Chapter NR 747

PETROLEUM ENVIRONMENTAL CLEANUP FUND

Note: Chapter ILHR 47 was created as an emergency rule effective January 1, 1993. Chapter ILHR 47 was renumbered Chapter Comm 47 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1998, No. 516. Chapter Comm 47 was renumbered chapter SPS 347 under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672. **Chapter SPS 347 was renumbered Chapter NR 747 under s. 13.92 (4) (b) 1., Stats., Register October 2013 No. 694.**

Subchapter I — Purpose, Authority and Application

NR 747.01 Purpose. (1) PECFA FUND. The purpose of this chapter is to provide information on the Petroleum Environmental Cleanup Fund program, also referred to as the Petroleum Storage Environmental Remedial Action Fund and the Petroleum Storage Remediation Fund; outline the processes and procedures for filing a claim for an eligible remediation and specify the process of determining award amounts.

(2) STATUTORY AUTHORITY. This chapter is adopted pursuant to s. 292.63, Stats.

(3) INTENT OF PECFA. (a) The PECFA fund does not relieve a responsible party from liability. The individual or organization responsible for a contaminated property shall carry out the remediation of that property. PECFA's role is to provide monetary awards to responsible parties who have completed and paid for PECFA−approved remediation activities and services. The availability or unavailability of PECFA funding shall not be the determining factor as to whether a remediation shall be completed.

(b) The responsible party shall be the primary point for the control of costs within the PECFA program. The focus of the program will be to maintain the responsible party as the central control point throughout the claim process.

(4) CONTROL OF COSTS. The framework for the control of costs within the PECFA program shall be based upon the responsible party minimizing costs in all phases of the remediation. The primary structural factors for the control of costs include the following:

(a) The selection of a consulting firm through a comparison of at least 3 proposals. Once selected, the firm may only provide professional consulting services on the remediation;

(b) The requirement to purchase or contract for commodity services through the use of competitive bids;

(c) The consideration of the costs and benefits of remediation alternatives;

(d) The use of environmental factors to determine the eligible range of responses on a site;

(e) The use of site bundling and competitive bidding to reduce costs;

(f) The registration for participation in the PECFA program, only those consultants and consulting firms which meet specific qualifying criteria and standards of conduct; and

(g) The publication of cost guidelines for cost−effective remediations.

(5) MOST COST−EFFECTIVE REMEDIATION ALTERNATIVE. The PECFA fund shall ensure that awards are made for only the most cost−effective remediation alternative. The department may allow a higher cost alternative provided:

(a) The responsible party assures personal payment of the difference in cost between the lowest cost remediation and the higher cost alternative desired; or

(b) The department determines that the objectives of the PECFA program would be furthered by the use of a specific remedial technology.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (2), (3) (a), (4) (c) and (5), renum. (4) (d) and (e) to be (4) (f) and (g), cr. (4) (d) and (e), Register, December, 1998, No. 516, eff. 1−1−99; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.015 Definitions. In this chapter:

(1) "Active treatment" means a remedial activity that is not natural attenuation or monitoring but is conducted in situ. Active

treatment includes use of biological or chemical agents to augment remediation of contamination.

(2) "Agent" means a person or organization designated by an owner, operator or person owning a home oil tank system to act on behalf of the owner or operator or person owning the home oil tank system in conducting the remedial activities.

(3) "Annual aggregate" means the total amount of awards that an owner or operator may obtain during a program year under this chapter.

(4) "Award" means the reimbursement provided to an owner or operator or person owning a home heating oil tank system for eligible costs incurred because of a petroleum product discharge from a petroleum product storage system or home oil tank system.

(5) "Bodily injury" has the meaning under s. 292.63 (1) (ad), Stats., however, this term shall not include those liabilities which, consistent with standard insurance industry practices, such as specified in s. Ins 6.35, are excluded from coverage in liability insurance policies for bodily injury.

(6) "Claimant" means any party who is eligible to submit a claim for an award under this chapter. Under this chapter, the claimant may also be the responsible party.

(7) "Closed remedial action" means that the department has determined, based on information available at the time, that no further action is necessary. A closed remedial action includes the approval of remediation by natural attenuation as a final site remedy. A determination that no further action is required might include one or more deed or use restrictions placed on a property, or other requirements, which are conditions for approval.

(8) "Consultant" means a person who performs or provides professional investigation, interpretation, design or technical project management services including, but not limited to, conducting site investigations, preparing remedial action plans and alternatives, and interpretation of data for passive or active bio−remediation systems. An owner or operator may prepare bid documents and complete other requirements of the bid process without being designated as a consultant.

Note: See s. SPS 305.81 for departmental credential requirements for consultants.

(9) "Consulting firm" means a corporation, partnership, sole proprietor or independent contractor who performs or provides professional engineering or hydrogeology services including but not limited to conducting site investigations, preparing remedial action plans and alternatives, designing and supervising the installation of remedial systems and plans for passive bio−remediation with long−term monitoring.

Note: See s. SPS 305.80 for departmental credential requirements for consulting firms.

(10) "Costs incurred" means costs integral to the remediation of a site which have been paid by a responsible party. Costs are considered incurred when funds are disbursed to the creditor, i.e., invoices have been paid and verification is available.

(11) "Department" means the department of natural resources.

(12) "Discharge" means spilling, leaking, pumping, pouring, emitting, or emptying, but does not include dumping.

(13) "DNR" means the Wisconsin department of natural resources.

(14) "Emergency action" means an immediate response to protect public health or safety.

Note: An emergency action would normally be expected to be directly related to a sudden event or discovery. Simple removal of contaminated soils, recovery of free product, or relief from financial hardship are not considered emergency actions.

(15) "Entity" means any of the following:

(a) A person owning a home oil tank system.

(b) A business required to maintain a worker's compensation insurance policy under ch. DWD 80.

(c) An owner or operator who is completely independent of any other business or corporation with coverage under the PECFA program.

(16) "Financial hardship claimant" means a claimant that has employed no more than 4 individuals, who are not immediate family members, at any time during the year prior to claim submittal and is able to document this through payroll or tax records.

(17) "Fund" means the petroleum environmental cleanup fund administered by the department.

(18) "Grossly negligent" means the conscious or reckless disregard for the negative consequences of one's actions or inaction.

(19) "Heating oil" has the same meaning as set forth in ch. ATCP 93.

Note: The definition in chapter ATCP 93 for heating oil reads as follows: " 'Heating fuel' or 'heating oil' means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grade grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these, including used oil or used cooking oils when used in an oil burner to provide space heat or processing heat for consumptive use on the property."

(20) "Home heating oil tank systems" has the meaning set forth in s. 292.63 (1) (cm), Stats.

Note: Section 292.63 (1) (cm), Stats., defines a home heating oil tank system as an underground home heating oil tank used for consumptive use on the premises together with any on−site integral piping or dispensing system.

(21) "Immediate family members" means parents, stepparents, grandparents, children, stepchildren, grandchildren, brothers (and their spouses), sisters (and their spouses), aunts, uncles, sons−in−law or daughters−in−law of the claimant or the claimant's spouse.

(22) "Independent" means entirely and completely free from any common control, guidance, ability to influence, significant financial interest or mutual benefit. Significant financial interest means ownership of more than 5% of a firm or business entity by the consulting firm, consultant or the consultant's family.

(23) "Interim action" means a response action taken to contain, stabilize or recover a discharge of a hazardous substance, in order to minimize any threats to public health or safety, while other response actions are being taken or planned for the site or facility.

(24) "Investigation awards" means awards that are made for investigative activities when no discharge is found, if the owner, operator or person owning a home heating oil tank system has written direction from the department to conduct an investigation under s. 292.63 (4) (es), Stats.

(25) "Loan secured" means the point at which a financial organization and customer have completed all documents associated with a commitment of funds and an agreement to repay the funding. The term applies to original loans and to the creation of additional funding.

(26) "Natural attenuation" means the reduction in the concentration and mass of a substance and its breakdown products in groundwater or soils, or both, due to naturally occurring physical, chemical or biological processes.

(27) "Occurrence" has the meaning set forth in s. 292.63 (1) (cs), Stats.

Note: Section 292.63 (1) (cs), Stats., defines occurrence as a contiguous contaminated area resulting from one or more petroleum product discharges.

Note: In Mews vs. Wisconsin Department of Commerce, 2004 WI APP 24, 676 NW 2d 160 Wis APP. (2004), the Court concluded that this definition is "published and unambiguous." In arriving at this conclusion, the Court agreed with the department that without an intervening, unimpacted area of no detects, all contamination at a site is contiguous and is therefore a single occurrence.

(28) "Operator" has the meaning set forth in s. 292.63 (1) (d), Stats.

Note: Section 292.63 (1) (d), Stats., defines operator as:

(d) 1. A person who operates a petroleum product storage system, regardless of whether the system remains in operation and regardless of whether the person operates or permits the use of the system at the time the environmental pollution occurs; or

2. A subsidiary or parent corporation of the person specified under subd. 1.

(29) "Outstanding unreimbursed loan amount" means funds that have been disbursed by the financial organization for actual costs incurred by the borrower's service providers and any earned interest charges, less any amounts reimbursed by the PECFA program.

(30) "Owner" is an entity under the PECFA program or a trust and in addition has the meaning set forth in s. 292.63 (1) (e), Stats.

Note: Section 292.63 (1) (e), Stats., defines owner as any of the following:

(e) 1. A person who owns, or has possession or control of, a petroleum product storage system or who receives direct or indirect consideration from the operation of a system regardless of whether the system remains in operation and regardless of whether the person owns or receives consideration at the time the discharge occurs;

2. A subsidiary or parent corporation of the person specified under subd. 1.

(31) "Passive bio−remediation" has the same meaning as "natural attenuation".

(32) "PECFA" means petroleum environmental cleanup fund award, as established in s. 292.63, Stats.

(33) "Person" has the meaning set forth in ch. ATCP 93.

Note: Chapter ATCP 93 defines person as an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of the state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

(34) "Petroleum product" has the meaning set forth in s. 292.63 (1) (f), Stats.

Note: Section 292.63 (1) (f), Stats., defines a petroleum product as gasoline, gasoline−alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.

(35) "Petroleum product storage system" has the meaning set forth in s. 292.63 (1) (fg), Stats.

Note: Section 292.63 (1) (fg), Stats., defines a petroleum product storage system as a storage tank that is located in Wisconsin and is used to store petroleum products together with any on−site integral piping or dispensing system. The term does not include pipeline facilities; tanks of 110 gallons or less capacity; residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale; farm tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, except as provided in sub. (4) (ei); tanks used for storing heating oil for consumptive use on the premises where stored, except for heating oil tanks owned by school districts and heating oil tanks owned by technical college districts and except as provided in sub. (4) (ei); or tanks owned by Wisconsin or the federal government.

(36) "Pollution impairment" means bodily injury or property damage arising from the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of a petroleum product.

(37) "Prime rate" means the most recent rate published in the *Wall Street Journal* under Money Rates — Prime Rate.

Note: The prime rate is the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks.

(38) "Program year" has the meaning set forth in s. 292.63 (1) (g), Stats.

Note: Section 292.63 (1) (g), Stats., defines program year as the period beginning on August 1 and ending on the following July 31.

(39) "Progress payment" means an award made prior to the full completion of a remediation and may include payments after completion of an emergency action, site investigation, remediation, maintenance or operation, or other points as defined in this chapter.

(40) "Property damage" has the meaning set forth in s. 292.63 (1) (gm), Stats.

Note: Section 292.63 (1) (gm), Stats., defines property damage as not including those liabilities which are exclusions in liability insurance policies for property damage, other than liability for remedial action associated with petroleum product discharges from petroleum product storage systems. The statute also excludes loss of fair market value.

(41) "Remedial action plan" means a document that reports a remedial action alternative and provides the basis for its recommendation along with projected costs and other required detail.

(42) "Responsible party" means either the owner, operator, person owning a home oil tank system or claimant who is financially responsible for all costs of remediation of a discharge of petroleum product.

(43) "Site bundling" means providing investigation or remedial action services, or both, for multiple occurrences while utilizing one consulting firm or common commodity services and providers, or both.

(44) "Service provider" has the meaning set forth in s. 292.63 (1) (gs), Stats.

Note: Section 292.63 (1) (gs) defines service provider as a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for which a claim for reimbursement has been or will be filed under this section (ch. NR 747), or a subcontractor of such a person.

(45) "Site investigation" means the investigation of a petroleum product discharge to provide the information necessary to define the nature, degree and extent of a contamination and to allow a remedial action alternative to be selected.

(46) "Subsidiary or parent corporation" has the meaning set forth in s. 292.63 (1) (h), Stats.

Note: Section 292.63 (1) (h) defines subsidiary or parent company as a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long−term contractual arrangement with a person to avoid direct responsibility for conditions at a petroleum product storage system site.

(47) "Tank" has the meaning set forth in ch. ATCP 93.

(48) "Third−party claim" means a claim against a claimant for personal injury or property damage associated with a discharge from an underground petroleum product storage tank system under this chapter.

(49) "Underground petroleum product storage tank system" has the meaning set forth in s. 292.63 (1) (i), Stats.

Note: Section 292.63 (1) (i), Stats., defines underground petroleum product storage tank system as an underground storage tank used for storing petroleum products together with any on−site integral piping or dispensing system with at least 10% of its total volume buried in the ground.

(50) "Upgrade" means the addition or retrofit of a petroleum product storage tank system with cathodic protection, lining or spill and overfill controls.

(51) "Used motor oil" means oil from internal combustion engines, collected and stored in accordance with s. ATCP 93.300.

(52) "Willful neglect" means the intentional failure to comply with the laws or rules of the state concerning the storage of petroleum products and may include, but is not limited to, the failure to:

(a) Conduct leak detection procedures;

(b) Take out of service a tank system that by reason of operational characteristics or leak detection is suspected of causing a discharge to the environment;

(c) Immediately shut down and repair a leaking tank system;

(d) Conduct a required product inventory;

(e) Comply with tank system use permit requirements;

(f) Comply with plan review, installation or inspection requirements under ch. ATCP 93;

(g) Register or actions to de−register an underground or aboveground tank system in order to avoid regulation under ch. ATCP 93; or

(h) Maintain corrosion protection on a system's tank or lines.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (24) and (32) Register February 2006 No. 602, eff. 5−1−06; CR 07−029: r. and recr. (19) Register November 2008 No. 635, eff. 2−1−09; correction in (51) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; correction in (11), (19), (33), (47), (51), (52) (f), (g) made under s. 13.92 (4) (b) 6., 7., Stats., Register December 2011 No. 672; **corrections in (5), (7), (11), (19), (20), (24), (27), (28), (30), (32), (33) to (35), (38), (40), (44), (46), (47), (49), (51), (52) (f), (g) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.02 Coverage. (1) PETROLEUM PRODUCT STORAGE TANK SYSTEMS. Owners or operators of a petroleum product storage systems are eligible for reimbursement from the fund provided claims are for underground or aboveground petroleum storage systems that are one or more of the following:

(a) Commercial tank systems larger than 110 gallons capacity.

(b) Heating oil tank systems where the petroleum product is sold.

(c) Farm or residential tank systems larger than 1,100 gallons capacity and not storing heating oil for consumptive use on the premises.

(d) Tank systems storing gasoline, diesel fuel or other vehicle fuel, other than residential tanks of 1,100 gallons or less capacity.

(e) Farm vehicle fuel systems of 1,100 gallons or less capacity, which meet the requirements in s. 292.63 (4) (ei) 1m. a., Stats., regarding farm size and farm income, and is used to store products not for resale.

(f) Heating oil tank systems owned by public school or technical college districts, supplying heating oil for consumptive use on the premises.

(g) Tank systems located on trust lands of an American Indian tribe or band if the owner or operator's tank system would be otherwise covered under pars. (a) to (f) and the owner or operator complies with this chapter and ch. ATCP 93 and obtains all applicable agency approvals.

(2) HEATING OIL TANK SYSTEMS. A person owning a home heating oil tank system is eligible for reimbursement from the fund provided the claim is for a heating oil tank system that is an underground home heating oil tank system and the person complies with this chapter and ch. ATCP 93.

(3) EXCLUSIONS. The fund does not cover a claim for any of the following:

(a) A pipeline facility.

(b) A commercial tank system of 110 gallons or less capacity.

(c) A residential motor fuel tank system of 1,100 gallons or less capacity.

(d) Any tank system that is federal or state owned.

(e) Any tank system of 110 gallons or less capacity which is not used for the storage of home heating oil.

(f) A nonresidential heating or boiler tank system where the product is used on the premises where it is stored.

(g) An underground petroleum product storage tank system or home oil tank system that meets the performance standards in 40 CFR 280.20 or ch. ATCP 93, was installed after December 22, 1988, and from which a release was confirmed after December 31, 1995.

(h) An underground petroleum product storage tank system or home oil tank system that meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or ch. ATCP 93 and a discharge is confirmed after December 31, 1995, and the discharge is confirmed, or remedial activities begun, after the day on which the system first met the upgrading requirements.

(i) A new aboveground petroleum product storage tank system that meets the performance standards promulgated in rules by the department, installed after April 30, 1991, and from which a discharge is confirmed after December 22, 2001.

(j) An aboveground petroleum product storage tank system that meets the upgrade requirements promulgated by the department and a discharge is confirmed after December 22, 2001, and the discharge is confirmed, or remedial activities begun, after the day on which the petroleum system first met the upgrading requirements in rules promulgated by the department.

(k) Any other tank system not included under sub. (1).

(4) ELIGIBLE SYSTEMS AND EXCLUDED SYSTEMS AT THE SAME SITE. (a) *Three possible conditions.* An owner or operator of a petroleum product storage system which is excluded by sub. (3) (g) to (j) from coverage is eligible for reimbursement from the fund for claims relating to other petroleum product storage systems at the same site, where one of the following conditions applies:

1. 'Discharges are not commingled.' A discharge that predates the deadlines in sub. (3) (g) to (j) is documented as not commingled with any discharge excluded by sub. (3) (g) to (j).

2. 'Discharges are commingled.' A discharge that predates the deadlines in sub. (3) (g) to (j) is commingled with a discharge excluded by sub. (3) (g) to (j).

3. 'Replacement within the same tank bed.' A storage system that predates the deadlines in sub. (3) (g) to (j) has been replaced within the same tank bed or has been upgraded, subsequent to the deadlines in sub. (3) (g) to (j), and documentation cannot confirm whether a discharge there occurred before or after the deadlines.

(b) *Reimbursement rates.* 1. Where par. (a) 1. applies, 100 percent of the eligible costs may be reimbursed.

2. Where par. (a) 2. applies, the department will consider the two discharges to be one occurrence, and will apply a methodology of cost separation based on total tank volume, or based on other factors acceptable to the department.

3. Where par. (a) 3. applies, 25 percent of the eligible costs may be reimbursed, after documentation is submitted to the department showing that all applicable tank closure and site assessment requirements in either ch. ATCP 93 or in preceding federal regulations were complied with, including the corresponding deadlines for performing that closure and assessment.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94**;** r. and recr. Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: cr. (4) Register February 2006 No. 602, eff. 5−1−06; corrections in (1) (e) and (3) (h) made under s. 13.93 (2m) (b) 7., Stats., Register February 2006 No. 602; correction in (1) (g), (2), (3) (g), (h), (4) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (e), (g), (2), (3) (g), (h), (4) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.025 Awards. (1) GENERAL. (a) If the department determines that the claimant meets all of the eligibility requirements of this chapter, the department shall determine a deductible amount and issue an award to reimburse the claimant for eligible costs incurred in a remediation.

(b) The department may not issue an award before all eligible costs have been incurred unless the department determines that the delay in issuing the award would cause a financial hardship to the owner, operator or the person owning a home oil tank system. The department may issue progress payments when sufficient evidence of completion of various activities, as specified in ss. NR 747.12 and 747.355 is received.

(2) AWARDS, DEDUCTIBLES, AND DENIALS.. All awards shall be issued in accordance with this chapter and the requirements in s. 292.63 (4) (d), (dg), and (dm) to (g), Stats.

Note: Other sections of this chapter, such as s. NR 747.30 (2) and (3), also address denial of claims, as established through other subsections of s. 292.63, Stats.

(3) THIRD−PARTY CLAIMS. For owners or operators of underground storage tank system discharges eligible for PECFA, third−party damages resulting from petroleum product discharges may be eligible for reimbursement under the PECFA fund. Items which may not be reimbursed include, but are not limited to, costs for which the owner or operator is not legally liable; costs associated with discharges based on or attributed to a criminal act; intentional, willful or deliberate noncompliance with any statute or administrative rule; punitive or exemplary damages; and federal, state or local fines, forfeitures or other penalties.

Note: See s. NR 747.36 (3) for further requirements for third−party claims.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94**;** am. (1) (b) and (5) (a), r. (1) (c), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (1) (b), r. and recr. (2), r. (3) to (5), renum. (6) to be (3) Register February 2006 No. 602, eff. 5−1−06; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.03 Emergency awards. The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health or safety. The finding of an emergency may not be based upon financial hardship of the responsible

party or its agent. A determination that no emergency exists may not be appealed to the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. (1), renum. (2) to be Comm 47.03, Register, December, 1998, No. 516, eff. 1−1−99.

Subchapter II — Program Eligibility

NR 747.10 Initial claim eligibility. (1) GENERAL. (a) *Responsible parties.* Responsible parties may submit claims to the department pursuant to s. 292.63 (4), Stats., for reimbursement of eligible costs incurred because of a petroleum product discharge from a petroleum product storage system or home oil tank system.

1. If a responsible party is not the sole owner of the site, an Owner Assignment Certification form (ERS−8070) shall be filed with the department to establish one entity to submit the claim and receive the award under this chapter.

2. The responsible party, owner or operator, agent or an assignee, as established in subd. 1., may submit a claim if all of the following are performed:

a. Documentation that the source of a discharge or discharges is from a petroleum product storage system or home oil tank system;

b. Notification to the department, before conducting a site investigation or remedial action activity, of the potential for submitting a claim under this chapter, except in emergency situations as provided under s. 292.63 (3) (g), Stats.;

c. Registration of the petroleum product storage system or the home oil tank system with the department of agriculture, trade and consumer protection under ss. 168.21 to 168.26, Stats.;

d. Report of the discharge in a timely manner to the division of emergency government in the department of military affairs or to the department, according to the requirements under ch. 292, Stats.;

e. Investigation of the degree and extent of environmental damage caused by the discharge from a petroleum product storage system or home oil tank system;

f. Recovery and proper disposal of any recoverable petroleum products in the discharge from a petroleum product storage system or home oil tank system;

g. Disposal of any residual solid or hazardous waste in a manner consistent with local, state and federal laws, rules and regulations;

h. Verification that the owner has maintained the site in compliance with laws and rules of the state concerning the storage of petroleum products; and

i. Restoration of the environment according to applicable standards using the most cost−effective approvable alternative available.

3. Owners or operators, or persons owning home oil tank systems, who were not owners or operators, or who were not persons owning home oil tank systems, when a petroleum product discharge occurred, and who meet all of the conditions of this section, may submit a claim for an award under the scope of this chapter.

(b) *Agents.* 1. 'Individuals as agents.' Except as specified in subd. 2., an owner or operator or the person owning a home oil tank system may, with the written approval of the department, enter into a written agreement with another person to act as an agent. An agent, in order to be approved and receive payment under the fund, shall agree to complete the remediation up to the point of operation and maintenance or long−term monitoring. The agent and the owner, operator, or person owning the home oil tank system shall jointly submit a claim for an award after completing all applicable requirements under this chapter and submittal of a Current Agent Assignment Certification form (ERS−8079) to the department. An award made under this paragraph shall be made payable to both the agent and owner, operator or person owning the home oil tank system.

2. 'Department of transportation as agent.' With prior written approval of the department and the owner, operator or the person owning the home oil tank system, the department of transportation may act as an agent as specified in subd. 1., when the petroleum product storage system or home oil tank system is located on property that is or may be affected by a transportation project under the jurisdiction of the department of transportation. The scope of the department of transportation shall be limited to the activities under subd. 3. The department of transportation shall submit the claim for an award as specified under this section with the award to be jointly paid to the owner, operator or the person owning the home oil tank system and the department of transportation for eligible costs incurred by the department of transportation in conducting the activities specified under subd. 3.

3. 'Activities of agents.' All agents shall be limited to the following activities:

a. Completing the site investigation to determine the degree and extent of the environmental contamination caused by the discharge from a petroleum product storage tank system or a home oil tank system and preparing the analysis and report as specified in s. NR 747.337.

b. Conducting bids for all commodity services necessary at the site to restore the environment and minimize the harmful effects from the petroleum products discharge up to point of operation and maintenance or long−term monitoring.

c. Providing commodity services that have reimbursement maximums which are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in subch. VI.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921 or at http://dnr.wi.gov/topic/brownfields/pecfa.html.

(2) PROVISIONS OF ELIGIBILITY LETTER. (a) When an owner, operator or person owning a home oil tank system has registered the tank systems on the property associated with the discharge and notified the department as specified under s. NR 747.11, the department shall upon request of the responsible party provide a letter of eligibility determination. This letter may include information on the PECFA program and the department's initial determination of the eligibility for an award under this chapter.

(b) The initial eligibility determination is made by the department based upon the information made available prior to the determination.

(c) This letter of eligibility may be used in securing loans to cover estimated costs for a proposed remediation.

(d) The initial estimate of eligibility shall not be binding if subsequently the owner, operator, person owning a home heating oil tank system or other source provides the department with additional information which necessitates a subsequent ineligibility determination to be made by the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (1) (a) 1., (b) 1., 3. a. and b., r. (1) (b) 3. c., Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: (1) (a) 3. renum. from Comm 47.30 (1) (a) and am., am. (1) (a) (intro.), cr. (1) (b) 3. c. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (b) 3. a., c., (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a) (intro.), 2. b. to d., (b) 3. a., c., (2) (a) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.11 Tank registration. (1) The department has the authority to inventory and determine the location of aboveground and underground petroleum storage tanks systems as specified in s. 168.28 (2), Stats. Tank systems shall be registered with the department of agriculture, trade and consumer protection on forms provided by the department of agriculture, trade and consumer protection. Eligibility determination of awards under the scope of this chapter requires prior tank registration.

(2) All aboveground petroleum product storage tank systems shall be registered with the department. Exceptions are for any of the following:

(a) Pipeline facilities.

(b) Tank systems of 110 gallons or less capacity.

(c) Residential tank systems of 1,100 gallons or less capacity.

(3) All underground petroleum product storage tank systems larger than 60 gallons capacity shall be registered with the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. Register, December, 1998, No. 516, eff. 1−1−99; **corrections in (1) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.115 Nonregistered tanks and out−of−service tanks. (1) All aboveground and underground petroleum storage tanks not previously registered, having no completed Underground Petroleum Product Tank Inventory form (ERS−7437) or Aboveground Petroleum Product Tank Inventory form (ERS−8731) on file with the department, shall be registered prior to submitting a claim for an award under the scope of this chapter.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921 or at http://dnr.wi.gov/topic/brownfields/pecfa.html.

(2) For all underground petroleum storage tanks removed, closed or out−of−service prior to the date of tank registration, as specified in s. ss. 168.21 to 168.26, Stats., the present owner, operator or person owning a home oil tank system shall submit documentation to the department as to the existence of the tank, the product stored, the size and type of tank, and other information to substantiate prior ownership and use. This documentation may include, but is not limited to, neutral third−party testimony, county tax records, land titles, and blue prints of initial tank installations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (1), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: r. (3) Register February 2006 No. 602, eff. 5−1−06; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.12 Claim process. (1) APPLICATION. A claimant shall submit a claim in a format prescribed by the department, and shall include all of the following that are applicable:

(a) For a claim covering the site investigation and the preparation of a remedial action plan, a copy of the report providing the information detailed in s. NR 716.15 and the letter provided by the department indicating that the remedial action plan submittal requirements have been complied with and that submittal of the claim is authorized.

(b) A copy of the Underground Petroleum Product Tank Inventory form (ERS−7437) for each underground tank system at the site and a copy of the Aboveground Petroleum Product Tank Inventory form (ERS−8731) for each aboveground tank system at the site.

(c) The bid specifications and a copy of the bids for commodity services as required in s. NR 747.33.

(d) Documentation verifying actual costs incurred because of the petroleum product discharge, which shall include receipts, invoices including contractor's and subcontractor's invoices, interest costs, loan fees, accounts, and processed payments.

(e) Proof of payment for all invoices including copies of both sides of canceled checks or money orders or alternate proofs of payment approved by the department.

(f) Properly detailed and itemized receipts for remedial activities and services performed.

(g) Owner's, operator's, home oil tank owner's or the responsible party's social security number or federal tax identification number.

(h) Other records or statements that the department determines to be necessary to complete the application.

(i) Signature of the owner, operator or person owning home oil tank system on the application.

(j) A certificate or certificates verifying the existence of the insurance coverage required in ch. SPS 305 for all the environmental consultants who performed work included in a claim.

(2) INCOMPLETE CLAIMS. (a) Incomplete claims, lack of verification of payment of costs, lack of signatures, and other factors may delay processing of claims or change the schedule of the review.

(b) Claims received by the department which contain unpaid invoices shall, at the department's discretion, be assigned a review date no earlier than the date proof of payment was provided to the department.

(c) PECFA claims for awards may not be processed without proper and complete documentation including, but not limited to, Underground Petroleum Product Tank Inventory forms (ERS−7437), Aboveground Petroleum Product Tank Inventory forms (ERS−8731), Remedial Action Fund Application form (ERS−8067), department letter indicating compliance with remedial action plan submittal requirements (investigation claim), report providing information detailed in s. NR 716.15 (investigation claim), evidence of the source of the petroleum product discharge and the degree and extent of the soil or water contamination resulting from the discharge, proof of payment of costs incurred in remediation, approval of closed remedial action, responsible party's social security number or federal tax identification number, and other forms available from the department necessary for claim processing.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921 or at http://dnr.wi.gov/topic/brownfields/pecfa.html.

(3) REQUEST FOR ADDITIONAL INFORMATION. (a) Once the department has begun the review of a claim, the department may request that additional information be submitted 15 business days from the date of the request. Otherwise, the claim may be deemed incomplete and progress payments may be denied. These claims, when complete, may be rescheduled for review after more recently received complete claims.

(b) The department may request additional information from owners, operators or persons owning home oil tank systems, agents, consultants, contractors or subcontractors as necessary.

(c) Failure to respond to a request, within the 15 business day response period for additional information, may result in a delay in payment, disallowance of interest costs accrued, action against a consultant, or scheduling a meeting with the responsible party and the department or other individuals.

1. The department may disallow interest costs accrued during the period when no response has been received, by issuing a letter stating the intent, on a specified date, to disallow payments on interest costs accrued during this period as specified in par. (c).

2. Appeal of disallowed interest costs, shall be conducted as specified in s. NR 747.53.

(4) COSTS INCURRED IN REMEDIATION. Only eligible costs, as specified in s. NR 747.30, that have been paid, shall be submitted for an award.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (1), am. (2) (c), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (1) (intro.), (2) (c) and (4), cr. (1) (j), Register February 2006 No. 602, eff. 5−1−06; correction in (1) (c), (j), (3) (c) 2., (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (c), (3) (c) 2., (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.13 Exclusive remedy and liability. The PECFA fund awards for remediation activities and is not intended to result in owners or operators or persons owning home oil tank systems making any profit or receiving duplicate payment in a remediation. As specified in s. 292.63 (7) (am), Stats., an award made under this chapter is the exclusive method of recovery for costs reimbursed under the fund.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.14 Right to recover actions. The department reserves the right to take action against an owner, operator or person owning a home oil tank system, or their agents or designees

to recover any award or portion of an award resulting from a fraudulent claim.

(1) RIGHT OF ACTION. A right of action under this section shall accrue to the state against an owner, operator or other person if the owner, operator or other person submits a fraudulent claim or does not meet the requirements under this chapter or if an award is issued under this section to the owner, operator or other person for ineligible costs under this section.

(2) ACTION TO RECOVER AWARDS. The department shall request the attorney general to take action as is appropriate to recover awards to which the state is entitled or when the department discovers a fraudulent claim after an award is issued.

Note: Section 292.63 (5) (c), Stats., states that recovered funds shall be credited to the petroleum environmental cleanup fund.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

NR 747.15 Assignment of awards. By written notification to the department, a claimant may make an assignment of an award to an institution which lends money to the claimant for the purpose of conducting remediation activities reimbursed under this chapter, as specified in s. 292.63 (4m), Stats. This assignment of an award creates and perfects a lien in favor of the assignee in the proceeds of the award.

Note: Section 292.63 (4m), Stats., states the lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this subsection has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; **correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

Subchapter III — Reimbursement Procedures

NR 747.30 Eligible cost items for remediation. **(1)** ELIGIBLE COSTS. (a) Costs related to the categories in pars. (b) to (g) may be reimbursed under the scope of this chapter.

(b) Costs associated with emergency action, site investigation and remedial plan development, remediation, long−term monitoring or operation and maintenance:

1. Investigation of potential sources of contamination by precision testing to determine tightness of tanks and lines if the method used is approved by the department and the tester is certified by the department of agriculture, trade and consumer protection as specified in ch. ATCP 93 and the testing is not designed to meet the regular leak detection responsibilities of the owner or operator;

2. Costs of eligible work performed after confirmation of a petroleum product discharge;

3. Preparation of remedial action alternatives and plans;

4. Laboratory services for testing specific to this chapter, including full VOC testing; and

5. Investigation and assessment of the degree and extent of contamination caused by a petroleum product discharge from a petroleum product storage tank system or home oil tank system.

(c) Costs associated with excavation and disposal of contaminated soils:

1. Removal of contaminated soils;

2. Actual costs incurred which are associated with equipment mobilization;

3. Removal of petroleum products from surface waters, groundwater or soil; and

4. Treatment and disposal of contaminated soils including department approved procedures for bio−remediation.

Note: All soils shall be reported in tons when included in a claim.

(d) Costs associated with monitoring and other remedial action activities:

1. Monitoring of natural bio−remediation progress;

2. Actual charges for maintenance of equipment used for petroleum product recovery or remedial action activities;

3. Other costs identified by the department as necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of ch. 292, Stats.;

4. State or municipal permits for installation of remedial equipment;

5. Actual costs for the purchase or rental of temporary building structures of a size adequate to house remedial equipment; and

6. Restoration or replacement of a private or public potable water supply.

(e) Costs associated with personnel, travel and related expenses:

1. Contractor or subcontractor costs for remedial action activities;

2. Labor and fringe benefit costs associated with inspection and supervision other than specified in subd. 4.;

3. Actual costs incurred for travel and lodging which are not in excess of state travel rates; and

4. Actual verified labor, fringe benefit and equipment costs when claimants use their own personnel or equipment to conduct a remediation.

Note: A listing of state travel and meal rates may be obtained by writing to the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921.

(f) Costs associated with the preparation of a claim package under the scope of this chapter and other related costs:

1. Fees up to $500 for a certified public accountant, contractor, or other independent preparer for compiling a claim under this chapter; and

2. For an owner or operator only, compensation to third parties for bodily injury and property damage caused by a petroleum product discharge from an underground petroleum product storage tank system.

(g) Costs associated with the support or protection of existing utilities or structures located within the remediation area during a remediation.

Note: Reimbursement for the re−installation of utilities or structures, without prior department approval, may not be made.

(2) EXCLUSIONS FROM ELIGIBLE COSTS. The department has identified various costs determined to be ineligible for reimbursement. Section 292.63, Stats., lists specific cost items which may not be reimbursable under the PECFA program. In order to control costs and provide awards for the most cost−effective remediations of petroleum−contaminated sites within the scope of this chapter, the following costs may not be reimbursed:

(a) Costs determined to be unrelated to remedial action activities under the scope of this chapter:

1. Any costs not supported by cancelled checks or other absolute proof of payment at time of submittal;

2. Any overtime labor charge, excluding an emergency action, billed at other than a straight time rate;

3. Costs for contamination cleanups from non−residential heating oil or boiler tank systems and discharges from mobile fueling tanks or fuel storage tanks on vehicles;

4. Costs associated with used oil remediations, if the oil is not from internal combustion engines;

5. Costs associated with environmental audits, environmental reconnaissance or real estate transactions, construction projects, new construction or long−term loan transactions;

6. Costs associated with investigation activities to locate petroleum product storage systems or home oil tank systems to determine eligibility for an award under the scope of this chapter;

7. Costs incurred after the department determines that no further remedial action is required, except for abandonment of monitoring wells and finalization of site closure;

8. Other costs that the department determines to be associated with, but not integral to, the remediation of a petroleum product

discharge from a petroleum product storage system or home oil tank system.

(b) Costs related to improper or incompetent remedial activities and services:

1. Costs associated with incompetent or non−effective cleanup actions which were not based upon sound professional and scientific judgment;

2. Costs of redoing remedial action activities or remedial action work which was incomplete or incompetent;

3. Costs associated with rework on remedial systems to accommodate construction, upgrades, retrofits, or redevelopment projects;

4. Any costs associated with actions that exceed the necessary activities to bring a site to the required level of remediation;

5. Costs associated with the repair or replacement of damaged buildings, sewer lines, water lines, electrical lines, phone lines, fiber optic lines or other utilities on the property;

6. Costs associated with the re−installation of damaged remedial equipment or the re−installation or modification of the remedial equipment for purposes other than effective remediation;

7. Additional interest costs accrued due to improper or incomplete filing of claims or non−response to department requests for additional information, exceptions being delays caused by the department claim process;

8. Any late service charges;

9. Any costs related to invoices or bills for which payment verification is unobtainable.

(c) Costs for testing or sampling unrelated to the investigation for the extent of contamination under the scope of this chapter:

1. Costs for sampling and testing for heavy metals, except lead testing when the discharge is verified to be from leaded gasoline, or lead and cadmium when the source is used motor oil;

2. Costs associated with the analysis for inappropriate constituents not normally part of or associated with an eligible petroleum product even if required by the department; and

(d) 1. Costs for remedial action activities funded under 42 USC 6991, unless the owner or operator or the person owning the home oil tank system repays the funds provided under 42 USC 6991;

2. Expenditures required by the department in order to meet the groundwater protection standards, ch. 160, Stats., ch. ATCP 93 or other administrative rules but not related to a petroleum product discharge under this chapter;

3. Costs associated with loss of business;

4. Costs associated with loss of interest or dividends, or interest costs from a loan other than one for the remediation; and

(e) Costs associated with site closure:

1. Costs associated with the closure of a tank system;

2. Costs associated with tank closure assessments;

3. Costs associated with the abandonment of wells not related to the remedial action.

(f) Costs associated with legal issues:

1. Costs, other than costs for compensating third parties for bodily injury and property damage, which the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the approved remedial action plan;

2. Costs associated with third−party actions by adjoining property owners for the installation of monitoring wells or other cleanup−related items unless a court judgment has been obtained;

3. Costs associated with third−party damages from a discharge originating from an aboveground storage tank;

4. Attorney fees associated with third−party actions;

5. Any costs associated with an appeal of a determination specific to the scope of this chapter; and

6. Other attorney fees including, but not limited to, legal advice, appeals, or other representation on behalf of the responsible party or agent.

(g) Supervisory and management costs that the department determines to be unreasonable or unnecessary in carrying out the remedial action activities under this chapter:

1. Supervisory or management costs when a municipality or company uses their own personnel or personnel from a wholly− or partially−owned subsidiary for remedial activities;

2. Costs for supervisory or management activities conducted by owners or operators;

3. Costs incurred by a responsible party associated with bid requirements or project administration such as consultant selection, monitoring or supervising subcontractors or consultants;

4. Costs for right of entry or trespass fees; and

5. Separate vehicle and mileage costs.

(h) Any costs, excluding for an emergency action, incurred before a confirmed discharge is reported to the department.

(i) Interest costs associated with costs that are ineligible under this section or s. NR 747.30 (3).

Note: See s. NR 747.305 for further ineligible costs associated with loans.

(j) Interest costs excluded under s. NR 747.60 (2) (a), 747.625, or 747.69 (1) (b).

(k) Costs determined by the department to be excessive, as defined by the usual and customary cost schedule periodically established by the department under s. NR 747.325.

(L) Costs for any work performed where a contract is not in place as required in s. NR 747.33 (2) (a) 1.

(m) Costs incurred for services exempted under s. NR 747.33 (6) (b) 1., if the costs are incurred prior to the department approval required under s. NR 747.33 (6) (b) 2., and the approval requirement is not subsequently waived by the department.

(n) Costs which exceed the $20,000 limit in s. NR 747.337 (2) (a) for a site investigation and remedial action plan, and which are incurred prior to either providing the notices that are required in s. NR 747.337 (2) (c), or obtaining the approval which is required in s. NR 747.337 (2) (b).

(o) Costs for any work performed after submittal of the notice of completion of an investigation under s. NR 747.62 (4) and prior to the department's issuance of a response to the responsible party and the consulting firm under s. NR 747.62 (5).

(p) Costs for any work performed more than 5 business days after the department issues a decision under s. NR 747.62 (5) that an occurrence is subject to the public bidding process in s. NR 747.68, if the work is conducted outside of that process.

(q) Costs for any work that is performed after submittal of a written deferral notice under s. NR 747.63 (5) (c) and prior to a departmental authorization to proceed with additional activities.

(r) Costs for any unauthorized work performed more than 5 business days after the department issues a directive or notice under s. NR 747.64 (1) about using the public bidding process in s. NR 747.68.

(s) Costs for any unauthorized services that are performed by any party other than a firm which submitted a bid under s. NR 747.68 (2) and with which a contract is executed under s. NR 747.69, if they are conducted after the qualified low bid is determined under s. NR 747.68 (3).

Note: For the purposes of pars. (o) to (s), costs for preparing or submitting a claim are eligible for reimbursement, regardless of when those costs are incurred.

(t) Costs that exceed the maximum reimbursement established under s. NR 747.68 (7) (d).

(u) Costs for unauthorized work performed more than 5 business days after the department issues a disqualification notice under s. NR 747.70 (4) (d).

(v) Costs for any work performed between the due date of any submittal required under this subchapter and the date a past−due submittal is actually submitted.

(w) Costs for performance bonds.

(x) Costs incurred that exceed caps established by the department unless written department approval is received prior to performance of the corresponding work.

(3) PENALIZED INELIGIBLES. (a) 1. The costs in par. (b) are considered to be grossly ineligible for reimbursement.

2. An award for a claim which includes any costs in par. (b) and which was prepared and submitted by an owner or operator or person owning a home oil tank system shall be reduced to exclude those costs, and shall then be further reduced by 50 percent of the total amount of those costs.

3. A consultant who prepares a submitted claim that includes any costs in par. (b) shall pay to the department an amount equal to 50 percent of the total amount of those costs, and the award for the claim shall be reduced to exclude those costs.

(b) 1. Costs incurred on or before August 1, 1987, for a remediation.

2. Costs for cleanup resulting from spills from petroleum transportation equipment.

3. Costs for investigations or remedial action activities conducted outside the state of Wisconsin.

4. Costs associated with emptying, cleaning, or disposing of storage tank systems, and other costs associated with closing or removing any petroleum product storage tank system or home oil tank system after November 1, 1991 — unless the claimant has a contract for those services that was signed before November 1, 1991; or has a loan agreement, note, or commitment letter for a loan for the purposes of conducting those services, that was executed before November 1, 1991.

5. Laboratory rush charges, unless related to an approved emergency action.

6. Air travel.

7. Costs associated with tank−system upgrades or retrofits, and any corresponding compliance with other state or federal rules or laws, and future business plans.

8. Costs for repairing, retrofitting, or replacing a petroleum product storage system or home oil tank system, such as for tank bedding materials or fill for setting tanks, lines, or canopies.

9. Costs associated with capital improvements, reinstallation of electrical power, dispensers, pumps, or other items for retrofits, upgrades, or new construction, unless written department approval is received prior to performance of the corresponding work.

10. Costs associated with concrete, blacktop replacement, on−site landscaping, or other improvements; except for depreciation costs for third−party actions, or for asphalt or concrete patching associated with well abandonment, or where written department approval is received prior to performance of the corresponding work.

11. Costs associated with razing of buildings, removal of roads, removal of footings and foundations, or other destruction of structures, or other redevelopment costs, unless written department approval is received prior to performance of the corresponding work.

12. The opportunity cost of money, or interest income or dividend income lost because of a decision to use internal funding for a remediation.

13. Subcontractor markups for work performed after January 31, 1993. This subdivision does not apply to work that is included in a public bidding contract executed under s. NR 747.69 (1).

14. Costs associated with general program support and office operation which are expected to be included in the hourly staff rates, such as telephone charges, photocopying, faxes, paper, printing, postage, hand tools, personal protective equipment, computer equipment, computer−aided−design, and software charges.

Note: For the purposes of this section, photo ionization detectors, flame ionization detectors, electronic equipment, and sampling kits are not considered hand tools.

15. Costs reimbursed by insurance companies unless performing in an agent role.

16. Costs associated with fees required by any other state agency, such as fees authorized by s. 292.55, Stats., and fees listed in ch. NR 749, except department closure review fees incurred prior to October 29, 1999.

(4) CLAIMS INCLUDING INELIGIBLE COSTS. Claims submitted which include ineligible costs shall be considered incomplete and may be returned to the claimant for recalculation, revision and re−submittal. The claim shall be rescheduled for review when the ineligible costs have been removed and the claim received by the department. The department may disallow interest costs accrued during the non−response period, as specified in s. NR 747.12 (3) (a).

(5) AREAS OF CONTAMINATION CONTAINING ELIGIBLE AND INELIGIBLE PRODUCTS. When an area of contamination is identified which contains both eligible and ineligible products under the fund, the following shall apply:

(a) Costs associated with the eligible products may be claimed. Any costs that are required only because of the presence of an ineligible product may not be claimed.

(b) The owner or operator and the department shall be notified immediately. The consultant, in conjunction with the owner or operator, shall propose a methodology to the department for dividing the costs of remediation between the eligible and ineligible products. Department approval of a methodology shall be obtained by the owner or operator prior to the submittal of any claims.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (4), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: renum. (1) (a) to be Comm 47.10 (1) (a) 3. and am., renum. (1) (intro.), (2) (a) 2., 5. to 7., 9., 10., 14., 15., (d) 3. to 5., 7., (e) 4., (3) and (4) to be (2) (a) 1. to 8., (d) 1. to 4., (e) 3., (4) and (5) and am. (1) (a), (2) (a) 7., and (5) (intro.) and (a), am. (1) (b) 2., 4., (2) (b) 7. and 8., r. (1) (b) 5., (2) (a) 1., 3., 4., 8., 11. to 13., (c) 3., (d) (intro.), 1., 2., 6., 8., and (e) 3., r. and recr. (2) (h) to (k), cr. (2) (L) to (x) and (3), Register February 2006 No. 602, eff. 5−1−06; correction in (1) (b) 1., (2) (d) 2., (i) to (u), (3) (b) 13., (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (b) 1., (c) 4., (2) (intro.), (a) 7., (b) 7., (c) 2., (d) 2., (h) to (u), (3) (b) 16., (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.305 Costs associated with loans. (1) INTEREST EXPENSE. (a) *Allowability of interest costs.* The fund will reimburse interest expense if a loan is specifically secured for a remediation and the proceeds are applied only to the cleanup at the site. To be eligible, interest costs cannot be combined with retrofits or construction loans and shall be site specific. Reasonable money management shall be practiced to avoid unnecessary accrual of interest charges. Interest expenses shall be managed in the most cost−effective manner possible and invoices shall be paid in a timely manner to avoid interest costs or late charges. If a line of credit is used to provide funding for a remediation, clear documentation shall be provided on the disbursements and interest expenses.

(b) *Ineligible interest expenses.* The PECFA fund shall not reimburse for the following items:

1. The opportunity cost of money or interest income or dividend income lost because of a decision to use internal funding for a remediation;

2. Interest costs which are not clearly documented;

3. Interest costs or late charges on invoices or bills.

4. Additional interest costs accrued for the use of PECFA loan proceeds to earn money or for investment purposes.

5. Interest costs which are specified in s. 292.63 (4) (c) 8., Stats.

Note: Section 292.63 (4) (c) 8., Stats., reads as follows: "Interest costs incurred by an applicant that exceed interest at the following rate:

a. If the applicant has gross revenues of not more than $25,000,000 in the most recent tax year before the applicant submits a claim, 1% under the prime rate.

b. If the applicant has gross revenues of more than $25,000,000 in the most recent tax year before the applicant submits a claim, 4%."

6. Interest costs which are ineligible under s. 292.63 (4) (cc), Stats.

Note: Section 292.63 (4) (cc), Stats., reads as follows: "*Ineligibility for interest reimbursement.* 1. a. Except as provided in subd. 1m. or 2., if an applicant's final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60th day after receiving that notification are not eligible costs.

c. Except as provided in subd. 2., if an applicant does not complete the investigation of the petroleum product discharge by the first day of the 61st month after the month in which the applicant notified the department under sub. (3) (a) 3. or October 1, 2003, whichever is later, interest costs incurred by the applicant after the later of those days are not eligible costs.

1m. If an applicant received written notification that no further remedial action is necessary with respect to a discharge before September 1, 2001, and the applicant's final claim is submitted more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120th day after September 1, 2001, are not eligible costs.

2. Subdivision 1. does not apply to any of the following:

a. An applicant that is a local unit of government, if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment.

b. An applicant that is engaged in the expansion or redevelopment of brownfields, as defined in s. 238.13 (1) (a), if federal or state financial assistance other than under this section, has been provided for that expansion or redevelopment."

Note: Other sections of this code may also specify interest costs that are ineligible for reimbursement, such as ss. NR 747.12 (3) (c) and 747.30 (2) (i) and (j).

(c) *Maximum interest and related costs.* 1. The following maximum rates are established for loans secured after January 31, 1993, and before October 15, 1997, for the purposes of a remediation:

a. Interest rate shall be reimbursable at no more than 2% above the prime rate.

b. Loan origination fees from the same lender shall be reimbursable only once, and at no more than 2 points of the loan principal. Where a later, larger loan is obtained to pay off a preceding loan, the origination fee for the portion of the later loan that equals the preceding principal will not be reimbursed. A duplicative loan origination fee from a subsequent lender will not be reimbursed, unless the preceding loan was terminated by a different lender.

2. The following maximum rates are established for loans secured on or after October 15, 1997, for the purposes of a remediation:

a. Interest rate shall be reimbursable at no more than 1% above the prime rate.

b. Loan origination fees from the same lender shall be reimbursable only once, and at no more than 2 points of the loan principal. Where a later, larger loan is obtained to pay off a preceding loan, the origination fee for the portion of the later loan that equals the preceding principal will not be reimbursed. A duplicative loan origination fee from a subsequent lender will not be reimbursed, unless the preceding loan was terminated by a different lender.

(d) *Annual services fees.* Annual loan service fees charged on or before April 20, 1998, shall be reimbursable at no more than 1% of the unreimbursed amount and remaining available loan balance. Annual loan service fees charged after April 20, 1998, shall be reimbursable at no more than 1% of the outstanding unreimbursed loan amount.

(e) *Documentation.* A copy of the loan agreement documenting the interest rate, loan origination fees, and other costs, shall be submitted when requested by the department.

(f) *Lending agreements.* In lieu of the maximum rates specified in par. (d), the department may negotiate agreements with lending institutions to obtain lower rates. The department may solicit proposals from lending institutions to supply loans for PECFA remediations.

(g) *Other items.* In addition to the maximum rates established in par. (c), the following shall apply:

1. Annual loan service fees shall be charged no more frequently than once annually, and at a rate of no more than 1% on the outstanding balance.

2. Original and re−estimated loan amounts, to the extent feasible, shall reflect a sound estimate of the cost to perform the remediation. Excessive estimates which result in excessive or unnecessary interest costs may not be reimbursed by the PECFA fund.

(2) MINIMUM LOAN AMOUNTS. A lending institution may unilaterally establish a minimum loan amount of $100,000 or less. Minimum loan amounts of more than $100,000 and loan origination fees on minimum loans of more than $100,000 shall require prior written approval of the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (1) (c) to (f), cr. (1) (g), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (1) (b) 3. and 4., (c) 1. b., 2. b. and (g) 1., cr. (1) (b) 5. and 6., Register February 2006 No. 602, eff. 5−1−06; **correction in (1) (b) 5. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.31 Incentives for cost−effective remediation. (1) GENERAL. The department may make incentives available to responsible parties who use the most cost−effective remediation methods and alternatives or participate in the voluntary bundling of sites for remediation purposes.

(2) INCENTIVES. For claimants who participate in the voluntary bundling of sites or for remediations that have approval as closed remedial actions and eligible costs not exceeding $60,000, excluding interest, the claim may receive priority review in the award process.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (2) Register February 2006 No. 602, eff. 5−1−06.

NR 747.325 Usual and customary costs. (1) APPLICATION. This section applies to all work covered under this chapter, for all occurrences previously or newly reported to the department, that is performed after May 1, 2006, except it does not apply to any of the following:

(a) Work for which a reimbursement cap has been determined through the competitive public bidding process established under s. 292.63 (3) (cp), Stats.

(b) Work performed as part of an emergency action, within the initial 72 hours after the onset of the need for the action.

(c) Work performed for home oil tank systems.

(2) COST SCHEDULE. Any cost for items that are commonly associated with claims under this chapter, which exceeds the amounts listed in the department's schedule of usual and customary costs, as published and in effect while the work was performed, may not be reimbursed, except as provided in sub. (3).

Note: The department of commerce promulgated rule order CR 07−032, relating to the schedule of usual and customary costs for the petroleum environmental cleanup fund awards, which was filed with the revisor of statutes bureau for publication in the October 2007 Wisconsin Administrative Register. The department directed that the schedule not be published in the Wisconsin Administrative Code as it is a "form" under s. 227.23, Stats., available as described in the next note, consistent with the requirements of s. 227.23 (3), Stats.

Note: The department's schedule of usual and customary costs is reviewed for updating in January and July of each year to reflect changes in actual costs. The current schedule, and all preceding versions, are posted at http://dnr.wi.gov/topic/brownfields/pecfa.html, under petroleum programs and PECFA.

Note: The schedule of usual and customary costs limits the per−unit reimbursement for various, commonly associated tasks. For caps on reimbursement for items that are not commonly associated with claims, or for caps on the scope of work for a particular task or occurrence, other sections of this chapter may apply, such as s. NR 747.337 (2), which addresses the maximum allowable cost for a site investigation and the development of a remedial action plan, and subch. VI, which addresses competitive public bidding.

(3) EXCEEDING THE SCHEDULE. The maximum reimbursement amounts established under sub. (2) may be exceeded only in accordance with all of the following:

(a) Higher costs must be incurred in order to comply with s. 292.63 (3) (c) 3., Stats., and with enforcement standards established under ch. 160, Stats.

(b) The higher costs, as needed under par. (a), are specifically approved in writing by the department prior to performance of the corresponding work.

Note: Under s. 292.63 (3) (c) 3., Stats., a responsible party is required to "conduct all remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11, Stats."

(4) CLASSIFICATION OF OCCURRENCES. (a) No later than 30 days after May 1, 2006, the responsible party or agent for each occurrence reported to the department by May 1, 2006, shall complete and submit to the department an occurrence−classification form prescribed by the department, except as provided in par. (c).

(b) If an occurrence−classification form required under par. (a) is not submitted in accordance with par. (a), the department may not reimburse costs for any work performed between May 1, 2006, and the date the department receives the form.

(c) An occurrence−classification form is not required where the only remaining work consists of submitting a claim or completing the conditions in a conditional closure letter from the department.

(5) REQUEST FOR ADDITIONAL INFORMATION. (a) If the department requests additional information after receipt of the occurrence−classification form required in sub. (4), the responsible party or agent shall provide the requested information no later than 45 days after the date of the department's request.

(b) If information requested under par. (a) is not submitted in accordance with par. (a), the department may only reimburse costs for the subject occurrence that are listed on the schedule established under sub. (2).

(6) RESPONSE TO THE OCCURRENCE−CLASSIFICATION FORM OR TO ADDITIONAL INFORMATION. After receipt of the occurrence−classification form required under sub. (4) or the additional information requested under sub. (5), the department may take one or more of the following actions:

(a) Limit reimbursement to the costs listed in the schedule established under sub. (2).

(b) Specify a reimbursement cap for costs that are not listed in the schedule established under sub. (2).

(c) Specify a scope of work and a corresponding reimbursement cap.

(d) Specify a period during which the public bidding process established under s. 292.63 (3) (cp), Stats., will be deferred.

(7) CLAIMS FOR PRIOR COSTS. For an occurrence that is the subject of a department directive under sub. (6) (b), (c) or (d), claims for reimbursement for costs incurred before the effective date of the directive shall be paid in accordance with s. NR 747.025.

Note: As required in s. NR 747.12 (1) (intro.), all claims for reimbursement for the costs included in the schedule established under sub. (2), or the costs included under sub. (7), must be submitted in a format prescribed by the department.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; CR 07−032: Register October 2007 No. 622; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (intro.), (a), (3) (a), (4) (a), (c), (6) (d), (7) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.33 Comparative proposals and bid processes for remediation activities and services.

(1) Except for home oil tank owners and department approved emergency actions, the purchase of consulting and commodity services, not already covered by a detailed written contract, as of February 1, 1993, shall conform to the procedures in this section. In order to qualify as an existing contract, the document shall be with a specific service provider and shall specify contract items, such as but not limited to, the project details, time limitations, projected completion dates, payment terms and other standard contract language.

(2) GENERAL. (a) *Consulting firm selection.* 1. An owner or operator shall select a PECFA consulting firm, as so registered under s. SPS 305.80, to conduct all site investigation and remedial action activities, and shall execute a written contract with that firm.

2. The services of the selected consulting firm shall be limited to providing the consulting services or scientific evaluations necessary to conduct an environmental response. The consulting firm and any company or consultant not independent of the consulting firm or project consultants are prohibited from providing any of the commodity services required in the remediation.

(b) *Purchase of commodity services.*. 1. All commodity services which include, but are not limited to, soil borings, monitoring−well construction, laboratory analysis, excavation and trucking shall be obtained through a competitive bid process. A minimum of 3 bids are required to be obtained and the lowest cost service provider shall be selected. An employee of a commodity service provider may not participate in the preparation of bid documents or other requirements of the bid process, except for providing technical material, if the employee's firm is a bidder.

2. Consulting firms may elect to bid laboratory services on a calendar−year basis in order to obtain volume discounts and reduce the number of bids that shall be completed for each remediation. In completing the competitive bid process, the consulting firm shall obtain a minimum of 3 written bids from qualified firms that respond to the specifications and estimated volume of work provided by the consulting firm. Only PECFA−eligible laboratory work shall be included in the analysis to determine the lowest cost service provider. The lowest bid shall be accepted. All discounts, rebates and savings shall be reflected in the PECFA claim.

3. The analysis of laboratory tests for passive or active bio−remediation and the performance of pump or pilot tests may be accomplished by either consultants or commodity providers. If these services are obtained by a consulting firm, as part of their consulting service, then the bidding of this service shall not be required.

4. An owner or operator may appeal to the department to obtain approval to select other than the lowest cost commodity service provider. The department may approve an appeal if it determines that the use of another service provider will further the goals of the program.

(c) *Remediation alternative.* 1. The owner or operator shall select the lowest cost remediation alternative that will result in a closed remedial action. The responsible party may select a higher cost alternative if he or she certifies to the department in writing that the additional costs will not be claimed for PECFA reimbursement.

2. A higher cost remediation alternative may be allowed by the department if it determines that the alternative would further the goals of the program.

(3) REMEDIATION. For sites for which a remedial alternative was received by the department before April 21, 1998, the following shall apply:

(a) The estimated cost for the selected remediation alternative contained in the remedial action plan shall provide a separate dollar amount for consulting services and for commodity items. The estimated costs for these items shall be submitted to the department as part of the comparison of remedial alternatives or, if the submittal of the alternatives is not required as specified in s. NR 747.335 (3) (c), prior to the start of the remedial activities.

(b) A dollar amount approved by the department shall establish the maximum reimbursable amount for consulting services during the remediation.

(c) The cost detail for the selected remediation alternative shall establish the total estimated cost for the remediation up to receiving approval as a closed remedial action. The estimate may be used to establish a maximum reimbursable amount. If the estimated consulting or commodity costs are established as maximum reimbursable amounts, and one or both will be exceeded, the consultant shall immediately notify in writing the claimant and the department of the anticipated actual cost.

(d) If it is determined that the consulting or commodity services may not be completed within the original estimate, the owner or operator and the consultant shall provide a written account, to the department, of the additional work to be performed

in order to prove the need for additional funding. Failure to obtain written approval of the additional costs by providing justification acceptable to the department shall constitute grounds for disallowing the additional expenses. Cost guidelines, as published by the department, may be used as one factor in determining if an approval for additional work is warranted.

(4) COMMODITY ITEMS REQUIRING COMPETITIVE BIDDING. The following items shall be competitively bid. All bids shall be in units standard to the industry.

(a) Excavation of petroleum−contaminated soils;

(b) Trucking of petroleum−contaminated soils or backfill material;

(c) Thermal treatment of petroleum−contaminated soils;

(d) Laboratory services including mobile labs;

(e) Backfill material;

(f) Drilling and installing monitoring wells;

(g) Soil borings;

(h) Surveying if the service requires a registered land surveyor; and

(i) Other non−consulting services.

(5) COMMODITY BUNDLES. The owner or operator may combine individual commodity items into one bid. These bundles of commodities shall be bid by at least 3 service providers and the lowest cost service provider shall be selected.

(6) EXEMPTIONS. (a) Commodity items with a purchase price of $1,000 or less shall be exempt from the competitive bid requirement. The exclusion from commodity bidding may not be used if a service is to be used multiple times and the cumulative cost exceeds $1,000.

(b) 1. The department may exempt specific services from the competitive commodity bid process if the department determines that the conduct of the bid proposal process is unlikely to further the remediation process or the goals of the program.

2. Written department approval shall be received prior to incurring costs for services that are exempted under subd. 1., except where a subsequent department waiver of the approval requirement would further the goals or objectives of the program.

Note: As established in s. NR 747.30 (2) (m) and (i), the department will not reimburse costs, including interest cost, for services exempted under subd. 1., if the costs are incurred prior to the department approval required under subd. 2., and the approval requirement is not subsequently waived.

(c) The competitive commodity bidding required under subs. (2) (b) and (4) is not required where reimbursement amounts are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in subch. VI.

(d) The prohibition in sub. (2) (a) 2. against consultants or their associates providing commodity services does not apply where reimbursement amounts are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in subch. VI.

(7) DOCUMENTATION. The owner or operator shall maintain the documents and data used in the competitive bid and selection process. These records shall be maintained and provided to the department if requested as part of the claim review or audit processes.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (intro.) to (2), r. (3) and (4), renum. (5) to (8) to be (3) to (6) and am. (5) (a), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: renum. (intro.) and (1) to (6) to be (1) to (7) and am. (2) (a) and (6) (b), cr. (6) (c) and (d) Register February 2006 No. 602, eff. 5−1−06; correction in (2) (a) 1., (3) (a), (6) (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (2), (3) (a), (6) (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.335 Site investigation and remedial action plan development cap. (1) GENERAL. Site investigations which were not started as of January 15, 1993, and for which a remedial alternative was received by the department before April 21, 1998, shall conform to this section.

(2) MAXIMUM ALLOWABLE COST. The maximum allowable cost for a site investigation and the development of a remedial action plan shall be no more than $40,000, excluding interest, feasibility testing, and interim action costs, unless approved under par. (a).

(a) If the investigation will exceed $40,000, the responsible party or its agent, shall contact the department in writing and provide an estimate of additional work and funding required and obtain the department's approval. If the additional approval is not obtained, costs above the $40,000 level will not be reimbursed.

(b) The consultant is responsible for monitoring the costs incurred in the investigation and remedial plan development and identifying that the $40,000 maximum may be exceeded. The consultant shall notify the owner, in writing, at the earliest point at which the consultant may know, or may have been reasonably expected to know, that the maximum allowable cost may be exceeded and that the approval of the department shall be obtained before any costs above $40,000 will be reimbursed by the department. The notification to the owner shall be made before the owner has incurred liabilities above the $40,000 maximum.

(3) CONSIDERATION OF ALTERNATIVES. (a) The remedial action plan developed for the site shall include a consideration of at least 3 alternatives, one of which shall be passive bio−remediation with long−term monitoring. The consideration of alternatives shall include a basic comparison of costs and the recommended alternative shall have a detailed cost estimate. If passive bio−remediation with long−term monitoring is feasible but not the recommended alternative, a clear rationale shall be provided as to why this alternative is not acceptable. Costs of long−term monitoring, or operation and maintenance shall be included in the comparison of costs in considering the alternatives.

(b) If the consideration of the passive bio−remediation or monitoring alternative shall be excluded because of site characteristics, the alternative shall be replaced by consideration of another alternative. If an alternative is substituted for the passive bio−remediation or monitoring alternative, the reason for this change shall be documented in the analysis.

(c) 1. The comparison of alternatives shall be a concise document written so that the responsible party and the department may easily compare alternatives. Only alternatives which are reasonably expected to be approved may be included in the comparison. The comparison of alternatives shall be submitted to the department if the proposed alternative is greater than $60,000. The comparison submitted to the department shall not include the full remedial action plan, unless requested by the department.

2. If the comparison document is determined by the department to be excessive or non−approvable alternatives are included, the department may require that the comparison be revised and resubmitted.

(4) START OF INVESTIGATION. An investigation shall be considered started if, after confirmation of a contamination is obtained, additional soil borings, soil sampling or monitoring−well construction have begun. In addition, the work on the site shall have an element of continuity. If work on a site stops for a period of 2 years or more, the site shall then fall under s. NR 747.335 (2) and (3) or 747.337 depending on whether a remedial alternative was received by the department as of April 20, 1998.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (1), am. (3) (c) 1. and (4), Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (3) (c) 1. Register February 2006 No. 602, eff. 5−1−06; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.337 Site investigation and remedial action. (1) GENERAL. Sites for which site investigations were not started as of January 15, 1993, and for which a remedial alternative has not been received by the department as of April 20, 1998, shall conform to this section. The scope of the site investigation shall

include determining the presence of the environmental factors specified in sub. (3) (a).

(2) MAXIMUM ALLOWABLE COST. (a) The maximum allowable cost for a site investigation and the development of a remedial action plan shall be no more than $20,000, excluding interest and interim action costs, unless approved under par. (b).

(b) If the investigation will exceed $20,000, either the claimant, their agent or the consultant shall contact the department in writing and provide an estimate of additional work and funding required, and obtain the department's approval.

(c) The consultant is responsible for monitoring the costs incurred in the investigation and remedial action plan development and notifying the department prior to exceeding the $20,000 maximum. The consultant shall also notify the claimant, in writing, at the earliest point at which the consultant may know, or may have been reasonably expected to know, that the maximum allowable cost may be exceeded. The written approval of the department shall be obtained before incurring any costs above $20,000. The notification to the owner shall be made before the owner has incurred liabilities above the $20,000 maximum

Note: As established in s. NR 747.30 (2) (n) and (i), the department will not reimburse costs, including interest costs, above the $20,000 limit in this subsection if they are incurred prior to either providing the notices that are required in par. (c), or obtaining the approval which is required in par. (b).

(d) If interim actions are performed during the course of an investigation or prior to the approval of a remedial action plan, costs above $5000, excluding interest, shall not be reimbursed. The department shall be informed prior to the implementation of any interim action.

(3) ENVIRONMENTAL FACTORS. (a) *Environmental factors.* Consultants shall determine the presence of any of the following environmental factors:

1. Documented expansion of plume margin.

2. Verified contaminant concentrations in a private or public potable well that exceeds the preventive action limit established under ch. 160, Stats.

3. Contamination within bedrock or within 1 meter of bedrock.

4. Petroleum product that is not in the dissolved phase is present with a thickness of .01 feet or more, and verified by more than one sampling event.

5. Documented contamination discharges to a surface water or wetland.

(b) *Presence of environmental factors.* Consultants for sites that exhibit one or more environmental factors shall complete an analysis of remedial alternatives and prepare a remedial action plan. The analysis shall identify the lowest cost remedial strategy that will address the environmental factor and the remediation of the site. Included within the action plan shall be a cost detail providing separate dollar amounts for consulting and commodity activities. The cost detail shall provide the total cost, excluding interest but including all closure costs, for the remediation up to approval as a closed remedial action. The remedial action plan, cost detail, information on any interim actions conducted during the site investigation, and a separate report providing the information detailed in s. NR 716.15, and including an estimate of total contaminant mass, shall be submitted to the department and approval of the cost detail received before conducting any remedial action for which reimbursement will be claimed under the PECFA fund.

(c) *Absence of environmental factor.* If no environmental factors are identified during or after a site investigation, the consultant will develop an analysis of remedial alternatives and prepare a remedial action plan utilizing a non−active treatment approach. The analysis shall identify the lowest cost remedial strategy that will address the remediation of the site. Included within the analysis shall be a cost detail providing separate dollar amounts for consulting and commodity activities. The cost detail shall provide the total cost, excluding interest but including all closure costs, for the remediation up to approval as a closed remedial action. The remedial action plan, cost detail, and a separate report providing the information detailed in s. NR 716.15, and including an estimate of total contaminant mass, shall be submitted to the department and approval of the cost detail received before conducting any remedial action for which reimbursement will be claimed under the PECFA fund. The alternative proposed may include only the use of the following:

1. Non−active source control, which may include soil excavation.

2. Development and remediation to site specific residual contamination levels.

3. Monitoring to evaluate the potential for remediation by natural attenuation.

4. Remediation by natural attenuation.

5. Monitoring.

6. Institutional controls and site restrictions.

7. Other non−active remedial approaches.

(d) *Additional controls.* Any alternative proposed to the department shall identify whether it assumes or includes the use of any institutional controls, groundwater use restrictions, deed notices or other restrictions or notifications.

(4) COST CAPS FOR OCCURRENCES THAT ARE NOT SUBJECT TO PUBLIC BIDDING. For an occurrence that is not subject to the public bidding process in s. NR 747.68 due to a waiver issued under s. NR 747.63 (1), cost caps shall be established as prescribed in s. 292.63 (3) (cs), Stats.

Note: Section 292.63 (3) (cs), Stats., reads as follows: "1. The department shall review the remedial action plan for a site and shall determine the least costly method of complying with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that reimbursement for remedial action under this section is limited to the amount necessary to implement that method.

3. In making determinations under subd. 1., the department shall determine whether natural attenuation will achieve compliance with par. (c) 3. and with enforcement standards.

4. The department may review and modify an amount established under subd. 1. if the department determines that new circumstances, including newly discovered contamination at a site, warrant those actions.

(6) CLAIMANT OPTIONS. (a) After receiving an approval of a remedial action plan from the department, a claimant may elect to either implement the alternative or to select another alternative. If the claimant elects to implement a higher cost remedial strategy, the claimant shall notify the department in writing of the intent to use a higher cost alternative. The notification shall include the statement that the claimant agrees that the department approved alternative establishes the maximum reimbursable amount for consulting and commodity services under the fund and that additional costs for the occurrence, excluding interest, will not be submitted to the fund.

(b) The department may elect to approve reimbursement for a higher cost remedial strategy if it furthers the objectives of the program.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (2) (a) to (c), r. (4) and (5), cr. (4) Register February 2006 No. 602, eff. 5−1−06; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.338 Review of existing sites. (1) GENERAL. The department may review the remedial performance and costs associated with any existing sites. As part of the review, the department may elect to do any or all of the following:

(a) Deny any or all funding, after July 1, 1998, if a claimant failed to carry out site recommendations developed by the department in its "PECFA Efficiency Project."

Note: "PECFA Efficiency Project" refers to a study conducted by the department.

(b) Deny any or all funding if a claimant fails to provide information required by the department as part of a review of existing sites.

(2) EXISTING SITE CAPS OR ESTIMATES. The department may require a redetermination of costs for any existing site to establish a total cost, excluding interest but including all closure costs, to achieve the status of a closed remedial action. After reviewing the total cost, the department may do any or a combination of the following: approve and establish a cap on total costs, excluding interest; deny approval of costs; approve system enhancements; bundle the site with another remediation(s); or direct the site through a public bid process to establish a lower site cost. A claimant may elect either to implement the alternative or to select another alternative. If the claimant elects to implement a higher cost remedial strategy, the claimant shall notify the department in writing of the intent to use a higher cost alternative. The notification shall include the statement that the claimant agrees that the department−approved alternative establishes the maximum reimbursable amount for consulting and commodity services under the fund and that additional costs for the occurrence, excluding interest, will not be submitted to the fund.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99; **correction in (1) (a) made under s. 13.92 (4) (b) 6., Stats., Register October 2013 No. 694.**

NR 747.339 Cost effective remediations. (1) FLEXIBILITY. If a claimant can achieve a closed remedial action, and the total costs incurred are equal to or less than $60,000, excluding interest, the department will allow the claimant to complete their remedial efforts without the requirements to:

(a) Develop and submit investigation and other interim environmental reports, if the site closure decision falls under the department's authority.

(b) Develop and submit a remedial action plan and be potentially subject to caps, bundling and public bidding.

(c) Adhere to the $40,000 cap on investigation costs.

(2) NOTIFICATION AND REQUIREMENTS. If a claimant and his or her consultant elect to attempt to achieve a closed remedial action within the $60,000 limit, the department shall be notified in advance of implementation of the remediation process of the intended attempt. If the effort is not successful, the department shall be notified as soon as it is known or should have reasonably been expected to be known that the site will not be completed within the $60,000 limit. The $60,000 limit shall not be exceeded without prior notice to and approval from the department. After notification of the failure to accomplish a closed remedial action, the department will provide direction on whether additional action will be funded. If any expenses above the $60,000 limit are incurred without department approval, they may not be claimed for reimbursement under the PECFA fund.

(3) DISQUALIFICATION. If a consulting firm or consultant, in the opinion of the department, exhibits a pattern of attempting and failing to complete remediations under this section, the department will notify the consultant or the firm of the general restriction from attempting the remediations. The department may also disqualify the consultant from performing all work under PECFA.

(4) SUNSET OF THIS SECTION. The election under sub. (2) to utilize this section may not be made on or after May 1, 2006.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (1) (intro.) and (2), cr. (4) Register February 2006 No. 602, eff. 5−1−06.

NR 747.34 Reduction of deductible, based on financial hardship. (1) The deductible amount specified in s. 292.63 (4) (dg), Stats., for underground petroleum product storage systems may be reduced by the department to $2500, where proof of financial hardship is established in accordance with sub. (2).

Note: See the Note under s. NR 747.025 (2) for a reprint of s. 292.63 (4) (dg), Stats.

(2) Financial hardship shall be demonstrated on a form provided by the department, in sufficient detail to enable the department to determine whether the hardship either exists, or will occur if the deductible is not reduced under this section.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921 or at http://dnr.wi.gov/topic/brownfields/pecfa.html.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: r. and recr. Register February 2006 No. 602, eff. 5−1−06.

NR 747.355 Award payments for claims received by the department on or after April 21, 1998. (1) GENERAL. Awards shall be made if funds are available at the time of completion of a claim review.

(2) SEQUENCING PAYMENTS. (a) Except for those cases specified in sub. (3) (a) and (b), claims shall be paid on a strict first−in−first−out basis with the claim date being established when any required state agency approval and the complete claim package have been received by the department.

(b) *Closure.* Payments shall be made for closed remedial actions.

(c) *Progress payments.* All requests for progress payments shall be accompanied by a completed Remedial Action Fund Application form (ERS−8067). The department may conduct field or financial audits or inspections to verify completion of each phase of remediation prior to payment. Progress payments may be made only at the following times:

1. Completion of an emergency action.

2. After completion of an investigation and receipt of written approval by the department to submit the investigation claim.

3. Approval of a closed remedial action.

4. Approval of natural attenuation as a final remedial response or at the end of each one−year cycle of the monitoring necessary to show that remediation by natural attenuation will occur.

5. At the end of each one−year cycle of monitoring required for off−site contamination.

6. After implementation and 1 year of actual operation, or monitoring, or combination thereof, and every 1 year thereafter.

7. For sites selected by the department for progress payments based upon extreme life safety and environmental risk and where the claimant has demonstrated to the department's satisfaction that he or she does not have the financial means to conduct a remediation without progress payments: the department shall be the sole determiner of whether progress payments are to be allowed, and an appeal of the decision to the department is not allowed.

(d) *Other interim payments.* The department shall also make awards at the following points:

1. When a lender terminates a funding relationship with a claimant and requests reimbursement for the funds expended. A completed Assignment of PECFA Reimbursement form (ERS−8523) shall be submitted to the department prior to payment and the check shall be jointly paid to the claimant and the lender.

2. When a claimant has incurred eligible expenses equal to the occurrence maximum plus the applicable deductible.

3. When the conditions prescribed in s. 292.63 (4) (a) 2. b., Stats., occur.

Note: Section 292.63 (4) (a) 2. b., Stats., reads as follows: "The department shall issue an award if the owner or operator or the person has incurred at least $50,000 in unreimbursed eligible costs and has not submitted a claim during the preceding 12 months."

4. When there is a change in responsible party, if the previous responsible party files a claim.

5. When there is a change in consulting firms working on the project.

6. When there is a change in lenders for the project.

7. When the department directs filing a claim, in an effort to reduce interest costs to the program.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921, or at http://dnr.wi.gov/topic/brownfields/pecfa.html.

(e) *Penalty for not submitting a required claim.* If a claim submittal that is directed under par. (d) 7. is not submitted within 120 days of receiving written notification of that directive, any interest expense beginning on the 121st day and extending until the department receives the claim, is not eligible.

(3) PRIORITY PROCESSING. (a) *Emergency actions.* The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health and safety. The finding of an emergency may not be based on financial hardship or indigence of the responsible party or agent. The department shall be the sole determiner of whether an emergency exists, and an appeal of the decision to the department is not allowed.

(b) *Cost−effective remediations, tanks for schools and farms, and home oil tanks.* 1. Claims received under subds. 2. and 3. may be processed and awards may be made thereto, before processing other complete claims, except for emergency claims under par. (a), and except for claims for either home oil tanks or farm tanks, as prescribed in s. 292.63 (4) (a) 5. and 5m., Stats., respectively.

Note: Sections 292.63 (4) (a) 5. and 5m., Stats., read as follows:

"5. The department shall review claims related to home oil tank discharges as soon as the claims are received. The department shall issue an award for an eligible home oil tank discharge as soon as it completes the review of the claim.

5m. The department shall review claims related to discharges from farm tanks described in par. (ei) as soon as the claims are received. The department shall issue an award for an eligible discharge from a farm tank described in par. (ei) as soon as it completes the review of the claim."

2. Priority processing may be assigned to a claim for a closed remedial action that is achieved at a total cost of $60,000 or less, excluding interest.

3. Priority processing may be assigned to a claim for a petroleum product storage system which is owned by a school district and which is used for storing heating oil for consumptive use on the premises where stored.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99; CR 04−058: am. (2) (c) (intro.), 2., and 4. to 8., cr. (2) (d) 3. to 7., (e), (3) (b) 2. and 3., renum. (3) (b) to be (3) (b) 1. and am. Register February 2006 No. 602, eff. 5−1−06; **corrections in (2) (d) 3., (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.36 Third−party claims. (1) GENERAL. A responsible party may file a claim with the department for the reimbursement of an amount paid to third parties for personal injury to another individual or off−site property damage associated with a petroleum product discharge from an underground petroleum product storage tank system within the scope of this chapter. The existence of these claims shall be made known to the department, by the responsible party, no later than 30 calendar days from the date that the responsible party knew or could have reasonably been expected to have known of the occurrence of the injury or personal property loss. Rules established by the office of the commissioner of insurance, as specified in s. Ins 6.35, concerning ineligible costs for third−party claims, shall apply.

(2) THIRD−PARTY COMPENSATION FOR UNDERGROUND STORAGE TANKS. Costs incurred from environmental pollution and remediation actions, including compensation to third parties for property damage and individual bodily injury, may be deemed eligible costs as specified in s. NR 747.30 (1).

Note: Liabilities which are excluded from coverage in liability insurance policies for bodily injury and liabilities which are excluded in liability insurance policies for property damage, for the purpose of this chapter, are defined by the state of Wisconsin commissioner of insurance, as specified in s. Ins 6.35, as required in s. 292.63 (1m), Stats.

Note: If a person conducts a remedial action activity for a discharge from a petroleum product storage tank system or home oil tank system, whether or not the person files a claim under this chapter, the claim and remedial action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution, as specified in s. 292.63 (7) (b), Stats.

(3) INTERVENTION IN THIRD−PARTY CLAIMS. The owner or operator of an underground petroleum product storage system eligible for an award under the scope of this chapter, shall notify the department in writing of any action by a third party against the owner or operator for compensation. The department may intervene in any third−party actions against an owner or operator of an underground petroleum product storage tank system for compensation for bodily injury or property damage. The department of justice may assist the department in this intervention.

(4) THIRD−PARTY COMPENSATION FOR ABOVEGROUND STORAGE TANK SYSTEMS. Third−party damages are not a reimbursable expense if the damage is the result of a discharge from an aboveground petroleum product storage system.

(5) REASONABLE JUDGMENT DETERMINATION. (a) Third−party personal injury. The department may establish a peer review adjudicator panel to review third−party personal injury reimbursement claims resulting from a discharge from an underground petroleum product system under the scope of this chapter. The review panel shall make a monetary determination for reimbursement based upon reasonable health care service costs and other computation methods established by the department.

(b) Peer review adjudicator panel. The panel may make a recommendation to the department for an award from the fund to compensate the third party for personal injury or property damage. The department shall review the recommendation and make a decision regarding an award amount under the program.

(c) Third−party property claims. For third−party claims associated with the removal of property items such as, but not limited to, blacktop and cement, the depreciated value of the property may be reimbursed. The basis of the value of the property shall be included in the claim. Full replacement costs may not be reimbursed by the fund.

(6) ELIGIBLE COSTS. (a) A responsible party may include the reimbursement for personal injury or property damage costs on a claim for an award within the scope of this chapter. Reimbursement of a claim shall be based upon a showing that the cost was caused by the petroleum product discharge and that the amount claimed is reasonable.

(b) If third−party claims exceed the maximum allowed under this chapter for the applicable type of underground petroleum product storage tank system, costs shall be reimbursed in the following order:

1. Eligible costs of on−site and off−site remediation and replacement of drinking water wells;

2. Eligible costs for personal injury; and

3. Eligible costs for property damage.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: am. (1) Register February 2006 No. 602, eff. 5−1−06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.37 Recovery of awards. Sale of remedial equipment or supplies shall comply with s. 292.63 (5) (a), Stats.

Note: Section 292.63 (5) (a), Stats., reads as follows: "If a person who received an award under this section sells equipment or supplies that were eligible costs for which the award was issued, the person shall pay the proceeds of the sale to the department. The proceeds shall be paid into the petroleum inspection fund."

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: r. and recr. Register February 2006 No. 602, eff. 5−1−06; **correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

Subchapter IV — Credentials, Laboratories, Drilling Firms and Audits

NR 747.40 Reimbursement and credentials. Remedial consulting services and activities performed by individuals and firms who do not have the applicable credentials under ss. SPS 305.80 and 305.81 to participate in the PECFA program may not be reimbursed under the scope of this chapter unless the department determines that denying the reimbursement would conflict with achieving the goals of the PECFA program.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: r. and recr. Register February 2006 No. 602, eff. 5−1−06; correction made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.41 Laboratories and drilling firms. (1) INSURANCE. (a) As of March 1, 1994, all laboratories per-

forming work under the PECFA program shall obtain and maintain errors and omissions (professional liability) coverage of no less than $1,000,000 per claim, $1,000,000 annual aggregate and a deductible of no more than $100,000 per claim.

(b) As of March 1, 1994, all drilling firms performing work under the PECFA program shall obtain and maintain general liability coverage, including pollution impairment liability, of no less than $1,000,000 per claim, $1,000,000 annual aggregate and a deductible of no more than $100,000 per claim.

(2) COVERAGE. The insurance obtained by laboratory and drilling firms shall cover work performed under PECFA on or after March 1, 1994. For all laboratory and drilling firms included in a claim, a certificate or certificates verifying the existence of the insurance coverage as specified in sub. (1), shall be submitted with the PECFA claim.

(3) RATING. The insurance coverage shall be provided by a firm that has an A.M. Best rating of at least "A−".

(4) ALTERNATE MECHANISMS. A laboratory or drilling firm may request the department's approval of an alternate mechanism for meeting the requirement of the maximum deductible of $100,000 per claim. The department shall review the request and determine whether the mechanism meets the requirement of the rule.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: renum. from Comm 47.415 Register February 2006 No. 602, eff. 5−1−06.

NR 747.42 Field and financial audits. (1) GENERAL. The department shall routinely investigate remediation sites to establish that the remediation is appropriate and that costs incurred reflect the remediation services and activities.

(2) APPLICABILITY. The department may conduct field and financial audits as deemed necessary in order to further the goals of the PECFA program. Activities which may warrant the conduct of a field or financial audit may include, but not be limited to, the following:

(a) Complaints;

(b) High cost sites;

(c) Cases where retrofits are being undertaken;

(d) New construction activities;

(e) Receipt of additional information which may result in modifying the initial determination of eligibility;

(f) More than one occurrence on a specific site; and

(g) Sites having commingled plumes.

Note: Defrauding the PECFA program may result in revocation or suspension of credentials issued under ch. SPS 305, and criminal prosecutions under chs. 939 and 943, Stats.

(3) MAINTENANCE OF AND ACCESS TO RECORDS. (a) *General.* All consultants and consulting firms registered to participate, all organizations and individuals, including but not limited to service providers and others who perform remedial action services, all owners, operators, and persons owning home oil tank systems who file or attempt to file a claim under the PECFA program shall maintain records relevant to a claim for 6 years after claim submittal and make available upon request of the department, all financial and work records deemed by the department as necessary to support or investigate a claim or attempted claim.

(b) *Penalties.* Penalties for violations of this section shall be established in accordance with s. 292.63 (10), Stats.

Note: Section 292.63 (10), Stats., reads as follows: "PENALTIES. (a) Any owner or operator, person owning a home oil tank system or service provider who fails to maintain a record as required by rules promulgated under sub. (9) (a) may be required to forfeit not more than $2000. Each day of continued violation constitutes a separate offense.

(b) Any owner or operator, person owning a home oil tank system or service provider who intentionally destroys a document that is relevant to a claim for reimbursement under this section is guilty of a Class G felony."

(c) *Notification of work performed.* The department may, at its request, require consultants and consulting firms registered to participation and all organizations and individuals who perform remedial action services and all owners, operators and persons owning home oil tank systems to notify the department no less than 10 calendar days in advance of any work being performed at a site or sites.

(d) *Parallel sampling requirement.* At the request of the department, consultants or firms registered to participate or organizations or individuals who perform remedial action services shall, as directed by the department, take soil or groundwater samples and submit these samples to a laboratory specified by the department. The cost of preparing and submitting these samples shall be an eligible cost to the PECFA program independent of any cost cap or cost estimate. The laboratory reports, for requested samples, shall be sent to the department directly from the specified laboratory. The cost of the laboratory analysis shall be paid by the owner and submitted as part of the PECFA claim.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: am. (2) (g) and (3) (a), r. (3) (b), renum. (3) (c) to (e) to be (3) (b) to (d) and am. (3) (b) Register February 2006 No. 602, eff. 5−1−06; **correction in (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

Subchapter V — Legal Issues

NR 747.50 Notifying the department of real estate transactions. (1) PROPERTY TRANSFER OR LEASE. The owner or operator or person owning a home oil tank system shall notify the department of any real estate transaction affecting the ownership or operation of a remediation site.

(2) REAL ESTATE SALES AGREEMENT OR LEASE AFFECTING RESPONSIBILITY FOR THE REMEDIATION. The sales agreement or a lease for a property being transferred or leased prior to the completion of a remediation shall identify the party or parties responsible for the completion of the remediation, responsible for the payment of costs and eligible to receive PECFA proceeds. The party or parties eligible to receive the PECFA award shall submit a signed copy of the sales agreement or lease, a form W−9, and a release from any previous assignment of award under s. NR 747.15, with the next claim.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; correction made under s. 13.93 (2m) (b) 1., Stats., Register, December, 1998, No. 516; CR 04−058: am. Register February 2006 No. 602, eff. 5−1−06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.52 Dispute resolution procedures. (1) Any person, including, but not limited to, owners, operators, persons owning home oil tank systems and their agents may submit a written complaint to the department regarding a consultant, consulting firm or other service provider.

(2) The department may investigate consultants, consulting firms or other service providers on its own initiative or upon the receipt of a complaint. The department may conduct an investigation and make a determination regarding a complaint as soon as practicable following the receipt of the complaint. The department shall take appropriate action based on its determination. If it is determined that no further action is warranted or authorized, the department shall notify the persons affected.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: am. Register February 2006 No. 602, eff. 5−1−06.

NR 747.53 Appeals and hearings. (1) APPEALS. (a) *General.* A responsible party, agent, consultant or consulting firm may request a hearing with the department, as specified in s. 227.42, Stats., on any decision affecting that person's legal rights except as specified in ss. NR 747.03, 747.355 (2) (c) 7. and (3) (a) and par. (b) 2.

(b) *Appeal requirements.* 1. All appeals pursuant to this chapter shall be in writing and shall be received by the department no later than 30 calendar days after the date of the decision being appealed. Appeals received more than 30 days after the date of the decision being appealed shall be dismissed. For purposes of this section, appeals received after 4:30 p.m. shall be considered received on the next business day.

Note: A claimant or an attorney representing the claimant may request an administrative hearing to review this action by delivering, mailing, or faxing a written request for a hearing to:

Delivery address:
Wisconsin DNR
Bureau for Remediation & Redevelopment
101 S. Webster Street, 5th Floor
Madison, WI 53703

Mailing address:
Wisconsin DNR
Bureau for Remediation & Redevelopment
P.O. Box 7921
Madison, WI 53707−7921

2. An appeal shall be signed by the person whose legal rights are affected by the decision being appealed or an attorney representing such person. Any appeal filed by a person other than the person whose legal rights are affected by the decision being appealed or an attorney representing that affected person shall be dismissed.

3. Appeals of items identified as ineligible, as listed in s. NR 747.30 (2) or (3), shall be dismissed.

4. The written appeal shall list every reason the department's decision is incorrect and shall identify every issue to be considered in the hearing. Issues not raised in the written appeal under this subdivision are considered to be waived and shall be dismissed.

(2) HEARINGS. (a) *General.* All hearings shall be conducted in accordance with these rules and ch. 227, Stats.

(b) *Settlement agreement prior to hearing*. If the department and the affected party are able to reach agreement on disposition of an appeal prior to a hearing, the following actions shall occur:

1. The settlement agreement shall be transmitted in writing to the administrative law judge designated by the secretary of the department.

2. The settlement agreement shall be binding upon the parties when signed by both parties and returned to the department.

3. The settlement agreement shall be considered a joint motion by the parties to dismiss the appeal its entirety or to dismiss such portions of the appeal as may be encompassed by the terms of the settlement agreement.

(c) *Prehearing discovery.* There shall be no prehearing discovery except as provided in s. 227.45 (7), Stats.

(d) *Witness fees.* Witness fees and mileage of witnesses subpoenaed on behalf of the department shall be paid at the rate prescribed for witnesses in circuit court.

(e) *Location of hearings.* All hearings shall be held in Madison, Wisconsin at a location determined by the department. Telephone testimony of individual witnesses and telephone hearings may be held at the discretion of the person designated by the secretary as hearing officer.

(f) *Hearing transcripts.* All hearings shall be electronically recorded. Any party may request a copy of the electronic recording. A transcript of the recorded hearing shall be prepared upon request at the expense of the party requesting the transcript. Copies of transcripts prepared under this section shall be provided to the other party or parties upon payment of the actual cost of copying or obtaining a copy of the transcript. The department may require payment in advance. A transcript may be provided at the department's expense to a party who demonstrates impecuniousness or financial need if that party has filed a petition for judicial review. Where the department contracts with a court reporting firm for the preparation of transcripts, the fees charged for transcription and copying shall be equal to the fees charged to the department by the court reporting firm.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; CR 04−058: am. Register February 2006 No. 602, eff. 5−1−06; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register February 2006 No. 602; correction in (1) (a), (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a), (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.54 Arbitration. (1) APPLICATION. (a) If a claimant who files an appeal under s. NR 747.53 requests use of arbitration and if the amount at issue is $100,000 or less, the appeal shall be processed under this section.

(b) 1. A request for arbitration shall be considered as a withdrawal of the appeal filed regarding the subject of that arbitration and precludes the claimant from going forward with an administrative appeal regarding the same issues under s. NR 747.53.

2. Proceeding to an appeal hearing under s. NR 747.53 precludes the claimant from filing an arbitration request regarding the same issues.

(c) A request for arbitration shall be in writing signed by the claimant or their attorney, shall include the names and addresses of all parties, and shall be made after denial of costs submitted for reimbursement, but prior to commencement of a hearing under ch. 227, Stats.

(2) SCOPE. Only the costs in the following categories may be the subject of arbitration under this section:

(a) Investigating a petroleum product discharge.

(b) Planning remedial action.

(c) Conducting remedial action activities.

(3) DEFINITIONS. (a) *Deadlines.* All time deadlines in this section, except in sub. (10) (e) 1., are specified in calendar days.

(b) *Terms.* Except where otherwise specified, the following terms are defined as follows for the purposes of this section:

1. "Administrator" means the administrator of the environmental and regulatory services division of the department, or his or her designee.

2. "Arbitrator" means a person appointed in accordance with s. 292.63 (6s), Stats., and governed by the provisions of this section.

Note: Section 292.63 (6s) Stats., reads as follows: "Upon the request of a person who files an appeal of a decision of the department under this section, if the amount at issue is $100,000 or less, the appeal shall be heard by one or more individuals designated by the department to serve as arbitrator under rules promulgated for this purpose by the department. In such an arbitration, the arbitrator shall render a decision at the conclusion of the hearing, or within 5 business days after the conclusion of the hearing if the arbitrator determines that additional time is needed to review materials submitted during the hearing, affirming, modifying or rejecting the decision of the department. The arbitrator shall promptly file his or her decision with the department. The decision of the arbitrator is final and shall stand as the decision of the department. An arbitrator's decision may not be cited as precedent in any other proceeding before the department or before any court. A decision under this subsection is subject to review under ss. 227.53 to 227.57 only on the ground that the decision was procured by corruption, fraud or undue means. The record of a proceeding under this subsection shall be transcribed as provided in s. 227.44 (8)."

3. "Claim" means the amount sought by a claimant as remediation costs actually incurred by the claimant at a remediation site.

4. "Ex parte communication" means any communication, written or oral, relating to the merits of an arbitration proceeding, between an arbitrator and any party or their agent, which was not originally filed or stated in the administrative record of the proceeding. Such communication is not ex parte communication if all parties to the proceeding have received prior written notice of the proposed communication and have been given the opportunity to be present and to participate therein.

5. "Party" means the department and any person who has agreed, pursuant to s. 292.63 (6s), Stats., to submit to an arbitrator one or more issues arising from a denial of incurred costs that have been claimed for reimbursement by a claimant.

(4) APPOINTMENT OF ARBITRATOR. (a) The department shall establish and maintain a panel of environmental arbitrators.

(b) Within 10 days of receiving a request for arbitration, the administrator shall identify and submit simultaneously to all parties an identical list of 6 individuals chosen from the panel of arbitrators, whom the administrator believes will not be subject to disqualification because of circumstances likely to affect impartiality. Each party shall have 10 days from the date of receipt of the list to identify any individuals objected to, to rank the remaining individuals in the order of preference, and to return the

list to the administrator. If a party does not return the list within the time specified, all individuals on the list are deemed acceptable to that party. From among the individuals whom the parties have indicated as acceptable, and, in accordance with the designated order of mutual preference, if any, the administrator shall appoint an arbitrator to serve. If the parties fail to mutually agree upon any of the individuals named, or if the appointed arbitrator is unable to serve, or if for any other reason the appointment cannot be made from the submitted lists, the administrator shall make the appointment from among the other members of the panel. In no event shall appointment of the arbitrator by the administrator take longer than 30 days from the filing of the request for arbitration. The administrator's appointment notice to the arbitrator shall include the names and addresses of all of the parties, as provided in the request for arbitration.

(c) The arbitrator shall, within 5 days of receipt of his or her notice of appointment, file a signed acceptance of the case with the department and the claimant. The acceptance shall include a disclosure to the parties of any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any known responsible party to which the claim may relate.

(d) If any appointed arbitrator should resign, die, withdraw, be disqualified, or otherwise be unable to perform the duties of the office, the administrator may fill the vacancy in accordance with the applicable provisions of this subsection, and the arbitration process shall be resumed.

(5) CHALLENGE PROCEDURES. (a) If any party wishes to request disqualification of an arbitrator, that party shall notify the other parties in writing of that request and the basis therefor within 5 days of receipt of the information on which the request is based.

(b) The administrator shall make a determination on any request for disqualification of an arbitrator within 7 days after the department receives the request, and shall notify the parties in writing of the determination. This determination shall be within the sole discretion of the administrator, and that decision shall be final.

(6) EX PARTE COMMUNICATION. (a) No party or agent of a party may make or knowingly cause to be made to the arbitrator an ex parte communication.

(b) The arbitrator may not make or knowingly cause to be made to any party or agent of a party an ex parte communication.

(c) The administrator may remove the arbitrator in any proceeding in which it is demonstrated to the administrator's satisfaction that the arbitrator has engaged in prohibited ex parte communication to the prejudice of any party. If the arbitrator is removed, the procedures in sub. (4) (d) shall apply.

(d) Whenever an ex parte communication in violation of this subsection is received by or made known to the arbitrator, the arbitrator shall immediately notify in writing all parties to the proceeding of the circumstances and substance of the communication and may require the party who made the communication or caused the communication to be made, or the party whose representative made the communication or caused the communication to be made, to show cause why that party's arguments or claim should not be denied, disregarded, or otherwise adversely affected on account of the violation.

(e) The prohibitions of this subsection apply upon appointment of the arbitrator and terminate on the date of the final decision.

(7) JOINT SUBMITTAL. (a) Within 10 days after receipt of the arbitrator's acceptance under sub. (4) (c), the claimant and the department shall jointly submit to the arbitrator a summary of one or more issues arising from the denial by the department of incurred costs claimed for reimbursement concerning the site. The joint submittal shall be signed by the claimant or their attorney, and a representative of the department, and shall include all of the following:

1. A description of the site and a brief summary of the actions taken at the site.

2. A statement of the issues arising from the costs denied by the department in the claim, that are being submitted for resolution by arbitration.

3. A statement that the parties consent to resolution of the issues jointly submitted to the arbitrator.

4. A statement that the parties agree to be bound by the final decision on all issues jointly submitted to the arbitrator, subject to the right to challenge the final decision solely on the grounds and in the manner prescribed in sub. (11) (b) and (c).

5. A statement that the parties agree that the final decision shall be binding only with respect to the costs at issue in the claim submitted for arbitration.

6. A statement that each signatory to the joint submittal is authorized to enter into the arbitration and to bind legally the party represented by him or her to the terms of the joint submittal.

(b) Any party may move to modify the joint submittal for arbitration to include one or more additional issues arising in the referred claim. To be effective, the modification must be signed by the arbitrator and all other parties.

(8) FILING OF PLEADINGS. (a) Discovery shall be in accordance with this subsection.

(b) Within 10 days after receipt of the arbitrator's acceptance under sub. (4) (c), the claimant shall submit to the arbitrator 2 copies of a written statement and shall serve a copy of the written statement upon all other parties. The written statement shall include all of the following:

1. A statement of facts, including a description of the costs incurred by the claimant in connection with the action taken at the site that have been denied by the department, and statements which state with particularity the basis for the claimant's assertion that the costs denied by the department are eligible.

2. A description of the evidence in support of both of the following:

a. The site at which the action was taken is an eligible site pursuant to s. NR 747.02.

b. There was a discharge from a petroleum product storage system of an eligible petroleum product at the site at which the remedial response action was taken.

3. A complete list of the specific costs which were denied by the department which the claimant has requested be the subject of the arbitration proceeding.

4. To the extent such information is available, the names and addresses of all identified owners for the site, and the volume of the tanks and nature of the petroleum products that contributed to the contamination.

5. Any other statement or documentation that the claimant deems necessary to support its claim.

(c) If any issue concerning the adequacy of the claimant's remedial action has been submitted for resolution or may arise during the arbitrator's determination of the dollar amount of response costs recoverable by the claimant, the statement shall be accompanied with an index of any documents that formed the basis for the selection of the remedial action taken at the site, and a copy of all indexed documents.

(d) Within 14 days after receipt of the claimant's written statement, the department shall submit to the arbitrator 2 copies of an answer and shall serve a copy of the answer upon all other parties. The answer shall include all of the following:

1. A brief statement of the department's basis for denying the costs at issue that are the subject of the arbitration.

2. Any objections to the statement of facts in the claimant's written statement, and, if so, a counterstatement of facts.

3. A description of the evidence in support of the department's denial of the costs at issue and any supporting documentation thereof.

4. Any objections to the remedial action taken by the claimant at the site based upon any documents that formed the basis for the selection of the remedial action.

5. Any other documentation that the department deems relevant, including documentation that the department deems necessary to support its denial of costs submitted by the claimant for reimbursement.

(9) JURISDICTION OF ARBITRATOR. (a) In accordance with the procedures established by this section, the arbitrator is authorized to arbitrate one or more issues arising from the denial by the department of incurred costs in a claim for reimbursement.

(b) The arbitrator's authority is to render a decision regarding the denial of incurred costs claimed and is limited to only the issues submitted for resolution by the parties in the joint submittal for arbitration. Any issues arising from the denial of incurred costs claimed that are not submitted for resolution shall be deemed to be waived and shall not be raised in any action seeking enforcement of the decision for the purpose of overturning or otherwise challenging the final decision, except as provided in subs. (11) (b) and (c).

(c) If the issue of the dollar amount of incurred costs that were denied by the department has been submitted for resolution, the arbitrator shall determine, pursuant to par. (d), the dollar amount recoverable by the claimant and shall award the amount of such costs to the claimant.

(d) The arbitrator shall uphold the department's denial of costs in full or in part unless the claimant can establish that all or part of such costs were either of the following:

1. Eligible costs based upon the department's list of eligible costs in s. NR 747.30, or the schedule of usual and customary costs established by the department under s. NR 747.325 for the period in which the costs were incurred.

2. Clearly not excessive and clearly necessary, taking into account the circumstances of the remedial action and relative to the usual and customary cost schedule established by the department under s. NR 747.325 for the time period in which the costs were actually incurred.

(e) If the arbitrator upholds the department's denial only in part, the arbitrator shall award to the claimant only those costs incurred in connection with the portions of the remedial action that were upheld along with any associated interest that was denied, less any remaining deductible and subject to occurrence maximums.

(f) The standard of review to be applied by the arbitrator to the department's reimbursement denial decision shall be whether the decision was arbitrary and capricious, or otherwise not in accordance with law.

(10) ARBITRATION DECISION. (a) Within 5 days after receipt of the statement and answer submitted under sub. (8), the arbitrator shall review the submittals and request any needed additional information from the claimant or the department.

(b) Any information requested under par. (a) shall be submitted to the arbitrator and served upon all other parties, within 5 days after receiving the request.

(c) Within 10 days after receipt of either the submittals under sub. (8) or the information requested under par. (a), whichever is applicable, the arbitrator shall render a proposed decision and shall mail the proposal to the parties, unless the parties have settled the dispute prior to the decision.

(d) Within 10 days after receipt of the proposed decision, a party may submit additional information to the arbitrator, and if done, shall serve a copy of the additional information to all other parties.

(e) 1. Within 5 business days after receipt of any additional information submitted under par. (d), the arbitrator shall render a final decision.

2. The final decision shall be in writing and shall be signed by the arbitrator. It shall be limited in accordance with the arbitrator's jurisdiction as established in sub. (9), and shall, if such issues have been jointly submitted by the parties for resolution, contain the arbitrator's determination of the dollar amount of costs denied by the department, if any, to be awarded to the claimant.

(f) The parties shall accept as legal delivery of the final decision the placing in the United States mail of a true copy of the final decision, sent by certified mail, return receipt requested, addressed to each party's last known address or each party's attorney's last known address, or by personal service.

(g) Notice of the final decision shall be published by the department on its Web site. The notice shall include the name and location of the site concerned, the names of the parties to the proceeding, and a brief summary of the final decision.

(11) EFFECT AND ENFORCEMENT OF FINAL DECISION. (a) The final decision shall be binding and conclusive upon the parties as to the issues that were jointly submitted by the parties for resolution and addressed in the decision.

Note: As established in s. NR 747.54 (1) (b) 1., an arbitrator's decision may not be appealed under s. NR 747.53.

(b) As established in s. 292.63 (6s), Stats., the final decision under this section is subject to review under ss. 227.53 to 227.57, Stats., only on the ground that the decision was procured by corruption, fraud, or undue means.

(c) Except as necessary to show fraud, misconduct, partiality, or excess of jurisdiction or authority, in any enforcement action, a party may not raise, for the purpose of overturning or otherwise challenging the final decision, issues arising in the claim that were not submitted for resolution by arbitration.

(d) Neither the initiation of an arbitration proceeding nor the rendering of a final decision shall preclude or otherwise affect the ability of the State of Wisconsin, including the department, to do any of the following:

1. Seek injunctive relief or enforcement against the claimant for further remedial action at the site concerned pursuant to s. 101.144, Stats., or any other applicable statute, regulation, or legal theory.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

2. Seek any relief for any violation of criminal law from any claimant, consultant, commodity provider, contractor, or subcontractor.

3. Seek any relief, civil or criminal, from any person not a party to the arbitration proceeding under s. 292.63, Stats., or any other applicable statute, regulation, or legal theory.

(12) FEES AND EXPENSES. (a) In any arbitration conducted, all fees and expenses of the arbitrator shall be divided equally among all parties. All other expenses shall be borne by the party incurring them.

(b) The department shall establish the per diem fee for the arbitrator prior to the commencement of any activities by the arbitrator.

(13) MISCELLANEOUS PROVISIONS. (a) Any party who proceeds with arbitration knowing that any provision or requirement of this section has not been complied with, and who fails to object thereto either orally or in writing in a timely manner, shall be deemed to have waived the right to object.

(b) The original of any joint submittal for arbitration, modification to any joint submittal for arbitration, pleading, letter, or other document filed in the proceeding, except for exhibits and other documentary evidence, shall be signed by the filing party or by his or her attorney.

(c) All papers associated with the proceeding that are served by a party to an opposing party shall be served by personal service,

or by United States first class mail, or by United States certified mail, return receipt requested, addressed to the party's attorney; or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party. All papers associated with the proceeding that are served by the arbitrator or by the department shall be served by personal service or by United States certified mail, return receipt requested, addressed to the party's attorney; or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party.

(d) If any provision of this section, or the application of any provision of this section to any person or circumstance is held invalid, the application of that provision to other persons or circumstances and the remainder of this section shall not be affected thereby.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (a), (b) 1., 2., (8) (b) 2. a., (9) (d) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a), (b) 1., 2., (3) (b) 2., 5., (8) (b) 2. a., (9) (d) 1., 2., (11) (b), (d) 3. made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

Subchapter VI — Competitive Public Bidding

NR 747.60 Selection of an investigation consulting firm and notification to the department.

(1) INITIAL CONTRACT. (a) No later than 14 days after a PECFA−registered consulting firm executes or terminates a written contract with a responsible party for investigating a discharge from a petroleum product storage system, the consulting firm shall submit to the department a notification form prescribed by the department.

Note: See s. NR 747.71 for special requirements for existing sites.

Note: The contracts referenced in this section are required by s. NR 747.33 (2) (a) 1. As established in s. NR 747.30 (2) (L) and (i), the department will not reimburse costs, including interest costs, for any site investigation work performed outside of these contracts.

(b) After receipt of a termination notice under par. (a), the department shall notify the responsible party of the requirements in sub. (2) for a subsequent contract and for ineligibility of interest costs.

(2) SUBSEQUENT CONTRACTS. (a) If a contract under sub. (1) is terminated before completion of the investigation, and the responsible party does not, within 60 days after the date of the notice in sub. (1) (b), perform either of the actions specified in pars. (b) and (c), any interest costs relating to the work under the terminated contract, which accrue between the termination date and the beginning of a new contract, may not be reimbursed by the department.

(b) Execute another written contract with a PECFA−registered consulting firm for completing the investigation.

(c) Obtain written approval from the department for additional time to comply with par. (b).

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06.

NR 747.61 Management during a site investigation.

(1) CONSULTING FIRM'S RESPONSIBILITIES FOR THE INVESTIGATION. The consulting firm selected to perform the investigation shall be responsible for planning and completing all investigation activities in the most cost−effective manner possible, drawing professional engineering and geologic conclusions from data collected during the investigation, and submitting any consultant reports required by this subchapter or s. 292.63, Stats.

(2) DEPARTMENT'S RESPONSIBILITIES DURING THE INVESTIGATION. The department shall be responsible for tracking the expenditure of funds for investigation activities as reported by the investigation consulting firm, in accordance with s. NR 747.62.

(3) REIMBURSEMENT AND COST CONTROLS DURING THE INVESTIGATION. For all investigation work that is not publicly bid under this subchapter, the usual and customary cost schedule referenced in s. NR 747.325 and the maximum costs specified in s. NR 747.337 (2) shall apply to reimbursement of all costs.

Note: Under s. NR 747.33 (6) (c), the department will not require commodity bidding during the investigation, where reimbursement amounts are determined either by the usual and customary cost schedule established under s. NR 747.325, or by the public bidding process in this subchapter.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.62 Periodic progress reporting during a site investigation.

(1) FREQUENCY OF REPORTS. (a) To inform the department of the consulting firm's progress and the estimated cost of work remaining in the investigation for each occurrence, the consulting firm for a site investigation shall periodically submit reports to the department in a format prescribed by the department, no later than the recurring, earlier of the following dates:

1. The anniversary date of the contract between the firm and the responsible party, except as provided in par. (b).

2. The end of the calendar month that follows the month of completion of each investigative phase specified by the department.

Note: See sub. (3) for information on directives from the department to carry out specific investigation activities.

Note: See sub. (4) for filing a notice of completion of an investigation.

(b) After a report is filed under par. (a) 2., the anniversary shall be based on the date of that report.

(c) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the DNR a copy of the reports received under par. (a).

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

Note: See s. NR 747.71 for special requirements for existing sites.

(2) DEPARTMENT RESPONSE TO INVESTIGATION PROGRESS REPORTS. After receiving a progress report under sub. (1), the department shall record the receipt and send a written response to the responsible party and the consulting firm, providing an assessment of the financial management of the investigation, an assessment of the estimate of the cost to complete the investigation for the occurrence, and a decision, if possible, of whether or not the occurrence is subject to the public bidding process in s. NR 747.68.

(3) DIRECTIVES FROM THE DEPARTMENT TO CARRY OUT SPECIFIC INVESTIGATION ACTIVITIES. At any time during the investigation, the department may direct the responsible party and the consulting firm to carry out specific activities necessary to achieve the most cost−effective collection of investigation data necessary to determine whether the occurrence is subject to competitive public bidding and to define a closure standard, remediation target, or scope of work for the remediation.

(4) NOTICE OF COMPLETION OF INVESTIGATION. (a) By the end of the calendar month that follows the consulting firm's development of all investigation data necessary to define either the remediation target or the scope of the remediation for an occurrence, the firm shall file with the department a notice of completion of an investigation, on a form prescribed by the department.

Note: As established in s. NR 747.30 (2) (o) and (i), the department will not reimburse costs, including interest cost, for any work performed after submittal of the notice of completion under this subsection and prior to the department's issuance of a response under sub. (5).

(b) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the DNR a copy of the notice received under par. (a).

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

(5) DEPARTMENT RESPONSE TO NOTICE OF COMPLETION. After receiving a notice of completion of an investigation of an occurrence, the department shall send a written response to the responsible party and to the consulting firm, containing a decision by the

department on whether the occurrence is subject to public bidding, or whether the responsible party may proceed to remediate the occurrence or take other action directed by the department.

Note: See s. NR 747.623 for determining which occurrences are subject to public bidding.

Note: See ss. NR 747.325 and 747.337 for cost controls for work that is not subject to public bidding.

Note: As established in s. NR 747.30 (2) (p) and (i), the department will not reimburse costs, including interest costs, for any work performed more than 5 business days after the department issues a decision under this section that an occurrence is subject to the public bidding process in s. NR 747.68, if the work is conducted outside of that process.

(6) PROVIDING DEPARTMENT RESPONSES TO THE DNR. For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the department a copy of all written departmental responses issued under this section.

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a) 2., (2), (3), (5), (6) made under s. 13.92 (4) (b) 6., 7., Register October 2013 No. 694.**

NR 747.623 Assignment to public bidding.

(1) COST ESTIMATE EXCEEDS $60,000. (a) *Occurrences under the department's jurisdiction.* Unless exempted under s. NR 747.63, an occurrence covered under s. 101.144 (2) (b), Stats., shall be subject to the public bidding process in s. NR 747.68 if the department estimates that the cost to complete a site investigation and remedial action will exceed $60,000, including interest.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(b) *Occurrences under department jurisdiction.* Unless exempted under s. NR 747.63, an occurrence that is not covered under s. 101.144 (2) (b), Stats., shall be subject to the public bidding process in s. NR 747.68 if the department estimates that the cost to complete a site investigation and remedial action will exceed $60,000, including interest.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(2) COST ESTIMATE DOES NOT EXCEED $60,000, OR INCURRED COSTS EXCEED $60,000, INCLUDING INTEREST. Occurrences not included in sub. (1) shall be subject to the public bidding process in s. NR 747.68 if so directed by the department.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (a), (b), (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a), (b), (2) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.625 Claim submittal required.

(1) ASSIGNMENT TO PUBLIC BIDDING. Whenever the department notifies a responsible party and the consulting firm that an occurrence is subject to the public bidding process in s. NR 747.68, a claim for eligible costs incurred up to then shall be submitted to the department, no later than 120 days after the date of the department's notice.

(2) COMPLETION OF A SCOPE OF WORK. (a) Whenever a consulting firm completes a scope of work designated by the department, a claim for eligible costs incurred for that scope of work shall be submitted to the department, no later than 120 days after completing that work.

(b) The department may waive the requirement in par. (a) for small scopes of work that do not include a change to a different consulting firm.

(3) INELIGIBLE INTEREST COSTS. (a) Failure to file a claim prior to the deadline prescribed in sub. (1) shall result in ineligibility of any interest expenses incurred between the date of the department's notice and the date a claim is filed.

(b) Failure to file a claim prior to the deadline prescribed in sub. (2) shall result in ineligibility of any interest expenses incurred between the date of the completion of the scope of work and the date a claim is filed.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.63 Exemptions from competitive public bidding.

(1) GENERAL. Pursuant to s. 292.63 (3) (cp), Stats., the following exemptions may apply to an occurrence:

(a) The department may waive the public bidding process in s. NR 747.68 for the reasons set forth in s. 292.63 (3) (cp) 2., Stats.

Note: Section 292.63 (3) (cp) 2., Stats., provides that the department may waive the competitive public bidding requirement "if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility, as defined in s. 196.01 (5), or within 100 feet of any other well used to provide water for human consumption."

(b) An occurrence is exempt from the public bidding process in s. NR 747.68 where or while the circumstances in subs. (2) to (5) apply, or where the bidding process is otherwise waived by the department.

(2) EMERGENCY ACTIONS. Work performed as part of an emergency action within the initial 72 hours after the onset of the need for the action, is not subject to the public bidding process in s. NR 747.68.

(3) BIDDING IS NOT COST EFFECTIVE. The department may waive the public bidding process in s. NR 747.68 after determining that either bidding would not be cost−effective, or the estimated additional cost to complete a scope of work is reasonable.

(4) ALTERNATIVE ACCEPTABLE BIDDING PROCESS. The department may waive the public bidding process in s. NR 747.68 after determining that a responsible party has used an acceptable alternative competitive bidding process to choose the consulting firm and establish an estimated cost to define a closure standard, remediation target, or scope of work for the remediation.

(5) TEMPORARY DEFERRAL OF PUBLIC BIDDING. (a) The department may defer public bidding for an occurrence that is subject to the public bidding process in s. NR 747.68 after determining that additional investigation activities will produce specific data and information which will contribute to the bidding process in s. NR 747.68 for that occurrence.

(b) The department shall provide a written notice to the responsible party and the consulting firm specifying the conditions to be met during the deferral period.

(c) The consulting firm shall cease work on the occurrence after the conditions that justified the deferral have been met, and shall submit a written notice thereof to the department within the 14 days following. Work may recommence only after authorization to proceed is received from the department.

Note: As established in s. NR 747.30 (2) (q) and (i), the department will not reimburse costs, including interest costs, for any work performed in violation of this paragraph.

Note: Under s. 292.63 (3) (cp) 5., Stats., the agency waiving competitive public bidding for an occurrence must provide notice to the other agency prior to issuing the waiver.

Note: Under s. 292.63 (4) (cm), Stats., the schedule of usual and customary costs referenced in s. NR 747.325 must be used to determine the amount of eligible costs for an occurrence for which a competitive bidding process is not used, except in circumstances under which higher costs must be incurred to comply with s. 292.63 (3) (c) 3., Stats., and with enforcement standards.

Note: Section 292.63 (3) (c) 3., Stats., provides that the owner shall "conduct all remedial activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11."

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (a), (b), (2), (3), (4), (5) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (intro.), (a), (b), (2) to (4), (5) (a) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.64 Bidding completion of an investigation.

(1) INVESTIGATION ACTIVITIES MAY BE BID. During a site investigation, if either the department determines that an occurrence is

subject to the public bidding process in s. NR 747.68, the department shall proceed under either of the following:

(a) For occurrences that are covered under s. 101.144 (2) (b), Stats., the department shall issue a written directive to the responsible party and the consulting firm to cease all work except as otherwise authorized by the department. The department shall then direct the occurrence through the public bidding process in s. NR 747.68.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(b) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall notify the responsible party and the consulting firm that no further costs will be reimbursed except as established through the public bidding process in s. NR 747.68 or as otherwise authorized by the department.

Note: Section 101.144, Stats., was repealed by 2013 Wis. Act 20.

(2) SCOPE OF WORK FOR BIDDING AN INVESTIGATION. The department may bid a scope of work to include the remainder of an investigation, where the investigation has stopped under sub. (1).

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (intro.), (a), (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.65 Department to determine scope of work to be bid. Prior to public bidding, the department shall determine whether the scope of work to be bid will be the work necessary to achieve closure, work to a defined remediation target, or completion of a defined set of activities.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06.

NR 747.66 Bidder qualifications. (1) GENERAL. Bids may be submitted only by representatives of consulting firms which are registered under s. SPS 305.80 and which meet all eligibility requirements in this section and in the bid specifications.

Note: The consulting firm retained by the responsible party to carry out the investigation is eligible to bid remedial activities if the consulting firm meets all eligibility requirements in this section and in the bid specifications.

(2) PERFORMANCE ASSURANCE. Every bidding firm shall submit a certified commitment to complete the work described in the bid specifications and in the submitted bid, for the price proposed in the bid.

(3) DISQUALIFIED INDIVIDUALS OR FIRMS. No individual or firm that has been disqualified under s. NR 747.67 may submit a bid until the period of disqualification has ended and all corrective actions required by the department to reinstate the individual or firm have been met.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1), (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1), (3) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.67 Disqualification from bidding. (1) GROUNDS FOR DISQUALIFICATION. (a) The department may disqualify from public bidding any individual or firm that has done any of the following:

1. Failed to complete a scope of work within a reimbursement cap established through public bidding.

2. Failed to complete the scope of work in a bid in a timely manner.

3. Failed to meet requirements in department rules on a bid project.

4. Received one or more notices from the department under s. NR 747.62 (2) that assess the financial management of an investigation as unacceptable.

5. In any prior occurrence that has been publicly bid, failed to do either of the following:

a. Pay subcontractors after receiving payment for them.

b. Obtain lien waivers on or before the date of the final payment by the responsible party or the PECFA program, from all subcontractors paid under subd. 5. a.

6. Failed to execute a contract with a responsible party as required in s. NR 747.69 (1).

7. Failed to commence work within 45 days after executing a contract, as required in s. NR 747.69 (3).

(b) In making disqualification decisions under this section, the Department shall excuse failures that are shown to be due to factors which are beyond the control of a bidding individual or firm, such as a responsible party's inability to obtain financing.

(2) PERIOD OF DISQUALIFICATION. The period of disqualification shall be 2 rounds of public bidding for the first disqualification, 4 rounds for the second disqualification, and 6 rounds for any subsequent disqualification.

Note: The department may consider disqualification from public bidding as a contributing factor when applying other disciplinary actions to any individual or firm.

(3) WRITTEN NOTICE OF DISQUALIFICATION. The department shall provide written notification to any individual or firm disqualified from submitting bids. The notification shall specify the reasons for the disqualification, the period of the disqualification, the consequence under s. NR 747.69 that post−bidding contracts at other sites may not be executed, and the right to protest or appeal the department's decision.

(4) CORRECTIVE ACTION BY DISQUALIFIED INDIVIDUAL OR FIRM. The department may require an individual or firm that has previously been disqualified to post a fidelity, surety, or performance bond or to take other corrective action specified by the department, to protect owners or operators and the PECFA fund from failure to carry out the work specified in the public bidding process in s. NR 747.68.

(5) PROTESTS AND APPEALS BY DISQUALIFIED INDIVIDUALS OR FIRMS. An individual or firm that receives a notice of disqualification may protest the disqualification. The individual or firm shall file a written protest with the director of the bureau of PECFA no later than 5 business days after issuance of the notice in sub. (3). The filing shall include all of the reasons for the protest. Any reason not listed for the protest shall be deemed waived. The director or the director's designee may resolve the protest by either upholding the department's determination or by removing a disqualification, and shall issue a written decision no later than 5 business days after receiving the protest. A protestor may file a written appeal of the decision of the bureau director or designee, to the administrator of the environmental and regulatory services division, no later than 5 days after issuance of the decision, provided the protestor alleges a violation of s. 292.63, Stats., or of this chapter. The administrator or designee shall resolve the appeal without hearing and issue a written decision no later than 5 business days after receiving the appeal. The decision on the appeal shall be mailed or otherwise furnished to the protestor. In the event of the filing of a timely appeal under this subsection, the department may not proceed further with disqualifying an individual or firm from public bidding until a decision is issued on the appeal.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (a) 4., 6., 7., (3), (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a) 3., 4., 6., 7., (3), (4) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.68 Competitive public bidding process. (1) PUBLISHING THE REQUEST FOR BIDS. The department shall post a request for bids on the department's Internet Web site.

(2) SUBMITTING BIDS. Firms submitting public bids in response to the bid specifications shall comply with all of the following:

(a) Bidders shall submit bids in a format prescribed by the department.

(b) Bidders shall submit bids so that the bids are received by the department no later than 4:00 p.m. on the bid−end date listed in the bid specifications.

(3) EVALUATING BIDS. (a) The department may not consider any late bids. The department shall rank all remaining bids solely on the basis of cost, in ascending order from the least costly to the

most costly. The department shall then evaluate only the bid containing the least costly proposal, to determine if all requirements of the bid specifications will be met, if the remedial strategy is appropriate to the geologic setting, and if the bid is likely to establish an amount to sufficiently fund the activities and outcome objective contained in the bid specifications. The department shall continue the evaluation process until the least costly qualified bid is identified.

Note: As established in s. 292.63 (3) (cp) 1., Stats., the purpose of the least costly qualified bid is to assist the department in making a determination of the least costly method of remedial action. See sub. (7) for further information about that determination.

(b) The department shall reserve the right to reject any or all bids.

(4) NOTICE OF DISQUALIFIED BID. The department shall provide written notification to any individual or firm that submitted a disqualified bid. The notification shall specify the reasons for the disqualification, and the right to protest or appeal the department's decision.

(5) NOTICE OF INTENT. The department shall announce its intent to select the least costly qualified bid to assist in determining the least costly method of remedial action or a cap for a defined scope of work. The department shall send the announcement in writing to the responsible party and shall post the announcement on its Internet Web site. The announcement shall identify the bid the department has determined to be the least costly qualified bid. The announcement shall identify all low bids that have been disqualified. The announcement shall be provided at least 11 business days prior to the determination of the least costly method or the determination of a cap.

(6) PROTESTS AND APPEALS. A responsible party or a bidder may protest the department's selection and use of the least costly qualified bid to assist in making the determination in sub. (7). The protestor shall file a written protest with the director of the bureau of PECFA no later than 10 business days after issuance of the notice in sub. (4) or (5), whichever is later. The filing shall include all of the reasons for the protest. Any reason not listed for the protest shall be deemed waived. The director or the director's designee may resolve the protest by upholding the department's determination, by removing a disqualification, or by correcting an error in determining the cost contained in a bid, and shall issue a written decision no later than 5 business days after receiving the protest. A protestor may file a written appeal of the decision of the bureau director or designee, to the administrator of the environmental and regulatory services division, no later than 5 days after issuance of the decision, provided the protestor alleges a violation of s. 292.63, Stats., or of this chapter. The administrator or designee shall resolve the appeal without hearing and issue a written decision no later than 5 business days after receiving the appeal. The decision on the appeal shall be mailed or otherwise furnished to the protestor. In the event of the filing of a timely protest or appeal, the department may not proceed further with making the determination in sub. (7) until a decision is issued on the protest or appeal.

(7) DETERMINING THE LEAST COSTLY METHOD OF REMEDIAL ACTION, OR THE CAP FOR A DEFINED SCOPE OF WORK. (a) The least costly method of remedial action or the cap for a defined scope of work shall be determined according to pars. (b) or (c).

(b) For occurrences under the direction of the department, the department shall consider the least costly qualified bid identified under sub. (3) in determining the least costly method of remedial action or the cap for a defined scope of work. No later than 10 business days after making its decision, the department shall notify the responsible party of the department's determination of the least costly method of remedial action or the cap for a defined scope of work, and shall specify the maximum amount that will be reimbursed.

(c) For occurrences under the direction of the department, the department shall consider the least costly qualified bid identified under sub. (3) in determining the least costly method of remedial action or the cap for a defined scope of work. No later than 10 business days after making the decision, the department shall notify the responsible party of the department's determination of the least costly method of remedial action or the cap for a defined scope of work, and shall specify the maximum amount that will be reimbursed.

(d) 1. The determination of the least costly method of remediation or the determination of the cap for a defined scope of work shall establish the maximum costs eligible for reimbursement by the PECFA program, except where that maximum is increased under s. NR 747.70 (3).

Note: See s. NR 747.71 (5) for special requirements for existing sites.

2. Any additional costs above the maximum established in subd. 1. or s. NR 747.70 (3) shall be the responsibility of the responsible party.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (7) (d) 1., 2. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (6), (7) (c), (d) 1., 2. made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 684.**

NR 747.69 Responsible party's contract with a bidder. (1) CONTRACT WITH REMEDIATION CONSULTING FIRM. (a) Except as provided in pars. (c) or (d), no later than 60 days after the department issues the notification under s. NR 747.68 (7) (b) or (c), the responsible party shall execute a written contract with one of the firms that submitted a bid under s. NR 747.68 (2), to perform the work identified in the notification.

(b) Failure to execute the written contract as required in par. (a) shall result in ineligibility of any interest expenses incurred from the date of the notification under s. NR 747.68 (7) (b) or (c), until a contract is executed and work commences on the occurrence.

(c) This subsection does not apply to a bidder who becomes disqualified under s. NR 747.67, or where all subsequent work will not be submitted for reimbursement from the PECFA fund.

(d) The department may grant an extension of the 60−day period specified in par. (a) only after a claimant demonstrates that substantive efforts to obtain financing have been unsuccessful.

Note: As established in s. NR 747.30 (2) (s) and (i), the department will not reimburse costs, including interest costs, for unauthorized services that are performed by any party other than a firm which submitted a bid under s. NR 747.68 (2) and which is contracted with under this section, if they are conducted after the qualified low bid is determined under s. NR 747.68 (3).

Note: See sub. (4) for criteria that apply to an affected site after a bidder who submits the least costly qualified bid becomes disqualified, and no other bidder agrees to perform the work within the corresponding reimbursement cap.

(2) NOTIFICATION OF CONSULTING FIRM SELECTION. No later than 14 days after any contract for remediation under sub. (1) is executed or terminated with the responsible party, the consulting firm shall submit to the department a notification form prescribed by the department.

(3) COMMENCING WORK. The consulting firm that executes a contract under sub. (1) shall commence the work specified therein no later than 45 days after the contract is executed.

(4) REBIDDING OR SELECTION OF NEXT−LOWEST, QUALIFIED BID. Where a bidder who submitted the least costly qualified bid becomes disqualified under s. NR 747.67, and no other bidder agrees to perform the work identified in the notification under s. NR 747.68 (7) (b) or (c), within the reimbursement cap established under s. NR 747.68 (7), the department may either redirect the scope of work through the entire public bidding process in s. NR 747.68, or reinitiate that process at the bid evaluation stage in s. NR 747.68 (3).

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (a), (b), (c), (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a) to (c), (4) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.**

NR 747.70 Monitoring the progress of the scope of work in the bid. (1) NOTIFICATION OF PROGRESS. (a) The consulting firm holding the contract required in s. NR 747.69 (1) (a) shall report to the department, in a format prescribed by the

department, the progress toward completing the scope of work defined in the bid specifications, at each of the following points:

1. Three months after entering into the contract.

2. Twelve months after beginning the work in the successful bid, except as provided in subd. 6.

3. Twelve months after submitting the previous report required under this subsection, except as provided in subd. 6.

4. No later than 10 days after encountering a change in circumstances, as specified in sub. (3).

5. At any other frequency directed by the department.

6. No later than 30 days after completing the work.

(b) For occurrences that are not covered under s. 101.144 (2) (b), Stats., the department shall send the DNR a copy of the reports received under par. (a).

Note: This paragraph is no longer effective and is subject to future repeal. Section 101.144, Stats., was repealed by 2013 Wis. Act 20. The "department" in this paragraph refers to the department of safety and professional services, which no longer has responsibility for occurrences under this section.

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(2) FAILURE TO MAKE PROGRESS. If the department determines that the consulting firm is failing to make adequate progress to complete the scope of work defined in the bid specifications for an amount not exceeding the reimbursement cap determined under s. NR 747.68 (7), the department shall so notify the responsible party and may reduce the reimbursement to accurately reflect the work completed.

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(3) CHANGE OF CIRCUMSTANCES. (a) For occurrences under the direction of the department, the department may review and modify the reimbursement cap, and may reinitiate the public bidding process in s. NR 747.68, based on a change in circumstances, if any of the following have occurred:

1. Substantial new contamination has been discovered on the site. Substantial contamination must increase remediation costs to either obtain closure or complete a defined scope of work. New contamination is contamination not previously identified, such as contamination in a broader area or deeper depth than previously identified.

2. Abnormal weather, previously unknown geologic conditions, or previously unknown subsurface structures have been encountered that directly affect the activities described in the least costly qualified bid identified under s. NR 747.68 (3).

(b) For occurrences under the direction of the department, the department may review and modify the reimbursement cap, and the department may reinitiate the public bidding process in s. NR 747.68, based on a change of circumstances, if any of the events in par. (a) 1. and 2. have occurred.

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(4) DISQUALIFICATION FROM FURTHER WORK ON A PROJECT. (a) *Grounds for disqualification.* The department may disqualify any individual or firm from performing further work on a project, if the individual or firm has done any of the following:

1. Failed to complete a substantive portion of the defined scope of work within the corresponding portion of the reimbursement cap.

2. Failed to complete the scope of work in a bid in a timely manner.

3. Failed to meet requirements in department rules on the project.

4. Failed to do either of the following:

a. Pay subcontractors within a contracted timeline, after receiving payment for them.

b. Obtain lien waivers on or before the date of the final payment by the responsible party or the PECFA program, from all subcontractors paid under subd. 4. a.

5. Failed to execute a contract with a responsible party as required in s. NR 747.69 (1).

6. Failed to commence work within 45 days after executing a contract, as required in s. NR 747.69 (3).

Note: See s. NR 747.71 (5) for special requirements for existing sites.

(b) In making disqualification decisions under this section, the department shall only excuse failures that are shown to be due to factors which are beyond the control of a bidding individual or firm, such as a responsible party's inability to obtain financing.

(c) *Period of disqualification.* The period of disqualification shall be 6 months for the first disqualification, 12 months for the second disqualification, and 24 months for any successive disqualification.

Note: The department may consider disqualification from further work as a contributing factor when applying other disciplinary actions to any individual or firm.

(d) *Written notice of disqualification*. The department shall provide written notification to any individual or firm disqualified from performing further work on a project. The notification shall specify the reasons for the disqualification, the period of the disqualification, and the right to appeal the department's decision. The notification shall inform the disqualified party that costs for any work on the occurrence during the disqualification, except as otherwise authorized by the department, will not be reimbursed.

(e) *Appeals by disqualified individuals or firms.* 1. An individual or firm that receives a notice of disqualification under this section may appeal as provided in s. NR 747.53.

2. The department shall hold a hearing for an appeal filed under subd. 1. no later than 30 days after receipt of the appeal.

(f) *Rebidding or selection of next−lowest, qualified bid*. Where an individual or firm has been disqualified under this section, the department may either redirect the scope of work through the entire public bidding process in s. NR 747.68, or reinitiate that process at the bid evaluation stage in s. NR 747.68 (3).

(g) *Corrective action by disqualified individual or firm.* The department may require an individual or firm that has previously been disqualified to take corrective action specified by the department, to protect owners or operators and the PECFA fund from failure to carry out the work specified in the public bidding process in s. NR 747.68.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (1) (a), (2), (3) (a) (intro.), 2., (b), (4) (a) 5., 6., (e) 1., (f), (g) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (1) (a) (intro.), (b), (2), (3) (a) (intro.), 2., (b), (4) (a) 3., 5., 6., (e) to (g) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**

NR 747.71 Special requirements for existing sites.

(1) DEFINITION. For the purposes of this section, a site investigation in progress is any investigation that began but was not completed before May 1, 2006.

(2) NOTIFICATIONS AND INITIAL INVESTIGATION PROGRESS REPORTS FOR INVESTIGATIONS IN PROGRESS. For site investigations in progress on May 1, 2006, the notification form in s. NR 747.60 (1) and the first investigation progress report under s. NR 747.62 for each occurrence shall be submitted no later than 60 days after that date.

(3) SUBSEQUENT REQUIREMENTS. Upon submittal of the notification and report under sub. (2), all of the requirements in s. NR 747.62 shall apply, except the requirement for submitting the initial investigation progress report.

Note: The department forms required in this chapter are available from the Wisconsin DNR, Bureau for Remediation & Redevelopment, P.O. Box 7921, Madison WI 53707−7921, or at http://dnr.wi.gov/topic/brownfields/pecfa.html.

(4) OCCURRENCES WITH PREVIOUSLY COMPLETED SITE INVESTIGATIONS. An occurrence for which a site investigation was completed prior to May 1, 2006 shall be subject to the public bidding process in s. NR 747.68 when so determined by the department under s. NR 747.325 or 747.623.

(5) OCCURRENCES WITH REIMBURSEMENT CAPS DETERMINED THROUGH PREVIOUS PUBLIC BIDDING. For occurrences with reimbursements caps determined through the public bidding process under s. 292.63 (3) (cp), Stats., prior to May 1, 2006, all of the requirements in s. NR 747.70 shall apply, except as follows:

(a) The consulting firm performing the work in the bid specifications shall submit the initial progress report required in s. NR 747.70 (1) (a) 1. 3 months after May 1, 2006.

(b) The consulting firm performing the work in the bid specifications shall submit the progress report required in s. NR 747.70 (1) (a) 2. 12 months after May 1, 2006.

(c) Reimbursement for the progress reports required in s. NR 747.70 (1) (a) shall be in addition to the reimbursement that was previously established through the public bidding process, but may not exceed the reimbursement which is specified for these reports in the department's schedule of usual and customary costs, as established under s. NR 747.325.

(d) The reimbursement cap used in s. NR 747.70 (2) shall be the reimbursement cap determined through the public bidding that preceded May 1, 2006.

(e) 1. For occurrences under the direction of the department, the department may review and modify the reimbursement cap prescribed in par. (d), and may reinitiate competitive bidding through the public bidding process in s. NR 747.68, if the modification is necessary to obtain compliance with s. 292.63 (3) (c) 3., Stats., and with enforcement standards.

2. For occurrences under the direction of the department, the department may review and modify the reimbursement cap prescribed in par. (d), and the department may reinitiate competitive bidding through the public bidding process in s. NR 747.68, if the modification is necessary to obtain compliance with s. 292.63 (3) (c) 3., Stats., and with enforcement standards.

Note: Under s. 292.63 (3) (c) 3., Stats., a responsible party must "Conduct all remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11, Stats."

(f) Section NR 747.70 (4) (a) 5. and 6. does not apply.

History: CR 04−058: cr. Register February 2006 No. 602, eff. 5−1−06; correction in (2), (3), (4), (5) (intro.), (a), (b), (c), (d), (e) 1., 2., (f) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **corrections in (2) to (4), (5) (a) to (f) made under s. 13.92 (4) (b) 6., 7., Stats., Register October 2013 No. 694.**