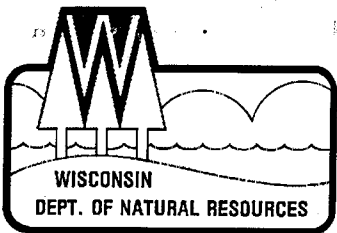


Clearinghouse Rule 95-076



George E. Meyer
Secretary

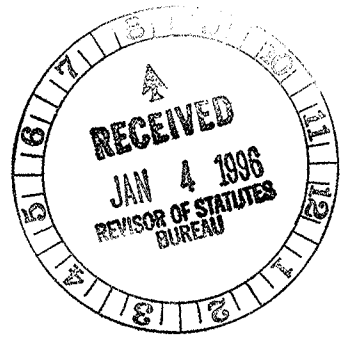
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-20-95 was duly approved and adopted by this Department on October 26, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



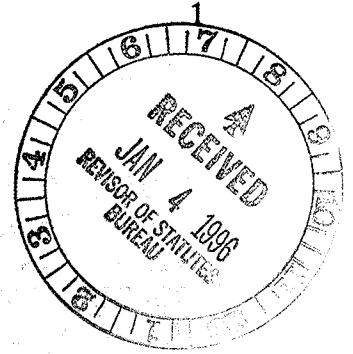
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 13th day of December, 1995.

George E Meyer
George E. Meyer, Secretary

(SEAL)



**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING, AMENDING AND CREATING RULES**



The Wisconsin Natural Resources Board adopts an order to to repeal NR 738.03(4)(a) to (c); to amend ss. NR 700.01, 700.02(1), 700.02(2)(note), 700.02(3)(intro.)(a) and (b), 700.02(4), 700.02(5), 700.03(intro.) 700.03(56)(note), 700.03(60), 700.05(1), 700.05(2), 700.11(3)(b), 700.11(3)(b)(note), 708.01, 712.01, 712.02(3), 714.01, 714.02, 716.01, 718.01, 718.02(1)(a)1, 718.02(1)(b)1, 720.01, 720.02(2), 722.01, 724.01, 724.03, 726.01, 726.02(2), 728.01, 728.02, 728.03(1), 728.05, 728.07(1), 728.07(2)(intro.), 738.03(4); and to create s. NR 700.02(2m), 700.02(3)(d), 700.02(4)(b), 700.02(5)(b), 708.02(2m), 716.02(1)(c), 720.02(1)(d), 722.02(2m), 724.02(4), 726.02(2)(b) and ch. NR 750 relating to the assessment and collection of fees and the establishment of application review procedures for the Contaminated Land Recycling program. SW-20-95

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.765(5) and 227.11(2), Stats.

Statutes interpreted: s. 144.765, Stats.

Section 144.765, Stats., which was created by 1993 Wisconsin Act 453 (the Land Recycling Law), became effective on May 13, 1994. This statute provides a liability exemption to persons who meet the definition of "purchaser" in s. 144.765(1)(c), Stats., and who conduct a thorough environmental investigation, conduct a cleanup of the property that they acquire in compliance with all applicable rules and obtain a certificate of completion from the Department of Natural Resources. This liability exemption is a release from certain requirements in the Hazardous Substance Discharge Law, s. 144.76, Stats., for any hazardous substances that are found on the property and were released to the environment prior to the date of the purchaser's acquisition of the property.

Section 144.765(5), Stats., authorizes the Department of Natural Resources to assess and collect fees, in accordance with rules that it promulgates, from persons who apply for a purchaser liability exemption, to offset the cost of the Department's oversight activities. Chapter NR 750 establishes the fees that will be assessed and the application review procedures that will be followed under the Contaminated Land Recycling Program.

Changes to several related administrative rules are also proposed as part of this rule package, as well as correcting a mistake in ch. NR 738. The following amended and newly created rules are included in this proposed rulemaking: ss. NR 700.01, 700.02(1), 700.02(2)(note), 700.02(2m), 700.02(3), 700.02(4), 700.02(5), 700.03, 700.05, 700.11(3)(b), 708.01, 708.02(2m), 712.01, 712.02(3), 714.01, 714.02, 716.01, 716.02(1)(c), 718.01, 718.02(1)(a)1, 718.02(1)(b)1, 720.01, 720.02(1)(d), 720.02(2), 722.01, 722.02(2m), 724.01, 724.02(4), 724.03, 726.01, 726.02(2), 728.01, 728.02, 728.03(1), 728.05, 728.07(1), 728.07(2)(intro.), 738.03(4). These changes add references to s. 144.765, Stats., and persons who apply for the purchaser liability exemption to existing rules.

SECTION 1. NR 700.01 is amended to read:

NR 700.01 PURPOSE. (1) The purpose of this chapter is to provide definitions of terms used in chs. NR 700 to ~~736~~ 750, to incorporate by reference specified regulations or materials, and to grant confidential status for records, reports and other information furnished to or obtained by the department for use in the administration of chs. NR 702 to ~~736~~ 750.

(2) The purpose of chs. NR 700 to ~~736~~ 750 is to establish consistent, uniform standards and procedures that allow for site-specific flexibility, pertaining to the identification, investigation and remediation of sites and facilities which are subject to regulation under s. 144.442, 144.76, 144.765 or 144.77, Stats. The department intends that responsible parties and other interested persons should be able to efficiently move through the ~~NR 700 rule series response process~~ set forth in chs. NR 700 to 736 with minimal department oversight, except where s. 144.765, Stats., requires department oversight. These rules are adopted pursuant to ss. 144.025 (2)(c), 144.431 (1), 144.435 (1), 144.44 (4)(f) and (7)(g), 144.442, 144.62 (8), 144.76, 144.765, 144.77, 159.03 (1)(a) and 227.11 (2), and ch. 160, Stats.

SECTION 2. NR 700.02 (1) is amended to read:

NR 700.02 APPLICABILITY. (1) This chapter and chs. NR 702, 704 and 708 to ~~736~~ 750 apply to actions taken by the department under the authority of s. 144.442, 144.76, 144.765, or 144.77, Stats.

SECTION 3. NR 700.02 (2)(note) is amended to read:

Note: Persons who are not responsible parties and who voluntarily take a response action at a site or facility that is subject to regulation under s. 144.442 or 144.76, Stats., are not required to comply with the standards and procedures in chs. NR 700 to 724 unless the person is seeking the liability exemption under s. 144.765, Stats. However, the department is not likely to consider case closure under ch. NR 726 for the site or facility until the applicable rules in chs. NR 700 to 724 have been complied with, and a person who did not originally fall within the definition of a responsible party may become a responsible party if the actions taken by that person cause the discharge of a hazardous substance or if the person takes possession or control of the site or facility.

SECTION 4. NR 700.02 (2m) is created to read:

NR 700.02 (2m) This chapter and chs. NR 708, 712 to 728 and 750 apply to actions taken by persons who are seeking the liability exemption under s. 144.765, Stats.

SECTION 5. NR 700.02 (3)(intro.), (a) and (b) are amended to read:

NR 700.02 (3) In addition to being applicable to sites or facilities that are subject to regulation under s. 144.442 or 144.76, Stats., ch. NR 720 applies to soil contamination at all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11);

(b) Hazardous waste facilities where the owner or operator is required to close the facility pursuant to s. 144.64(2m), Stats., or ch. NR 685, or to institute corrective action pursuant to s. 144.735, Stats., or s. NR 635.17, or where the department has imposed special requirements where a discharge has occurred under s. NR 600.07; ~~and~~.

SECTION 6. NR 700.02 (3)(d) is created to read:

NR 700.02 (3)(d) Sites where remedial action is being taken by a person who is seeking the liability exemption under s. 144.765, Stats.

SECTION 7. NR 700.02 (4) is amended to read:

NR 700.02 (4) In addition to being applicable to sites or facilities that are subject to regulation under s. 144.442 or 144.76, Stats., ch. NR 722 applies to the evaluation of proposed remedial action for ~~solid~~ all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11).

SECTION 8. NR 700.02 (4)(b) is created to read:

NR 700.02 (4)(b) Sites where remedial action is being taken by a person who is seeking the liability exemption under s. 144.765, Stats.

SECTION 9. NR 700.02 (5) is amended to read:

NR 700.02 (5) In addition to being applicable to sites or facilities that are subject to regulation under s. 144.442 or 144.76, Stats., ch. NR 726 applies to the proposed closure of ~~solid~~ all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11).

SECTION 10. NR 700.02 (5)(b) is created to read:

NR 700.02 (5)(b) Sites where remedial action has been taken by a person who is seeking the liability exemption under s. 144.765, Stats.

SECTION 11. NR 700.03 (intro.) is amended to read:

NR 700.03 DEFINITIONS. The following definitions apply to chs. NR 700 to 738 750:

SECTION 12. NR 700.03 (56)(note) is amended to read:

Note: Section 144.442 (1) (e), Stats., defines "waste site" to mean "any site, other than an approved facility, an approved mining facility or a nonapproved facility, where

waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978."

SECTION 13. NR 700.03 (60) is amended to read:

NR 700.03 (60) "Submittal" means any document, report, plan, set of specifications, engineering design or scientific evaluation of site data that is prepared to satisfy the requirements of chs. NR 702 to ~~726~~ 750.

SECTION 14. NR 700.05 (1) is amended to read:

NR 700.05 (1) Except as provided under sub. (2), any record, report or other information furnished to, or obtained by, the department in the administration of chs. NR 700 to ~~736~~ 750 is a public record subject to the provisions of ss. 19.21, 19.31 to 19.39, Stats., and s. NR 2.195.

SECTION 15. NR 700.05 (2) is amended to read:

NR 700.05 (2) If confidential status is sought for any record, report or other information furnished to or obtained by the department under chs. NR 700 to ~~736~~ 750, the standards and procedures in s. NR 2.19 are applicable to all sites and facilities, and the standards and procedures in s. 144.433 (2) Stats., are applicable to the owners and operators of solid waste facilities.

SECTION 16. NR 700.11 (3)(b) is amended to read:

NR 700.11 (3)(b) Where an application ~~for review and certification~~ is submitted to the department by ~~an entity~~ a person seeking a liability exemption as ~~a purchaser~~ under s. 144.765, Stats.

SECTION 17. NR 700.11 (3)(b)(note) is amended to read:

Note: Section 144.765, Stats., as created by 1993 Wisconsin Act 453, ~~is the Remediated Property/Purchaser Liability statute, also known as the Contaminated Lands Recycling Program, which applies to persons purchasing~~ acquiring contaminated property. Department ~~certification and review~~ of submittals ~~which is required by s. 144.765, Stats., to be more frequent than that described in the simple site review process under s. NR 700.11(1) is required to determine if a thorough investigation of the property has been conducted and the property environment has been satisfactorily restored; and the harmful effects from any release of a hazardous substance has been minimized.~~

SECTION 18. NR 708.01 is amended to read:

NR 708.01 PURPOSE. This chapter establishes criteria for emergency and non-emergency immediate actions and interim actions to be taken by responsible parties to protect public health, safety and welfare and the environment; and establishes the documentation requirements associated with these response actions. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765, 159.03(1)(a) and 227.11(2), Stats.

SECTION 19. NR 708.02 (2m) is created to read:

NR 708.02 (2m) This chapter applies to response actions taken by persons seeking the liability exemption under s. 144.765, Stats.

SECTION 20. NR 712.01 is amended to read:

NR 712.01 PURPOSE. This chapter establishes minimum standards for experience and professional qualifications for persons who perform and provide certain services or scientific evaluations associated with specified environmental response actions. This chapter is adopted pursuant to ss. 144.442, 144.76, 144.765, 144.77 and 227.11(2), Stats.

SECTION 21. NR 712.02(3) is amended to read:

NR 712.02(3) Except as provided in s. NR 712.11, this chapter applies to any person who provides engineering services or performs any scientific evaluation associated with a remedial action or any of the interim actions specified in s. NR 708.11(4) for a site, facility or portion of a site or facility that is subject to regulation under s. 144.442 or 144.76, Stats., regardless of whether there is direct involvement or oversight by the department. This chapter also applies to any person who provides engineering services or performs any scientific evaluation associated with a response action taken by a person seeking the liability exemption under s. 144.765, Stats.

SECTION 22. NR 714.01 is amended to read:

NR 714.01 PURPOSE. The purpose of this chapter is to identify required public participation and public information activities for response actions undertaken pursuant to chs. NR 700 to 726. Nothing in this chapter shall be construed to prevent the department or responsible parties from providing additional means for public information and participation consistent with the provisions of this chapter. This chapter contains public participation requirements mandated for environmental repair sites or facilities in s. 144.442, Stats., and for leaking underground storage tanks in 40 CFR part 280. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765, 144.77 and 227.11(2), Stats.

SECTION 23. NR 714.02 is amended to read:

NR 714.02 APPLICABILITY. This chapter applies to response actions taken under the authority of s. 144.442, ~~or 144.76~~ or 144.765, Stats.

SECTION 24. NR 716.01 is amended to read:

NR 716.01 PURPOSE. The purpose of this chapter is to ensure that site investigations provide the information necessary to define the nature, degree and extent of contamination, define the source or sources of contamination, determine whether any interim actions, remedial actions, or both are necessary at the site or facility, and allow a interim or remedial action option to be selected that complies with applicable environmental laws. Nothing in this chapter shall be construed to require plans or reports that are more detailed or complex than is justified by the known scope of

contamination or the complexity of the site or facility. This chapter is adopted pursuant to ss. 144.431(a) and (b), 144.442, 144.76, 144.765, 159.03(1)(a) and 227.11(2), Stats.

SECTION 25. NR 716.02 (1)(c) is created to read:

NR 716.02 (1)(c) Persons undertaking actions in order to obtain the liability exemption under s. 144.765, Stats. In this chapter, where the term "responsible parties" appears, it shall be read to include "the purchaser" or "person under contract with the purchaser" where an action is being taken to comply with s. 144.765, Stats.

SECTION 26. NR 718.01 is amended to read:

NR 718.01 PURPOSE. This chapter establishes minimum standards for the storage, transportation, treatment and disposal of contaminated soil and certain other solid wastes excavated during response actions conducted in accordance with the requirements of chs. NR 700 to 726. Where responsible parties have chosen to comply with the requirements of this chapter, the responsible parties are exempt from the storage, transportation, treatment and disposal requirements in ss. 144.43 to 144.441, 144.443 to 144.47, Stats., and chs. NR 500 to 536, except where solid waste program requirements are specifically referenced in this chapter. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.435, 144.44(7)(g), 144.442, 144.76, 144.765, 159.03(1)(a) and 227.11(2), Stats.

SECTION 27. NR 718.02(1)(a)1 is amended to read:

NR 718.02 (1)(a)1. Is excavated as part of a response action conducted pursuant to chs. NR 700 to 726, at sites or facilities subject to regulation under s. 144.442 or 144.76, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 144.765, Stats.; and

SECTION 28. NR 718.02(1)(b)1 is amended to read:

NR 718.02 (1)(b)1. Contains materials other than contaminated soil and is excavated during a response action conducted pursuant to chs. NR 700 to 726, at sites or facilities subject to regulation under s. 144.442, or 144.76, Stats., or sites where remedial action is being taken by a person who is seeking the liability exemption under s. 144.765, Stats.;

SECTION 29. NR 720.01 is amended to read:

NR 720.01 PURPOSE. The purpose of this chapter is to establish soil cleanup standards, for the remediation of soil contamination, which result in restoration of the environment to the extent practicable, minimize harmful effects to the air, lands and waters of the state and are protective of public health, safety and welfare, and the environment as required by ss. 144.442 ~~and~~, 144.76 and 144.765, Stats., and which are consistent with ch. 160, Stats., and ch. NR 140. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765 and 227.11(2), Stats.

SECTION 30. NR 720.02(1)(d) is created to read:

NR 720.02 (1)(d) Sites where remedial action is being taken by a person who is seeking the liability exemption under s. 144.765, Stats.

SECTION 31. NR 720.02(2) is amended to read:

NR 720.02(2) This chapter applies to interim actions taken by responsible parties or other persons under s. 144.765, Stats., when at the completion of both the site investigation and interim action taken to address contaminated soil, the responsible parties or persons taking action under s. 144.765, Stats. request that the site or facility be closed out in accordance with ch. NR 726, without taking a subsequent remedial action to address the contaminated soil.

SECTION 32. NR 722.01 is amended to read:

NR 722.01 PURPOSE. The purpose of this chapter is to establish minimum standards for identifying and evaluating remedial action options and selecting remedial actions. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765, 159.03(1)(a) and 227.11(2), Stats.

SECTION 33. NR 722.02 (2m) is created to read:

NR 722.02 (2m) This chapter applies to all remedial actions taken by persons seeking the liability exemption under s. 144.765, Stats. In this chapter, where the term "responsible party" appears, it shall be read to include the "purchaser" where an action is being undertaken to comply with s. 144.765, Stats.

SECTION 34. NR 724.01 is amended to read:

NR 724.01 PURPOSE. The purpose of this chapter is to specify the requirements for the design, implementation, operation, maintenance and monitoring of remedial actions and certain types of interim actions. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765, 159.03(1)(a) and 227.11 (2), Stats.

SECTION 35. NR 724.02(4) is created to read:

NR 724.02(4) This chapter applies to all remedial actions and to those types of interim actions that are specified in sub. (1) taken by persons seeking the liability exemption under s. 144.765, Stats. In this chapter, where the term "responsible parties" appears, it shall be read to include the "purchaser" where an action is being taken to comply with s. 144.765, Stats.

SECTION 36. NR 724.03 is amended to read:

NR 724.03 DEFINITIONS. The definitions in s. NR 700.03 apply to this chapter. **In this chapter, where the term "responsible parties" appears, it shall be read to include "purchasers" where an action is being taken to comply with s. 144.765, Stats.**

SECTION 37. NR 726.01 is amended to read:

NR 726.01 PURPOSE. The purpose of this chapter is to specify the minimum requirements and conditions that shall be met before the department may determine that a case related to a specific site or facility may be closed. This chapter is adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765, 159.03(1)(a) and 227.11(2), Stats.

SECTION 38. NR 726.02 (2) is amended to read:

NR 726.02 (2) In addition to being applicable to sites or facilities specified in sub. (1), this chapter applies to the proposed closure of ~~solid~~ all of the following:

(a) Solid waste facilities where remedial action is required by the department pursuant to s. NR 508.20(11).

SECTION 39. NR 726.02 (2)(b) is created to read:

NR 726.02 (2)(b) Sites where remedial action has been taken by a person who is seeking the liability exemption under s. 144.765, Stats.

SECTION 40. NR 728.01 is amended to read:

NR 728.01 PURPOSE. The purpose of this chapter is to describe the enforcement tools that are available to the department to enforce chs. NR 700 to ~~726~~ 750 and to implement response actions at sites or facilities with environmental pollution, and sites where there has been a discharge of a hazardous substance. This chapter is

adopted pursuant to ss. 144.431(1)(a) and (b), 144.442, 144.76, 144.765, 144.77 and 227.11(2), Stats.

SECTION 41. NR 728.02 is amended to read:

NR 728.02 APPLICABILITY. This chapter applies to enforcement actions taken by the department under the authority of s. 144.442, 144.76 ~~or~~ 144.765 or 144.77, Stats.

SECTION 42. NR 728.03(1) is amended to read:

NR 728.03 (1) "Environmental repair contract" means an agreement entered into by one or more persons and the department pursuant to s. 144.442 or 144.765, Stats., which requires the performance of a response action at a site or facility which causes or threatens to cause environmental pollution.

SECTION 43. NR 728.05 is amended to read:

NR 728.05 REFERRALS FOR RULE VIOLATIONS. Any person who violates the requirements of chs. NR 700 to ~~726~~ 750 may be referred to the office of the attorney general by the department. Any person who is referred to the office of the attorney general by the department shall be given written notice of the referral. Section 144.98, Stats., requires that the attorney general enforce ch. 144, Stats., and all rules promulgated to implement ch. 144, Stats.

SECTION 44. NR 728.07(1) is amended to read:

NR 728.07 ENVIRONMENTAL REPAIR CONTRACTS. (1)

APPLICABILITY. The department may enter into an environmental repair contract with any person for response actions pursuant to s. 144.442 or 144.765, Stats.

SECTION 45. NR 728.07(2)(intro.) is amended to read:

(2) **CONTENT.** (intro.) All environmental repair contracts entered into pursuant to s. 144.442 or 144.765, Stats., shall contain at a minimum, all of the following provisions:

SECTION 46. NR 738.03 (4) (a) to (c) are repealed.

SECTION 47. NR 750 is created to read:

CHAPTER NR 750

**DEPARTMENT FEES FOR PROVIDING OVERSIGHT FOR THE
CONTAMINATED LAND RECYCLING PROGRAM**

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 parties undertaking response actions in accordance with s. 144.765, Stats. This chapter is adopted pursuant to ss. 144.765 and 227.11 (2), Stats.

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. 144.765, Stats.

Note: The Land Recycling Law (1993 Wisconsin Act 453, effective May 13, 1994), created s. 144.765, Stats. 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. 144.76, Stats.

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. 144.765, Stats.

(2) "Arm's-length" means a transaction negotiated by unrelated persons who have no business ties, each acting in their own self interest.

Note: If fair market value has been paid to acquire the property, it is one indication that the transaction was an "arm's-length" transaction. However, the department does not rule out the possibility that, in some circumstances, a transaction may be an "arm's-length" transaction even though fair market value was not paid by the purchaser.

(3) "Good faith" means the absence of malice and design to defraud or to seek an unconscionable advantage over another person.

(4) "Owner of a business or entity" has the meaning specified in s. 144.765 (1) (b), Stats.

Note: Under s. 144.765 (1) (b), Stats., "owner of a business or entity" means "any person who owns or who receives direct or indirect consideration from the operation of a business or entity regardless of whether the business or entity remains in operation and regardless of whether the person owns or receives consideration at the time any discharge of a hazardous substance occurs. 'Owner of a business or entity' includes a subsidiary or parent corporation."

(5) "Phase I environmental assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.

(6) "Phase II environmental assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase I environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not

limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

(7) "Purchaser" has the meaning specified in s. 144.765 (1) (c), Stats.

Note: Under s. 144.765, (1) (c), Stats., "purchaser" means "a person who acquires property in an arm's-length, good faith transaction and to whom all of the following apply:

1. The person did not participate in the management of, and was not the owner of, a business or entity that caused the release of a hazardous substance on the property.
2. The person did not own the property at the time a hazardous substance was released.
3. The person did not otherwise cause the release of a hazardous substance on the property."

(8) "Release" has the meaning specified in s. 144.765 (1) (d), Stats.

Note: Under s. 144.765 (1) (d), Stats., "release" means "the original discharge."

(9) "Subsidiary or parent corporation" has the meaning specified in s. 144.765 (1) (e), Stats.

Note: Under s. 144.765 (1) (e), Stats., "subsidiary or parent corporation" means "any business entity, including a subsidiary, parent corporation or other business arrangement that has elements of common ownership or control or uses a long-term contractual arrangement with any person that has the effect of avoiding direct responsibility for conditions on a parcel of property."

(10) "Thorough environmental investigation" means a study of the entire property, 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.

NR 750.05 APPLICATION. (1) **APPLICATION SUBMITTAL.** An applicant shall submit to the department a completed application form, requesting department oversight in reviewing and approving the proposed response actions. The applicant shall submit with the application a non-refundable fee of \$250.00, to cover the department's cost of reviewing the application. The department may not review the application until the specified fee is submitted to the department.

Note: The application form (Form 4400-178) is available by telephoning the Contaminated Land Recycling Information Line at 1-800-367-6076 or (608) 264-6020 or by writing the Emergency and Remedial Response Section, Public Information Requests,

Bureau of Solid and Hazardous Waste Management, P.O. Box 7921, Madison, WI,
53707-7921.

(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 "purchaser" under s. 144.765, Stats.
2. The response actions that are proposed will be conducted by the persons specified in s. 144.765 (2) (a), Stats.

Note: Section 144.765 (2) (a), Stats., requires that a "thorough environmental investigation of the property" be conducted. Either the "purchaser" may conduct the investigation or the person from whom the purchaser acquires the property may conduct the investigation under contract with the "purchaser." In addition, all necessary response actions required to restore the environment are to be conducted by the "purchaser."

(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 is eligible under s. 144.765, Stats. If the department finds that the applicant meets the criteria in par. (a) and the applicant chooses to proceed in the program, the applicant shall, at a

minimum, submit to the department 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 does not meet the criteria in par. (a), the applicant will not receive department oversight under s. 144.765, Stats. The applicant may submit additional information to the department to try to establish that the applicant 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 750.

(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. 144.765, 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.

**NR 750.07 ASSESSMENT AND PAYMENT OF FEES FOR DEPARTMENT
OVERSIGHT ON OR AFTER THE EFFECTIVE DATE OF THESE RULES . . .
[REVISOR INSERT DATE].**

(1) ASSESSMENT OF OVERSIGHT FEES. Beginning on the effective date of these rules . . . [revisor insert date], applicants shall pay oversight fees to offset department costs incurred on or after July 1, 1995, for activities conducted under s. 144.765, 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 736 or under a contract 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. 144.765 (2) (a) 3. or 4., Stats.

(c) Negotiating and entering into an agreement under s. 144.765 (4), Stats.

(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 applicant is eligible under s. 144.765, Stats.

(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. (a) For all applications submitted after the effective date of these rules . . . [revisor insert date], 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 applicant is eligible under s. 144.765, Stats. The advance deposit shall be \$1,000 for properties of one acre or less and \$3,000 for properties larger than one acre.

(b) An applicant who is receiving department oversight under s. 144.765, Stats., who has submitted an application prior to the effective date of these rules . . . [revisor insert date] and has not yet satisfied the requirements of ch. NR 726 for case closure by the effective date of these rules . . . [revisor insert date], shall within 30 days after the effective date of these rules . . . [revisor insert date] submit to the department a deposit of \$1,000 for properties of one acre or less, and \$3,000 for properties larger than one acre, to be used to pay department oversight fees.

(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. 144.765, 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.

(6) OVERSIGHT FEE OPTIONS. (a) In cases where the department has provided oversight beginning with the review of either a scope of work for a Phase II environmental assessment or an investigation work plan, the applicant has the option of continuing to pay assessed fees under sub. (4), or to elect to be assessed a final fee upon department approval of the final design report and operation and maintenance plan for a specific project.

(b) If the applicant is eligible and chooses the final fee option, the department shall determine the final fee by calculating the sum of the department costs incurred to date for providing oversight to the project, including the review and approval of the final design report, and shall assess a final fee equivalent to 40% of the sum of the department's previously-incurred oversight costs for the project.

(c) The final fee shall be submitted within 30 days after receiving the departments' final fee statement.

(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. 144.765 (2) (a) 3., Stats.

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. 144.765, 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. 144.765 (2) (a) 3, 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. 144.765, Stats., including conducting a thorough environmental investigation.

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

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 26, 1995.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2)(intro.), Stats.

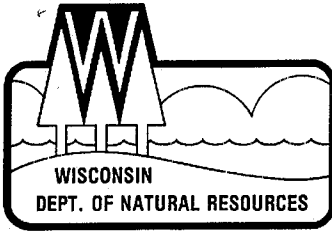
Dated at Madison, Wisconsin December 13, 1995.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By George E. Meyer
George E. Meyer, Secretary



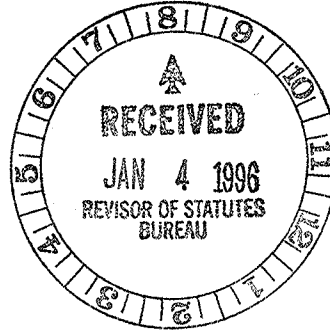
George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street
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December 13, 1995

Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI



Dear Mr. Poulson: *Gary*

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. SW-20-95. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

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

Sincerely,

George
George E. Meyer
Secretary

Enc.