

2001 DRAFTING REQUEST

Bill

Received: **12/04/2000**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-7597**

By/Representing: **Wong**

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

Drafter: **traderc**

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Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Voluntary party liability exemption, former owners

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>
/1	traderc 12/11/2000	jdye 12/12/2000	martykr 12/12/2000	_____	lrb_docadmin 12/12/2000		

FE Sent For:

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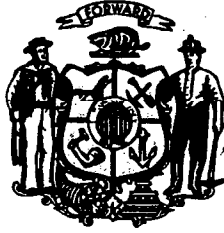
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Date: November 29, 2000
To: Steve Miller, LRB
From: Manyee Wong, DOA
266-7595
Subject: Brownfields Statutory Language

I'm forwarding statutory language requests based on the Brownfields Study Group recommendations for inclusion in the budget. Attached is a draft of the Brownfields Study Group Report.

- ✓ 1. **Stewardship Liability Exemption:** Substitute statutory reference to the stewardship appropriation under the LGU liability exemption provision with the phrase stewardship program funds.

Reason for change: 1999 Wisconsin Act 9 allowed LGUs to qualify for liability exemption if they purchased a property using stewardship funds. However, s. 292.11(9)(e)1m.f., Wis. Stats., referenced the incorrect appropriation.

- ✓ 2. **Solid Waste Liability Exemption:** Expand the voluntary party solid waste liability exemption to include local government units.
- ✓ 3. **Interim Liability Protection:** Remove the interim liability protection exemption from current law.
- ✓ 4. **Off-site liability exemption:** Expand off-site liability exemption coverage to soil and sediments.
- ✓ 5. **Voluntary Party Liability Exemption:** Clarify that liability exemptions continue to apply to a voluntary party who no longer owns the property, even if the current property owner fails to maintain and monitor the property in accordance with DNR rules.
- ✓ 6. **Use of Natural Attenuation:** Require the voluntary party using natural attenuation as a remedial strategy to provide DNR, the responsible party, the insurance company, or any authorized representative access to the property in order to determine whether natural attenuation has failed and to conduct cleanup if necessary.
- ✓ 7. **Environmental Remediation Tax Increment Financing (ER TIF):** Make technical changes to various definitions under the provision:

- a. Create a definition for "environmental remediation tax incremental tax district" similar to the definition of regular TIFs
- b. Change the definitions of "environmental remediation tax increment", "environmental remediation tax increment base", and "taxable property" as suggested by DOR.
- c. Modify certain provisions of the program to ensure eligible application to both contiguous parcels and individual parcel of property.
- d. Require that a certified audit be done once after the final expenditure is completed.
- e. Change the application due date for environmental remediation tax increment base certification from April 1st to December 31st of the year the ER TIF is created.

Note: For a, b, and c, please refer to LRB 4239/2 created under the 1999 legislative session.

- ✓ 8. Negotiated Sale in Lieu of Bidding: Allow a county or a city to transfer tax delinquent properties it owns without using the competitive bid process if the purchaser agrees to conduct a site assessment and cleanup the property in accordance with DNR rules.
- ✓ 9. Assign Judgement of a Tax Deed: Allow a county to transfer a tax deed to an individual at the time of judgement if the individual agrees to conduct a site assessment and cleanup the property.
- ✓ 10. Liens and Back Taxes: Exclude EPA and DNR liens and back taxes from eligibility under the grant.
- ✓ 11. Vehicle Environmental Impact Fee - Extend the repeal date to June 30, 2003.
- ✓ 12. Land Recycling Loan Program: Allow the Land Recycling Loan Program to be used on contiguous parcels of properties so as to better address cleanup of area-wide groundwater contamination.

5

Issue Clarification: Assignability after Certificate of Completion (COC) for Voluntary Party Liability Exemptions

Background

Under the current VPLE law, s. 292.15(3), Wis. Stats., the Voluntary Party Liability Exemption (VPLE) can be assigned to future owners. However, Study Group members expressed a concern that future owners of a property may not maintain institutional controls as required by statute and as conditions of a Certificate of Completion (COC). It is currently unclear whether or not a voluntary party who no longer owns a property would still be exempt from liability if the property is not maintained and monitored as required by the statute and DNR regulations.

Proposal

To clarify this issue, the following two changes are proposed:

- change s. 292.15(2), Wis. Stats., so that the requirement to maintain and monitor the property [s. 292.15(2)(a)4 and s. 292.15(2)(ae)4, Wis. Stats.] applies only to the voluntary parties if they possess or control the property for which the COC was issued; as under current law, the voluntary party who possesses or controls the property could potentially lose the VPLE and be subject to liability if they fail to maintain and monitor the property; and
- add a section under s. 292.15(2)(b), Wis. Stats., which would allow the exemptions to continue to apply to a voluntary party who no longer owns a property, even if the person in current possession or control fails to maintain and monitor the property.

Type of Change

Statutory

Resources

None

Comments



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1311/1

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SO ON

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DOA:.....Wong – Voluntary party liability exemption, former owners
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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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 applies to DNR for an exemption from this liability, 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, DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, and the voluntary party maintains and monitors the property as required by DNR. This exemption applies if later changes to the law would impose greater responsibilities on the voluntary party or if it is discovered that the cleanup failed to fully restore the environment or to minimize the harmful effects of the discharge.

This party modifies the voluntary party liability exemption so that the requirement to maintain and monitor the property as required by DNR only applies to a voluntary party if the voluntary party owns or controls the property. The bill specifies that the voluntary party liability exemption continues to apply to a

* voluntary party who does not own or control the property ~~even~~ if the person who owns or controls the property fails to maintain and monitor the property as required by DNR.

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

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

2 292.15 (2) (a) 4. ~~The~~ If the voluntary party owns or controls the property, ✓ the
3 voluntary party maintains and monitors the property as required under rules
4 promulgated by the department and any contract entered into under those rules.

5 History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237; 1999 a. 9, 185.

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

7 292.15 (2) (ae) 4. ~~The~~ If the voluntary party owns or controls the property, the
8 voluntary party maintains and monitors the property as required under rules
9 promulgated by the department and any contract entered into under those rules.

10 History: 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237; 1999 a. 9, 185.

11 **SECTION 3.** 292.15 (2) (b) 4. of the statutes is created to read:

12 292.15 (2) (b) 4. If the voluntary party does not own or control the property, the
13 person who owns or controls the property fails to maintain and monitor the property
14 as required under rules promulgated by the department ✓ or any contract entered into
15 under those rules.

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1311/1

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