

**Tradewell, Becky**

**From:** Asbjornson, Karen  
**Sent:** Saturday, April 09, 2005 1:38 PM  
**To:** Tradewell, Becky  
**Subject:** FW: Comments on LRB #1290/2  
**Importance:** High

Changes to LRB 1290/2 attached. Thanks!

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**From:** Foss, Darsi J  
**Sent:** Friday, April 08, 2005 1:13 PM  
**To:** Asbjornson, Karen  
**Subject:** Comments on LRB #1290/2  
**Importance:** High

**Comments on LRB #1290/2 April 8, 2005**

Dear Karen:

I believe that we are done if LRB finds these suggestions amenable. On behalf of DNR staff and the study group, our immense thanks to you and the legal staff at the LRB.

Here are the remaining, minor suggestions:

1. DATCP Comments – Definition of “case closure”:

As you are aware, the staff at DATCP has provided comments. We have looked at these and determined that one of the 4 comments dealt with the statutory aspects of LRB #1290/2; the remaining issues were more in the line of implementation issues, which the DNR will be working with DATCP on to clarify, and hopefully resolve.

However, DATCP did raise the issue that the definition of “case closure” in s. 292.12 was different than the definition in ch. NR 726. This is a correct conclusion. To address this issue, we suggest that the definition of “case closure” in ch. NR 726, with the following modification, be substituted for the definition in the bill draft:

**NR 726.03 Definitions.** In this chapter:

(1) “Case closure” means a determination by the ~~department~~ agency with administrative authority, based on information available at the time of the agency with administrative authority’s review, that no further action is necessary.

2. Ensuring it is clear that deed restrictions placed on property prior to the effective date of this statute also apply to persons regardless of when they acquired the property. The Department would like to offer the following language as a suggested method to clarify this concern:

These suggestions are based on discussions with DNR staff and DNR Legal Counsel, Judy Ohm and Joe Renville:

**(5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS.** (a) A person who owns Property, including those properties or sites ~~that is~~ listed under sub. (3) (b), shall comply 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), including those properties or sites listed under sub. (3) (b), shall comply with those limitations or conditions without regard to when the person obtained or occupied the property.

3. Typo.

Section 292.12(3)(b)1., on line 25 of the draft, the phrase ... "the agency with administrative authority shall request the department to [not "of"] list the site, and ...."

Darsi Foss, Chief  
Brownfields and Outreach Section  
Bureau for Remediation and Redevelopment  
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**Tradewell, Becky**

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**From:** Foss, Darsi J  
**Sent:** Monday, April 11, 2005 10:30 AM  
**To:** Tradewell, Becky  
**Cc:** Ohm, Judith M.; Renville, Joe W  
**Subject:** RE: Comments on LRB #1290/2  
Becky

Both changes seem well thought out and appropriate. Thank you for catching those.

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---

**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.state.wi.us]  
**Sent:** Monday, April 11, 2005 10:12 AM  
**To:** Foss, Darsi J  
**Subject:** FW: Comments on LRB #1290/2  
**Importance:** High

Darci,

On the definition of "case closure": I see no problem with adding "based on information available at the time of the review by the agency with administrative authority" but am uneasy about deleting some of the other language in the definition in the draft. It is not necessary to use exactly the same language as in the rule, as long as the differences do not cause legal problems. It is necessary that the statutory definition be clear, including to persons who are not familiar with the cleanup programs. Therefore, I think that the definition should include "remedial" and "at a site." I propose this definition:

"Case closure" means a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site.

On the changes proposed to sub. (5): It seems to me that the draft should explicitly limit this provision to requirements imposed by an agency with administrative authority. Otherwise it could be interpreted to authorize the state to impose forfeitures to enforce purely private transactions.

Please let me know what you think.

Becky Tradewell  
6-7290

-----Original Message-----  
**From:** Asbjornson, Karen

04/11/2005

**Sent:** Saturday, April 09, 2005 1:38 PM  
**To:** Tradewell, Becky  
**Subject:** FW: Comments on LRB #1290/2  
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Changes to LRB 1290/2 attached. Thanks!

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**Sent:** Friday, April 08, 2005 1:13 PM  
**To:** Asbjornson, Karen  
**Subject:** Comments on LRB #1290/2  
**Importance:** High

### Comments on LRB #1290/2 April 8, 2005

Dear Karen:

I believe that we are done if LRB finds these suggestions amenable. On behalf of DNR staff and the study group, our immense thanks to you and the legal staff at the LRB.

Here are the remaining, minor suggestions:

1. DATCP Comments – Definition of “case closure”:

As you are aware, the staff at DATCP has provided comments. We have looked at these and determined that one of the 4 comments dealt with the statutory aspects of LRB #1290/2; the remaining issues were more in the line of implementation issues, which the DNR will be working with DATCP on to clarify, and hopefully resolve.

However, DATCP did raise the issue that the definition of “case closure” in s. 292.12 was different than the definition in ch. NR 726. This is a correct conclusion. To address this issue, we suggest that the definition of “case closure” in ch. NR 726, with the following modification, be substituted for the definition in the bill draft:

**NR 726.03 Definitions.** In this chapter:

**(1)** “Case closure” means a determination by the ~~department~~ agency with administrative authority, based on information available at the time of the agency with administrative authority’s review, that no further action is necessary.

2. Ensuring it is clear that deed restrictions placed on property prior to the effective date of this statute also apply to persons regardless of when they acquired the property. The Department would like to offer the following language as a suggested method to clarify this concern:

These suggestions are based on discussions with DNR staff and DNR Legal Counsel, Judy Ohm and Joe Renville:

**(5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS.** (a) A person who owns Property, including those properties or sites that is listed under sub. (3) (b), shall comply 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), including those properties or sites listed under sub. (3) (b), shall comply with those limitations or conditions without regard to when the person obtained or occupied the property.

3. Typo.

Section 292.12(3)(b)1., on line 25 of the draft, the phrase ... "the agency with administrative authority shall request the department to [not "of"] list the site, and ...."

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State of Wisconsin  
2005 - 2006 LEGISLATURE

SOON (in 4/11)

LRB-1290/1<sup>2</sup>

RCT:lmk/ch

↑  
keep RMY

**2005 BILL**

ReGen

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* 20.370 (2) (dh), 227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title),  
3 292.31 (1) (a) 3., 292.31 (1) (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2)  
4 (a), 292.31 (3) (c), 292.31 (3) (d), 292.31 (4), 292.57 (title), 292.57 (2) (a) and  
5 292.57 (2) (b); *to repeal and recreate* 292.31 (1) (a) (title) and 292.31 (1) (a)  
6 1.; and *to create* 292.12 of the statutes; **relating to:** identification and cleanup  
7 of properties that are environmentally contaminated, properties with residual  
8 contamination, and granting rule-making authority.

---

***Analysis by the Legislative Reference Bureau***

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.

**BILL**

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 or cleanup of contamination on the site.
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.

Current law requires 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 database of all known properties that are environmentally contaminated. The 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.

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

- 1           **SECTION 1.** 20.370 (2) (dh) of the statutes is amended to read:
- 2           20.370 (2) (dh) *Solid waste management — remediated property.* All moneys
- 3 received under ss. 292.11 (7) (d) 2., 292.13 (3), 292.15 (5), 292.21 (1) (c) 1. d., 292.35

**BILL**

1 (13), 292.55 (2), 292.57 (2), and 292.94 for the department's activities related to the  
2 issuance of determinations under s. 292.13 (2), remedial action cost recovery under  
3 s. 292.35, remediation of property under ss. 292.11 (7) (d), 292.15 (2) and (4), and  
4 292.55 (1), and 292.57, and conducting reviews described in s. 292.94.

5 **SECTION 2.** 227.01 (13) (zc) of the statutes is amended to read:

6 227.01 (13) (zc) Establishes ~~an inventory or a hazard ranking~~ a database under  
7 s. 292.31.

8 **SECTION 3.** 292.12 of the statutes is created to read:

9 **292.12 Sites with residual contamination. (1) DEFINITIONS.** In this section:

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

15 (b) "Case closure" means a determination by the agency with administrative  
16 authority <sup>based on information available at the time of the review by the agency</sup> that no further remedial action is necessary at a site ~~that was~~  
17 ~~contaminated by a hazardous substance.~~

18 (c) "Engineering control" means an action designed and implemented to  
19 contain contamination or to minimize the spread of contamination, including a cap  
20 or soil cover.

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

*with administrative authority*



**BILL**

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

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

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

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

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

15 (3) DATABASE. (a) The department shall maintain a database listing sites for  
16 which remedial action has been approved or a case closure letter has been issued and  
17 that have residual contamination and listing sites for which the department has  
18 directed that action be taken under s. 292.11 (9) (e) 4. The department shall make  
19 the database available to the public. The department shall include any  
20 requirements, limitations, or conditions imposed under sub. (2) (a) to (c) in the  
21 database, subject to modification under sub. (6), and shall include any action that the  
22 department has directed to be taken under s. 292.11 (9) (e) 4.

23 (b) 1. If residual contamination remains on a site after the conclusion of  
24 remedial action at the site, the agency with administrative authority shall request  
25 the department of list the site, and any requirements, limitations, or conditions

**BILL**

1 imposed under sub. (2) (a) to (c), in the database maintained by the department  
2 under par. (a) and, as a condition of approving remedial action or of issuing a case  
3 closure letter, shall require the person requesting approval of remedial action or case  
4 closure to provide the information necessary for the listing and to pay a fee  
5 established by the department for the listing.

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

12 (4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies for case  
13 closure for a site that includes any property that has residual contamination and is  
14 not owned by the person, the person shall provide written notification of the residual  
15 contamination to the owner of that property. The person shall include in the notice,  
16 at a minimum, a description of the type of residual contamination and the location  
17 and description of any engineering control on the site.

18 (5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS. (a) A person who owns  
19 <sup>including a property or site</sup> property <sup>shall comply</sup> that is listed under sub. (3) (b) with requirements described in sub. (2) (a)  
20 <sup>that are imposed by an agency with administrative authority</sup> or (b) shall comply with those requirements without regard to when the person  
21 obtained the property, unless another person has a legally enforceable responsibility  
22 to comply with the requirements. <sup>including a property or site</sup> <sup>shall comply</sup>

23 (b) A person who owns or occupies property that is listed under sub. (3) (b) with  
24 limitations or conditions described in sub. (2) (c) shall comply with those limitations  
25 <sup>that are imposed by an agency with administrative authority</sup> or conditions without regard to when the person obtained or occupied the property.

**BILL**

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

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

10           292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of  
11 the written compilations of sites or facilities considered to pose a threat to human  
12 health or the environment, including the national priorities list under 42 USC 9605  
13 (a) (8) (B); the federal environmental protection agency's information system for the  
14 comprehensive environmental response, compensation and liability act, 42 USC  
15 9601 to 9675, (CERCLIS); and the department's ~~most recent Wisconsin remedial~~  
16 ~~response site evaluation report, including the inventory database~~ of sites or facilities  
17 ~~which may cause or threaten to cause environmental pollution and other properties~~  
18 ~~that are environmentally contaminated~~ required by s. 292.31 (1) (a); ~~and the~~  
19 ~~department's registry of abandoned landfills.~~

20           **SECTION 5.** 292.31 (1) (title) of the statutes is amended to read:

21           292.31 (1) (title) ~~INVENTORY DATABASE; ANALYSIS; HAZARD RANKING.~~

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

23           292.31 (1) (a) (title) *Database.*

24           **SECTION 7.** 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 database 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 database regularly.

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

6           **SECTION 9.** 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 database under subd. 1. or exclude a site or facility  
9 or other property from the inventory database is not subject to judicial review.

10          **SECTION 10.** 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 of sites~~  
12 ~~or facilities which results from the inventory database under subd. 1.~~ is not a rule.

13          **SECTION 11.** 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 12.** 292.31 (1) (c) of the statutes is repealed.

19          **SECTION 13.** 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 14.** 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 15.** 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 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 16.** 292.31 (3) (cm) of the statutes is repealed.

20           **SECTION 17.** 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 18.** 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 19.** 292.31 (5) of the statutes is repealed.

14 **SECTION 20.** 292.57 (title) of the statutes is amended to read:

15 **292.57 (title) Database of properties on which groundwater standards**  
16 **are exceeded with residual contamination.**

17 **SECTION 21.** 292.57 (2) (a) of the statutes is amended to read:

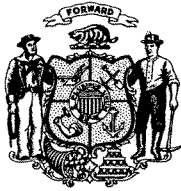
18 292.57 (2) (a) The department may promulgate a rule specifying a fee for  
19 placing information into a database concerning a property on which a groundwater  
20 standard is exceeded into a database, a property on which residual contamination  
21 is present in soil, or a property that is subject to s. 292.12 (3) (b). The department  
22 may also specify a fee for modifying information in the database.

23 **SECTION 22.** 292.57 (2) (b) of the statutes is amended to read:

**BILL**

1           292.57 (2) (b) Any moneys collected under this subsection shall be credited to  
2 the appropriation account under s. 20.370 (2) ~~(mi)~~ (dh).

3                                   (END)                                   ✓



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1290/2

RCT:lmk:ch

**2005 BILL**

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** 20.370 (2) (dh), 227.01 (13) (zc), 292.21 (1) (c) 2. g., 292.31 (1) (title),  
3             292.31 (1) (a) 3., 292.31 (1) (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2)  
4             (a), 292.31 (3) (c), 292.31 (3) (d), 292.31 (4), 292.57 (title), 292.57 (2) (a) and  
5             292.57 (2) (b); **to repeal and recreate** 292.31 (1) (a) (title) and 292.31 (1) (a)  
6             1.; and **to create** 292.12 of the statutes; **relating to:** identification and cleanup  
7             of properties that are environmentally contaminated, properties with residual  
8             contamination, and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

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.



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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 or cleanup of contamination on the site.
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.

Current law requires 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 database of all known properties that are environmentally contaminated. The 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.

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

- 1           **SECTION 1.** 20.370 (2) (dh) of the statutes is amended to read:
- 2           20.370 (2) (dh) *Solid waste management — remediated property.* All moneys
- 3 received under ss. 292.11 (7) (d) 2., 292.13 (3), 292.15 (5), 292.21 (1) (c) 1. d., 292.35

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1 (13), 292.55 (2), 292.57 (2), and 292.94 for the department's activities related to the  
2 issuance of determinations under s. 292.13 (2), remedial action cost recovery under  
3 s. 292.35, remediation of property under ss. 292.11 (7) (d), 292.15 (2) and (4), and  
4 292.55 (1), and 292.57, and conducting reviews described in s. 292.94.

5 **SECTION 2.** 227.01 (13) (zc) of the statutes is amended to read:

6 227.01 (13) (zc) Establishes ~~an inventory or a hazard ranking~~ a database under  
7 s. 292.31.

8 **SECTION 3.** 292.12 of the statutes is created to read:

9 **292.12 Sites with residual contamination. (1) DEFINITIONS.** In this section:

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

15 (b) "Case closure" means a determination by the agency with administrative  
16 authority, based on information available at the time of the review by the agency with  
17 administrative authority, that no further remedial action is necessary at a site.

18 (c) "Engineering control" means an action designed and implemented to  
19 contain contamination or to minimize the spread of contamination, including a cap  
20 or soil cover.

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

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

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

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

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

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

15 (3) DATABASE. (a) The department shall maintain a database listing sites for  
16 which remedial action has been approved or a case closure letter has been issued and  
17 that have residual contamination and listing sites for which the department has  
18 directed that action be taken under s. 292.11 (9) (e) 4. The department shall make  
19 the database available to the public. The department shall include any  
20 requirements, limitations, or conditions imposed under sub. (2) (a) to (c) in the  
21 database, subject to modification under sub. (6), and shall include any action that the  
22 department has directed to be taken under s. 292.11 (9) (e) 4.

23 (b) 1. If residual contamination remains on a site after the conclusion of  
24 remedial action at the site, the agency with administrative authority shall request  
25 the department to list the site, and any requirements, limitations, or conditions

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1 imposed under sub. (2) (a) to (c), in the database maintained by the department  
2 under par. (a) and, as a condition of approving remedial action or of issuing a case  
3 closure letter, shall require the person requesting approval of remedial action or case  
4 closure to provide the information necessary for the listing and to pay a fee  
5 established by the department for the listing.

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

12 (4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies for case  
13 closure for a site that includes any property that has residual contamination and is  
14 not owned by the person, the person shall provide written notification of the residual  
15 contamination to the owner of that property. The person shall include in the notice,  
16 at a minimum, a description of the type of residual contamination and the location  
17 and description of any engineering control on the site.

18 (5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS. (a) A person who owns  
19 property, including a property or site that is listed under sub. (3) (b), shall comply  
20 with requirements described in sub. (2) (a) or (b) that are imposed by an agency with  
21 administrative authority without regard to when the person obtained the property,  
22 unless another person has a legally enforceable responsibility to comply with the  
23 requirements.

24 (b) A person who owns or occupies property, including a property or site that  
25 is listed under sub. (3) (b), shall comply with limitations or conditions described in

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1 sub. (2) (c) that are imposed by an agency with administrative authority without  
2 regard to when the person obtained or occupied the property.

3 (6) MODIFICATION OF REQUIREMENTS. A person may request the agency with  
4 administrative authority over a site to change or eliminate a requirement,  
5 limitation, or condition that it imposed under sub. (2) (a) to (c) with respect to a site.

6 If the agency with administrative authority agrees to change or eliminate a  
7 requirement, limitation, or condition imposed under sub. (2) (a) to (c), it shall provide  
8 written approval to the person, shall request the department to change the listing  
9 under sub. (3) (b) for the site accordingly, and shall require the person to pay a fee  
10 established by the department for changing the listing.

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

12 292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of  
13 the written compilations of sites or facilities considered to pose a threat to human  
14 health or the environment, including the national priorities list under 42 USC 9605  
15 (a) (8) (B); the federal environmental protection agency's information system for the  
16 comprehensive environmental response, compensation and liability act, 42 USC  
17 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial  
18 response site evaluation report, including the inventory database of sites or facilities  
19 which may cause or threaten to cause environmental pollution and other properties  
20 that are environmentally contaminated required by s. 292.31 (1) (a); ~~and the~~  
21 ~~department's registry of abandoned landfills.~~

22 **SECTION 5.** 292.31 (1) (title) of the statutes is amended to read:

23 292.31 (1) (title) ~~INVENTORY DATABASE; ANALYSIS; HAZARD RANKING.~~

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

25 292.31 (1) (a) (title) *Database.*

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1           **SECTION 7.** 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

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

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

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

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

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

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

14           **SECTION 11.** 292.31 (1) (b) 1. of the statutes is amended to read:

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

19           **SECTION 12.** 292.31 (1) (c) of the statutes is repealed.

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

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

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1 the discharge of a hazardous substance or other environmental pollution, including  
2 all of the following provisions:

3 **SECTION 14.** 292.31 (2) (a) of the statutes is amended to read:

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

7 **SECTION 15.** 292.31 (3) (c) of the statutes is amended to read:

8 292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for  
9 taking remedial action under this subsection, the department shall consider the  
10 ~~hazard ranking significance to public health, the community, and the environment~~  
11 of each site or facility, the amount of funds available, the information available about  
12 each site or facility, the willingness and ability of an owner, operator, or other  
13 responsible person to undertake or assist in remedial action, the availability of  
14 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 16.** 292.31 (3) (cm) of the statutes is repealed.

22 **SECTION 17.** 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

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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 18.** 292.31 (4) 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 19.** 292.31 (5) of the statutes is repealed.

16 **SECTION 20.** 292.57 (title) of the statutes is amended to read:

17 **292.57 (title) Database of properties on which groundwater standards**  
18 **are exceeded with residual contamination.**

19 **SECTION 21.** 292.57 (2) (a) of the statutes is amended to read:

20 292.57 (2) (a) The department may promulgate a rule specifying a fee for  
21 placing information into a database concerning a property on which a groundwater  
22 standard is exceeded ~~into a database, a property on which residual contamination~~  
23 is present in soil, or a property that is subject to s. 292.12 (3) (b). The department  
24 may also specify a fee for modifying information in the database.

25 **SECTION 22.** 292.57 (2) (b) of the statutes is amended to read:



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1           292.57 (2) (b) Any moneys collected under this subsection shall be credited to  
2 the appropriation account under s. 20.370 (2) (~~mi~~) (dh).

3   (END)