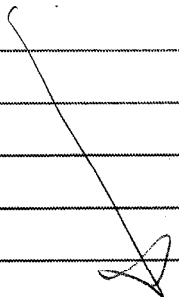
(END)

OWote

Insert 2-1, p. 1

Section #. CR; 292.15 (2) (a) (title)

292.15 (2) (a) (title) ^(B) ^(I) General.



Insert 2-1, p. 2

-0614/2

Section #. 292.15 (2) (a) 6. of the statutes is amended to read:

292.15 (2) (a) 6. [✓]The voluntary party has not obtained the ~~certification~~ ^{certificate} under subd. 3 ~~by~~ ^{of completion} 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.

History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237.

End of insert 2-1

Section #. 292.15 (2) (am) (intro.)[✓] of the statutes is amended to read:

① Partial cleanup.

292.15 (2) (am) (intro.)[✓] The department may approve a partial cleanup and issue a certificate of completion as provided in par. (a)^{or (a) ✓} 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)^{or (a) ✓}, a certificate for a partial cleanup under this paragraph may be issued only if:

History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237.

Section # CR; 292.15 (2) (ar) (title) ① Condition.
292.15 (2) (ar) (title) ②

end of insert

Insert 4-14

Section #. CR; 292.15(2)(c)(title) ✓

292.15(2)(c)(title) [ⓑ] ⓓ Prohibition on action.

Section #. CR; 292.15(2)(d)(title) ✓

292.15(2)(d)(title) [ⓑ] ⓓ Exception.

end of insert

○ Note

RCT:WLj:

Manager:

of LRB-0614

This redraft shortens proposed s. 292.15 (2) (ag), which
seems to have been one of DNR's goals in its comments^s
on LRB-0614/1. I ~~thought~~ ^{structure} thought that it might be
clearer to have each liability exemption ~~structured~~ ^{also} in
the same way, but ~~this~~ this approach also seems satisfactory.

DNR's proposed language had some problems. For one
thing, it seemed to contemplate issuing a certificate of
completion that would state that the property is "clean"
when the property is not "clean".

I have tried to integrate the partial cleanup and
off-site provisions by amending s. 292.15 (2) (am) (intro).

Please let me know if you have any questions.

RCT

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0614/2dn
RCT:wlj&jlg:hmh

Tuesday, January 26, 1999

Manyee:

This redraft of LRB-0614 shortens proposed s. 292.15 (2) (ag), which seems to have been one of DNR's goals in its comments on LRB-0614/1. I thought that it might be clearer to structure each liability exemption in the same way, but this approach also seems satisfactory.

DNR's proposed language had some problems. For one thing, it seemed to contemplate issuing a certificate of completion that would state that the property is "clean" when the property is not "clean".

I have tried to integrate the partial cleanup and off-site provisions by amending s. 292.15 (2) (am) (intro.).

Please let me know if you have any questions.

Rebecca C. Tradewell
Managing Attorney
266-7290



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0614/3
RCT:wj&jlg:hmh
redraft
run

Today

DOA:.....Wong - Certificates of completion for groundwater

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

note

WFO: Inserts are out of order.

Don't Get Cat

1 AN ACT *f*; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Under current law, a person who did not intentionally or recklessly cause the original discharge of a hazardous substance on a property, called a voluntary party, is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, the department of natural resources (DNR) certifies that the cleanup restored the environment and minimized the harmful effects of the discharge and the voluntary party maintains and monitors the property as required by DNR. This exemption applies if later changes to the law would impose greater responsibilities on the voluntary party or if it is discovered that the cleanup failed to fully restore the environment or to minimize the harmful effects of the discharge. Also, under current law, a person is exempt from the requirements to restore the environment and minimize the effects of the discharge of a hazardous substance on the environment with respect to the existence of a hazardous substance in groundwater on property

possessed or controlled by the person if the discharge originated from a source off of the property, the person agrees to allow access to the property so that someone else can conduct a cleanup and the person agrees to any other condition necessary to ensure that an adequate cleanup can be conducted.

Under this bill, for a property affected by an off-site discharge that has contaminated the groundwater and by discharges of other hazardous substances, a voluntary party is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharges, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted; the property is cleaned up, except with respect to the discharge that originated off-site; DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, except with respect to the discharge that originated off-site; DNR determines in writing that the voluntary party qualifies for the off-site exemption; and the voluntary party maintains and monitors the property as required by DNR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 292.15 (2) (a) (title) *General.*

Insert ✓
A 3 →

3 **SECTION 2.** 292.15 (2) (a) 6. of the statutes is amended to read:

4 292.15 (2) (a) 6. The voluntary party has not obtained the ~~certification under~~
5 subd. 3. certificate of completion by fraud or misrepresentation, by the knowing
6 failure to disclose material information or under circumstances in which the
7 voluntary party knew or should have known about more discharges of hazardous
8 substances than were revealed by the investigation conducted under subd. 1.

9 **SECTION 3.** 292.15 (2) (ag) of the statutes is created to read:

10 292.15 (2) (ag) *Property affected by off-site discharge.* Except as provided in
11 sub. (6) or (7), for a property on which there exists a hazardous substance for which
12 a voluntary party is exempt from liability under s. 292.13 (1), a voluntary party is
13 exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25

1 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules
2 promulgated under those provisions, with respect to ^{discharges} the existence of hazardous
3 substances on ^{or originating from} the property, ^{insert 3-3} if par. (a) 1. and 4. to 6. apply and all of the following occur
4 at any time before or after the date of acquisition:

5 1. The ~~property is cleaned up by restoring~~ the environment ^{is restored} to the extent
6 practicable ^{with respect to the discharges} and ~~minimizing~~ the harmful effects from ^{the} discharges of ~~hazardous~~
7 ~~substances on the property~~ ^{are minimized} in accordance with rules promulgated by the department
8 and any contract entered into under those rules, except that this requirement does
9 not apply with respect to the hazardous substance for which the voluntary party is
10 exempt from liability under s. 292.13 (1).

11 2. The voluntary party obtains a certificate of completion from the department
12 stating that the ~~property~~ ^{environment} has been satisfactorily restored to the extent practicable
13 ^{with respect to the discharges} and that the harmful effects from ^{the} discharges of hazardous substances ^{have been}
14 minimized, except with respect to the hazardous substance for which the voluntary
15 party is exempt from liability under s. 292.13 (1).

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

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

Insert
B

21 SECTION 4. 292.15 (2) (am) (intro.) of the statutes is amended to read:

22 292.15 (2) (am) Partial cleanup. (intro.) The department may approve a ^(ae)
23 partial cleanup and issue a certificate of completion as provided in par. (a) ^{or (ag)} that
24 states that not all of the property has been satisfactorily restored or that not all of
25 the harmful effects from a discharge of a hazardous substance have been minimized.

1 Approval of a partial cleanup exempts a voluntary party from ss. 291.37 (2) and
2 292.11 (3), (4) and (7) (b) and (c) with respect to the portion of the property or
3 hazardous substances cleaned up under this paragraph. In addition to meeting the
4 requirements of par. (a) ^{g(ae) ✓✓} ~~or (ag)~~, a certificate for a partial cleanup under this
5 paragraph may be issued only if:

Insert
C →

6 SECTION 5. 292.15 (2) (ar) (title) of the statutes is created to read:

7 292.15 (2) (ar) (title) *Condition.*

Insert
D →

8 SECTION 6. 292.15 (2) (b) of the statutes is amended to read:

9 292.15 (2) (b) *Extent of exemptions.* The exemptions provided in pars. (a) ^{g(ae) ✓} ~~(ag)~~
10 and (am) continue to apply after the date of certification by the department under
11 par. (a) 3. ^{g(ae) 3. ✓} ~~or (ag) 2.~~, or approval by the department under par. (am), notwithstanding
12 the occurrence of any of the following:

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

Insert
A →

15 ^{g(ae) 2. ✓✓} ~~or (ag) 1.~~

16 2. The voluntary party fully complies with the rules promulgated by the
17 department and any contract entered into under those rules under par. (a) 2. ^{g(ae) 2. ✓} ~~or (ag)~~
18 1. but it is discovered that the cleanup fails to fully restore the environment and
19 minimize the effects from a discharge of a hazardous substance.

20 3. The contamination from a hazardous substance that is the subject of the
21 cleanup under par. (a) 2. ^{g(ae) 2. ✓✓} ~~or (ag) 1.~~ is discovered to be more extensive than anticipated

Insert
E →

22 by the voluntary party and the department.

23 SECTION 7. 292.15 (2) (c) (title) of the statutes is created to read:

24 292.15 (2) (c) (title) *Prohibition on action.*

Insert
F →

25 SECTION 8. 292.15 (2) (d) (title) of the statutes is created to read:

1 292.15 (2) (d) (title) *Exception.*

2 ~~SECTION 9. 292.15 (3) of the statutes is amended to read:~~

*Insert
G*

3 292.15 (3) SUCCESSORS AND ASSIGNS. ~~The An exemption provided in sub. (2)~~
4 ~~applies to any successor or assignee of the voluntary party who qualifies as a~~
5 ~~voluntary party and who complies with the provisions of sub. (2) (a) 4. and 5. and (ag)~~
6 ~~4., if applicable, unless the successor or assignee knows that a certificate under sub.~~
7 ~~(2) (a) 3., (ag) 2. or (am) was obtained by any of the means or under any of the~~
8 ~~circumstances specified in sub. (2) (a) 6.~~

9 SECTION 10. 292.15 (6) of the statutes is amended to read:

10 292.15 (6) LIENS. This section does not exempt property from any lien filed
11 under s. 292.81 (3) for costs incurred by the department prior to the date that
12 certification is issued under sub. (2) (a) 3. or (ag) 2.

13 (END)

Insert 3-3 to -0614/3

1 ~~(1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules~~
 2 ~~promulgated under those provisions, with respect to the existence discharges of a~~
 3 ~~hazardous substance substances on the or originating from a property if the release~~
 4 ~~of those hazardous substances occurred prior to the date on which the department~~
 5 ~~approves the environmental investigation of the property under ^{part (a)} sub 1 and if all~~
 6 ~~of the following occur at any time before or after the date of acquisition:~~

plain text

****NOTE: This draft (LRB-0285/1) is reconciled with LRB-1422/P2. Both drafts should continue to appear in the compiled bill.

7

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0614/3
.....

Insert
A

292.15(2)(a)(title) ✓

****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:
LRB - 0614 and LRB 14230

Insert
B

292.15(2)(ag) ✓
****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:
LRB - 0285, LRB 0614 and LRB 14220

Insert
C

292.15(2)(am)(intro) ✓
****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:
LRB - 0614 and LRB 14230

Insert
D

292.15(2)(ar)(title) ✓
****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:
LRB - 0614 and LRB 14230

Insert
E

292.15(2)(b) ✓
****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:
LRB - 0614 and LRB 14230

Insert
F

292.15(2)(c)(title) ✓
****NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:
LRB - 0614 and LRB 14230

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0614/3
.....

Insert
G

✓ 292.15(2)(d) (title) ✓

***NOTE: This is reconciled s. 1 . This SECTION has been affected by drafts with the following LRB numbers:

LRB-0614 and LRB-061423.

~~***NOTE: This is reconciled s. . This SECTION has been affected by drafts with the following LRB numbers:~~

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0614/3dn
.....
RET: WJ
+
JG

Manyc:

0285 ✓ 0614 ✓ LRB-0929 ✓, LRB-1422 ✓
1423 9

This draft reconciles LRB-~~XXXX~~, LRB-~~XXXX~~, and LRB-~~XXXX~~. All of these drafts should continue to appear in the compiled bill. All of these drafts, except LRB-~~XXXX~~, should continue to appear in the compiled bill. LRB-~~XXXX~~ should be dropped from the compile.]

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0614/3dn
RCT:wj&jlg:hmh

Wednesday, February 3, 1999

Manyee:

This draft reconciles LRB-0285, LRB-0614, LRB-0929, LRB-1422 and LRB-1423.
All of these drafts should continue to appear in the compiled bill.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0614/3
RCT:wj&jlg:hmh

DOA:.....Wong – Certificates of completion for groundwater

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Under current law, a person who did not intentionally or recklessly cause the original discharge of a hazardous substance on a property, called a voluntary party, is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, the department of natural resources (DNR) certifies that the cleanup restored the environment and minimized the harmful effects of the discharge and the voluntary party maintains and monitors the property as required by DNR. This exemption applies if later changes to the law would impose greater responsibilities on the voluntary party or if it is discovered that the cleanup failed to fully restore the environment or to minimize the harmful effects of the discharge. Also, under current law, a person is exempt from the requirements to restore the environment and minimize the effects of the discharge of a hazardous substance on the environment with respect to the existence of a hazardous substance in groundwater on property

possessed or controlled by the person if the discharge originated from a source off of the property, the person agrees to allow access to the property so that someone else can conduct a cleanup and the person agrees to any other condition necessary to ensure that an adequate cleanup can be conducted.

Under this bill, for a property affected by an off-site discharge that has contaminated the groundwater and by discharges of other hazardous substances, a voluntary party is exempt from absolute requirements to restore the environment and minimize the harmful effects of the discharges, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted; the property is cleaned up, except with respect to the discharge that originated off-site; DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, except with respect to the discharge that originated off-site; DNR determines in writing that the voluntary party qualifies for the off-site exemption; and the voluntary party maintains and monitors the property as required by DNR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 292.15 (2) (a) (title) *General.*

 ****NOTE: This is reconciled s. 292.15 (2) (a) (title). This SECTION has been affected by drafts with the following LRB numbers: LRB-0614 and LRB-1423.

3 **SECTION 2.** 292.15 (2) (a) 6. of the statutes is amended to read:

4 292.15 (2) (a) 6. The voluntary party has not obtained the ~~certification under~~
5 ~~subd. 3.~~ certificate of completion by fraud or misrepresentation, by the knowing
6 failure to disclose material information or under circumstances in which the
7 voluntary party knew or should have known about more discharges of hazardous
8 substances than were revealed by the investigation conducted under subd. 1.

9 **SECTION 3.** 292.15 (2) (ag) of the statutes is created to read:

10 292.15 (2) (ag) *Property affected by off-site discharge.* Except as provided in
11 sub. (6) or (7), for a property on which there exists a hazardous substance for which
12 a voluntary party is exempt from liability under s. 292.13 (1), a voluntary party is

1 exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25
2 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules
3 promulgated under those provisions, with respect to discharges of hazardous
4 substances on or originating from the property, if the release of those hazardous
5 substances occurred prior to the date on which the department approves the
6 environmental investigation of the property under par. (a) 1., if par. (a) 1. and 4. to
7 6. apply and all of the following occur at any time before or after the date of
8 acquisition:

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

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

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

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

****NOTE: This is reconciled s. 292.15 (2) (ag). This SECTION has been affected by
drafts with the following LRB numbers: LRB-0285, LRB-0614 and LRB-1422.

1 **SECTION 4.** 292.15 (2) (am) (intro.) of the statutes is amended to read:

2 292.15 (2) (am) *Partial cleanup.* (intro.) The department may approve a
3 partial cleanup and issue a certificate of completion as provided in par. (a), (ae) or (ag)
4 that states that not all of the property has been satisfactorily restored or that not all
5 of the harmful effects from a discharge of a hazardous substance have been
6 minimized. Approval of a partial cleanup exempts a voluntary party from ss. 291.37
7 (2) and 292.11 (3), (4) and (7) (b) and (c) with respect to the portion of the property
8 or hazardous substances cleaned up under this paragraph. In addition to meeting
9 the requirements of par. (a), (ae) or (ag), a certificate for a partial cleanup under this
10 paragraph may be issued only if:

 ****NOTE: This is reconciled s. 292.15 (2) (am) (intro.). This SECTION has been
affected by drafts with the following LRB numbers: LRB-0614 and LRB-1423.

11 **SECTION 5.** 292.15 (2) (ar) (title) of the statutes is created to read:

12 292.15 (2) (ar) (title) *Condition.*

 ****NOTE: This is reconciled s. 292.15 (2) (ar) (title). This SECTION has been affected
by drafts with the following LRB numbers: LRB-0614 and LRB-1423.

13 **SECTION 6.** 292.15 (2) (b) of the statutes is amended to read:

14 292.15 (2) (b) *Extent of exemptions.* The exemptions provided in pars. (a), (ae),
15 (ag) and (am) continue to apply after the date of certification by the department
16 under par. (a) 3., (ae) 3. or (ag) 2., or approval by the department under par. (am),
17 notwithstanding the occurrence of any of the following:

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

21 2. The voluntary party fully complies with the rules promulgated by the
22 department and any contract entered into under those rules under par. (a) 2., (ae) 2.

1 or (ag) 1. but it is discovered that the cleanup fails to fully restore the environment
2 and minimize the effects from a discharge of a hazardous substance.

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

****NOTE: This is reconciled s. 292.15 (2) (b). This SECTION has been affected by
drafts with the following LRB numbers: LRB-0614 and LRB-1423.

6 **SECTION 7.** 292.15 (2) (c) (title) of the statutes is created to read:

7 292.15 (2) (c) (title) *Prohibition on action.*

****NOTE: This is reconciled s. 292.15 (2) (c) (title). This SECTION has been affected
by drafts with the following LRB numbers: LRB-0614 and LRB-1423.

8 **SECTION 8.** 292.15 (2) (d) (title) of the statutes is created to read:

9 292.15 (2) (d) (title) *Exception.*

****NOTE: This is reconciled s. 292.15 (2) (d) (title). This SECTION has been affected
by drafts with the following LRB numbers: LRB-0614 and LRB-1423.

10

(END)