

CR 85-133

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

STATE OF WISCONSIN )  
 ) ss  
DEPARTMENT OF NATURAL RESOURCES )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-34-85 was duly approved and adopted by this Department on October 23, 1985. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 6<sup>th</sup> day of December, 1985.

RECEIVED

DEC 11 1985

8:30 am  
Revisor of Statutes  
Bureau

*Bruce B. Braun*  
Bruce B. Braun, Deputy Secretary

(SEAL)

6140J

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD CREATING RULES

.....  
IN THE MATTER of creating ch. NR 184 of the .....  
Wisconsin Administrative Code pertaining to .....  
Superfund cost sharing ..... SW-34-85  
.....

Analysis Prepared by the Department of Natural Resources

The creation of ch. NR 184, Wis. Adm. Code, consisting of s. NR 184.08, will allow the Department to complete agreements with the U.S. Environmental Protection Agency for Superfund remedial actions at in Wisconsin. Under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 USC 9601, et seq., the state must share the cost of remedial actions taken under Superfund. The creation of s. NR 184.08, Wis. Adm. Code, will allow the state to contribute the state share from existing appropriations to the Environmental Repair Fund (ERF) using the criteria required by s. 144.442(8)(b), Stats. The criteria listed in the rule are: the benefits derived from the remedial action, the money available in ERF, money available from other sources, the potential of cost recovery from the responsible party, the ownership of the site, the timing of remedial actions, and other appropriate criteria.

The Department is currently preparing the Environmental Response and Repair Rules required by s. 144.442(5), Stats. The Response and Repair Rules will contain the criteria found in the proposed NR 184.08. The Department needs the ability to commit state funds to Superfund remedial actions prior to the promulgation of the remaining Environmental Response and Repair Rules. The promulgation of NR 184.08 will allow the Department to proceed with EPA contracts for remedial action in a timely manner as the overall Environmental Response and Repair Rules are being completed.

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Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 144.442(8) and 227.014, Stats., the State of Wisconsin Natural Resources Board hereby creates rules interpreting s. 144.442(8), Stats., as follows:

SECTION 1. Chapter NR 184 is created to read:

Chapter NR 184

ENVIRONMENTAL RESPONSE AND REPAIR

NR 184.08 SUPERFUND COST SHARING. (1) DEFINITIONS. (a) "Department" means the department of natural resources.

(b) "EPA" means the U.S. environmental protection agency.

(c) "ERF" means the the environmental repair fund established in s. 25.46, Stats.

(d) "National priorities list" means the list established under s. 105(8)(b) of the superfund act, 42 USC 9605(8)(B).

(e) "Superfund act" means the comprehensive environmental response, compensation, and liability act of 1980, 42 USC 9601, et seq.

(2) USE OF SUPERFUND ACT. To the extent possible, the department shall use available federal resources for remedial action if the site or facility is listed on the national priorities list. However, the department's first priority in taking remedial action is to protect the public health, welfare, and safety, and environmental quality, and to restore the environment to the extent practicable. The department may use money from ERF to take immediate remedial action at any site or facility listed on the national priorities list if the department determines that failure to take immediate action will cause an imminent risk to the public health or safety, or the environment.

(3) COOPERATIVE AGREEMENTS AND STATE CONTRACTS. The department may enter into cooperative agreements or state contracts with the EPA for the purposes of taking remedial actions under the superfund act. The department may use money from ERF to pay the required state share of any remedial action taken in agreement with the EPA.

(4) CRITERIA FOR COST SHARING. (a) General. The department shall consider the criteria listed in pars. (b) to (i), in descending order of importance, to determine whether or not to enter into a cooperative agreement or state contract with EPA for taking remedial action.

(b) Benefits to be derived from the remedial action. The department shall review the risk assessment, focused feasibility study, and other reports prepared by EPA to evaluate proposed remedial actions. The department may not commit the required state share for a remedial action unless the department is in substantial agreement with EPA's assessment of the effectiveness of the proposed remedial action to protect public health, welfare, and safety, and environmental quality, and to restore the environment to the extent practicable.

(c) Money available in ERF. The department shall consider the money available in ERF taking into account the following:

1. At the beginning of each fiscal year, the department shall reserve adequate funds for planned state-funded investigations, hazardous substance spill response, abandoned container cleanup, and imminent risk response.

2. The department shall consider the timing of expenditures from ERF in relation to the end of the fiscal year and the availability of new appropriations. When nearing the end of a fiscal year, the department may use the funds earlier reserved for hazardous substance spill response, abandoned container cleanup, and imminent risk response to commit the state share of remedial actions taken in agreement with EPA.

(d) Money available from other sources. The department shall consider the money available from other sources to pay the capital cost and annual operations and maintenance costs for remedial actions taken in agreement with EPA. These sources include:

1. Responsible parties who are willing and able to pay part of the project costs;
2. Other federal grant or loan programs which have money immediately available;
3. The Wisconsin well compensation program, and for approved mining facilities, the investment and local impact funds;
4. Closure bonds or other financial responsibility proofs; and
5. Local governments willing to financially support the remedial action.

(e) Potential of cost recovery from responsible party. The department shall consider the potential for cost recovery from a responsible party under the provisions of federal or state law. In general, if a responsible party exists the department shall favor remedial action where cost recovery from the responsible party is likely rather than remedial action where cost recovery is unlikely.

(f) Ownership of site. 1. The department shall establish whether the site or facility is privately or publicly owned.

Note: The superfund act requires states to commit 10% of the remedial costs for actions taken at private sites, and at least 50% of the remedial costs for actions taken at publicly owned sites.

2. To receive the greatest benefit of funds under the superfund act, and to extend the money available in ERF, the department shall favor cost-sharing of remedial actions taken at private sites or facilities over cost-sharing of remedial actions taken at public sites or facilities.

(g) Timing of remedial actions. The department shall consider:

1. Whether or not the remedial action may be more effective if started at another time of year; and,

2. Whether or not the environmental hazards at the site or facility will become greater if action is delayed.

(h) Preclusion of other projects. The department shall consider whether the department's ability to take remedial action at other sites or facilities will be precluded by committing ERF funds for the state share of remedial actions taken in agreement with EPA.

(i) Other criteria. The department may consider other appropriate criteria.

(5) NOTIFICATION. After consideration of the criteria listed in sub. (4), the secretary of the department shall notify EPA in writing whether or not the department will commit the required state share for remedial action taken under the superfund act.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 23, 1985.

The rules contained herein shall take effect as provided in s. 227.026 (1)(intro.), Stats.

Dated at Madison, Wisconsin

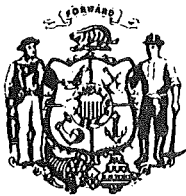
December 6, 1985

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By

Carroll D. Besadny  
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

*Carroll D. Besadny*  
*Secretary*

BOX 7921

MADISON, WISCONSIN 53707

December 6, 1985

IN REPLY REFER TO: 1020

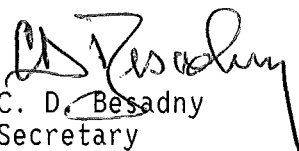
Mr. Orlan L. Prestegard  
Revisor of Statutes  
Suite 904  
30 W. Mifflin Street

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. SW-34-85. These rules were reviewed by the Assembly Committee on Environmental Resources and the Senate Committee on Energy and Environmental Resources pursuant to s. 227.018, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

  
C. D. Besadny  
Secretary

Enc.

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