

Chapter NR 750

FEES FOR PROVIDING OVERSIGHT FOR THE CONTAMINATED LAND RECYCLING PROGRAM

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, January, 2001, No. 541.

NR 750.01 Purpose. The purpose of this chapter is to establish the procedures and criteria that the department shall use to process applications and assess and collect fees to provide oversight to persons undertaking response actions in accordance with s. 292.15, Stats. This chapter is adopted pursuant to ss. 227.11 (2) and 292.15, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.**

NR 750.02 Applicability. This chapter applies to persons seeking department review and approval of the response actions that will be or have been undertaken to receive the protection of the liability exemption in s. 292.15, Stats.

Note: The Land Recycling Law (1993 Wis. Act 453, effective May 13, 1994), created s. 144.765, Stats., now numbered as s. 292.15, Stats., renumbered under 1995 Wis. Act 227. The objective of this law is to provide persons, who satisfy all of the requirements of the statute, with a liability exemption from specific requirements of the state's Hazardous Substance Discharge Law, s. 292.11, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96.

NR 750.03 Definitions. In this chapter:

(1) "Applicant" means the person seeking department review and approval of the response action that will be taken or has been undertaken to receive the protection of the liability exemption under s. 292.15, Stats.

(2m) "Environmental investigation of the property" means a study of the entire property, including any discharges that have or may have migrated off the property, and approved by the department, consisting of a Phase I and Phase II environmental assessment and a site investigation, based on information documented in these environmental assessments.

(3m) "Release" has the meaning specified in s. 292.15 (1) (d), Stats.

Note: Under s. 292.15 (1) (d), Stats., "release" means "the original discharge."

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: r. (2) to (10), cr. (2m), (3m) Register October 2013 No. 694, eff. 11-1-13.**

NR 750.05 Application. (1) APPLICATION SUBMITTAL. An applicant shall submit to the department a completed application form for each property, requesting department oversight in reviewing and approving the proposed response actions. The applicant shall submit with each application a non-refundable fee of \$250.00, to cover the department's cost of reviewing and processing the application. The department may not review the application until the specified fee is submitted to the department. In addition to the application form, the applicant shall include any attachments required by the department, including a copy of the property deed and a map which clearly shows the boundaries of the property.

Note: The application form (Form 4400-178) is available by writing to the Bureau for Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707-7921. The application form is also available at <http://dnr.wi.gov/files/PDF/forms/4400/4400-178.pdf>.

(2) **APPLICATION REVIEW AND ELIGIBILITY NOTIFICATION. (a) Department review.** The department shall review each completed

application to determine if all of the following criteria are satisfied:

1. The applicant is a "voluntary party" under s. 292.15, Stats.

Note: 1995 Wis. Act 227 removed "purchaser". 1995 Wis. Act 227 created s. 292.15 (1) (f), Stats., which provides the definition for "voluntary party" which means "a person who submits an application to obtain an exemption under this section and pays any fees required under sub. (5)", of that section.

2. The property is eligible to receive a liability exemption under s. 292.15, Stats.

Note: 1995 Wis. Act 227 removed s. 144.765 (2) (a), Stats. 1995 Wis. Act 227 created s. 292.15 (2) (a) 1., Stats., which requires that "an environmental investigation of the property is conducted that is approved by the department."

3. The area of land for which the application was submitted meets the definition of a property in s. NR 700.03 (45e).

(b) *Additional information.* The department may request from the applicant additional information needed to determine whether the criteria in par. (a) are met.

(c) *Notification to applicant.* The department shall mail written notice to the applicant stating whether or not the department believes that the applicant and the property are eligible under s. 292.15, Stats. If the department finds that the applicant and property meet the criteria in par. (a) and the applicant chooses to proceed in the program, the applicant shall, at a minimum, submit to the department the appropriate fee in s. NR 750.07, a Phase I environmental assessment, and a scope of work necessary to conduct an adequate Phase II environmental assessment. If the department finds that the applicant or the property does not meet the criteria in par. (a), the applicant will not receive department oversight under s. 292.15, Stats. The applicant may submit additional information to the department to try to establish that the applicant or the property does meet the criteria in par. (a), and may proceed to conduct a response action, while the department makes that determination, if the response action is conducted in compliance with the requirements of chs. NR 700 to 754 and ss. 292.11 and 292.15, Stats.

(3) **NOTICE FROM APPLICANT.** If at any time after an application is submitted to the department, the applicant decides not to pursue the liability exemption provided for in s. 292.15, Stats., the applicant shall promptly notify the department of that decision in writing, so as not to incur any additional obligation to pay department oversight fees.

(4) **INACTIVE APPLICANTS.** Any time after an application is submitted to the department, if an applicant fails to make reasonable progress towards completion of the site investigation and remediation of the property, the department may withdraw the voluntary party from the process to obtain the liability exemption. If the voluntary party fails to provide requested reports or updates on the status of the investigation and remedial action to the department for 1 year or longer, the department may request for a written progress update from the applicant. If the progress update is not received within 60 days or does not show reasonable progress is being made, the department may withdraw the applicant from the process to obtain the liability exemption. The department shall provide a written determination to the applicant confirming withdrawal from the program. The department shall return any unused deposit, unless otherwise directed by the voluntary party. To re-

enter the process, the voluntary party would need to pay the appropriate fees, and make a request to and to enter into an agreement with the department, in accordance with s. 292.11 (7) (d), Stats.

(5) **PROPERTY BOUNDARY CHANGES.** Any time after an application is submitted, if the boundaries of the property change the applicant shall notify the department in writing. The notification shall occur no later than 60 days prior to the request for a certificate of completion on the property. The voluntary party or parties shall submit a revised application to clearly demonstrate the boundaries and legal descriptions of the properties for which the applicant is seeking the liability exemption.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; corrections in (2) (a) 1. and 2. were made under s. 13.93 (2m) (b) 7., Stats., Register September 2007 No. 621; **CR 12-023: am. (1), (2) (a) 1., 2., cr. (2) (a) 3., am. (2) (c), cr. (4), (5) Register October 2013 No. 694, eff. 11-1-13.**

NR 750.07 Assessment and payment of fees for department oversight on or after March 1, 1996.

(1) **ASSESSMENT OF OVERSIGHT FEES.** Beginning on March 1, 1996, applicants shall pay oversight fees to offset department costs incurred on or after July 1, 1995, for activities conducted under s. 292.15, Stats., and this chapter. Oversight fees assessed to applicants shall be based upon the hourly billing rate, established under sub. (2), for hours spent by department staff and other department costs, including, but not limited to, the following activities:

(a) Review of submittals required under this chapter, chs. NR 700 to 754 or under an agreement entered into under s. NR 728.07, or participation in meetings with the applicants or their representatives to discuss an application or proposed project.

(b) Negotiating and entering into contracts under s. 292.15 (2) (a) 3. or 4., Stats.

(c) Negotiating and entering into an agreement under s. 292.15 (4), Stats.

Note: Section 292.15 (4), Stats., was repealed by 2011 Wis. Act 103.

(d) Review of file documents and required submittals to determine whether or not the project may be closed and a certificate of completion may be issued.

(e) Providing assistance in response to any other request by the applicant after the applicant is notified that the department believes that the property is eligible under s. 292.15, Stats.

(f) Placement of the property on the department database, in accordance s. 292.12 (3) or s. 292.57, Stats., unless other fees are specified in ch. NR 749 to add sites to the database.

(2) **HOURLY BILLING RATE.** The department shall calculate on an annual basis an hourly billing rate at which oversight fees shall be assessed. The hourly billing rate shall be calculated by averaging hourly wages of personnel employed by the department in the contaminated land recycling program, and by multiplying the sum by the annual fringe benefit rate and the annual indirect rate. Indirect costs include costs associated with personnel providing support to employees who provide oversight, daily operating costs, travel, equipment, supplies and training.

(3) **DEPOSIT.** The applicant shall submit to the department an advance deposit to cover oversight fees. The advance deposit shall be submitted within 30 days after the applicant is notified that the department believes that the property is eligible under s.

292.15, Stats. The advance deposit shall be \$2,000 for properties of one acre or less and \$4,000 for properties larger than one acre.

(4) **QUARTERLY PAYMENTS.** (a) *General.* If the advance deposit paid by the applicant is not sufficient to offset the department's costs for providing oversight, the department shall bill the applicant on a quarterly basis for additional costs incurred by the department. The applicant shall pay the department within 30 days after receiving the department's quarterly fee statement.

(b) *Information request.* The applicant may request, in writing, within 10 days after the date the fee statement is issued, that the department supply to the applicant a list of department staff and the hours that they spent on oversight activities associated with the project.

(5) **RETURN OF ANY UNUSED DEPOSIT.** When the applicant has been issued a certificate of completion under s. 292.15, Stats., or after department receipt of a notice under s. NR 750.05 (3), the department shall return to the applicant any amount of the applicant's deposit that exceeds the amount of costs incurred by the department for the applicant's project.

(7) **FAILURE TO PAY REQUIRED FEES.** If the applicant fails to pay department oversight fees that are required under this section, the department shall cease to provide oversight to the applicant and may not issue a certificate of completion as provided under s. 292.15, Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: am. (1) (a), (e), cr. (1) (f), renum. (3) (a) to (3) and am., r. (3) (b), (6), am. (7) Register October 2013 No. 694, eff. 11-1-13.**

NR 750.09 Completion of response actions. At the completion of all response actions taken by an applicant who is seeking the liability exemption under s. 292.15, Stats., the applicant shall request case closure in accordance with the requirements in ch. NR 726. The department shall provide the applicant with a written certificate of completion, as provided in s. 292.15, Stats., when all of the following requirements are satisfied:

(1) The property has been closed out by the department in accordance with the requirements in ch. NR 726 and the applicant has provided proof that all conditions of case closure have been satisfied.

(2) The applicant satisfies all the requirements of s. 292.15, Stats., including conducting an environmental investigation of the property, including any discharges that have or may have migrated off the property.

(3) The applicant has paid the department for all oversight fees assessed pursuant to this chapter.

(4) For properties where the voluntary party is seeking an exemption from liability for voluntary party remediation under s. 292.15 (2) (ae), Stats., where groundwater contamination is in concentrations that exceed enforcement standards and the department determines that natural attenuation will restore groundwater quality in accordance with rules promulgated by the department, the insurance requirements in ch. NR 754, have been satisfied.

(5) For properties with residual groundwater contamination that are closed in accordance with the requirements in s. NR 726.07 (2), the fees to add the property to the department database in accordance with ch. NR 749, have been paid.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96; **CR 12-023: am. (intro.), (2), cr. (4), (5) Register October 2013 No. 694, eff. 11-1-13.**