

1999 DRAFTING REQUEST

Bill

Received: **11/18/98**

Received By: **traderc**

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 - env. cleanup**

Extra Copies:

Topic:

DOA:.....Wong - Interim liability protections for voluntary parties

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>
/P1	traderc 12/11/98	ygeller 12/12/98	hhagen 12/14/98	_____	lrb_docadmin 12/14/98		
/P2	traderc 01/30/99	ygeller 01/31/99	hhagen 01/31/99	_____	gretskl 01/31/99		State
/P3	traderc 02/1/99	ygeller 02/1/99	hhagen 02/1/99	_____	lrb_docadmin 02/1/99		State
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/2	traderc 02/4/99	ygeller 02/4/99	martykr 02/4/99	_____	gretskl 02/4/99		State

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/1	traderc 02/3/99	ygeller 02/3/99	martykr 02/3/99	_____	lrb_docadmin 02/3/99		State

FE Sent For:

1/2 2/4 jlg *2/4* *2/4* *2/4*

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km 2/3
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May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies: *CNR*

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FE Sent For:

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- *Modify Environmental Remediation Tax Incremental Financing (ER TIF) District – s. 66.462, Wis.Stats.*

Changes include: 1) expanding the definition eligible costs to include demolition and other costs specific to remediation but exclude costs related to delinquent taxes, penalties, and special assessment and property acquisition, 2) modifying the period of certification, 3) modifying the use of environmental remediation tax increments, and 4) requiring the recipient of ER TIF to reduce their eligible costs if they receive remediation funds from other federal, state, or local sources, and 5) modifying ER TIF to allow for TIF to apply to multiple properties within one taxing jurisdiction.

- *Definition of "Voluntary Party"*

Expand the definition of "Voluntary Party" to include anyone who thoroughly investigates and remediates the contaminated property since current language has the potential to hinder the goal of maximizing remediation and redevelopment of brownfields. Eliminate the language "reckless" and "intentional" under section 292.15(1)(f) but state explicitly that parties cannot escape enforcement under the Spill Law by entering into the Voluntary Party Liability Exemption process.

- *Create Interim Liability Protections during the Voluntary Party Liability Exemption Process*

Provide voluntary parties with interim liability protection during the period between the approval of the investigation and remediation plan to remove impediments toward the redevelopment of brownfields. Interim liability protection is available to parties that have DNR's approval of their site investigations and have entered into agreement with DNR to remediate their sites.

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

To provide a more valuable incentive for parties to purchase and redevelop brownfields, a full Certification of Completion rather than a partial Certificate of Completion will be issued to voluntary parties who cleaned up all groundwater contamination coming from on-site sources but not off-site sources. Voluntary parties must meet the conditions of the off-site exemption and continue to comply with all of its requirements.

- *Create Financial Incentives for Cleaning up and Redeveloping Areawide Brownfields Contamination*

Create a Wisconsin Economic Revitalization Zone Program (WERZ) to promote the cleanup of areawide contamination. Financial incentives will be used to promote the cleanup of blighted areas in a community rather than a specific property.

Issue: Create Interim Liability Protections during the Voluntary Party Liability Exemption process

Background

Under the current Voluntary Party Liability Exemption (VPLE) process (s. 292.15, Stats.), the Department of Natural Resources provides a party with a Certificate of Completion after they have successfully remediated the property. However, the liability exemption does not provide “interim” liability protection during the period between the approval of the investigation/remediation plan and the issuance of a Certificate of Completion.

Voluntary parties are not protected from liability by the State of Wisconsin for additional contamination that may be discovered during the remediation. Some people believe that this lack of interim protection creates an impediment for

redevelopment in cases where the remediation takes several years to complete. Others believe that this “interim” liability protection currently is being addressed in the following manner by:

- Municipalities entering into agreements with purchasers to take on that liability prior to receiving the VPLE;
- Either the buyer or the seller of the property agree to take on that liability; or
- A person securing a private environmental insurance policy to cover that period of time.

Proposal

The VPLE process, s. 292.15, Stats., should be modified to expressly provide interim liability protection for qualified parties where the DNR has approved a site investigation and those parties have agreed to implement a remediation approved by the Department. This interim protection would protect the party from liability for any subsurface conditions that were not identified in the approved site investigation report, but are discovered prior to the time the required remediation is completed.

To receive the interim protection, a party would need to enter into a contract or negotiated agreement with the DNR to implement the remediation. This interim protection would not release voluntary parties from their responsibility to meet standards if the chosen remediation technique fails. This interim protection would certify that the site investigation is complete, but would not certify that the chosen remediation will meet the remediation objectives.

If this interim protection is provided to parties, the state Environmental Fund would face greater risk because the state would be responsible for additional contamination found at sites after the remedial action plan is approved, but before the remediation is completed. To eliminate this risk, parties requesting this interim exemption would be required to obtain a standard insurance policy for the interim period naming the voluntary party and the State of Wisconsin as the insured. To receive the liability exemption after the DNR approval of the investigation and remedial action plan, participants would have to demonstrate that they have the state approved standard insurance policy. The insured will pay for this policy. Before this change is implemented, the availability

of this type of environmental insurance and the feasibility of the requirement should be investigated.

Comments

DNR Staff Comments:

DNR staff expressed the following concerns regarding the proposal:

- Workload – entering into contracts to complete remedial activities and approving insurance policies would significantly increase the DNR’s workload.
- Privatization – voluntary parties are currently able to obtain insurance to cover the costs of unanticipated remedial actions. Staff believes that it is important to support private sector solutions to as many brownfields issues as possible. The State may be stepping in and taking over a role that the private sector can and should fulfill, by way of providing environmental insurance.
- Thoroughness of Site Investigation – the availability of interim protection may increase the pressure on DNR staff to approve investigations and grant exemptions without adequate information. In turn, it may result in the DNR requiring more investigative work, than if the liability protection came at the conclusion of the cleanup.

Type of Change: Statutory and Regulatory

Resources: The DNR would require 5 additional staff to implement this change. The DNR would need to:

- investigate the availability of insurance;
- develop rules to approve the insurance policies;
- develop site-specific contracts to complete remediation for persons who wish to receive this interim protection.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0937/P1

RCT:.....

soon

19

DOA:.....Wong – Interim liability protections for voluntary parties

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ONde

1 AN ACT ...; relating to: the budget. ✓
do not gen

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided on a later version.

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

2 SECTION 1. 292.15 (2) (at) ^X of the statutes is created to read:

3 292.15 (2) (at) Except as provided in sub. (6) [✓] or (7) [✓], a voluntary party is exempt
4 from ss. 289.05 (1) [✓], (2) [✓], (3) [✓] and (4) [✓], 289.42 (1) [✓], 289.67 [✓], 291.25 (1) to (5) [✓], 291.29 [✓], 291.37 [✓],
5 292.11 (3) [✓], (4) [✓] and (7) (b) [✓] and (c) [✓] and 292.31 (8) [✓], and rules promulgated under those
6 provisions, with respect to the existence of a hazardous substance on a property if all
7 of the following apply:

8 1. An environmental investigation of the property is conducted and is approved
9 by the department. ✓

1 2. The voluntary party enters into an agreement with the department under
2 which the voluntary party agrees to conduct a cleanup approved by the department.

3 3. The voluntary party obtains and maintains insurance to cover the costs of
4 complying with s. 292.11 (3) with respect to a hazardous substance described in subd.
5 5., the insurance complies with rules promulgated by the department and the
6 insurance names the voluntary party and this state as insureds.

7 4. The voluntary party conducts the agreed upon cleanup.

8 5. The hazardous substance is a type of substance the existence of which on the
9 property was not revealed by the environmental investigation under subd. 1. but is
10 discovered in the course of conducting the cleanup under subd. 4., or the hazardous
11 substance is that portion of a type of substance the existence of which on the property
12 was revealed by the environmental investigation but that, it is discovered in the
13 course of conducting the cleanup, exists on a part of the property where the substance
14 was not revealed by the environmental investigation.

15 6. 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 7. The voluntary party does not engage in activities that are inconsistent with
19 the maintenance of the property.

20 8. The voluntary party has not obtained approval of the investigation under
21 subd. 1. or the agreement under subd. 2. by fraud or misrepresentation, by the
22 knowing failure to disclose material information or under circumstances in which
23 the voluntary party knew or should have known about more discharges of hazardous
24 substances than were revealed by the investigation conducted under subd. 1.

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

6 **SECTION 2.** 292.15 (6) of the statutes is renumbered 292.15 (6) (a).^x

7 **SECTION 3.** 292.15 (6) (b)[✓] of the statutes is created to read:

8 292.15 (6) (b) This section does not exempt property from any lien filed under
9 s. 292.81 (3)[✓] for costs incurred by the department with respect to hazardous
10 substances described in sub. (2) (at) 5.[✓]

11

(END)[✓]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0937/P1dn

RCT:.....

jlq

This is a preliminary version of the draft concerning interim liability protection for voluntary parties. It is based on the proposal in the draft report of the DNR Brownfields Study Committee.

The request describes the proposal as "creating interim liability protections". This sounds as though it would be referring to protection *during* a cleanup. However, upon a closer look at the proposal, it appears to be more a matter of providing protection from liability with respect to hazardous substances discovered after the remedial action plan is approved but before the cleanup is completed. As drafted, the exemption from liability is not time-limited. Please let me know if I am wrong about this. Note that this proposal may create an incentive not to discover all of the contamination on a property during the investigation.

The most difficult aspect of drafting this item seems to be describing the hazardous substances with respect to which the voluntary party would be relieved from liability. It also seems that it may be difficult in practice to tell what "stuff" on the property is eligible for the exemption. My attempt to describe the relevant hazardous substances appears in proposed s. 292.15 (2) (at) 5. I am trying to describe two situations. In the first, a hazardous substance is discovered during the cleanup which was not discovered at all during the investigation. In the second, the hazardous substance was discovered during the investigation, but it is more widespread than the investigation revealed. Are these the situations that were intended to be covered?

I have modeled proposed s. 292.15 (2) (at) in part on current s. 292.15 (2) (a) and in part on s. 292.15 (2) (am). Please review the language carefully and, in particular, review the conditions in proposed s. 292.15 (2) (at) 1. to 9. to determine whether any conditions should be deleted or changed. Please also consider whether any additional changes should be made to s. 292.15. *existing portions of*

Please feel free to contact me with any questions or redraft instructions. This draft must be redrafted before it can be included in the budget.

current

Rebecca C. Tradewell
Managing Attorney
266-7290

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0937/P1dn
RCT:jlg:hmh

Monday, December 14, 1998

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Rebecca C. Tradewell
Managing Attorney
266-7290

FROM	Post-It® Fax Note	7671	Date	pages
COI	To	Becky Trudewill	From	Maryann Wang
	Co./Dept.	LRB	Co.	SRD
	Phone #	266-7290	Phone #	266-7597
	Fax #	264-8522	Fax #	

1999.01.19 15:03 #632 P.03/04

State of Wisconsin

DATE: January 19, 1999

FILE REF: LRB-0937/P1

TO: Brian Dranzik- MB/6

FROM: Darsi Foss- RR/3

SUBJECT: Response to Dec. 14, 1998. drafter's note LRB-0937/P1 re: interim liability protection.

Please accept the following comments in response to the above-referenced memo:

1. You are correct that this proposal is directed at providing liability protection for hazardous substance discharges that are discovered after the remedial action plan is approved but before the cleanup is completed. The proposal was made to allow voluntary parties to establish concrete cost estimates and market their properties before the final cleanup is completed.
2. Any concerns about creating an incentive to not discover all of the possible contamination in the site investigation should be alleviated by the fact that the department must review and approve the investigation (any attempt to conceal information would render the exemption invalid by under s. 292.15(2)(a)6.), and the voluntary party must obtain insurance from a company that would also review the site investigation for completeness.
3. With respect to the two situations described in s. 292.15(2)(at)5., the "interim protection" is intended to apply only to newly discovered discharges, not those that are of a greater degree and extent than originally identified in the investigation and remedial action plan. (Of course, as is the case with this entire proposal, a voluntary party is always free to obtain insurance to cover these costs without any DNR involvement. (See DNR comment 2 on final study group report)).
4. Instead of attempting to identify those conditions in the draft that should be deleted or changed, I took the liberty of preparing a draft which I believe contains all of the conditions necessary. Take special note of the fact that I changed the intro in a manner that only provides a voluntary party with assurance that their costs won't be drastically affected by discharges discovered in the course of the cleanup. The proposal was not intended to grant the full exemption provided for in subd. (2)(a) or (ar) after the site investigation stage. I also clarified that the assurance only covers discharges that occurred prior to the date that the site investigation and remedial action plan were approved.

(suggested structure)

- s. 292.15(2)(ar)1. The department may approve an environmental investigation and remedial action plan for the property and provide written assurance to the voluntary party that the voluntary party will not be responsible for the costs of investigating and cleaning up any hazardous substance discharge or discharges on or originating from the property that occurred prior to the date that the environmental investigation and remedial action plan were approved by the department if the hazardous substance discharge or discharges were not identified in the site investigation and were not addressed by the remedial action plan and if all of the following apply:
 - a. If requested by the department, the voluntary party enters into a written agreement with the department to conduct the cleanup described in the remedial action plan that is approved by the department.
 - b. The voluntary party obtains insurance to cover the costs of complying with s. 292.11(3) with respect to a hazardous substance discharge described in subd. (intro), the insurance complies with rules promulgated by the department and the insurance names the



voluntary party and the state as insureds. The insurance shall be maintained until a certificate of completion is issued for the property under subd. (a) or (am).

2. This subdivision does not affect a voluntary party's responsibility to clean up any hazardous substance discharge that is identified in the environmental investigation and addressed by the remedial action plan, but is later discovered to be greater in degree or extent than was identified in the environmental investigation and remedial action plan.

Tradewell, Becky

From: Tradewell, Becky
Sent: Wednesday, January 20, 1999 6:09 PM
To: Manyee Wong (E-mail)
Cc: David Schmiedicke (E-mail)
Subject: DNR's comments on LRB-0937/P1

Manyee,

I am confused by Darsi Foss' comments on LRB-0937/P1 in her memo dated January 19.

The main thing that confuses me is the statement in point 4 of the memo that this proposal was not intended to grant the full exemption provided under 292.15 (2) (a). The memo states that the draft should only provide a voluntary party with assurance that its costs will not be drastically altered. That really is not specific enough to turn into statutory language. The statutory language proposed in the January 19 memo says that DNR "may provide written assurance to the voluntary party that the voluntary party will not be responsible for the costs of investigating and cleaning up" the hazardous substances covered by this proposal. I do not think that language clearly states the legal effect of this proposal on a voluntary party. Is this intended to mean that the person is not subject to s. 292.11 (3) and (7) (b) and (c) with respect to these substances? If not, those provisions continue to apply and the voluntary party is required to complete a cleanup. Then what is this proposal intended to do? Please note that the brownfields study group report states that this proposal "would protect the party from liability for any subsurface conditions that were not identified in the approved site investigation report ...". I need to know whether you want to narrow the protection given to the voluntary party in LRB-0937/P1. If so, from what legal requirements is the voluntary party to be protected?

The brownfields study group report states that to receive the interim protection, a party would need to enter into an agreement with DNR to implement the remedial action. The proposed draft language in the memo would allow DNR to allow a voluntary party to obtain the interim liability exemption without having an agreement. Do you want me to make that change? The proposed draft language would not require the voluntary party to conduct the agreed upon cleanup. Do you want me to make that change? The proposed draft language would also delete the requirements that require monitoring and maintenance of the property and that require the voluntary party to allow DNR access to the property. I included those requirements on the assumption that the property covered by this exemption might remain partially contaminated, as is property for which a partial certificate of completion is issued. Do you want me to make those changes?

Becky

Tradewell, Becky

From: Tradewell, Becky
Sent: Saturday, January 23, 1999 10:28 AM
To: Wong, Manyee
Subject: RE: LRB draft 0937

Manyee,

I need to know whether you want to adopt DNR's suggestions. What they are proposing does not give any protection from liability. As I understand it, they would just send a letter to voluntary parties who get insurance. The letter would say that the insurance will cover the costs of cleaning up any contamination found during the cleanup. This does not seem to be what the brownfields study group report was talking about. If DNR wants to send out such letters, it seems to me that they can do so without any new statutory authority.

Becky

-----Original Message-----

From: Wong, Manyee
Sent: Friday, January 22, 1999 12:33 PM
To: Tradewell, Becky
Subject: FW: LRB draft 0937

Hi Becky,

Here is DNR's response to your questions on draft 0937. Let me know if you have any more concerns. Thanks a lot.

Manyee

-----Original Message-----

From: RamseW@mail01.dnr.state.wi.us [SMTP:RamseW@mail01.dnr.state.wi.us]
Sent: Friday, January 22, 1999 11:05 AM
To: Manyee.Wong@doa.state.wi.us
Cc: FossD@mail01.dnr.state.wi.us
Subject: LRB draft 0937

Sorry for the confusion regarding this draft (LRB-0937/P1). In response to Becky's questions/comments.

1. The "drastically altered" language is in reference to Point #3 of the same memo. It was intended to acknowledge the fact that costs to a voluntary party may be greater than anticipated if the degree and extent of a discharge that was identified in the investigation and remedial action plan is greater than anticipated. The word used often by the study group members was "wholly latent" contamination not identified in the site investigation. Sorry for the confusion
2. With respect to the reference to an "assurance letter," as opposed to an "exemption," the proposal is intended to give the department the authority to give formal assurance to voluntary parties that, if they obtain the insurance necessary to cover the costs of cleaning up any "latent" contamination, their costs will not be greatly increased by the discovery of such latent contamination in the course of conducting the remediation (e.g. doubled, or tripled, as has been the case in a few of the VPLE sites we have encountered to date) and ultimately obtaining the certificate of completion. As was noted in the "DNR comments" to this proposal, DNR staff believe that voluntary parties can already obtain insurance and protect themselves from increased costs without the department's issuance of a formal letter. However, it was the opinion of many of the study group members (attorneys, developers, etc. . .) that a formal letter that essentially approves of the use of environmental insurance for this purpose is acceptable to the department. It also gives the department the authority to review the terms of the insurance and formally approve of those terms. As with many of the Brownfields initiatives (technical oversight, requests for formal closure of

sites, etc. . .) the department is being asked to play an active role in private cleanup activities so that developers, lenders, and attorneys (who are, by nature, conservative in their ventures) have, in writing from the department, assurance that their approach (insurance) will serve the purpose that it was intended to serve (limit exposure to unforeseen costs that could cause redevelopment project to fail financially).

It is the department's opinion that giving the voluntary party the full exemption at this point would be giving the voluntary party much more than the assurance they seek at too early a date. It may seriously limit the department's authority to oversee the cleanup and require the actions necessary to restore the environment and give rise to disputes by voluntary parties (who would already have the exemption) over what they are responsible for.

3. The suggested change that would make the requirement of a written agreement with the department to conduct the cleanup described in the remedial action plan discretionary is intended to allow the department to consider the need for such an agreement on a case by case basis, depending on the nature of the cleanup and the voluntary party involved. It reflects the DNR staff comments that it is their experience that contracts are generally a time consuming process that should be avoided if not necessary.

4. Lastly, with respect to the comment about deleting the maintenance and monitoring requirements. That language would be unnecessary if our comments are adopted and the voluntary party gets an "assurance letter" and not an exemption upon completion of the site investigation and remedial action plan. Those provisions would kick in when the cleanup is completed and the voluntary party actually receives the certificate of completion.

I understand that this is a somewhat confusing proposal, and if this memo is in any way unclear, please do not hesitate to call me so we can further discuss it (264-6007). I'd like to thank you and Ms. Tradewell for your time and efforts on incorporating the vast number of proposals into the current statutes.

Tradewell, Becky

From: Wong, Manyee
Sent: Friday, January 22, 1999 12:33 PM
To: Tradewell, Becky
Subject: FW: LRB draft 0937

Hi Becky,

Here is DNR's response to your questions on draft 0937. Let me know if you have any more concerns. Thanks a lot.

Manyee

-----Original Message-----

From: RamseW@mail01.dnr.state.wi.us [SMTP:RamseW@mail01.dnr.state.wi.us]
Sent: Friday, January 22, 1999 11:05 AM
To: Manyee.Wong@doa.state.wi.us
Cc: FossD@mail01.dnr.state.wi.us
Subject: LRB draft 0937

Sorry for the confusion regarding this draft (LRB-0937/P1). In response to Becky's questions/comments.

1. The "drastically altered" language is in reference to Point #3 of the same memo. It was intended to acknowledge the fact that costs to a voluntary party may be greater than anticipated if the degree and extent of a discharge that was identified in the investigation and remedial action plan is greater than anticipated. The word used often by the study group members was "wholly latent" contamination not identified in the site investigation. Sorry for the confusion
2. With respect to the reference to an "assurance letter," as opposed to an "exemption," the proposal is intended to give the department the authority to give formal assurance to voluntary parties that, if they obtain the insurance necessary to cover the costs of cleaning up any "latent" contamination, their costs will not be greatly increased by the discovery of such latent contamination in the course of conducting the remediation (e.g. doubled, or tripled, as has been the case in a few of the VPLE sites we have encountered to date) and ultimately obtaining the certificate of completion. As was noted in the "DNR comments" to this proposal, DNR staff believe that voluntary parties can already obtain insurance and protect themselves from increased costs without the department's issuance of a formal letter. However, it was the opinion of many of the study group members (attorneys, developers, etc. . .) that a formal letter that essentially approves of the use of environmental insurance for this purpose is acceptable to the department. It also gives the department the authority to review the terms of the insurance and formally approve of those terms. As with many of the Brownfields initiatives (technical oversight, requests for formal closure of sites, etc. . .) the department is being asked to play an active role in private cleanup activities so that developers, lenders, and attorneys (who are, by nature, conservative in their ventures) have, in writing from the department, assurance that their approach (insurance) will serve the purpose that it was intended to serve (limit exposure to unforeseen costs that could cause redevelopment project to fail financially).

It is the department's opinion that giving the voluntary party the full exemption at this point would be giving the voluntary party much more than the assurance they seek at too early a date. It may seriously limit the department's authority to oversee the cleanup and require the actions necessary to restore the environment and give rise to disputes by voluntary parties (who would already have the exemption) over what they are responsible for.

3. The suggested change that would make the requirement of a written agreement with the department to conduct the cleanup described in the remedial action plan discretionary is intended to allow the department to consider the need for such an agreement on a case by case basis, depending on the nature of the cleanup and the voluntary party involved. It reflects the DNR staff comments that it is their experience that contracts are generally a time consuming process that should be avoided if not necessary.

4. Lastly, with respect to the comment about deleting the maintenance and monitoring requirements. That language would be unnecessary if our comments are adopted and the voluntary party gets an "assurance letter" and not an exemption upon completion of the site investigation and remedial action plan. Those provisions would kick in when the cleanup is completed and the voluntary party actually receives the certificate of completion.

I understand that this is a somewhat confusing proposal, and if this memo is in any way unclear, please do not hesitate to call me so we can further discuss it (264-6007). I'd like to thank you and Ms. Tradewell for your time and efforts on incorporating the vast number of proposals into the current statutes.

1/30/99 Per Margee - If person has insurance
and finds contamination during a cleanup & does a
2nd investigation, then person is exempt from liability
~~for~~ for additional contamination found after 2nd
site investigation is approved.

DOA:.....Wong - Interim liability protections for voluntary parties

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Onote

do not gen

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

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided on a later version.~~

✓
Analysis
insert

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

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

Ⓢ Discharges discovered after environmental investigations.

3 292.15 (2) (at) Except as provided in sub. (6) or (7), a voluntary party is exempt

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

5 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those

6 provisions, with respect to ^{a discharge} the existence of a hazardous substance ^{or originating from} on a property ^{Insert 1-6} if all

7 of the following apply:

Ⓢ 1. An ^{initial} environmental investigation of the property is conducted and is approved

9 by the department.

If required by the department,

1

2. The voluntary party enters into an agreement with the department under

2

which the voluntary party agrees to conduct a cleanup approved by the department.

3

3. The voluntary party obtains and maintains insurance to cover the costs of

4

complying with s. 292.11 (3) with respect to a hazardous substance described in subd. 1. *discharges that occurred before the investigation under subd. 1. is completed and*

5

5. the insurance complies with rules promulgated by the department and the

6

insurance names the voluntary party and this state as insureds.

7

~~4. The voluntary party conducts the agreed upon cleanup.~~

8

~~5. The hazardous substance is a type of substance the existence of which on the~~

9

~~property was not revealed by the environmental investigation under subd. 1. but is~~

10

~~discovered in the course of conducting the cleanup under subd. 4, or the hazardous~~

11

~~substance is that portion of a type of substance the existence of which on the property~~

12

~~was revealed by the environmental investigation but that, it is discovered in the~~

13

~~course of conducting the cleanup, exists on a part of the property where the substance~~

14

~~was not revealed by the environmental investigation.~~

15

~~6. 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

7. The voluntary party does not engage in activities that are inconsistent with

19

the maintenance of the property.

20

16. The voluntary party has not obtained approval of the investigation under

21

subd. 1. *or 5.* by fraud or misrepresentation, by the

22

knowing failure to disclose material information or under circumstances in which

23

the voluntary party knew or should have known about more discharges of hazardous

24

substances than were revealed by the investigation conducted under subd. 1. *or 5.*

24

substances than were revealed by the investigation conducted under subd. 1. *or 5.*

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

6 **SECTION 2.** 292.15 (6) of the statutes is renumbered 292.15 (6) (a).

7 **SECTION 3.** 292.15 (6) (b) of the statutes is created to read:

8 292.15 (6) (b) This section does not exempt property from any lien filed under

9 s. 292.81 (3) for costs incurred by the department with respect to ^a hazardous

10 substances ^{discharge} described in sub. (2) (at) ³

11

(END)

(CS)
***Note: The existence of a title for s. 292.15 (2) (at) depends on
LRB-1423 being included in the bill. IF LRB-1423 is not included, the
title must be removed.

Inset

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0937/P2ins
RCT:.....

Analysis insert

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 on a property, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted and approved by the department of natural resources (DNR), the property is cleaned up, DNR issues a certificate of completion stating 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 later discovered that the cleanup failed to restore the environment fully or to minimize the harmful effects of the discharge.

Under this bill, if an environmental investigation of a property is conducted and approved by ~~the department of natural resources (DNR)~~, a voluntary party obtains insurance to cover the costs of cleaning up hazardous substance discharges discovered after the environmental investigation is approved, an additional hazardous substance discharge is discovered in the course of conducting a cleanup and a second environmental investigation is conducted and approved by DNR, a voluntary party is exempt from the requirements to clean up any hazardous substance discharge discovered after the second environmental investigation is approved.

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

Insert 1-6

~~NO~~ if the discharge occurred before the environmental investigation under subd. 1. is completed and is discovered after the environmental investigation under subd. 5. is approved and ~~NO~~

Insert A

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

292.15 (2) (c) The department of justice may not commence an action under 42 USC 9607 against any voluntary party meeting the criteria of this subsection to recover costs for which the voluntary [✓] party is exempt under pars. (a), (am) [✓] ^{3 Cat)} and (b).

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0937/P2 dn
RCT...:....
↑
jlg

Manyee:

This draft exempts a voluntary party from the ✓ clean-up requirements of the spills law (and the other listed laws) for a hazardous substance discharge if the discharge occurred before the initial site investigation is completed and the discharge is discovered after a second site investigation is approved. The reporting requirement in s. ✓ 292.11 (2) will apply to the discharge, so that DNR should be informed of it. The voluntary party will be able to qualify for a certificate of completion under s. 292.11 (2) (a) ✓ after the property is all cleaned up. Someone (using the insurance proceeds, presumably) will have to clean up the discharge with respect to which this draft exempts the voluntary party.

Please let me know if you have any questions.

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-0937/P2dn
RCT:jlg:hmh

Sunday, January 31, 1999

Manyee:

This draft exempts a voluntary party from the clean-up requirements of the spills law (and the other listed laws) for a hazardous substance discharge if the discharge occurred before the initial site investigation is completed and the discharge is discovered after a second site investigation is approved. The reporting requirement in s. 292.11 (2) will apply to the discharge, so that DNR should be informed of it. The voluntary party will be able to qualify for a certificate of completion under s. 292.11 (2) (a) after the property is all cleaned up. Someone (using the insurance proceeds, presumably) will have to clean up the discharge with respect to which this draft exempts the voluntary party.

Please let me know if you have any questions.

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



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0937/P~~2~~3

RCT:jlg:hmh

today

redraft
run

DOA:.....Wong - Interim liability protections for voluntary parties

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

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

Analysis by the Legislative Reference Bureau

ENVIRONMENT

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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 on a property, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted and approved by the department of natural resources (DNR), the property is cleaned up, DNR issues a certificate of completion stating 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 later discovered that the cleanup failed to restore the environment fully or to minimize the harmful effects of the discharge.

Under this bill, if an environmental investigation of a property is conducted and approved by DNR, a voluntary party obtains insurance to cover the costs of cleaning

up hazardous substance discharges discovered after the environmental investigation is approved, an additional hazardous substance discharge is discovered ^{during} ~~in the course of conducting~~ a cleanup and a second environmental investigation is conducted and approved by DNR, a voluntary party is exempt from the requirements to clean up any hazardous substance discharge discovered after the second environmental investigation is approved.

For further information see the *state* 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) (at) of the statutes is created to read:

2 292.15 (2) (at) *Discharges discovered after environmental investigations.*

3 Except as provided in sub. (6) or (7), a voluntary party is exempt from ss. 289.05 (1),
4 (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and
5 (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with
6 respect to a discharge of a hazardous substance on or originating from a property if
7 the discharge occurred before the environmental investigation under subd. 1. is
8 completed and is discovered after the environmental investigation under subd. 5. is
9 approved and if all of the following apply:

10 1. An initial environmental investigation of the property is conducted and is
11 approved by the department.

12 2. If required by the department, the voluntary party enters into an agreement
13 with the department under which the voluntary party agrees to conduct a cleanup
14 approved by the department.

15 3. The voluntary party obtains and maintains insurance to cover the costs of
16 complying with s. 292.11 (3) with respect to a hazardous substance discharges that
17 occurred before the investigation under subd. 1. is completed and that are discovered
18 in the course of conducting a cleanup of the property, the insurance complies with

1 rules promulgated by the department and the insurance names the voluntary party
2 and this state as insureds.

3 4. A hazardous substance discharge that occurred before the investigation,
4 under subd. 1. is completed ^{after the investigation under subd. 1. is approved and before} is discovered ~~in the course of conducting~~ the cleanup ^{is completed}

5 5. A 2nd environmental investigation of the property is conducted and is
6 approved by the department.

7 6. The voluntary party has not obtained approval of the investigation under
8 subd. 1. or 5. or the agreement under subd. 2. by fraud or misrepresentation, by the
9 knowing failure to disclose material information or under circumstances in which
10 the voluntary party knew or should have known about more discharges of hazardous
11 substances than were revealed by the investigation conducted under subd. 1. or 5.

****NOTE: The existence of a title for s. 292.15 (2) (at) depends on LRB-1423 being included in the bill. If LRB-1423 is not included, the title must be removed.

12 **SECTION 2.** 292.15 (2) (c) of the statutes is amended to read:

13 292.15 (2) (c) The department of justice may not commence an action under 42
14 USC 9607 against any voluntary party meeting the criteria of this subsection to
15 recover costs for which the voluntary party is exempt under pars. (a), (am), (at) and
16 (b).

17 **SECTION 3.** 292.15 (6) of the statutes is renumbered 292.15 (6) (a).

18 **SECTION 4.** 292.15 (6) (b) of the statutes is created to read:

19 292.15 (6) (b) This section does not exempt property from any lien filed under
20 s. 292.81 (3) for costs incurred by the department with respect to a hazardous
21 substance discharge described in sub. (2) (at) 3. ^{that are not covered by insurance required by sub. (2) (at) 3. ✓} and

22 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0937/1

RCT:jlg:hmh

Today

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DOA:.....Wong - Interim liability protections for voluntary parties

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

Note

do not gen

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 on a property, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted and approved by the department of natural resources (DNR), the property is cleaned up, DNR issues a certificate of completion stating 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 later discovered that the cleanup failed to restore the environment fully or to minimize the harmful effects of the discharge.

Under this bill, if an environmental investigation of a property is conducted and approved by DNR, a voluntary party obtains insurance to cover the costs of cleaning

up hazardous substance discharges discovered after the environmental investigation is approved, an additional hazardous substance discharge is discovered during a cleanup and a second environmental investigation is conducted and approved by DNR, a voluntary party is exempt from the requirements to clean up any hazardous substance discharge discovered after the second environmental investigation is approved.

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6 respect to a discharge of a hazardous substance on or originating from a property if
7 the discharge occurred before the environmental investigation under subd. 1. is
8 completed and is discovered after the environmental investigation under subd. 5. is
9 approved and if all of the following apply:

10 1. An initial environmental investigation of the property is conducted and is
11 approved by the department.

12 2. If required by the department, the voluntary party enters into an agreement
13 with the department under which the voluntary party agrees to conduct a cleanup
14 approved by the department.

15 3. The voluntary party obtains and maintains insurance to cover the costs of
16 complying with s. 292.11 (3) with respect to a hazardous substance discharges that
17 occurred before the investigation under subd. 1. is completed and that are discovered
18 in the course of conducting a cleanup of the property, the insurance complies with

1 rules promulgated by the department and the insurance names the voluntary party
2 and this state as insureds.

3 4. A hazardous substance discharge that occurred before the investigation
4 under subd. 1. is completed is discovered after the investigation under subd. 1. is
5 approved and before the cleanup is completed.

6 5. A 2nd environmental investigation of the property is conducted and is
7 approved by the department.

8 6. The voluntary party has not obtained approval of the investigation under
9 subd. 1. or 5. or the agreement under subd. 2. by fraud or misrepresentation, by the
10 knowing failure to disclose material information or under circumstances in which
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12 substances than were revealed by the investigation conducted under subd. 1. or 5.

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

14 292.15 (2) (c) The department of justice may not commence an action under 42
15 USC 9607 against any voluntary party meeting the criteria of this subsection to
16 recover costs for which the voluntary party is exempt under pars. (a), ^{(ae), (ag)} ~~(am), (at)~~ and

17 (b).

✓ Insert
A

18 ~~SECTION 3. 292.15 (6) of the statutes is renumbered 292.15 (6) (a).~~

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20 292.15 (6) (b) This section does not exempt property from any lien filed under
21 s. 292.81 (3) for costs incurred by the department with respect to a hazardous

1 substance discharge described in sub. (2)(at) 3. and that are not covered by insurance
2 required by sub. (2) (at) 3.

3 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

-0937/1

INSA

29215(2)(c)✓

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

-0614, -0937 and -1423.

~~****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 -0937/1
.....

Manager!

0614

0937

1423

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-0937/1dn
RCTjlg:km

February 3, 1999

Manyee:

This draft reconciles LRB-0614, LRB-0937 and LRB-1423. All of these drafts should continue to appear in the compiled bill.

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



State of Wisconsin
1999 - 2000 LEGISLATURE

Today

LRB-093712²

RCT:jl:km

redraft
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DOA:.....Wong - Interim liability protections for voluntary parties

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

See p. 3

DNote

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

Analysis by the Legislative Reference Bureau

ENVIRONMENT

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- 11 approved by the department.
- 12 2. If required by the department, the voluntary party enters into an agreement
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- 14 approved by the department.
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4 under subd. 1. is completed is discovered after the investigation under subd. 1. is
5 approved and before the cleanup is completed.

6 5. A 2nd environmental investigation of the property is conducted and is
7 approved by the department.

8 6. The voluntary party has not obtained approval of the investigation under
9 subd. 1. or 5. or the agreement under subd. 2. by fraud or misrepresentation, by the
10 knowing failure to disclose material information or under circumstances in which
11 the voluntary party knew or should have known about more discharges of hazardous
12 substances than were revealed by the investigation conducted under subd. 1. or 5.

****NOTE: The existence of a title for s. 292.15 (2) (at) depends on LRB-1423 being
included in the bill. If LRB-1423 is not included, the title must be removed.

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15 USC 9607 against any voluntary party meeting the criteria of this subsection to
16 recover costs for which the voluntary party is exempt under pars. (a), ~~(ac)~~, ~~(ag)~~, (am),
17 (at) and (b).

****NOTE: This is reconciled s. 292.15 (2) (c). This SECTION has been affected by
drafts with the following LRB numbers: -0614, -0937 and -1423.

18 **SECTION 3.** 292.15 (6) (b) of the statutes is created to read:

19 292.15 (6) (b) This section does not exempt property from any lien filed under
20 s. 292.81 (3) for costs ^{that are} incurred by the department with respect to a hazardous

1 substance discharge described in sub. (2) (at) 3. and that are not covered by insurance

2 required by sub. (2) (at) 3.

3 (END)

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

LRB-0937/²adn
RCT;jlg:km

February 3, 1999 } new
date

Manye: ^R This redraft (12) improves the wording in 5.292.15(6)(6).⁵

This draft reconciles LRB-0614, LRB-0937 and LRB-1423. All of these drafts should continue to appear in the compiled bill.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1548/5dn
DAK:pgt:lp

February 4, 1999

To Gretchen Fossum:

This draft reconciles LRB-0277/3, LRB-0605/2, LRB-0702/6, LRB-0940/5, LRB-1548/4, LRB-1569/3, LRB-1604/3, LRB-1631/6, LRB-1922/4 and LRB-2024/2. LRB-0277, LRB-0605, LRB-0702, LRB-0940, LRB-1548, LRB-1569, LRB-1604, LRB-1631, LRB-1922 and LRB-2024 all should continue to appear in the compiled bill.

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

LRB-0937/2dn
RCT:jl:km

February 4, 1999

Manyee:

This redraft (/2) improves the wording in s. 292.15 (6) (b).

This draft reconciles LRB-0614, LRB-0937 and LRB-1423. All of these drafts should continue to appear in the compiled bill.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0937/2

RCT;jlg:km

DOA:.....Wong – Interim liability protections for voluntary parties

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 on a property, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted and approved by the department of natural resources (DNR), the property is cleaned up, DNR issues a certificate of completion stating 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 later discovered that the cleanup failed to restore the environment fully or to minimize the harmful effects of the discharge.

Under this bill, if an environmental investigation of a property is conducted and approved by DNR, a voluntary party obtains insurance to cover the costs of cleaning

up hazardous substance discharges discovered after the environmental investigation is approved, an additional hazardous substance discharge is discovered during a cleanup and a second environmental investigation is conducted and approved by DNR, a voluntary party is exempt from the requirements to clean up any hazardous substance discharge discovered after the second environmental investigation is approved.

For further information see the *state* 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) (at) of the statutes is created to read:

2 292.15 (2) (at) *Discharges discovered after environmental investigations.*

3 Except as provided in sub. (6) or (7), a voluntary party is exempt from ss. 289.05 (1),
4 (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and
5 (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with
6 respect to a discharge of a hazardous substance on or originating from a property if
7 the discharge occurred before the environmental investigation under subd. 1. is
8 completed and is discovered after the environmental investigation under subd. 5. is
9 approved and if all of the following apply:

10 1. An initial environmental investigation of the property is conducted and is
11 approved by the department.

12 2. If required by the department, the voluntary party enters into an agreement
13 with the department under which the voluntary party agrees to conduct a cleanup
14 approved by the department.

15 3. The voluntary party obtains and maintains insurance to cover the costs of
16 complying with s. 292.11 (3) with respect to a hazardous substance discharges that
17 occurred before the investigation under subd. 1. is completed and that are discovered
18 in the course of conducting a cleanup of the property, the insurance complies with

1 rules promulgated by the department and the insurance names the voluntary party
2 and this state as insureds.

3 4. A hazardous substance discharge that occurred before the investigation
4 under subd. 1. is completed is discovered after the investigation under subd. 1. is
5 approved and before the cleanup is completed.

6 5. A 2nd environmental investigation of the property is conducted and is
7 approved by the department.

8 6. The voluntary party has not obtained approval of the investigation under
9 subd. 1. or 5. or the agreement under subd. 2. by fraud or misrepresentation, by the
10 knowing failure to disclose material information or under circumstances in which
11 the voluntary party knew or should have known about more discharges of hazardous
12 substances than were revealed by the investigation conducted under subd. 1. or 5.

***NOTE: The existence of a title for s. 292.15 (2) (at) depends on LRB-1423 being
included in the bill. If LRB-1423 is not included, the title must be removed.

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

14 292.15 (2) (c) The department of justice may not commence an action under 42
15 USC 9607 against any voluntary party meeting the criteria of this subsection to
16 recover costs for which the voluntary party is exempt under pars. (a), (ac), (ag), (am),
17 (at) and (b).

***NOTE: This is reconciled s. 292.15 (2) (c). This SECTION has been affected by
drafts with the following LRB numbers: -0614, -0937 and -1423.

18 **SECTION 3.** 292.15 (6) (b) of the statutes is created to read:

19 292.15 (6) (b) This section does not exempt property from any lien filed under
20 s. 292.81 (3) for costs that are incurred by the department with respect to a hazardous

1 substance discharge described in sub. (2) (at) 3. and that are not covered by insurance
2 required by sub. (2) (at) 3.

3 (END)