



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

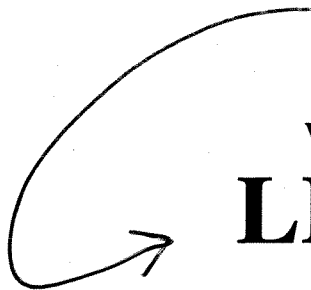
### **Appendix A ... Part 03 of 04**

Date Transfer Requested: 01/23/2006 (Per: RCT)



The 2005 drafting file for  
LRB-1287 (transferred)  
LRB-1288 (transferred)  
LRB-1290 (transferred)  
LRB-1390 (transferred)  
where used to create ...

**LRB 05-3740**



The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## 2005 DRAFTING REQUEST

### Bill

Received: 12/17/2004

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Carol Roessler (608) 266-5300

By/Representing: Karen Asbjornson

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Submit via email: YES

Requester's email: Sen.Roessler@legis.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Brownfields, inspection, engineering, repair, and monitoring conditions for closed sites

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### Instructions:

See Attached

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### 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>
/?	btradewe 02/09/2005	lkunkel 03/09/2005		_____			
/P1			rschluet 03/09/2005	_____	lemery 03/09/2005		S&L
/1	btradewe 03/30/2005	lkunkel 04/01/2005	chaugen 04/04/2005	_____	mbarman 04/04/2005		S&L
/2	btradewe	lkunkel	chaugen	_____	lnorthro		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
04/11/2005	04/13/2005	04/13/2005	04/13/2005	_____	04/13/2005		

FE Sent For:

**<END>**

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/?	btradewe 02/09/2005	lkunkel 03/09/2005		_____			
/P1			rschluet 03/09/2005	_____	lemery 03/09/2005		S&L
/1	btradewe 03/30/2005	lkunkel 04/01/2005	chaugen 04/04/2005	_____ <i>ch 4-13</i>	mbarman 04/04/2005		

*1/2 lmk 4/13*

*ch 4-13*

*PG*

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<END>

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/?	btradewe 02/09/2005	lkunkel 03/09/2005		_____			
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/P1			rschluet 03/09/2005	_____	lemery 03/09/2005		
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FE Sent For:

1/mk 4/1

CH  
4/4

PS  
4/4

<END>

**2005 DRAFTING REQUEST**

**Bill**

Received: 12/17/2004

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Carol Roessler (608) 266-5300

By/Representing: Karen Ashbjornson

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Submit via email: YES

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/?	btradewe	/pl lmk 3/8					
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*[Handwritten signature]*  
3/2/05  
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FE Sent For:



12-16-04

Becky,

Enclosed are brown field initiatives (some new - some old) that need to be drafted into one bill (package).

Please call me or Darsi Foss (7-6713) at DNR if you have any questions.

Thank you for your assistance!

Happy Holidays!

Karen Ashpkinson  
Office of Senator  
Roessler



**Recommended Changes to Wisconsin Statutes  
By the Brownfields Study Group**

TOPIC	Draft Language	RECOMMENDATION	Agencies
<p>7. Modify the Environmental Remediation TIF statute, s. 66.1106, Stats.</p>	<p>LRB# 03-3347/1</p>	<ul style="list-style-type: none"> <li>-include delinquent taxes as an eligible cost.</li> <li>-extend the ER TIF time period from 16 to 23 years</li> <li>-adopt the technical changes proposed by Revenue in the FY 2001-03 executive budget and AB 510.</li> <li>- makes changes retroactive to existing ER TIFs</li> </ul>	<p>DOR DNR</p>
<p>8. Language to clarify that certain inspection, engineering, repair and monitoring conditions placed on a property by the DNR, Commerce or DATCP at the completion of an environmental clean up are enforceable and run with the land once placed.</p>	<p>Not yet. Bill drafting language is attached.</p>	<ul style="list-style-type: none"> <li>- Clarify that the DNR, Commerce and DATCP have the authority to require that environmental conditions be placed on a property in accordance with clean up rules and agency approvals.</li> <li>- Clarify that DNR can enforce that requirement.</li> <li>- Clarify that the deed restriction runs with the land.</li> <li>- Clarify they will be tracked in DNR's GIS Registry and that a fee is required to place the property on the Registry.</li> </ul>	<p>DATCP DNR Commerce</p>

**Recommended Changes to Wisconsin Statutes  
By the Brownfields Study Group**

TOPIC	Draft Language	RECOMMENDATION	Agencies
1. Modify Negotiated Sale In Lieu Of Bidding For Tax Delinquent Brownfields Properties	LRB #03-3314/1	Create a statutory amendment to s.75.69(2), Wis. Stats., that would allow a county or city of the first class to transfer tax delinquent property it owns, without using the competitive bidding process, if environmental pollution is present and the property meets the definition of a brownfield under s.292.75(1)(a), Wis. Stats.	Revenue DNR
2. Assign Judgment Of A Tax Deed Without Taking Title	LRB# 03-1315/1	-allow a county to execute a tax deed under s.75.14(1), Wis. Stats., to an individual under the same conditions as prescribed under s.75.106, Wis. Stats.; -allow the individual who has elected to accept a tax deed under the above conditions to commence an action to bar former owners under s.75.39, Wis. Stats.	Revenue DNR
3. Adoption of Federal Brownfields Tax Deduction into State Tax Code	No, need new bill draft	Adopt the federal brownfields tax deduction for cleanup costs associated with non-petroleum contamination	Revenue DNR
4. Changes to Voluntary Party Liability Exemption statute, s. 292.15: <ul style="list-style-type: none"> <li>• Eliminate Interim Liability Exemption for Voluntary Parties – (292.15(2)(at)</li> <li>• Natural Attenuation at Voluntary Party Sites - clarify</li> <li>• Expand definition of landfills that may receive the VPLE.</li> </ul>	LRB# 03-3316	-The first change would eliminate the need for the department to create an insurance mechanism for voluntary parties at the time their site investigation is approved. -The second change provides the department access to a property if natural attenuation has or is suspected to have failed, once a Certificate has been issued. -Presently, only landfills that are not municipal solid waste sites may obtain a VPLE certificate. Expand this to include wider universe of landfills	Revenue DNR
5. Local Government Liability Exemption for Certain Types of Solid Waste Sites	LRB# 03-1318/1	This change provides that a local governmental unit that is exempt from the clean-up requirements for a property is also exempt from solid waste management standards and other legal requirements relating to solid waste for that property. This would not apply to licensed or approved facilities, nor a facility where the local government caused the contamination.	DNR
6. Streamline the Land Recycling Loan Program (LRLP)	LRB# 03-3324	-Eliminate the use of the Intent to Apply (ITA) form, and the December 31 deadline associated with it -direct financing for Phase I and II environmental assessments, and site investigations.	DNR DOA

#8

Need new bill draft

**New Bill Draft: Enforceability of Environmental Response Maintenance, Monitoring and Inspection Requirements post-State Agency Clean-up Approval (this is in lieu of adopting the State Uniform Environmental Covenants Act)**

Nearly everywhere in the United States, including Wisconsin, state and local governments are struggling to deal with the problem of brownfields – vacant, abandoned or underused properties with varying degrees of environmental contamination. Reclaiming these properties for beneficial uses can be very difficult and expensive. Total cleanup, if possible, would often cost much more than the market value of the property. However, if a legal mechanism can be developed for long-term control of the use of the land and to require maintenance of remedial measures (such as caps to prevent direct contact or to minimize the infiltration of precipitation), many properties could be safely returned to use and may be bought and sold for redevelopment. It appears that current real property law may be inadequate to achieve this goal, however.

Various common-law doctrines in property law have been used in other states to successfully challenge restrictive covenants that state governments have sought to impose to control the use of contaminated brownfields. At its 2003 Annual Meeting, the National Conference of Commissioners on Uniform State Laws approved a "Uniform Environmental Covenants Act" that seeks to establish the legal validity and enforceability of environmental covenants by specifically providing that historic common law doctrines are not applicable to environmental covenants. However, the Uniform Act is complex, provides that mortgages and other previously recorded interests in the land have priority over a new environmental covenant, and requires rather cumbersome procedures to establish, modify or terminate environmental covenants in order to protect the interests of property owners, lien holders, and local units of government.

In order to establish a more efficient process for creating and modifying enforceable brownfield environmental restrictions that does not involve the recording of a document in the chain of title records at the county Register of Deeds office, the Brownfields Study Group has proposed an alternative approach. The Brownfields Study Group believes that this alternative approach will be less objectionable than the "Uniform Act" would be, because statutory limitations on the use of land with some residual contamination would not be viewed as a defect that would limit the desirability of the property for purchase or redevelopment, like a deed restriction would.

**Draft Proposal:**

- ◇ Amend the ss. 94.73, 101.44, and 292.11, Wis. Stats. (Commerce, DATCP and DNR spill cleanup laws), to provide that the property owner has the responsibility to maintain engineering controls (such as caps or soil covers) on property with residual hazardous substance contamination and the responsibility to comply with land use restrictions and any other property conditions that are put in place at the time that a state agency approves of a clean up ("response action") or at the time that a state agency closes an environmental contamination case. This would make the enforceability of engineering controls, land use restrictions and other property conditions uniformly applicable, regardless of which state agency has jurisdiction over the response action.
- ◇ Require that persons who own the property be held responsible for the following conditions, unless the responsibility was contractually assumed by, or otherwise assigned to, another entity who is complying with all applicable conditions:
  - ◇ maintaining and repairing any remedial measures on the property; and
  - ◇ Conducting any needed investigation or remediation activities if structural impediments are removed which previously prevented a complete investigation or remediation.
- ◇ Require that persons who own or occupy the property must comply with land use restrictions that were put in place by the agency with jurisdiction over the site at the time that a response action is approved or at the time that the case is closed, including limiting the use of the property to industrial land uses where non-industrial soil cleanup standards are exceeded.

- ◇ Require that the person who applies for case closure of a site which includes property with residual contamination that the applicant does not own must send written notice to the owners of all properties with residual contamination within that site, including the source property, at the time that the application for closure is filed.
- ◇ Limitations on land use and other environmental conditions would be listed in the closure letter or certificate of completion, at the time of state agency approval of the case closure, as well as being listed in the written approval of the response action (if there is one before a case closure decision is made) and on the electronic registry database maintained by the DNR, pursuant to s. 292.57, Stats.
- ◇ Listing on the registry (and the payment of any applicable fees) would be required as part of an agency's approval of the response action, or as part of the agency's approval of case closure if the response action is not reviewed until case closure.
- ◇ If a person wants to undertake actions on a property that would otherwise be prohibited or limited by a land use restriction or other property condition listed on the registry, the person would be required to obtain written approval from the agency with jurisdiction over the hazardous substance contamination.

Addon?

Brownfields  
editorial/  
house cleaning

LRB 3-3321/1 Update Environmental Repair Law

- Page 2, Lines 10-11: the words "most recent Wisconsin remedial response site evaluation report, including the" should be deleted in addition to deleting the word "inventory."
- Page 2, Line 12: the phrase "and other properties" should be inserted before "that are" to be consistent with the other provisions in s. 292.31 (1) where "or other property" is proposed to be added after "a site or facility."
- Page 3, Line 12: either delete "of sites or facilities" (so that it reads: "the data base under subd. 1 is not a rule.") or add "and other properties" after "sites or facilities" to be consistent with other provisions in s. 292.31 (1) where "or other property" is proposed to be added after "a site or facility."
- Page 4, Line 2: Retain the word "for" that is proposed to be deleted.
- Page 4, Lines 14-15. Delete "in a town with a population greater than 10,000." All sites or facilities that have caused the contamination of a municipal water system should be given high priority.
- Page 4, Lines 15-18. The last sentence in s. 292.31 (3)(c) should be deleted. It is obsolete, and there is no need to simply amend or update this provision.
- Page 5, Lines 13-22. Section 292.31 (5) should be repealed instead of amended. This provision is obsolete, and is no longer needed.



## 2003 BILL

1     **AN ACT** *to repeal* 292.31 (1) (a) 2., 292.31 (1) (c) and 292.31 (3) (cm); *to amend*  
2             227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a) 3., 292.31 (1)  
3             (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3) (c), 292.31  
4             (3) (d), 292.31 (4) and 292.31 (5); and *to repeal and recreate* 292.31 (1) (a)  
5             (title) and 292.31 (1) (a) 1. of the statutes; **relating to:** identification and  
6             cleanup of properties that are environmentally contaminated and granting  
7             rule-making authority.

---

### *Analysis by the Legislative Reference Bureau*

Current law requires the Department of Natural Resources (DNR) to compile and maintain an inventory of sites or facilities that may cause or threaten to cause environmental pollution. DNR must compile a revised list every four years. DNR must also create a list ranking the sites or facilities on the inventory in order of the hazard that they pose to public health or welfare or the environment. The law requires DNR to begin cleanups on all of those sites that are determined to present a substantial danger to public health or welfare or to the environment by January 1, 2000.

This bill eliminates the requirements for the contaminated site inventory and hazard ranking. Under this bill, DNR is required to compile and make available a data base of all known sites or facilities that are environmentally contaminated. The

**BILL**

bill also eliminates the deadline for beginning cleanups at sites that present a substantial danger to public health or welfare or to the environment.

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

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

1           SECTION 1. 227.01 (13) (zc) of the statutes is amended to read:

2           227.01 (13) (zc) Establishes ~~an inventory or a hazard ranking a data base~~ under  
3 s. 292.31.

4           SECTION 2. 292.21 (1) (c) 2. g. of the statutes is amended to read:

5           292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of  
6 the written compilations of sites or facilities considered to pose a threat to human  
7 health or the environment, including the national priorities list under 42 USC 9605  
8 (a) (8) (B); the federal environmental protection agency's information system for the  
9 comprehensive environmental response, compensation and liability act, 42 USC  
10 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial  
11 response site evaluation report, including the inventory data base of sites or facilities  
12 which may cause or threaten to cause environmental pollution that are  
13 environmentally contaminated required by s. 292.31 (1) (a); ~~and the department's~~  
14 ~~registry of abandoned landfills.~~

15           SECTION 3. 292.31 (1) (title) of the statutes is amended to read:

16           292.31 (1) (title) ~~INVENTORY DATA BASE; ANALYSIS; HAZARD RANKING.~~

17           SECTION 4. 292.31 (1) (a) (title) of the statutes is repealed and recreated to read:

18           292.31 (1) (a) (title) *Data base.*

19           SECTION 5. 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

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## BILL

1           292.31 (1) (a) 1. The department shall compile, maintain, and make available  
2 to the public a data base of all sites or facilities and other properties at which the  
3 discharge of a hazardous substance or other environmental pollution has been  
4 reported to the department. The department shall update the data base regularly.

5           SECTION 6. 292.31 (1) (a) 2. of the statutes is repealed.

6           SECTION 7. 292.31 (1) (a) 3. of the statutes is amended to read:

7           292.31 (1) (a) 3. The decision of the department to include a site or facility or  
8 other property on the inventory data base under subd. 1. or exclude a site or facility  
9 from the inventory data base is not subject to judicial review.

10          SECTION 8. 292.31 (1) (a) 4. of the statutes is amended to read:

11          292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list data base  
12 of sites or facilities ~~which results from the inventory under subd. 1.~~ is not a rule.

13          SECTION 9. 292.31 (1) (b) 1. of the statutes is amended to read:

14          292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or  
15 may enter into a contract with any person to take the action. ~~The department may~~  
16 ~~take action under subd. 2. or 3. regardless of whether a site or facility is included on~~  
17 ~~the inventory under par. (a) or the hazard ranking list under par. (c).~~

18          SECTION 10. 292.31 (1) (c) of the statutes is repealed.

19          SECTION 11. 292.31 (2) (intro.) of the statutes is amended to read:

20          292.31 (2) ENVIRONMENTAL RESPONSE PLAN RULES. (intro.) The department shall  
21 promulgate ~~by rule a waste facility environmental response plan. The plan shall~~  
22 contain rules relating to investigation and remedial action for sites or facilities and  
23 other properties at which the air, land, or waters of the state have been affected by  
24 the discharge of a hazardous substance or other environmental pollution, including  
25 all of the following provisions:



## BILL

1 SECTION 12. 292.31 (2) (a) of the statutes is amended to read:

2 292.31 (2) (a) ~~Methods for preparing the inventory and conducting the analysis~~  
3 ~~under sub. (1) investigating the degree and extent of contamination for actions under~~  
4 ~~sub. (3).~~

5 SECTION 13. 292.31 (3) (c) of the statutes is amended to read:

6 292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for  
7 taking remedial action under this subsection, the department shall consider the  
8 ~~hazard ranking of significance to public health, the community, and the environment~~  
9 ~~of each site or facility, the amount of funds available, the information available about~~  
10 ~~each site or facility, the willingness and ability of an owner, operator or other~~  
11 ~~responsible person to undertake or assist in remedial action, the availability of~~  
12 ~~federal funds under 42 USC 9601, et seq., and other relevant factors. The~~  
13 ~~department shall give the highest priority to remedial action at sites or facilities~~  
14 ~~which have caused contamination of a municipal water system in a town with a~~  
15 ~~population greater than 10,000. If any such site or facility is eligible for federal funds~~  
16 ~~under 42 USC s. 9601 to 9675, but the federal funds will not be available before~~  
17 ~~January 1, 2000, the department shall proceed with remedial action using state~~  
18 ~~funds.~~

19 SECTION 14. 292.31 (3) (cm) of the statutes is repealed.

20 SECTION 15. 292.31 (3) (d) of the statutes is amended to read:

21 292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated  
22 ~~under this section, the hazard ranking list, or the considerations for taking action~~  
23 ~~under par. (c) or the remedial action schedule under par. (cm), the department may~~  
24 ~~take emergency action under this subsection and subs. (1) and (7) at a site or facility~~  
25 ~~if delay will result in imminent risk to public health or safety or the environment.~~

**BILL**

1 The department is not required to hold a hearing under par. (f) if emergency action  
2 is taken under this paragraph. The decision of the department to take emergency  
3 action is a final decision of the agency subject to judicial review under ch. 227.

4 **SECTION 16.** 292.31 (4) of the statutes is amended to read:

5 292.31 (4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY  
6 MUNICIPALITIES. Notwithstanding ~~the inventory, analysis and hazard ranking under~~  
7 ~~sub. (1),~~ the environmental response plan prepared rules under sub. (2) or the  
8 environmental repair authority, remedial action sequence and emergency response  
9 requirements under sub. (3), the department shall pay that portion of the cost of any  
10 monitoring requirement which is to be paid under s. 289.31 (7) (f) from the  
11 appropriation under s. 20.370 (2) (dv) prior to making other payments from that  
12 appropriation.

13 **SECTION 17.** 292.31 (5) of the statutes is amended to read:

14 292.31 (5) MUNICIPAL INCINERATOR ASH TESTING. Notwithstanding ~~the inventory,~~  
15 ~~analysis and hazard ranking under sub. (1),~~ the environmental response plan  
16 prepared rules under sub. (2), the environmental repair authority, remedial action  
17 sequence and emergency response requirements under sub. (3), or the monitoring  
18 costs under sub. (4), the department shall pay the cost incurred by a municipality  
19 after June 30, 1986, and before January 30, 1988, for testing required to determine  
20 whether the ash from a municipally owned incinerator is hazardous. The  
21 department shall make payments under this subsection from the appropriation  
22 under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

23 (END)

3/11

2005 ~~2003~~ BILL

OWote

regenerate  
↓

LPS:PlsPWF

~~LPS:Pls check  
all a.r.~~

1 **AN ACT to repeal** 292.31 (1) (a) 2., 292.31 (1) (c) and 292.31 (3) (cm); **to amend**  
 2 227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a) 3., 292.31 (1)  
 3 (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3) (c), 292.31  
 4 (3) (d), 292.31 (4) and 292.31 (5); and **to repeal and recreate** 292.31 (1) (a)  
 5 (title) and 292.31 (1) (a) 1. of the statutes; **relating to:** identification and  
 6 cleanup of properties that are environmentally contaminated, and granting  
 7 rule-making authority.

↑ properties with residual contamination

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

**Analysis by the Legislative Reference Bureau**

Current law requires the Department of Natural Resources (DNR) to compile and maintain an inventory of sites or facilities that may cause or threaten to cause environmental pollution. DNR must compile a revised list every four years. DNR must also create a list ranking the sites or facilities on the inventory in order of the hazard that they pose to public health or welfare or the environment. The law requires DNR to begin cleanups on all of those sites that are determined to present a substantial danger to public health or welfare or to the environment by January 1, 2000.

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↑ properties

**BILL**

bill also eliminates the deadline for beginning cleanups at sites that present a substantial danger to public health or welfare or to the environment.

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. 227.01 (13) (zc) of the statutes is amended to read:

2 227.01 (13) (zc) Establishes an inventory or a hazard ranking a data base under  
3 s. 292.31.

Insert  
2-3

4 SECTION 2. 292.21 (1) (c) 2. g. of the statutes is amended to read:

5 292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of  
6 the written compilations of sites or facilities considered to pose a threat to human  
7 health or the environment, including the national priorities list under 42 USC 9605  
8 (a) (8) (B); the federal environmental protection agency's information system for the  
9 comprehensive environmental response, compensation and liability act, 42 USC  
10 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial  
11 response site evaluation report, including the inventory data base of sites or facilities  
12 which may cause or threaten to cause environmental pollution and other properties that are  
13 environmentally contaminated required by s. 292.31 (1) (a); and the department's  
14 registry of abandoned landfills.

15 SECTION 3. 292.31 (1) (title) of the statutes is amended to read:

16 292.31 (1) (title) INVENTORY DATA BASE; ANALYSIS; HAZARD-RANKING.

17 SECTION 4. 292.31 (1) (a) (title) of the statutes is repealed and recreated to read:

18 292.31 (1) (a) (title) Data base.

19 SECTION 5. 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

## BILL

1           292.31 (1) (a) 1. The department shall compile, maintain, and make available  
2 to the public a data base of all sites or facilities and other properties at which the  
3 discharge of a hazardous substance or other environmental pollution has been  
4 reported to the department. The department shall update the data base regularly.

5           **SECTION 6.** 292.31 (1) (a) 2. of the statutes is repealed.

6           **SECTION 7.** 292.31 (1) (a) 3. of the statutes is amended to read:

7           292.31 (1) (a) 3. The decision of the department to include a site or facility or  
8 other property on the inventory data base under subd. 1. or exclude a site or facility  
9 or other property from the inventory data base is not subject to judicial review.

10          **SECTION 8.** 292.31 (1) (a) 4. of the statutes is amended to read:

11          292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list data base  
12 of sites or facilities which results from the inventory under subd. 1. is not a rule. ✓

13          **SECTION 9.** 292.31 (1) (b) 1. of the statutes is amended to read:

14          292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or  
15 may enter into a contract with any person to take the action. ~~The department may~~  
16 ~~take action under subd. 2. or 3. regardless of whether a site or facility is included on~~  
17 ~~the inventory under par. (a) or the hazard ranking list under par. (c).~~

18          **SECTION 10.** 292.31 (1) (c) of the statutes is repealed.

19          **SECTION 11.** 292.31 (2) (intro.) of the statutes is amended to read:

20          292.31 (2) ENVIRONMENTAL RESPONSE PLAN RULES. (intro.) The department shall  
21 promulgate ~~by rule a waste facility environmental response plan.~~ ~~The plan shall~~  
22 contain rules relating to investigation and remedial action for sites or facilities and  
23 other properties at which the air, land, or waters of the state have been affected by  
24 the discharge of a hazardous substance or other environmental pollution, including  
25 all of the following provisions:

## BILL

1 SECTION 12. 292.31 (2) (a) of the statutes is amended to read:

2 292.31 (2) (a) Methods <sup>✓</sup> for <sup>✓</sup> preparing the inventory and conducting the analysis  
3 under sub. (1) investigating the degree and extent of contamination for actions under  
4 sub. (3). ✓

5 SECTION 13. 292.31 (3) (c) of the statutes is amended to read:

6 292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for  
7 taking remedial action under this subsection, the department shall consider the  
8 hazard ranking <sup>plan</sup> of significance to public health, the community, and the environment  
9 of each site or facility, the amount of funds available, the information available about  
10 each site or facility, the willingness and ability of an owner, operator, or other  
11 responsible person to undertake or assist in remedial action, the availability of  
12 federal funds under 42 USC 9601, et seq., and other relevant factors. The  
13 department shall give the highest priority to remedial action at sites or facilities  
14 which have caused contamination of a municipal water system in a town with a  
15 population greater than 10,000. ~~If any such site or facility is eligible for federal funds~~  
16 ~~under 42 USC s. 9601 to 9675, but the federal funds will not be available before~~  
17 ~~January 1, 2000, the department shall proceed with remedial action using state~~  
18 ~~funds.~~

19 SECTION 14. 292.31 (3) (cm) of the statutes is repealed.

20 SECTION 15. 292.31 (3) (d) of the statutes is amended to read:

21 292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated  
22 under this section, ~~the hazard ranking list,~~ <sup>✓</sup> or the considerations for taking action  
23 under par. (c) ~~or the remedial action schedule under par. (cm),~~ the department may  
24 take emergency action under this subsection and subs. (1) and (7) at a site or facility  
25 if delay will result in imminent risk to public health or safety or the environment.

**BILL**

1 The department is not required to hold a hearing under par. (f) if emergency action  
2 is taken under this paragraph. The decision of the department to take emergency  
3 action is a final decision of the agency subject to judicial review under ch. 227.

4 **SECTION 16.** 292.31 (4) of the statutes is amended to read:

5 **292.31 (4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY**  
6 **MUNICIPALITIES.** Notwithstanding ~~the inventory, analysis and hazard ranking under~~  
7 ~~sub. (1),~~ the environmental response plan prepared rules under sub. (2) or the  
8 environmental repair authority, remedial action sequence and emergency response  
9 requirements under sub. (3), the department shall pay that portion of the cost of any  
10 monitoring requirement which is to be paid under s. 289.31 (7) (f) from the  
11 appropriation under s. 20.370 (2) (dv) prior to making other payments from that  
12 appropriation.

13 **SECTION 17.** 292.31 (5) of the statutes is amended to read:

14 **292.31 (5) MUNICIPAL INCINERATOR ASH TESTING.** Notwithstanding the ~~inventory,~~  
15 ~~analysis and hazard ranking under sub. (1),~~ the environmental response plan  
16 prepared rules under sub. (2), the environmental repair authority, remedial action  
17 sequence and emergency response requirements under sub. (3), or the monitoring  
18 costs under sub. (4), the department shall pay the cost incurred by a municipality  
19 after June 30, 1986, and before January 30, 1988, for testing required to determine  
20 whether the ash from a municipally owned incinerator is hazardous. The  
21 department shall make payments under this subsection from the appropriation  
22 under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

23 (END)

d-n

**Insert 2-3**

**SECTION 1.** 292.12 of the statutes is created to read:

**292.12 Sites with residual contamination. (1) DEFINITIONS.** In this section:

(a) "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.75<sup>3</sup> (2), the department of commerce with respect to a site over which it has jurisdiction under s. 101.144 (2) (a), or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

(b) "Case closure" means a determination by the agency with administrative authority, based on information available to the agency with administrative authority, that no further remedial action is necessary at a site that was contaminated by a hazardous substance.

(c) "Engineering control" means a cap, soil cover, or other method of containing contamination.

(d) "Remedial action" means action that is taken in response to a discharge of a hazardous substance and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands, and waters of this state.

(2) AGENCY AUTHORITY. The agency with administrative authority may do any of the following as a condition of approving remedial action or of issuing a case closure letter if residual contamination remains on a site after the conclusion of remedial action at the site:

(a) Require maintenance of an engineering control on the site.



(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action <sup>at</sup> of the site. ✓

(c) Impose limitations on land use and other conditions related to property that the agency with administrative authority over the site determines are necessary to protect public health, safety, and welfare and the environment. ✓

\*\*\*\*NOTE: Is this sufficiently clear? I am uncertain about what kinds of conditions it is intended to authorize. Is it intended to authorize monitoring requirements? If so, does the language need to be changed? Or should monitoring requirements be included in par. (a)?

**(3) DATABASE.** (a) The department shall maintain a database listing sites for which remedial action has been approved or a case closure letter has been issued, issued and that have residual contamination and shall make the database available to the public. ✓ The department shall include any requirements, limitations, ✓ or conditions imposed under sub. (2) (a) to (c) in the database, subject to modification under sub. (6). ✓

(b) If residual contamination remains on a site after the conclusion of remedial action at the site, ✓ the agency with administrative authority shall, as a condition of approving remedial action or of issuing a case closure letter, ✓ list the site, and any requirements, limitations, or conditions imposed under sub. (2) (a) to (c), on the database maintained by the department under par. (a) and require the person requesting case closure to pay a fee established by the department for that listing. ✓

**(4) NOTIFICATION OF RESIDUAL CONTAMINATION.** Before a person applies for case closure for a site that includes any property that has residual contamination and is not owned by the person, the person shall provide written notification of the residual contamination to the owner of that property. ✓

\*\*\*NOTE: Should the notice contain any other information?

(5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS. (a) A person who owns property that is listed under sub. (3) (b) with requirements described in sub. (2) (a) or (b) shall comply with those requirements without regard to when the person obtained the property, unless another person has a legally enforceable responsibility to comply with the requirements.

(b) A person who owns or occupies property that is listed under sub. (3) (b) with limitations or conditions described in sub. (2) (c) shall comply with those limitations or conditions without regard to when the person obtained or occupied the property.

(6) MODIFICATION OF REQUIREMENTS. A person may request the agency with administrative authority over a site to change or eliminate a requirement, limitation, or condition imposed under sub. (2) (a) to (c) with respect to a site. If the agency with administrative authority agrees to change or eliminate a requirement, limitation, or condition imposed under sub. (2) (a) to (c) it shall provide written approval to the person and shall change the listing under sub. (3) (b) for the site accordingly.

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

LRB-1290/P1dn

RCT:.....

lmk

(date)

<sup>LRB</sup>  
20 This is a preliminary draft of the proposal related to sites that have residual contamination after a cleanup is conducted. It also includes last session's draft (03-3321/1) relating to the environmental repair program (s. 292.31), with changes that were requested in the drafting instructions. ✓

The language related to sites that have residual contamination (proposed s. 292.12) should be reviewed carefully to ensure that it complies with the intent of the request. ✓  
The language is based on instructions dated 12/08/04. ✓ In particular, I am uncertain as to whether the language in the draft carries out the intent of the first three points of the instructions (by which I mean the first three full paragraphs), which seemed to me to overlap in some ways. ✓ I was also uncertain what was intended by some of the terms used and uncertain whether some terms were intended to mean the same thing. For example, does "remedial measures" mean the same thing as "engineering controls" and does "other property conditions" mean the same thing as "environmental conditions" (used in the fifth full paragraph of the instructions)? I have included a couple of specific questions in the draft itself. ✓

It might be a good idea to broaden s. 292.57, which authorizes DNR to collect fees for placing information about certain properties into a database, so that it covers all of the properties to which proposed s. 292.12 applies. ✓

Please contact me with any questions and redraft instructions. ✓

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-1290/P1dn  
RCT:lmk:rs

March 9, 2005

This is a preliminary draft of the proposal related to sites that have residual contamination after a cleanup is conducted. It also includes last session's draft (2003 LRB-3321/1) relating to the environmental repair program (s. 292.31), with changes that were requested in the drafting instructions.

The language related to sites that have residual contamination (proposed s. 292.12) should be reviewed carefully to ensure that it complies with the intent of the request. The language is based on instructions dated 12/08/04. In particular, I am uncertain as to whether the language in the draft carries out the intent of the first three points of the instructions (by which I mean the first three full paragraphs), which seemed to me to overlap in some ways. I was also uncertain what was intended by some of the terms used and uncertain whether some terms were intended to mean the same thing. For example, does "remedial measures" mean the same thing as "engineering controls" and does "other property conditions" mean the same thing as "environmental conditions" (used in the fifth full paragraph of the instructions)? I have included a couple of specific questions in the draft itself.

It might be a good idea to broaden s. 292.57, which authorizes DNR to collect fees for placing information about certain properties into a database, so that it covers all of the properties to which proposed s. 292.12 applies.

Please contact me with any questions and redraft instructions.

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

**Tradewell, Becky**

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**From:** Asbjornson, Karen  
**Sent:** Monday, March 28, 2005 10:01 AM  
**To:** Tradewell, Becky  
**Subject:** FW: Comments on LRB 1290

Becky, Here are comments on the questions.

Thanks!

Karen Asbjornson  
Office of Senator Roessler

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

**From:** Foss, Darsi J  
**Sent:** Monday, March 28, 2005 9:44 AM  
**To:** Asbjornson, Karen  
**Subject:** Comments on LRB 1290

<<Landusecontrols.doc>>

Karen

Comments and responses to questions. This was a well-done first draft.

Darsi Foss, Chief  
Brownfields and Outreach Section  
Bureau for Remediation and Redevelopment  
Wisconsin Department of Natural Resources  
()

Overarching issues:

1. **Quality.** This is very well thought out and developed draft. It is very simple, which is amazing on a difficult concept such as this. Again, well done.
2. **Retroactivity.** As written, would this apply to land use controls we have already placed on properties, in the form of deed restrictions? If not, is there a way to make this retroactive?
3. **Enforceability.** If someone does not comply with this, is there an enforcement mechanism we should include? For example, if the property owner does not maintain the land use control, and does not respond to enforcement, can we refer them to DOJ? Or is this inherent in chapter 292, and need not be repeated in s. 292.12? (I am asking this cause I imagine Linda Meyer will come back and cuff me in the head if I don't ask the question.)
4. **VPLE, s. 292.15.** It is my understanding that s. 292.12 would apply to properties which receive a voluntary party liability exemption? We hope that is correct.
5. **Notification/data base.** You are correct that we need to modify s. 292.57 to make it more generic, to cover fees we charge at the end of a cleanup for properties which have BOTH residual groundwater and soil contamination remaining, as well as those where engineering controls have been placed as a condition of closure. In addition, we have attached executive budget changes to s. 292.57 and appropriation 20.370(2)(dh). This proposed change puts all of the fees at closure into the same appropriation.

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT **to repeal** 292.31 (1) (a) 2., 292.31 (1) (c), 292.31 (3) (cm) and 292.31 (5); **to amend** 227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a) 3., 292.31 (1) (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3) (c), 292.31 (3) (d) and 292.31 (4); **to repeal and recreate** 292.31 (1) (a) (title) and 292.31 (1) (a) 1.; and **to create** 292.12 of the statutes; **relating to:** identification and cleanup of properties that are environmentally contaminated, properties with residual contamination, and granting rulemaking authority.

**Analysis by the Legislative Reference Bureau**

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

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

**SECTION 1.** 227.01 (13) (zc) of the statutes is amended to read:

227.01 (13) (zc) Establishes an inventory or a hazard ranking a database under s. 292.31.

**SECTION 2.** 292.12 of the statutes is created to read:

**292.12 Sites with residual contamination. (1) DEFINITIONS.** In this section:

(a) "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2), the department of commerce with respect to a site over which it has jurisdiction under s. 101.144 (2) (a), or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

(b) "Case closure" means a determination by the agency with administrative

authority that no further remedial action is necessary at a site that was contaminated by a hazardous substance.

(c) "Engineering control" means a cap, soil cover, or other method of containing contamination.

We suggest this modified definition, that is more analogous to the s. NR 700.03(17) definition, yet different, in that the NR 700 definition needs to encompass engineering controls pre- and post-closure:

"Engineering control" means, in this chapter, an action designed and implemented to contain contamination or minimize the spread of contamination within a media or to another media, including, but are not limited to, a cap, soil cover or other containment or minimization methods.

(d) "Remedial action" means action that is taken in response to a discharge of a hazardous substance and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands, and waters of this state.

Do we need a definition of "site"? The NR 700 definition is:

"Site means:

- (a) Any waste site as defined in s. 292.01(21), Stats., or
- (b) Any area where a hazardous substance has been discharged.

**(2) AGENCY AUTHORITY.** The agency with administrative authority may do any of the following as a condition of approving remedial action or of issuing a case closure letter if residual contamination remains on a site after the conclusion of remedial action at the site:

(a) Require maintenance of an engineering control on the site.

(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.

(c) Impose limitations on land use and other conditions related to property that the agency with administrative authority over the site determines are necessary to protect public health, safety, and welfare and the environment, including s. 292.11(9)(e)4.

\*\*\*\*NOTE: Is this sufficiently clear? I am uncertain about what kinds of conditions it is intended to authorize. Is it intended to authorize monitoring requirements? If so, does the language need to be changed? Or should monitoring requirements be included in par. (a)?

Yes, I think it is clear. Linda's wish (which we all agreed with) was that if we gave case closure to an industrial site with high lead levels, the DNR may choose to put a deed restriction on that site. If the use was going to be changed to residential, then the person owning the property would need to come back to the DNR on what further requirements need to be met to change the land use from industrial to residential. Also, we want to make sure that a local government – that does not have to do an NR 700 cleanup because of the local government exemption – but may be required to put a cap on the site because they are making it a park, are subject to this as well – I don't if what the local government is doing could be considered a full remedial action, let alone a closure.

**(3) DATABASE.** (a) The department shall maintain a database listing sites for which remedial action has been approved or a case closure letter has been issued and that have residual contamination and shall make the database available to the public. The department shall include any requirements, limitations, or conditions imposed under sub. (2) (a) to (c) in the database, subject to modification under sub. (6).

(b) If residual contamination remains on a site after the conclusion of remedial action at the site, the agency with administrative authority shall, as a condition of approving remedial action or of issuing a case closure letter, request that the department list the site, and any requirements, limitations, or conditions imposed under sub. (2) (a) to (c), on the database maintained by the department under par. (a) and require the person requesting remedial action approval or case closure to provide the necessary information and pay a fee established by the department for that listing, or any modification requested under sub. (6).

We want to make sure in par. (b) that the person undertaking the cleanup is responsible for providing to the "administrative authority" the necessary information to close out the site and list the site in the database. DNR will receive that info from DATCP or Commerce and the fee, once closure is approved by the "administrative authority." We also want to be paid for any modifications requested under sub. (6).

**(4) NOTIFICATION OF RESIDUAL CONTAMINATION.** Before a person applies for case closure for a site that includes any property that has residual contamination and is not owned by the person, the person shall provide written notification of the residual contamination to the owner of that property.

\*\*\*\*NOTE: Should the notice contain any other information? Yes, good point...

Including but not limited to the type of residual contamination, and a description and location of the engineering control.

**(5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS.** (a) A person who owns property that is listed under sub. (3) (b) with requirements described in sub. (2) (a) or (b) shall comply with those requirements without regard to when the person obtained the property, unless another person has a legally enforceable responsibility to comply with the requirements.

(b) A person who owns or occupies property that is listed under sub. (3) (b) with limitations or conditions described in sub. (2) (c) shall comply with those limitations or conditions without regard to when the person obtained or occupied the property.

**(6) MODIFICATION OF REQUIREMENTS.** A person may request the agency with administrative authority over a site to change or eliminate a requirement, limitation, or condition imposed under sub. (2) (a) to (c) with respect to a site. If the agency with administrative authority agrees to change or eliminate a requirement, limitation, or condition imposed under sub. (2) (a) to (c) it shall provide written approval to the person and shall change the listing under sub. (3) (b) for the site accordingly.



If you choose not add a definition of "site," we request that you change "a site" to "the case closure." Unfortunately, there are properties out there were both DNR and DATCP, or DNR and Commerce have made closure decisions on. Each agency should be limited to modifying its own closure decisions.

**SECTION 3.** 292.21 (1) (c) 2. g. of the statutes is amended to read:

292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment, including the national priorities list under 42 USC 9605 (a) (8) (B); the federal environmental protection agency's information system for the comprehensive environmental response, compensation and liability act, 42 USC 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial response site evaluation report, including the inventory database of sites or facilities which may cause or threaten to cause environmental pollution and other properties that are environmentally contaminated required by s. 292.31 (1) (a); and the department's registry of abandoned landfills.

**SECTION 4.** 292.31 (1) (title) of the statutes is amended to read:

292.31 (1) (title) INVENTORY DATABASE; ANALYSIS; HAZARD RANKING.

**SECTION 5.** 292.31 (1) (a) (title) of the statutes is repealed and recreated to read:

292.31 (1) (a) (title) *Database*.

**SECTION 6.** 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

292.31 (1) (a) 1. The department shall compile, maintain, and make available to the public a database of all sites or facilities and other properties at which the discharge of a hazardous substance or other environmental pollution has been reported to the department. The department shall update the database regularly.

**SECTION 7.** 292.31 (1) (a) 2. of the statutes is repealed.

**SECTION 8.** 292.31 (1) (a) 3. of the statutes is amended to read:

292.31 (1) (a) 3. The decision of the department to include a site or facility or other property on the inventory database under subd. 1. or exclude a site or facility or other property from the inventory database is not subject to judicial review.

**SECTION 9.** 292.31 (1) (a) 4. of the statutes is amended to read:

292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list of sites or facilities which results from the inventory database under subd. 1. is not a rule.

**SECTION 10.** 292.31 (1) (b) 1. of the statutes is amended to read:

292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or may enter into a contract with any person to take the action. The department may take action under subd. 2. or 3. regardless of whether a site or facility is included on the inventory under par. (a) or the hazard ranking list under par. (c).

**SECTION 11.** 292.31 (1) (c) of the statutes is repealed.

**SECTION 12.** 292.31 (2) (intro.) of the statutes is amended to read:

292.31 (2) ENVIRONMENTAL RESPONSE PLAN RULES. (intro.) The department shall promulgate by rule a waste facility environmental response plan. The plan shall contain rules relating to investigation and remedial action for sites or facilities and

**SECTION 12**

other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution, including all of the following provisions:

**SECTION 13.** 292.31 (2) (a) of the statutes is amended to read:

292.31 (2) (a) Methods for preparing the inventory and conducting the analysis under sub. (1) investigating the degree and extent of contamination for actions under sub. (3).

**SECTION 14.** 292.31 (3) (c) of the statutes is amended to read:

292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider ~~the hazard ranking of each site or facility,~~ the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator, or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors. The department shall give the highest priority to remedial action at sites or facilities which have caused contamination of a municipal water system in a town with a population greater than 10,000. If any such site or facility is eligible for federal funds under 42 USC s. 9601 to 9675, but the federal funds will not be available before January 1, 2000, the department shall proceed with remedial action using state funds.

**SECTION 15.** 292.31 (3) (cm) of the statutes is repealed.

**SECTION 16.** 292.31 (3) (d) of the statutes is amended to read:

292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated under this section, the hazard ranking list, or the considerations for taking action under par. (c) or the remedial action schedule under par. (cm), the department may

**SECTION 16**

take emergency action under this subsection and subs. (1) and (7) at a site or facility if delay will result in imminent risk to public health or safety or the environment.

The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

**SECTION 17.** 292.31 (4) of the statutes is amended to read:

**292.31 (4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY**

**MUNICIPALITIES.** Notwithstanding the inventory, analysis and hazard ranking under sub. (1), the environmental response plan prepared rules under sub. (2) or the environmental repair authority, remedial action sequence and emergency response requirements under sub. (3), the department shall pay that portion of the cost of any monitoring requirement which is to be paid under s. 289.31 (7) (f) from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

**SECTION 18.** 292.31 (5) of the statutes is repealed.

As noted by LRB, s. 292.57 needs to be amended to reflect the fact that we presently put sites on our GIS registry if they have residual groundwater or soil contamination. In addition, we are proposing in s. 292.12 to add the land use control sites to the Registry. Also, the new draft should include the correct appropriation account, which is found in the attached PDF, and at the conclusion of this paper.

So, the amended ch. 292.57 would be a "Database of properties with residual contamination."

It would include:

- (1) existing 292.57 sites
- (2) sites subject to 292.12, and
- (3) sites subject to s. NR 726.05(2)(a) 3.

s. NR 726.05(2)(a) 3 states:

"For sites with soil contamination that exceeds generic or site-specific residual contaminant levels as determined under ss. NR 720.09, 720.11, and 720.19 at the time that case closure is requested, the properties within or partially within the contaminated site boundaries, including all public street and highway rights of way and railroad rights of way, shall be entered into a soil GIS registry...."

I would imagine you will somehow humanize and shorten s. 726.05...

**292.57 Database of properties on which groundwater standards are exceeded.** (1) In this section, "groundwater standard" means an enforcement standard, as defined in s. 160.01 (2), or a preventive action limit, as defined in s. 160.01 (6).

(2) (a) The department may promulgate a rule specifying a fee for placing information concerning a property on which a groundwater standard is exceeded into a database.

(b) Any moneys collected under this subsection shall be credited to the appropriation account under s. 20.370 (2) (mi).

Text from Executive Budget:

*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP**

Under current law, DNR maintains a database containing information about properties on which groundwater standards are exceeded. DNR collects a fee for placing information about a property into that database. This bill changes the appropriation into which these fees are deposited.

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

**SECTION 1.** 20.370 (2) (dh) of the statutes is amended to read:

20.370 (2) (dh) *Solid waste management — remediated property.* All moneys received under ss. 292.11 (7) (d) 2., 292.13 (3), 292.15 (5), 292.21 (1) (c) 1. d., 292.35 (13), 292.55 (2), 292.57 (2), and 292.94 for the department's activities related to the issuance of determinations under s. 292.13 (2), remedial action cost recovery under

**SECTION 1**

s. 292.35, remediation of property under ss. 292.11 (7) (d), 292.15 (2) and (4), and, 292.55 (1), and 292.57 and conducting reviews described in s. 292.94.

**SECTION 2.** 292.57 (2) (b) of the statutes is amended to read:

292.57 (2) (b) Any moneys collected under this subsection shall be credited to

the appropriation account under s. 20.370 (2) (mi) (dh).



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1290/11

RCT:lmk:rs

↑ *smv*

*5000 (in 3/30)*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*DNote*

*regenerate*

*LPS: Inserts out of order*

1 AN ACT *to repeal* 292.31 (1) (a) 2., 292.31 (1) (c), 292.31 (3) (cm) and 292.31 (5);  
2 *to amend* 227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a) 3.,  
3 292.31 (1) (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3) (c),  
4 292.31 (3) (d) and 292.31 (4); *to repeal and recreate* 292.31 (1) (a) (title) and  
5 292.31 (1) (a) 1.; and *to create* 292.12 of the statutes; **relating to:** identification  
6 and cleanup of properties that are environmentally contaminated, properties  
7 with residual contamination, and granting rule-making authority.

*Analysis insert 1*

**Analysis by the Legislative Reference Bureau**

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

*Analysis insert 2 from 03-3321*

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

*Insert 1-8*

SECTION 1. 227.01 (13) (zc) of the statutes is amended to read:

227.01 (13) (zc) Establishes an inventory or a hazard ranking a database under

*From 08-455*

1 SECTION 2. 292.12<sup>X</sup> of the statutes is created to read:

2 **292.12 Sites with residual contamination. (1) DEFINITIONS.** In this section:

3 (a) “Agency with administrative authority” means the department of  
4 agriculture, trade and consumer protection with respect to a site over which it has  
5 jurisdiction under s. 94.73 (2), the department of commerce with respect to a site over  
6 which it has jurisdiction under s. 101.144 (2) (a), or the department of natural  
7 resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

8 (b) “Case closure” means a determination by the agency with administrative  
9 authority that no further remedial action is necessary at a site that was  
10 contaminated by a hazardous substance. *an action designed and implemented to*

11 (c) “Engineering control” means a cap, soil cover, or other method of containing  
12 contamination, *or to minimize the spread of contamination, including a cap or soil cover*

13 (d) “Remedial action” means action that is taken in response to a discharge of  
14 a hazardous substance and that is necessary to restore the environment to the extent  
15 practicable and to minimize the harmful effects of the discharge to the air, lands, and  
16 waters of this state.

*Insert*  
*2-16* 17 → (2) AGENCY AUTHORITY. The agency with administrative authority may do any  
18 of the following as a condition of approving remedial action or of issuing a case closure  
19 letter if residual contamination remains on a site after the conclusion of remedial  
20 action at the site:

21 (a) Require maintenance of an engineering control on the site.

22 (b) Require an investigation of the extent of residual contamination and the  
23 performance of any necessary remedial action if a building or other structural  
24 impediment is removed that had prevented a complete investigation or remedial  
25 action at the site.

1 (c) Impose limitations on land use and other conditions related to property that  
2 the agency with administrative authority over the site determines are necessary to  
3 protect public health, safety, and welfare and the environment.

\*\*\*\*NOTE: Is this sufficiently clear? I am uncertain about what kinds of conditions it is intended to authorize. Is it intended to authorize monitoring requirements? If so, does the language need to be changed? Or should monitoring requirements be included in par. (a)?

4 (3) DATABASE. (a) The department shall maintain a database listing sites for  
5 which remedial action has been approved or a case closure letter has been issued and  
6 that have residual contamination and shall make the database available to the  
7 public. The department shall include any requirements, limitations, or conditions  
8 imposed under sub. (2) (a) to (c) in the database, subject to modification under sub.

9 (6) *and shall include any action that the department has directed to be taken under*  
*SD 292.11(9)(e) 40*

10 (b) If residual contamination remains on a site after the conclusion of remedial  
11 action at the site, the agency with administrative authority shall, as a condition of  
12 approving remedial action or of issuing a case closure letter, *move* list the site, and any  
13 requirements, limitations, or conditions imposed under sub. (2) (a) to (c), *in* the  
14 database maintained by the department under par. (a) and *shall* require the person  
15 requesting *approval of remedial action or* case closure to *provide the information necessary for the listing and to* pay a fee established by the department for *the* that listing.

16 (4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies for case  
17 closure for a site that includes any property that has residual contamination and is  
18 not owned by the person, the person shall provide written notification of the residual  
19 contamination to the owner of that property. *INSERT 3-19*

\*\*\*\*NOTE: Should the notice contain any other information?

20 (5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS. (a) A person who owns  
21 property that is listed under sub. (3) (b) with requirements described in sub. (2) (a)  
22 or (b) shall comply with those requirements without regard to when the person

*Insert 3-15*

1 obtained the property, unless another person has a legally enforceable responsibility  
2 to comply with the requirements.

3 (b) A person who owns or occupies property that is listed under sub. (3) (b) with  
4 limitations or conditions described in sub. (2) (c) shall comply with those limitations  
5 or conditions without regard to when the person obtained or occupied the property.

6 (6) MODIFICATION OF REQUIREMENTS. A person may request the agency with  
7 administrative authority over a site to change or eliminate a requirement,  
8 limitation, or condition <sup>that it</sup> imposed under sub. (2) (a) to (c) with respect to a site. If the  
9 agency with administrative authority agrees to change or eliminate a requirement,  
10 limitation, or condition imposed under sub. (2) (a) to (c) <sup>(5)</sup> it shall provide written  
11 approval to the person <sup>request the department to</sup> and shall change the listing under sub. (3) (b) for the site  
12 accordingly <sup>and shall require the person to pay a fee established by the</sup>  
13 <sup>department for changing the listing</sup>

SECTION 3. 292.21 (1) (c) 2. g. of the statutes is amended to read:

14 292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of  
15 the written compilations of sites or facilities considered to pose a threat to human  
16 health or the environment, including the national priorities list under 42 USC 9605  
17 (a) (8) (B); the federal environmental protection agency's information system for the  
18 comprehensive environmental response, compensation and liability act, 42 USC  
19 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial  
20 response site evaluation report, including the inventory database of sites or facilities  
21 which may cause or threaten to cause environmental pollution and other properties  
22 that are environmentally contaminated required by s. 292.31 (1) (a); ~~and the~~  
23 ~~department's registry of abandoned landfills.~~

SECTION 4. 292.31 (1) (title) of the statutes is amended to read:

292.31 (1) (title) INVENTORY DATABASE; ANALYSIS; HAZARD RANKING.



1           SECTION 5. 292.31 (1) (a) (title) of the statutes is repealed and recreated to read:  
2           292.31 (1) (a) (title) *Database*.

3           SECTION 6. 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:  
4           292.31 (1) (a) 1. The department shall compile, maintain, and make available  
5           to the public a database of all sites or facilities and other properties at which the  
6           discharge of a hazardous substance or other environmental pollution has been  
7           reported to the department. The department shall update the database regularly.

8           SECTION 7. 292.31 (1) (a) 2. of the statutes is repealed.

9           SECTION 8. 292.31 (1) (a) 3. of the statutes is amended to read:

10           292.31 (1) (a) 3. The decision of the department to include a site or facility or  
11           other property on the inventory database under subd. 1. or exclude a site or facility  
12           or other property from the inventory database is not subject to judicial review.

13           SECTION 9. 292.31 (1) (a) 4. of the statutes is amended to read:

14           292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the ~~list of sites~~  
15           ~~or facilities which results from the inventory database under subd. 1.~~ is not a rule.

16           SECTION 10. 292.31 (1) (b) 1. of the statutes is amended to read:

17           292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or  
18           may enter into a contract with any person to take the action. ~~The department may~~  
19           ~~take action under subd. 2. or 3. regardless of whether a site or facility is included on~~  
20           ~~the inventory under par. (a) or the hazard ranking list under par. (c).~~

21           SECTION 11. 292.31 (1) (c) of the statutes is repealed.

22           SECTION 12. 292.31 (2) (intro.) of the statutes is amended to read:

23           292.31 (2) ENVIRONMENTAL RESPONSE PLAN RULES. (intro.) The department shall  
24           promulgate by rule ~~a waste facility environmental response plan. The plan shall~~  
25           ~~contain~~ rules relating to investigation and remedial action for sites or facilities and

1 other properties at which the air, land, or waters of the state have been affected by  
2 the discharge of a hazardous substance or other environmental pollution, including  
3 all of the following provisions:

4 **SECTION 13.** 292.31 (2) (a) of the statutes is amended to read:

5 292.31 (2) (a) Methods for preparing the inventory and conducting the analysis  
6 under sub. (1) investigating the degree and extent of contamination for actions under  
7 sub. (3).

8 **SECTION 14.** 292.31 (3) (c) of the statutes is amended to read:

9 292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for  
10 taking remedial action under this subsection, the department shall consider the  
11 hazard ranking of each site or facility, the amount of funds available, the information  
12 available about each site or facility, the willingness and ability of an owner, operator,  
13 or other responsible person to undertake or assist in remedial action, the availability  
14 of federal funds under 42 USC 9601, et seq., and other relevant factors. The  
15 department shall give the highest priority to remedial action at sites or facilities  
16 which have caused contamination of a municipal water system ~~in a town with a~~  
17 ~~population greater than 10,000. If any such site or facility is eligible for federal funds~~  
18 ~~under 42 USC s. 9601 to 9675, but the federal funds will not be available before~~  
19 ~~January 1, 2000, the department shall proceed with remedial action using state~~  
20 ~~funds.~~

21 **SECTION 15.** 292.31 (3) (cm) of the statutes is repealed.

22 **SECTION 16.** 292.31 (3) (d) of the statutes is amended to read:

23 292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated  
24 under this section, ~~the hazard ranking list, or~~ the considerations for taking action  
25 under par. (c) ~~or the remedial action schedule under par. (cm),~~ the department may

1 take emergency action under this subsection and subs. (1) and (7) at a site or facility  
 2 if delay will result in imminent risk to public health or safety or the environment.  
 3 The department is not required to hold a hearing under par. (f) if emergency action  
 4 is taken under this paragraph. The decision of the department to take emergency  
 5 action is a final decision of the agency subject to judicial review under ch. 227.

6 **SECTION 17.** 292.31 (4) <sup>✓</sup> of the statutes is amended to read:

7 292.31 (4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY  
 8 MUNICIPALITIES. Notwithstanding ~~the inventory, analysis and hazard ranking under~~  
 9 ~~sub. (1),~~ the environmental response ~~plan prepared~~ rules under sub. (2) or the  
 10 environmental repair authority, remedial action sequence and emergency response  
 11 requirements under sub. (3), the department shall pay that portion of the cost of any  
 12 monitoring requirement which is to be paid under s. 289.31 (7) (f) from the  
 13 appropriation under s. 20.370 (2) (dv) prior to making other payments from that  
 14 appropriation.

15 **SECTION 18.** 292.31 (5) <sup>✓</sup> of the statutes is repealed.

(END)

16 Inset  
 7-16-A

7-16-B  
 From 05-0455/1

DNote

### Analysis insert 1

Current law generally requires a person who possess or controls a hazardous substance that is discharged into the environment, including the person who owns the property on which the discharge occurred, or who causes a discharge to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. ✓ The Department of Natural Resources (DNR) usually has jurisdiction over the cleanup of hazardous substance discharges. ✓ The Department of Commerce has jurisdiction over the cleanup of some petroleum product discharges ✓ and the Department of Agriculture, Trade and Consumer Protection (DATCP) has jurisdiction over the cleanup of some discharges of agricultural chemicals. ✓

This bill authorizes the agency with administrative authority over the site of a discharge of a hazardous substance (DNR, the Department of Commerce, or DATCP, depending on the type of site) ✓ to impose requirements as a condition of approving a cleanup if residual contamination remains on the site. The agency may do any of the following: ✓

1. Require maintenance of an engineering control, such as a soil cover, that is needed to prevent or minimize the spread of the contamination. ✓

2. Require an investigation and the performance of any needed cleanup if a building is removed that prevented a complete investigation of contamination on the site. ✓ *or cleanup*

3. Impose limitations on land use and other conditions related to property that are necessary to protect public health, safety, and welfare and the environment. ✓

The bill requires DNR to maintain a database of sites for which a cleanup has been approved but that have residual contamination. ✓ DNR must list each of those sites in the database and must include any requirements imposed by the agency with jurisdiction over a site. ✓ A person requesting approval of a cleanup must pay a fee to have the site listed in the database. ✓

The bill also requires a person who applies for approval of a cleanup that leaves residual contamination on property that is not owned by the person to notify the owner of the property about the residual contamination. ✓

A person who violates the requirements imposed under this bill is subject to a civil forfeiture of \$10 to \$5,000 for each day of violation. ✓

### Insert 2-16

(e) "Site" means a waste site or any area where a hazardous substance has been discharged. ✓

### Insert 3-6

no ff

and listing sites for which the department has directed that action be taken under s. 292.11 (9) (e) 4. The department

**Insert 3-15**

2. If the department has directed that a local governmental unit or economic development corporation take action under s. 292.11 (9) (e) 4. for a site, the department shall list the site, and the action that the department has directed, in the database maintained by the department under par. (a) and require the local governmental unit or the corporation to pay a fee established by the department for that listing.

**Insert 3-19**

no ff

\*

The person shall include in the notice, at a minimum, a description of the type of ~~remedial~~ residual contamination and the location and description of any engineering control on the site.

**Insert 7-16-A**

SECTION 1. 292.57 (title) of the statutes is amended to read:

**292.57 (title) Database of properties on which groundwater standards are exceeded with residual contamination.**

History: 1999 a. 9.

SECTION 2. 292.57 (2) (a) of the statutes is amended to read:

292.57 (2) (a) The department may promulgate a rule specifying a fee for placing information into a database concerning a property on which a groundwater standard is exceeded into a database, a property on which residual contamination is present in soil, or a property that is subject to s. 292.12 (3) (b). The department may also specify a fee for modifying information in the database.

History: 1999 a. 9.

DOA:.....Walker, BB0171 - Combine soil and groundwater GIS fees  
FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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

---

*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP**

Under current law, DNR maintains a database containing information about properties on which groundwater standards are exceeded. DNR collects a fee for placing information about a property into that database. This bill changes the appropriation into which these fees are deposited.

---

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

2 **SECTION 1.** 20.370 (2) (dh) of the statutes is amended to read:

*Insert  
1-8*

3 20.370 (2) (dh) *Solid waste management — remediated property.* All moneys

4 received under ss. 292.11 (7) (d) 2., 292.13 (3), 292.15 (5), 292.21 (1) (c) 1. d., 292.35

5 (13), 292.55 (2), 292.57 (2), and 292.94 for the department's activities related to the

6 issuance of determinations under s. 292.13 (2), remedial action cost recovery under



1 s. 292.35, remediation of property under ss. 292.11 (7) (d), 292.15 (2) and (4), and  
2 292.55 (1), and 292.57, and conducting reviews described in s. 292.94. *end of insert 1-8*

*Insert  
7-16-B*

3 SECTION 2. 292.57 (2) (b) of the statutes is amended to read:

4 292.57 (2) (b) Any moneys collected under this subsection shall be credited to  
5 the appropriation account under s. 20.370 (2) ~~(mi)~~ (dh).

6 (END) *insert*

# 2003 BILL

1 AN ACT *to repeal* 292.31 (1) (a) 2., 292.31 (1) (c) and 292.31 (3) (cm); *to amend*  
 2 227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a) 3., 292.31 (1)  
 3 (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3) (c), 292.31  
 4 (3) (d), 292.31 (4) and 292.31 (5); and *to repeal and recreate* 292.31 (1) (a)  
 5 (title) and 292.31 (1) (a) 1. of the statutes; **relating to:** identification and  
 6 cleanup of properties that are environmentally contaminated and granting  
 7 rule-making authority.

### *Analysis by the Legislative Reference Bureau*

Current law requires the Department of Natural Resources (DNR) to compile and maintain an inventory of sites or facilities that may cause or threaten to cause environmental pollution. ✓ DNR must compile a revised list every four years. ✓ DNR must also create a list ranking the sites or facilities on the inventory in order of the hazard that they pose to public health or welfare or the environment. ✓ The law requires DNR to begin cleanups on all of those sites that are determined to present a substantial danger to public health or welfare or to the environment by January 1, 2000. ✓

This bill eliminates the requirements for the contaminated site inventory and hazard ranking. Under this bill, DNR is required to compile and make available a data base of all known sites or facilities that are environmentally contaminated. The

Analysis  
 insert  
 2

\*

properties

↓



**BILL**

bill also eliminates the deadline for beginning cleanups at sites that present a substantial danger to public health or welfare or to the environment. ✓

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

please change to FE-SL

end of analysis insert

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

1 SECTION 1. 227.01 (13) (zc) of the statutes is amended to read:

2 227.01 (13) (zc) Establishes an inventory or a hazard ranking a data base under  
3 s. 292.31.

4 SECTION 2. 292.21 (1) (c) 2. g. of the statutes is amended to read:

5 292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of  
6 the written compilations of sites or facilities considered to pose a threat to human  
7 health or the environment, including the national priorities list under 42 USC 9605  
8 (a) (8) (B); the federal environmental protection agency's information system for the  
9 comprehensive environmental response, compensation and liability act, 42 USC  
10 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial  
11 response site evaluation report, including the inventory data base of sites or facilities  
12 which may cause or threaten to cause environmental pollution that are  
13 environmentally contaminated required by s. 292.31 (1) (a); and the department's  
14 registry of abandoned landfills.

15 SECTION 3. 292.31 (1) (title) of the statutes is amended to read:

16 292.31 (1) (title) ~~INVENTORY DATA BASE; ANALYSIS; HAZARD RANKING.~~

17 SECTION 4. 292.31 (1) (a) (title) of the statutes is repealed and recreated to read:

18 292.31 (1) (a) (title) *Data base.*

19 SECTION 5. 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

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

LRB-1290/1dn  
RCT/elmk

(date)

✓  
Karen Asbjornson:

This is a redraft of the proposal relating to land use controls on properties with residual contamination. ✓

\* ✓ DNR proposed to add a cross-reference to s. 292.11 (9) (e) 4. in proposed s. 292.12 (2) (c). I approached this issue differently because the situation in which s. 292.11 (9) (e) 4. applies does not involve a case closure or approval of a remedial action. ✓ DNR clearly has the authority to order the actions described in s. 292.11 (9) (e) 4. to be taken, so it is not necessary to repeat that authority in this proposal. ✓ I gather that DNR's intent is to list sites to which s. 292.11(9) (e) 4. applies, and the actions it directs at those sites, in the database. ✓ Therefore, I added language about these sites in proposed s. 292.12 (3) (a) and (b) 2. ✓

I added language about fees for modifying listings to proposed s. 292.12 (6) (and in the amendment to s. 292.57 (2) (a)) rather than to s. 292.12 (3) (b). ✓

→ DNR asked about the enforceability of the conditions authorized by this proposal. ✓ Proposed s. 292.12 (5) requires compliance with those conditions by specified persons. ✓ Violations would subject a person to the penalties under s. 292.99 (1). ✓ DOJ would have enforcement authority under s. 299.85. ①

DNR also asked whether proposed s. 292.12 would apply to properties that receive the voluntary party liability exemption. ✓ The proposal is very broad. I believe that it would apply to any property with a hazardous substance discharge. ✓

Finally, DNR asked whether this proposal would apply to land use controls that it has already placed on properties using deed restrictions. ✓ Proposed s. 292.12 does not relate to deed restrictions, so the answer to this question is "no." ✓ There are probably ways to ratify deed restrictions previously imposed, if that is considered to be necessary. I would need guidance on a desired approach to this issue. ✓

Please feel free to contact me with questions or redraft instructions. ✓

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-1290/1dn  
RCT:lmk:ch

April 4, 2005

Karen Asbjornson:

This is a redraft of the proposal relating to land use controls on properties with residual contamination.

DNR proposed to add a cross-reference to s. 292.11 (9) (e) 4. in proposed s. 292.12 (2) (c). I approached this issue differently because the situation in which s. 292.11 (9) (e) 4. applies does not involve a case closure or approval of a remedial action. DNR clearly has the authority to order the actions described in s. 292.11 (9) (e) 4. to be taken, so it is not necessary to repeat that authority in this proposal. I gather that DNR's intent is to list sites to which s. 292.11 (9) (e) 4. applies, and the actions it directs at those sites, in the database. Therefore, I added language about these sites in proposed s. 292.12 (3) (a) and (b) 2.

I added language about fees for modifying listings to proposed s. 292.12 (6) (and in the amendment to s. 292.57 (2) (a)) rather than to s. 292.12 (3) (b).

DNR asked about the enforceability of the conditions authorized by this proposal. Proposed s. 292.12 (5) requires compliance with those conditions by specified persons. Violations would subject a person to the penalties under s. 292.99 (1). DOJ would have enforcement authority under s. 299.95.

DNR also asked whether proposed s. 292.12 would apply to properties that receive the voluntary party liability exemption. The proposal is very broad. I believe that it would apply to any property with a hazardous substance discharge.

Finally, DNR asked whether this proposal would apply to land use controls that it has already placed on properties using deed restrictions. Proposed s. 292.12 does not relate to deed restrictions, so the answer to this question is "no." There are probably ways to ratify deed restrictions previously imposed, if that is considered to be necessary. I would need guidance on a desired approach to this issue.

Please feel free to contact me with questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)