

1999 DRAFTING REQUEST

Bill

Received: **12/21/98**

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: **PEN**

Topic:

DOA:.....Wong - Exempt voluntary parties and local units of government from liability for contamination that migrates off-site

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 01/6/99	chanaman 01/8/99	martykr 01/8/99	_____	lrb_docadmin 01/8/99		S&L
/P2	traderc 01/28/99	chanaman 01/29/99	martykr 01/29/99	_____	lrb_docadmin 01/29/99		S&L
/1	traderc 02/3/99	gilfokm 02/3/99	martykr 02/3/99	_____	gretskl 02/3/99		S&L

FE Sent For:

<END>

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FE Sent For:

1-2-3-99
King

Kon 2/3

JS
km 2/3

<END>

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FE Sent For: *cmm*
4/28 1p2 *km/29* *km/29*

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1/?	traderc	CMM 1/7 1/8	Jm/8	JA 1/8 Jm/8			
FE Sent For:		1/1-1-7-99 CMM CMM 1/2 1/28					

<END>

2. ~~Create Interim Liability Protections during the Voluntary Party Liability Exemption Process (Reference: LRB 0937)~~

- ~~Modify previous request to specify that information on the number of sites where additional contamination was discovered during the end of a site investigation and the start of remediation activities must be provided in the biennial report as discussed in numeral 1.~~
- ~~Modify previous request to authorize DNR to require that voluntary parties acquire insurance to cover liability for the interim period naming the voluntary party and the State of Wisconsin as the insured. The policy will name both voluntary party and the State of Wisconsin as the insured.~~

3. Expand the Voluntary Party Liability Exemption and Liability Protections for Local Units of Government

- Exempt voluntary parties from environmental liability if contamination migrates to an off-site property after the Certificate of Completion has been issued.
- Exempt local units of government from environmental liability if contamination migrates off site and impacts another property.
- Require that information on the number of sites where contamination migrated off sites after a Certification of Completion has been issued be provided in the biennial report as discussed in numeral 1.
- Authorize DNR to require the voluntary party and local units of government to obtain insurance to cover liability due to migration of contamination off site after a Certificate of Completion is issued. The policy will name both voluntary party and the State of Wisconsin as the insured.

4. Natural Attenuation at Voluntary Party Sites

- Allow Certificates of Completion to be issued before ch. NR 140 standards are met for sites where natural attenuation is used as a final remedy.
- Require that information on the number of sites where the use of natural attenuation as a final remedy failed after the Certification of Completion has been issued be provided in the biennial report as discussed in numeral 1.
- Authorize DNR to require voluntary party to obtain insurance that would cover the costs of remediation in the event that the natural attenuation remedy fails. Insurance may be obtained privately or from a state sponsored insurance pool. The policy will name both voluntary party and the State of Wisconsin as the insured.

5. Definition of "Voluntary Party" (Reference: LRB 0929)

- Modify previous request to require that information on the number of sites where additional contamination was discovered after a Certificate of Completion has been issued be provided in the biennial report as discussed in numeral 1.
- Modify previous request to authorize DNR to require the voluntary party to obtain a private standard insurance policy or participate in a state insurance pool to cover liability for contamination found after a Certificate of Completion

Issue: Expand the Voluntary Party Liability Exemption and the Liability Protections for Local Units of Government

Background

The Voluntary Party Liability Exemption (s.292.15, Wis. Stats.) provides Voluntary Parties who clean up contaminated property an exemption from environmental liability under sections of the Spill, Hazardous and Solid Waste laws.

However, Voluntary Parties who receive a Certificate of Completion are not exempt from liability from the DNR when contamination migrates off-site (e.g., to an adjacent property) because the exemption only applies to the property where the

hazardous substance is located. Similarly, Local Units of Government who receive exemptions from the Spill Law when they acquire property involuntarily (s.292.11(9)(e)1m) are not clearly exempt from the Spill Law if contamination migrates off-site to another property.

This is because the statute is unclear whether the current LUG exemption applies to the property itself or anything impacted by the property.

Proposals

- To encourage more parties to clean up and redevelop brownfields, the liability exemption provided in s.292.15(2)(a), Wis. Stats., should be changed to clearly exempt voluntary parties from liability if the contamination migrates to an off-site property. After the Certificate of Completion has been issued, voluntary parties should be protected the possibility that the DNR could require additional remedial actions (under the Spill Law) for contamination originating from the property if it impacts an off-site property.

To accomplish this, s.292.15(2)(a), Wis. Stats., should be changed as follows:

"Except as provided in sub. (6) or (7), a voluntary party is exempt from with respect to the existence of a hazardous substance located on or originating from the property, if all of the following occur....

- To encourage more Local Units of Government to acquire and recycle brownfields, the LUG exemption should be changed to clearly exempt LUGs who acquire property by one of the mechanisms listed in s.292.11(9)(e)1m, Wis. Stats.(blight elimination, tax delinquency, etc.), from liability if the contamination migrates off-site and impacts another property.

To accomplish this, s.292.11(9)(e)1m, Wis. Stats., should be amended as follows:

"A local governmental unit is exempt from subs. (3), (4) and (7)(b) and (c) with respect to the existence of hazardous substances located on or originating from property acquired by the local governmental unit if any of the following applies:"

- To further encourage Local Units of Government to acquire and recycle brownfields, and to provide consistency in state policy with respect to civil immunity protection provided to LUGs who acquire contaminated properties one of the mechanisms listed in s.292.11(9)(e)1m, Wis.

Stats., the immunity provisions in s.292.26, Wis. Stats., should be extended to cover such acquisitions.

To accomplish this, s.292.26(2), Wis. Stats., should be amended as follows to read as follows: "Except as provided in sub. (3), a local governmental unit is immune from civil liability related to the discharge of a hazardous substance on or from the property if any of the following applies:

- (a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.
- (b) The local governmental unit acquired the property from a local governmental unit that acquired the property under a method described in par. (a)
- (c) The local governmental unit acquired the property through condemnation or other proceeding under Ch. 32, Wis. Stats.
- (d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination."

Comments

DNR Comments: The third proposal listed above would deprive a third party of the right to seek a remedy for damages to their property caused by contamination migrating onto their property from the source property. It could be found to be an unlawful attempt to deprive the third party of his or her property without compensation.

Study Group Comments: Many members of the Study Group expressed concern over the third bullet in this proposal. These concerns mirrored the DNR's comments.

Bruce Keyes, Foley and Lardner, Brownfields Study Group Member, Comments: The first two proposals (a and b) address situations where the municipality has little or no choice regarding property to be acquired. In some instances this could be said of acquiring property for blight elimination or condemnation. However, the local unit of government is likely to have a greater degree of free will in selecting to acquire properties for redevelopment and acquisition through condemnation or blight elimination. Consequently, while it is in the public interest to protect the public coffers, in balance I believe that the local unit of government should, in these cases, be held to the same responsibility as private parties.

Type of Change: Statutory

Resources: None



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1422/P1

SOON

RCT:.....
Cory King

DOA:.....Wong - Exempt voluntary parties and local units of government
from liability for contamination that migrates off-site

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

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gen. cat

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

present

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. A person is considered to possess or control any hazardous substance that is discharged on property that the person owns. Current law generally exempts a local governmental unit from requirements to clean up a property if the local governmental unit acquired the property in one of several specified ways, such as through tax delinquency or condemnation.

*

This bill exempts a local governmental unit from the requirement to clean up a hazardous substance that has migrated from a property acquired in one of the specified ways to another property. As a condition of obtaining this exemption, the department of natural resources (DNR) may require a local governmental unit to obtain insurance covering the cost of cleaning up hazardous substances that migrate from its property.

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} 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 ^{later} 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. ^{fully}

This bill exempts a person who qualifies for the voluntary party exemption from the requirement to clean up a hazardous substance that has migrated from the voluntary party's property to another property after DNR issues the certificate of completion. As a condition of obtaining this exemption, ~~the department of natural resources~~ ^{DNR} may require a voluntary party to obtain insurance covering the cost of cleaning up hazardous substances that migrate from its property.

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:

Insert →

1 SECTION 1. 292.11 (9) (em) of the statutes is created to read:

2 292.11 (9) (em) 1. Subject to subd. 2., a local governmental unit entitled to the
 3 exemption under par. (e) 1m. is exempt from subs. (3), (4) and (7) (b) and (c) with
 4 respect to a hazardous substance that migrates from the property to which the
 5 exemption under par. (e) 1m. applies onto another property.

6 2. As a condition of obtaining the exemption under subd. 1., the department
 7 may require a local governmental unit to obtain and maintain insurance, naming the
 8 local governmental unit and this state as insureds, to cover the costs of complying
 9 with ~~§ 292.11~~ ^{subd.} (3) with respect to a hazardous substance described in subd. 1.

10 SECTION 2. 292.15 (2) (cm) of the statutes is created to read:

11 292.15 (2) (cm) 1. Subject to subd. 2., a voluntary party entitled to the
 12 exemption under par. (a) is exempt from ss. 289.05 (1), (2), (3) and (4), 289.42 (1),

1 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31
2 (8), and rules promulgated under those provisions, with respect to a hazardous
3 substance that migrates from the property to which the exemption under par. (a)
4 applies onto another property after the date on which the certificate under par. (a)
5 is issued.

6 2. As a condition of obtaining the exemption under subd. 1., the department
7 may require a voluntary party to obtain and maintain insurance, naming the
8 voluntary party and this state as insureds, to cover the costs of complying with s.
9 292.11 (3) with respect to a hazardous substance described in subd. 1.

10 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1422/P1dn

RCT:.....

cmj/ikmg

Manye: ^{stat.}

was This is a preliminary version of the draft relating to liability of voluntary parties and local governmental units for contamination that migrates off-site. As requested, for voluntary parties the draft provides an exemption for migration that occurs after the certificate of completion is issued. It may be difficult to tell when a substance migrated from one property to another. Should the exemption also apply to migration that occurred before the certificate ~~is~~ ^{was} issued but was not discovered until later? Should the exemption apply to voluntary parties that have already obtained a certificate of completion? If not, I will need to add an initial applicability provision to this draft.

I am not certain how DNR will go about requiring insurance unless it does so on a blanket basis, by rule. A local governmental unit is not required to apply to DNR to obtain the current liability exemption, so DNR would not necessarily know when a local governmental unit has acquired a contaminated property in one of the specified ways.

Note that the person whose property is affected by this migrating contamination is probably not legally required to clean up the contamination because of s. 292.13. However, the person may be stuck with a contaminated property which the person may be unable to sell or to use as he or she wishes unless a cleanup is conducted. DNR has the authority to clean up the contamination, but is not required to do so.

I plan to include language relating to the biennial report on the impact of this exemption in the draft relating to that report. Otherwise, I will add that language in a redraft of this draft.

Please let me know if you have any questions.

Rebecca C. Tradewell
Managing Attorney
266-7290

CS

Insert

99-1422/p1

Section #. 292.11 (9) (e) 1. of the statutes is amended to read:

In this paragraph and par. (em), "local

292.11 (9) (e) 1. ~~Local~~ governmental unit" means a municipality, a redevelopment authority created under s. 66.431, a public body designated by a municipality under s. 66.435 (4) or a housing authority.

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35.

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

LRB-1422/P1dn
RCT:cmh&kmg:km

January 8, 1999

Manyeey:

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I plan to include language relating to the biennial report on the impact of this exemption in the draft relating to that report. Otherwise, I will add that language in a redraft of this draft.

Please let me know if you have any questions.

Rebecca C. Tradewell
Managing Attorney
266-7290

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: January 20, 1999

TO: Brian Dranzik, MB/5

FROM: Darsi Foss, RR/3

SUBJECT: LRB Draft 1422/P1 dn - Exempt voluntary parties and local units of government for contamination that migrates off-site

We have discussed this bill draft with staff at the Department of Administration (DOA) and I believe we have come to a general agreement on the language that would cover the off-site situations contemplated in the Brownfields Study Report. In addition, I believe we have come to an agreement as to the application of environmental insurance both for the voluntary party and local units of government exemptions.

Voluntary Party Exemption Language in LRB 1422/P1:

OK With respect to the Voluntary Party exemption in s. 292.15, Wis. Stats., we believe that the language in LRB draft 0929/2dn regarding environmental insurance should be sufficient to cover the situation contemplated in LRB draft 1422/P1 dn. In addition, we recommend that s. 292.15(2)(a), Wis. Stats., be amended to address the concerns of the Brownfields Study Group with respect to off-site contamination:

"Except as provided in sub. (6) or (7), a voluntary party is exempt from with respect to the existence of a hazardous substance located on or originating from the property, if all of the following occur....

This amended language and the insurance language in LRB draft 0929/2dn are recommended to replace the voluntary party language in LRB draft 1422/P1 dn.

Local Units of Government Exemption Language:

As contemplated in LRB Draft 1422/P1 dn, DNR staff believe that application of environmental insurance to off-site contamination at properties acquired by a Local Unit of Government by one of the methods in s. 292.11(9)(e) should be dropped. In addition, we recommend that the following language be adopted to address the concerns of the Brownfields Study Group with respect to a LUG's liability under s. 292.11(9)(e), Wis.Stats., for off-site contamination:

no insurance "A local governmental unit is exempt from subs. (3), (4) and (7)(b) and (c) with respect to the existence of hazardous substances located on or originating from property acquired by the local governmental unit if any of the following applies:"

Please let us know of any questions you may have.

Cc:
Judy Ohm, LS/5
Bill Ramsey, RR/3



Tradewell, Becky

From: Tradewell, Becky
Sent: Monday, January 25, 1999 11:23 AM
To: Wong, Manyee
Cc: Schmiedicke, David
Subject: DNR's comments on LRB-1422/P1

Manyee,

The memo from Darsi Foss that you forwarded to me concerning LRB-1422/P1 asks that s. 292.15 (2) (a) (intro.) be amended to refer to "a hazardous substance located on or originating from the property" instead of the language that is in the draft. This would appear to exempt a voluntary party from having to clean up any hazardous substance that has migrated from the property, without regard to when the substance migrated and without regard to whether the voluntary party knew about the migration before the voluntary party cleaned up the originating property. Section 292.15 (2) (a) only requires a cleanup of the property for which the voluntary party is seeking an exemption, it does not require that the voluntary party clean up any neighboring property. Is this the substantive effect that you desire?

Please keep in mind that another brownfields draft changes the definition of "voluntary party" so that anyone can be a voluntary party. If that draft is included in the budget and this draft exempts a voluntary party from any responsibility to clean up a neighboring property, the budget could result in exempting a person who intentionally discharged a hazardous substance from liability to remedy the effects of the discharge on neighboring properties. The language proposed by DNR appears to very greatly limit the spills law requirement that a person cleanup the messes that the person caused. Please let me know if you would like me to clarify the point that I am trying to make.

As a drafter, my job is to understand the legal effect that a draft is intended to have and to ensure that it does have that effect. I am trying very hard to do this. It is often impossible for a drafter to do this if he or she is only given proposed statutory language.

Of course, drafters sometimes do not accomplish the desired legal effect on the first try (or even the second). When the LRB receives redraft instructions, we need to be told in what respect our previous draft fails to accomplish the legal change that the requester wants. That has not been happening with some of the redraft requests that are coming from DNR. This is especially frustrating when we have so little time to finalize budget drafts, some of which have been available for review for a considerable amount of time. All of the drafts must be finalized by next Monday.

It is also my job to try to draft so that the meaning of the statutes is clear to readers. Some of the changes that DNR is requesting do not seem to be based on substance but on a structure that DNR would prefer. In determining whether to make such changes, we need to consider whether the changes would make the statutes more or less clear.

I will make any necessary changes to LRB-1422/P1 after I hear back from you.

Becky

1/28 Meeting with Manjoo, Darci Foss (DNR), Bill Ramsey (DNR) and Brian Dranzik (DNR)

DNR interprets the voluntary party statute to require the voluntary party to clean up the hazardous substances that have migrated off site before DNR grants a certificate of completion. I said that I did not interpret the statute that way, but that I would modify it.

DNR wants to use the "originating from" language because that was used in s. 292.13 and was hard to get agreement on. I pointed-out that "originating from" language could cover hazardous waste generated on a property & sent off-site.



State of Wisconsin
1999 - 2000 LEGISLATURE

Fri (2/29) Noon

LRB-1422/P42
RCT:cmh&kmg:km ✓
redraft
run

DOA:.....Wong - Exempt voluntary parties and local units of government from liability for contamination that migrates off-site

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

✓
Note

1 AN ACT ^{don't get cat} (...); 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. A person is considered to possess or control any hazardous substance that is present on property that the person owns. Current law generally exempts a local governmental unit from the requirement to clean up a property if the local governmental unit acquired the property in one of several specified ways, such as through tax delinquency or condemnation.

This bill exempts a local governmental unit from the requirement to clean up a hazardous substance that has migrated from a property acquired in one of the specified ways to another property. ~~As a condition of obtaining this exemption, the department of natural resources (DNR) may require a local governmental unit to obtain insurance covering the cost of cleaning up hazardous substances that migrate from its property.~~

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,

on a property

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, 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.

Analysis insert

This bill exempts a person who qualifies for the voluntary party exemption from the requirement to clean up a hazardous substance that has migrated from the voluntary party's property to another property after DNR issues the certificate of completion. As a condition of obtaining this exemption, DNR may require a voluntary party to obtain insurance covering the cost of cleaning up hazardous substances that migrate from its property.

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. 292.11 (9) (e) 1. of the statutes is amended to read:

2 292.11 (9) (e) 1. "~~Local~~ In this paragraph ~~the word "local"~~, "local governmental
3 unit" means a municipality, a redevelopment authority created under s. 66.431, a
4 public body designated by a municipality under s. 66.435 (4) or a housing authority.

5 SECTION 2. 292.11 (9) (em) of the statutes is created to read:

6 292.11 (9) (em) 1. Subject to subd. 2., a local governmental unit entitled to the
7 exemption under par. (e) 1m. is exempt from subs. (3), (4) and (7) (b) and (c) with
8 respect to a hazardous substance that migrates from the property to which the
9 exemption under par. (e) 1m. applies onto another property.

10 2. As a condition of obtaining the exemption under subd. 1., the department
11 may require a local governmental unit to obtain and maintain insurance, naming the

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local governmental unit and this state as insureds, to cover the costs of complying with sub. (3) with respect to a hazardous substance described in subd. 1.

SECTION 3. 292.15 (2) (cm) of the statutes is created to read:

292.15 (2) (cm) 1. Subject to subd. 2., a voluntary party entitled to the exemption under par. (a) is exempt from ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with respect to a hazardous substance that migrates from the property to which the exemption under par. (a) applies onto another property after the date on which the certificate under par. (a) 3. is issued.

2. As a condition of obtaining the exemption under subd. 1., the department may require a voluntary party to obtain and maintain insurance, naming the voluntary party and this state as insureds, to cover the costs of complying with s. 292.11 (3) with respect to a hazardous substance described in subd. 1.

(END)

15
Inse A
3-14

Analysis insert

Under this bill, in order to qualify for the voluntary party exemption, both the voluntary party's property and any other property affected by a discharge originating from that property must be cleaned up. Under the bill, once DNR approves the cleanup, the voluntary party is exempt from further cleanup requirements on both the voluntary party's own property and any other property affected by a discharge originating from that property. The bill also ^{authorizes} DNR to require a voluntary party to obtain insurance to cover the ^{cost} of a cleanup if the initial cleanup fails.

insert hyphen

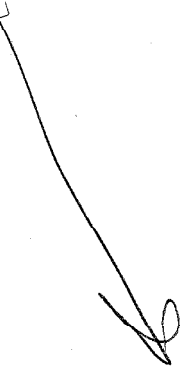
Insert 3-14, p.1

Section #. 292.11 (9) (c) 1m. (intro.) of the statutes is amended to read:

292.11 (9) (e) 1m. (intro.) A local governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property acquired by the local government unit if any of the following applies:

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35.

discharges of hazardous substances on or originating from



Insert 3-14, p. 2

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

292.15 (2) (a) (intro.) Except as provided in sub. (6) or (7), a voluntary party is exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with respect to the existence of a hazardous substance ^{discharges} on the property, if all of the following occur at any time before or after the date of acquisition:

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



Insert 3-14, p. 3

X

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

292.15 (2) (a) 2. Except as provided in sub. (4), the property is cleaned up by restoring the environment to the extent practicable and minimizing the harmful effects from a discharge of the hazardous substance in accordance with rules promulgated by the department and any contract entered into under those rules.

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

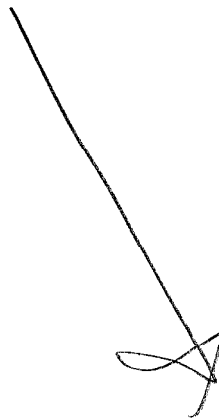
Strike

Insert 3-14, p. 4

Section #. 292.15 (2) (a) 3. of the statutes is amended to read:

292.15 (2) (a) 3. The voluntary party obtains a certificate of completion from the department that the ~~property~~ ^{environment} has been satisfactorily restored to the extent practicable ^{with respect to the discharges} and that the harmful effects from ~~a discharge of a hazardous substance~~ ^{the discharges} have been minimized.

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



Insert 3-14, p. 5

the requirements of other laws relating to hazardous substances. The bill also authorizes DNR to require a voluntary party to obtain insurance to cover the cost of a cleanup in case the initial cleanup fails.

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:

SECTION 1. 292.15 (1) (f) of the statutes is repealed and recreated to read:

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

SECTION 2. 292.15 (2) (a) 7. of the statutes is created to read:

292.15 (2) (a) 7. If required by the department, the voluntary party obtains and maintains insurance to cover the costs of complying with s. 292.11 (3) in case it is discovered, after the department issues a certificate of completion under subd. 3., that the cleanup under subd. 2. fails to fully restore the environment or to minimize the effects from a discharge or that the hazardous substance that is the subject of the cleanup is more extensive than known before the department issues the certificate of completion, and the insurance complies with rules promulgated by the department and names the voluntary party and this state as insureds.

SECTION 3. 292.15 (2) (e) of the statutes is created to read:

292.15 (2) (e) If the department requires insurance under par. (a) 7., the department may contract with an insurer to provide insurance required under par. (a) 7. and may require voluntary parties to obtain coverage under the contract.

SECTION 4. 292.15 (3) of the statutes is amended to read:

292.15 (3) SUCCESSORS AND ASSIGNS. The exemption provided in sub. (2) applies to any successor or assignee of the voluntary party who qualifies as a voluntary party

end of insert

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1422/P2dn

RCT:.....

cmh
↑

Manyee:

At our meeting, I learned that DNR interprets s. 292.15 (2) (a) to require a voluntary party (or whoever is conducting the cleanup) to clean up any discharge that has migrated to another property in order to qualify for the exemption for the voluntary party's property. Although in isolation the language of s. 292.15 (2) (a) 3. can be read support this position, I think that s. 292.15 (2) (a) 2. states the clean-up requirements, namely that the voluntary party is only required to clean up the property for which the exemption is sought. I discussed the matter with Paul Nilsen, who has also done some work in this area, and he agrees with my interpretation.

Whatever drafting problems there are with s. 292.15 (2) (a) 3., I believe that the legislature did not intend to require the cleanup of adjacent properties in order to obtain the voluntary party exemption. Under my interpretation, if s. 292.11 (3) applied to the voluntary party with respect to an adjacent property, the voluntary party would still be liable under s. 292.11 (3) for that property. But a voluntary party that obtained a property after the property itself was cleaned up would probably not be liable under s. 292.11 (3) for the hazardous substances that had migrated from the property before the voluntary party obtained the property.

Under this draft, I believe that, as under current law, s. 292.15 (2) (a) 1., 4. and 5. only apply to the voluntary party's property. Is that OK?

Please let me know if you have any questions about this draft.

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-1422/P2dn
RCT:cmh:km

January 29, 1999

Manyee:

At our meeting, I learned that DNR interprets s. 292.15 (2) (a) to require a voluntary party (or whoever is conducting the cleanup) to clean up any discharge that has migrated to another property in order to qualify for the exemption for the voluntary party's property. Although in isolation the language of s. 292.15 (2) (a) 3. can be read support this position, I think that s. 292.15 (2) (a) 2. states the clean-up requirements, namely that the voluntary party is only required to clean up the property for which the exemption is sought. I discussed the matter with Paul Nilsen, who has also done some work in this area, and he agrees with my interpretation.

Whatever drafting problems there are with s. 292.15 (2) (a) 3., I believe that the legislature did not intend to require the cleanup of adjacent properties in order to obtain the voluntary party exemption. Under my interpretation, if s. 292.11 (3) applied to the voluntary party with respect to an adjacent property, the voluntary party would still be liable under s. 292.11 (3) for that property. But a voluntary party that obtained a property after the property itself was cleaned up would probably not be liable under s. 292.11 (3) for the hazardous substances that had migrated from the property before the voluntary party obtained the property.

Under this draft, I believe that, as under current law, s. 292.15 (2) (a) 1., 4. and 5. only apply to the voluntary party's property. Is that OK?

Please let me know if you have any questions about this draft.

Rebecca C. Tradewell
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E-mail: Becky.Tradewell@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

today

LRB-1422/1
RCT:cmh&kg:km redraft run

DOA:.....Wong - Exempt voluntary parties and local units of government from liability for contamination that migrates off-site

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

DNote

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even
col.

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. A person is considered to possess or control any hazardous substance that is present on property that the person owns. Current law generally exempts a local governmental unit from the requirement to clean up a property if the local governmental unit acquired the property in one of several specified ways, such as through tax delinquency or condemnation.

This bill exempts a local governmental unit from the requirement to clean up a hazardous substance that has migrated from a property acquired in one of the specified ways to another property.

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, 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, in order to qualify for the voluntary party exemption, both the voluntary party's property and any other property affected by a discharge originating from that property must be cleaned up. Under the bill, once DNR approves the cleanup, the voluntary party is exempt from further clean-up requirements on both the voluntary party's own property and any other property affected by a discharge originating from that property. The bill also authorizes DNR to require a voluntary party to obtain insurance to cover the cost of a cleanup if the initial cleanup fails.

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.** 292.11 (9) (e) 1. of the statutes is amended to read:

2 292.11 (9) (e) 1. ~~Local~~ In this paragraph, "local governmental unit" means a
3 municipality, a redevelopment authority created under s. 66.431, a public body
4 designated by a municipality under s. 66.435 (4) or a housing authority.

5 **SECTION 2.** 292.11 (9) (e) 1m. (intro.) of the statutes is amended to read:

6 292.11 (9) (e) 1m. (intro.) ~~A local governmental unit is exempt from subs. (3),~~
7 ~~(4) and (7) (b) and (c) with respect to discharges of hazardous substances on or~~
8 ~~originating from property acquired by the local government unit if any of the~~
9 ~~following applies:~~

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

11 292.15 (2) (a) (intro.) ~~Except as provided in sub. (6) or (7), a voluntary party is~~
12 ~~exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25~~
13 ~~(1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules~~

1 promulgated under those provisions, with respect to the existence discharges of a
2 hazardous ~~substance~~ substances on the or originating from a property, if all of the
3 following occur at any time before or after the date of acquisition:

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

5 292.15 (2) (a) 2. Except as provided in sub. (4), the ~~property is cleaned up by~~
6 ~~restoring the environment~~ is restored to the extent practicable with respect to the
7 discharges and ~~minimizing~~ the harmful effects from a ~~discharge of the hazardous~~
8 ~~substance~~ the discharges are minimized in accordance with rules promulgated by the
9 department and any contract entered into under those rules.

10 **SECTION 5.** 292.15 (2) (a) 3. of the statutes is amended to read:

11 292.15 (2) (a) 3. The voluntary party obtains a certificate of completion from
12 the department that the ~~property environment~~ has been satisfactorily restored to the
13 extent practicable with respect to the discharges and that the harmful effects from
14 a ~~discharge of a hazardous substance~~ the discharges have been minimized.

15 ~~**SECTION 6.** 292.15 (2) (a) 7. of the statutes is created to read:~~

16 ~~292.15 (2) (a) 7. If required by the department, the voluntary party obtains and~~
17 ~~maintains insurance to cover the costs of complying with s. 292.11 (3) in case it is~~
18 ~~discovered, after the department issues a certificate of completion under subd. 3.,~~
19 ~~that the cleanup under subd. 2. fails to fully restore the environment or to minimize~~
20 ~~the effects from a discharge or that the hazardous substance that is the subject of the~~
21 ~~cleanup is more extensive than known before the department issues the certificate~~
22 ~~of completion, and the insurance complies with rules promulgated by the department~~
23 ~~and names the voluntary party and this state as insureds.~~

24 ~~**SECTION 7.** 292.15 (2) (e) of the statutes is created to read:~~

SECTION 7

1
2
3
4

~~292.15 (2) (e) If the department requires insurance under par. (a) 7., the department may contract with an insurer to provide insurance required under par. (a) 7. and may require voluntary parties to obtain coverage under the contract.~~

(END)

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

LRB-1422/1dn

.....
RET: Kmg

Manager:

LRB-0929, LRB-1419, LRB-1422

0257

0285

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

LRB-1422/1dn
RCT:kmg:km

February 3, 1999

Manyee:

This draft reconciles LRB-0257, LRB-0285, LRB-0929, LRB-1419, LRB-1422 and LRB-1423. All of these drafts should continue to appear in the compiled bill.

Rebecca C. Tradewell
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1422/1
RCT:cmh&kg:km

DOA:.....Wong - Exempt voluntary parties and local units of government
from liability for contamination that migrates off-site

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

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3 ~~restoring the environment~~ is restored to the extent practicable with respect to the
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5 ~~substance~~ the discharges are minimized in accordance with rules promulgated by the
6 department and any contract entered into under those rules.

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

8 292.15 (2) (a) 3. The voluntary party obtains a certificate of completion from
9 the department that the ~~property~~ environment has been satisfactorily restored to the
10 extent practicable with respect to the discharges and that the harmful effects from
11 ~~a discharge of a hazardous substance~~ the discharges have been minimized.

12

(END)