



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4282/en
CMH:cjs

2015 SENATE BILL 545

1 **AN ACT** *to renumber and amend* 292.12 (1) (c) and 292.15 (2) (am); *to amend*
2 289.31 (10), 292.12 (1) (a), 292.12 (2) (intro.), 292.12 (3) (a), 292.12 (3) (b) 1.,
3 292.12 (4), 292.12 (5) (title), 292.12 (5) (a), 292.12 (5) (b), 292.12 (6), 292.15 (2)
4 (a) (intro.), 292.15 (2) (b) (intro.), 292.15 (2) (b) 1., 292.15 (2) (b) 2., 292.15 (2)
5 (b) 3., 292.15 (2) (b) 5., 292.15 (2) (c), 292.15 (2) (e), 292.25 (1) (e) and 292.68 (1)
6 (b); and *to create* 292.01 (1s), 292.01 (17g), 292.01 (17m), 292.12 (2) (d), 292.12
7 (5) (c), 292.12 (5) (d), 292.12 (5m), 292.15 (2) (af), 292.15 (2) (am) 2m., 292.15
8 (2) (d), 292.15 (6m), 292.15 (7) (f) and 292.25 (1) (f) of the statutes; **relating to:**
9 action required to be taken in response to a discharge of hazardous substances,
10 exemption from liability for certain hazardous substance discharges, providing

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1 an exemption from emergency rule procedures, and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

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

3 **SECTION 1.** 289.31 (10) of the statutes is amended to read:

4 289.31 (10) VOLUNTARY PARTY CERTIFICATE OF COMPLETION. When the
5 department issues a certificate of completion under s. 292.15 (2) (a) 3., (ae) 3., (af) 3.,
6 or (ag) 2. for all or a portion of a solid waste facility with an operating license under
7 this section, the operating license for the solid waste facility or the portion of the solid
8 waste facility covered by the certificate of completion is terminated.

9 **SECTION 2.** 292.01 (1s) of the statutes is created to read:

10 292.01 (1s) “Contaminated sediment” means sediment that contains a
11 hazardous substance.

12 **SECTION 3.** 292.01 (17g) of the statutes is created to read:

13 292.01 (17g) “Sediment” means particles in the bed of a navigable water up to
14 the ordinary high-water mark that are derived from the erosion of rock, minerals,
15 soil, and biological materials and from chemical precipitation from the water column
16 and that are transported or deposited by water.

17 **SECTION 4.** 292.01 (17m) of the statutes is created to read:

18 292.01 (17m) “Sediment cover” means a layer of uncontaminated sand or
19 similar material that is deposited on top of contaminated sediment.

20 **SECTION 5.** 292.12 (1) (a) of the statutes is amended to read:

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1 292.12 (1) (a) “Agency with administrative authority” means the department
2 of agriculture, trade and consumer protection with respect to a site over which it has
3 jurisdiction under s. 94.73 (2) or the department of natural resources with respect
4 to a site over which it has jurisdiction under ~~s. 292.11 (7)~~ ch. 289, 291, or 292.

5 **SECTION 6.** 292.12 (1) (c) of the statutes is renumbered 292.01 (3m) and
6 amended to read:

7 292.01 (3m) “Engineering control” means an object or action designed and
8 implemented to contain contamination or to minimize the spread of contamination,
9 including a cap ~~or~~, soil cover, or in-place stabilization, but not including a sediment
10 cover.

11 **SECTION 7.** 292.12 (2) (intro.) of the statutes is amended to read:

12 292.12 (2) AGENCY AUTHORITY. (intro.) The agency with administrative
13 authority may do any of the following as a condition of approving an interim action,
14 as defined by the agency with administrative authority by rule, or a remedial action
15 or of issuing a case closure letter if residual contamination remains on a site after
16 the conclusion of an interim action or a remedial action at the site:

17 **SECTION 8.** 292.12 (2) (d) of the statutes is created to read:

18 292.12 (2) (d) If the site is one for which a person is required to take action
19 under sub. (5m) (a), require submission to the agency with administrative authority
20 of any of the following:

21 1. A satisfactory plan and compliance schedule for satisfying any requirements
22 imposed under par. (a) or (b).

23 2. Proof of financial responsibility, as determined by the agency with
24 administrative authority by rule, sufficient to pay the costs of complying with a plan
25 approved under subd. 1.

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1 **SECTION 9.** 292.12 (3) (a) of the statutes is amended to read:

2 292.12 (3) (a) The department shall maintain a database listing sites for which
3 an interim action that includes the use of an engineering control or a remedial action
4 has been approved or a case closure letter has been issued and that have residual
5 contamination and listing sites for which the department has directed that action be
6 taken under s. 292.11 (9) (e) 4. The department shall make the database available
7 to the public. The department shall include any requirements, limitations, or
8 conditions imposed under sub. (2) (a) to (c), and any information required under sub.
9 (2) (d), in the database, subject to modification under sub. (6), and shall include any
10 action that the department has directed to be taken under s. 292.11 (9) (e) 4.

11 **SECTION 10.** 292.12 (3) (b) 1. of the statutes is amended to read:

12 292.12 (3) (b) 1. If residual contamination remains on a site after the conclusion
13 of an interim action that includes the use of an engineering control or a remedial
14 action at the site, the agency with administrative authority shall request the
15 department to list the site, and any requirements, limitations, or conditions imposed
16 under sub. (2) (a) to (c), and any information required under sub. (2) (d), in the
17 database maintained by the department under par. (a) and, as a condition of
18 approving remedial action or of issuing a case closure letter, shall require the person
19 requesting approval of remedial action or case closure to provide the information
20 necessary for the listing and to pay a fee established by the department for the
21 listing.

22 **SECTION 11.** 292.12 (4) of the statutes is amended to read:

23 292.12 (4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies
24 for case closure for a site that includes any property that has residual contamination
25 and is not owned by the person, the person shall provide written notification of the

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1 residual contamination to the owner of that property. The person shall include in the
2 notice, at a minimum, a description of the type of residual contamination and the
3 location and description of any engineering control or sediment cover on the site.

4 **SECTION 12.** 292.12 (5) (title) of the statutes is amended to read:

5 292.12 (5) (title) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS AND
6 PROHIBITION ON INTERFERENCE.

7 **SECTION 13.** 292.12 (5) (a) of the statutes is amended to read:

8 292.12 (5) (a) ~~A Except as provided in par. (c) and sub. (5m) (a) and (b), a person~~
9 who owns property, including a property or site that is listed under sub. (3) (b), shall
10 comply with the requirements described in sub. (2) (a) ~~or~~ and (b) that are imposed
11 by an agency with administrative authority without regard to when the person
12 obtained the property, ~~unless another person has a legally enforceable responsibility~~
13 ~~to comply with the requirements.~~

14 **SECTION 14.** 292.12 (5) (b) of the statutes is amended to read:

15 292.12 (5) (b) ~~A Except as provided in par. (c) and sub. (5m) (a) and (b), a person~~
16 who owns or occupies property, including a property or site that is listed under sub.
17 (3) (b), shall comply with the limitations or conditions described in sub. (2) (c) that
18 are imposed by an agency with administrative authority without regard to when the
19 person obtained or occupied the property.

20 **SECTION 15.** 292.12 (5) (c) of the statutes is created to read:

21 292.12 (5) (c) If another person has entered into and is complying with a legally
22 enforceable agreement to comply with any of the requirements, limitations, or
23 conditions described in sub. (2) (a) to (c) that are applicable to the property and the
24 agreement is included in the database maintained under sub. (3), the person who

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1 owns or occupies the property is not required to comply with the requirements,
2 limitations, or conditions included in that agreement.

3 **SECTION 16.** 292.12 (5) (d) of the statutes is created to read:

4 292.12 (5) (d) A person who owns or occupies property, including a property or
5 site that is listed under sub. (3) (b), may not interfere with another person's actions
6 on the property that are required under sub. (2) (a) to (c).

7 **SECTION 17.** 292.12 (5m) of the statutes is created to read:

8 292.12 (5m) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS RELATED TO
9 CONTAMINATED SEDIMENT AND PROHIBITION ON INTERFERENCE. (a) Notwithstanding the
10 requirements under sub. (5) (a) and (b), and except as provided in par. (b), a person
11 who is required to take action under s. 292.11 (3), (4), or (7) (b) with respect to
12 contaminated sediment and who takes action that includes the use of an engineering
13 control shall do all of the following:

14 1. Except as provided in par. (am), comply with the requirements, limitations,
15 and conditions described in sub. (2) (a) to (d) that are imposed by an agency with
16 administrative authority without regard to whether the person owns or occupies the
17 property on which the engineering control is used.

18 2. If the person does not own or occupy the property on which the engineering
19 control is used, obtain access to the property that allows for the inspection,
20 maintenance, and reinstallation of the engineering control or the removal of the
21 engineering control and contaminated sediment.

22 (am) If another person has entered into and is complying with a legally
23 enforceable agreement to comply with any of the requirements, limitations, or
24 conditions described in par. (a) 1. and the agreement is included in the database
25 maintained under sub. (3), the person who is required to take action under par. (a)

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1 is not required to comply with the requirements, limitations, or conditions included
2 in that agreement.

3 (ar) A person who owns or occupies property on which an engineering control
4 is used may not interfere with another person's actions on the property that are
5 required under par. (a).

6 (b) A person who owns property from which a hazardous substance was
7 discharged is not required to comply with sub. (2) (a) to (d) with respect to any other
8 property containing contaminated sediment as a result of that discharge if all of the
9 following apply:

10 1. The agency with administrative authority determines that the environment,
11 including sediment, has been satisfactorily restored to the extent practicable with
12 respect to the discharge and the harmful effects from the discharge have been
13 minimized.

14 2. The person is a bona fide prospective purchaser under 42 USC 9601 (40).

15 3. Another person has entered into and is complying with a legally enforceable
16 agreement to comply with any of the requirements, limitations, or conditions
17 described under sub. (2) (a) to (d) with respect to any other property containing
18 contaminated sediment as a result of that discharge.

19 4. The agreement under subd. 3. is included in the database maintained under
20 sub. (3).

21 5. The person submits information that the agency with administrative
22 authority determines is adequate to substantiate that subs. 1. to 4. are satisfied.

23 (c) The agency with administrative authority may negotiate and enter into an
24 agreement containing a schedule for conducting actions required under sub. (2) with

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1 any person required to take action under sub. (2) with respect to contaminated
2 sediment.

3 **SECTION 18.** 292.12 (6) of the statutes is amended to read:

4 292.12 (6) MODIFICATION OF REQUIREMENTS. A person may request the agency
5 with administrative authority over a site to change or eliminate a requirement,
6 limitation, or condition that it imposed under sub. (2) (a) to (e) (d) with respect to a
7 site. If the agency with administrative authority agrees to change or eliminate a
8 requirement, limitation, or condition imposed under sub. (2) (a) to (e) (d), it shall
9 provide written approval to the person, shall request the department to change the
10 listing under sub. (3) (b) for the site accordingly, and shall require the person to pay
11 a fee established by the department for changing the listing.

12 **SECTION 19.** 292.15 (2) (a) (intro.) of the statutes is amended to read:

13 292.15 (2) (a) *General.* (intro.) Except as provided in sub. (6) or (7), and subject
14 to pars. (ae) to (ag), a voluntary party is exempt from the provisions of ss. 289.05 (1),
15 (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and
16 (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with
17 respect to discharges of hazardous substances on or originating from a property, if
18 the release of those hazardous substances occurred prior to the date on which the
19 department approves the environmental investigation of the property under subd.
20 1. and if all of the following occur at any time before or after the date of acquisition:

21 **SECTION 20.** 292.15 (2) (af) of the statutes is created to read:

22 292.15 (2) (af) *Contaminated sediment.* Except as provided in sub. (6), (6m),
23 or (7), if there exists contaminated sediment on a property from a release of a
24 hazardous substance on or originating from a property, the voluntary party is exempt
25 from ss. 289.05 (1), (2), (3), and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37,

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1 292.11 (3), (4), and (7) (b) and (c), and 292.31 (8) and rules promulgated under those
2 provisions, with respect to discharges of hazardous substances on or originating from
3 the property, if the release of those hazardous substances occurred before the date
4 on which the department approves the environmental investigation of the property
5 under subd. 1., and if all of the following occur at any time before or after the date
6 of acquisition:

7 1. An environmental investigation of the property is conducted that is approved
8 by the department.

9 2. The voluntary party removes all or part of the contaminated sediment and
10 addresses any remaining contaminated sediment in a manner approved by the
11 department, such that the environment is restored to the extent practicable with
12 respect to the discharges and the harmful effects from the discharges are minimized
13 in accordance with rules promulgated by the department and any contract entered
14 into under those rules, except that with respect to contaminated sediment the
15 environment is restored to the extent practicable with respect to the discharges and
16 the harmful effects from the discharges are minimized as determined by the
17 department by monitoring or sampling and in accordance with any contract entered
18 into with the department's approval.

19 3. The voluntary party obtains a certificate of completion from the department
20 stating that the environment has been satisfactorily restored to the extent
21 practicable with respect to the discharges and that the harmful effects from the
22 discharges have been minimized.

23 3m. The voluntary party obtains and maintains insurance to cover the cost of
24 complying with s. 292.11 (3) with respect to the contaminated sediment in the event
25 that additional remedial action is necessary, unless additional action is not required

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1 under par. (b). The insurance shall conform with rules promulgated by the
2 department and shall name the state as the insured. The department may waive the
3 requirement to obtain and maintain insurance or accept a form of financial
4 responsibility other than insurance if the hazardous substance contained in the
5 contaminated sediment is not mercury, PCBs, as defined in s. 299.45 (1) (a), or dioxin
6 and the department determines that insurance is not necessary.

7 4. If the voluntary party owns or controls the property, the voluntary party
8 maintains and monitors the property in a manner required by the department and
9 any contract entered into with the department's approval.

10 5. The voluntary party does not engage in activities that are inconsistent with
11 the maintenance of the property.

12 6. The voluntary party has not obtained the certificate under subd. 3. by fraud
13 or misrepresentation, by the knowing failure to disclose material information or
14 under circumstances in which the voluntary party knew or should have known about
15 more discharges of hazardous substances than were revealed by the investigation
16 conducted under subd. 1.

17 7. If the voluntary party owns or controls the property, the voluntary party
18 allows the department, any authorized representative of the department, a
19 representative of a company that has issued insurance required under subd. 3m.,
20 any party that possessed or controlled the hazardous substance or caused the
21 discharge of the hazardous substance, and any consultant or contractor of those
22 persons to enter the property to determine whether additional remedial action is
23 necessary, subject to par. (b), and to take the necessary remedial action.

24 **SECTION 21.** 292.15 (2) (am) of the statutes is renumbered 292.15 (2) (am) 1m.,
25 and 292.15 (2) (am) 1m. (intro.), as renumbered, is amended to read:

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1 292.15 (2) (am) 1m. (intro.) The Except as provided in subd. 2m., the
2 department may approve a partial cleanup and issue a certificate of completion as
3 provided in par. (a), (ae), (af), or (ag) that states that not all of the property has been
4 satisfactorily restored or that not all of the harmful effects from a discharge of a
5 hazardous substance have been minimized. Approval of a partial cleanup exempts
6 a voluntary party from ss. 291.37 (2) and 292.11 (3), (4) and (7) (b) and (c) with respect
7 to the portion of the property or hazardous substances cleaned up under this
8 paragraph. In addition to meeting the requirements of par. (a), (ae), (af), or (ag), a
9 certificate for a partial cleanup under this paragraph may be issued only if:

10 **SECTION 22.** 292.15 (2) (am) 2m. of the statutes is created to read:

11 292.15 (2) (am) 2m. If there exists contaminated sediment in addition to a
12 hazardous substance in soil or soil and groundwater on a property from a release of
13 a hazardous substance on or originating from a property, the department may only
14 approve a partial cleanup of the property or discharge with respect to the soil or soil
15 and groundwater. The department may approve the partial cleanup only if, in
16 addition to the requirements under subd. 1m., all of the following apply:

17 a. An environmental investigation of the property or discharges is conducted
18 in a manner approved by the department.

19 b. The voluntary party, or a person who has entered into a legally enforceable
20 agreement with the department, agrees to restore the environment to the extent
21 practicable and minimize the harmful effects from the contaminated sediment on the
22 property or the discharges resulting in contaminated sediment.

23 c. The voluntary party or the person who has entered into a legally enforceable
24 agreement under subd. 2m. b. provides financial assurance to the department, in the
25 manner required by the department, in the event that the voluntary party or the

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1 person who has entered into a legally enforceable agreement under subd. 2m. b. fails
2 to restore the environment to the extent practicable and minimize the harmful
3 effects from the contaminated sediment on the property or the discharges resulting
4 in contaminated sediment.

5 **SECTION 23.** 292.15 (2) (b) (intro.) of the statutes is amended to read:

6 292.15 (2) (b) *Extent of exemptions.* (intro.) The exemptions provided in pars.
7 (a), (ae), (af), (ag) and (am) continue to apply after the date of certification by the
8 department under par. (a) 3., (ae) 3., (af) 3., or (ag) 2., or approval by the department
9 under par. (am), notwithstanding the occurrence of any of the following:

10 **SECTION 24.** 292.15 (2) (b) 1. of the statutes is amended to read:

11 292.15 (2) (b) 1. Statutes, rules or regulations are created or amended that
12 would impose greater responsibilities on the voluntary party than those imposed
13 under par. (a) 2., (ae) 2., (af) 2., or (ag) 1.

14 **SECTION 25.** 292.15 (2) (b) 2. of the statutes is amended to read:

15 292.15 (2) (b) 2. The voluntary party fully complies with the rules promulgated
16 by the department and any contract entered into under those rules under par. (a) 2.,
17 (ae) 2. or (ag) 1., or fully complies with the requirements imposed by the department
18 and any contract entered into with the department's approval under par. (af) 2., but
19 it is discovered that the cleanup fails to fully restore the environment and minimize
20 the effects from a discharge of a hazardous substance.

21 **SECTION 26.** 292.15 (2) (b) 3. of the statutes is amended to read:

22 292.15 (2) (b) 3. The contamination from a hazardous substance that is the
23 subject of the cleanup under par. (a) 2., (ae) 2., (af) 2., or (ag) 1. is discovered to be more
24 extensive than anticipated by the voluntary party and the department.

25 **SECTION 27.** 292.15 (2) (b) 5. of the statutes is amended to read:

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1 292.15 (2) (b) 5. If the voluntary party does not own or control the property, the
2 person who owns or controls the property fails to allow the department, any
3 authorized representative of the department, any representative of a company that
4 has issued insurance required under par. (ae) 3m. or (af) 3m., any party that
5 possessed or controlled the hazardous substance or caused the discharge of the
6 hazardous substance, or any consultant or contractor of any of those persons to enter
7 the property to determine whether natural attenuation has failed and to take action
8 to respond to the discharge if natural attenuation has failed, or to determine whether
9 additional remedial action is necessary and to take the necessary remedial action,
10 unless additional action is not required under this paragraph.

11 **SECTION 28.** 292.15 (2) (c) of the statutes is amended to read:

12 292.15 (2) (c) *Prohibition on action.* The department of justice may not
13 commence an action ~~under 42 USC 9607,~~ against any voluntary party meeting the
14 criteria of this subsection, under 42 USC 9607 to recover costs for which the
15 voluntary party is exempt or under 43 CFR Part 11 to recover damages to natural
16 resources resulting from a discharge for which the party is exempt under pars. (a),
17 (ae), (af), (ag), (am), and (b).

18 **SECTION 29.** 292.15 (2) (d) of the statutes is created to read:

19 292.15 (2) (d) *Prohibition on requiring additional action to comply with a total*
20 *maximum daily load.* If a voluntary party is exempt from liability under par. (af),
21 the department may not require the voluntary party to take additional action in
22 relation to the discharge for which the voluntary party is exempt under par. (af) for
23 the purpose of complying with a federally approved total maximum daily load under
24 33 USC 1313 (d) (1) (C), unless otherwise required under this section or s. 292.12.

25 **SECTION 30.** 292.15 (2) (e) of the statutes is amended to read:

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1 292.15 (2) (e) *Contract with insurer*. If the department requires insurance
2 under par. (ae) 3m. or (af) 3m., the department may contract with an insurer to
3 provide insurance required under par. (ae) 3m. or (af) 3m. and may require voluntary
4 parties to obtain coverage under the contract.

5 **SECTION 31.** 292.15 (6m) of the statutes is created to read:

6 292.15 (6m) **LIMITATION ON ELIGIBILITY.** A voluntary party is not eligible for the
7 exemption provided in sub. (2) (af) if the remedial action taken by the voluntary party
8 relating to contaminated sediment includes an engineering control.

9 **SECTION 32.** 292.15 (7) (f) of the statutes is created to read:

10 292.15 (7) (f) A property that is listed or proposed to be listed on the national
11 priorities list under 42 USC 9605 (a) (8) (B).

12 **SECTION 33.** 292.25 (1) (e) of the statutes is amended to read:

13 292.25 (1) (e) The number of sites for which a claim was made against an
14 insurance policy required under s. 292.15 (2) (ae).

15 **SECTION 34.** 292.25 (1) (f) of the statutes is created to read:

16 292.25 (1) (f) The number of sites for which a claim was made against an
17 insurance policy required under s. 292.15 (2) (af).

18 **SECTION 35.** 292.68 (1) (b) of the statutes is amended to read:

19 292.68 (1) (b) “PCB contaminated sediment” means sediment that contains
20 polychlorinated biphenyls in a concentration of 50 parts per million or greater and
21 that is dredged from ~~the bed or bank of~~ a navigable water in this state.

22 **SECTION 36. Nonstatutory provisions.**

23 (1) Using the procedure under section 227.24 of the statutes, the department
24 of natural resources shall promulgate rules required under sections 292.12 (2) (d) 2.
25 and 292.15 (2) (af) 3m. of the statutes, as created by this act, for the period before the

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1 effective date of the permanent rules promulgated under sections 292.12 (2) (d) 2.
2 and 292.15 (2) (af) 3m. of the statutes, as created by this act, but not to exceed the
3 period authorized under section 227.24 (1) (c) of the statutes, subject to extension
4 under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2)
5 (b), and (3) of the statutes, the department is not required to provide evidence that
6 promulgating a rule under this subsection as an emergency rule is necessary for the
7 preservation of the public peace, health, safety, or welfare and is not required to
8 provide a finding of emergency for a rule promulgated under this subsection.

9

(END)