

## Chapter NR 730

## SUPERFUND COST SHARING

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**NR 730.01 Purpose.** The purpose of this chapter is to establish criteria for the department's expenditure of moneys for Superfund state cost share purposes from the appropriations that are referenced in s. 292.31 (7) (b), Stats., and for determining a municipality's responsibility to pay a share of the state's Superfund cost share in cases where a municipality will benefit from the proposed remedial action. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1) and 292.31, Stats.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 730.02 Applicability.** This chapter applies to all cases where the department is considering signing a Superfund state contract with U.S. EPA, under the authority of s. 292.31 (7), Stats., in order to authorize the payment of a state cost share for a Superfund-financed remedial action. It also applies to those cases where a municipality will benefit from the proposed remedial action and is not a responsible party under section 107 (a) of CERCLA.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 730.03 Definitions.** The definitions found in s. NR 700.03 apply to this chapter.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 730.05 Superfund state cost share. (1) COOPERATIVE AGREEMENTS AND SUPERFUND STATE CONTRACTS.** The department may enter into cooperative agreements or Superfund state contracts with the U.S. EPA for the purpose of taking a response action under CERCLA. The department may use money from the appropriations referenced in s. 292.31 (7), Stats., to pay the required Superfund state cost share of any Superfund-financed remedial action taken at a national priorities list site in accordance with the criteria in sub. (2).

**(2) CRITERIA FOR COST SHARING. (a) General.** The department shall consider the criteria in pars. (b) to (h), to determine whether or not to enter into a Superfund state contract with U.S. EPA.

**(b) Department evaluation of the proposed remedial action.** The department shall review the remedial investigation, feasibility study, the proposed plan and any other reports prepared by U.S. EPA to evaluate the proposed remedial action. The department may not commit the required Superfund state cost share for a remedial action unless the department is in substantial agreement with EPA's assessment of the expected ability of the proposed remedial action to protect public health, safety and welfare and the environment, and to comply with the applicable state environmental and public health laws and standards, whichever are more stringent.

**(c) Money available to the department.** The department shall consider the money available from the appropriations in s. 292.31 (7) (b), Stats., taking into account all of the following:

1. At the beginning of each fiscal year, the department shall reserve adequate funds for planned investigations, environmental repair and hazardous substance spill program response actions, abandoned container response actions, LUST program state matching funds and emergency actions.

2. The department shall consider the timing of expenditures in relation to the end of the state fiscal year and the availability of new appropriations. When nearing the end of a state fiscal year, the department may use funds earlier reserved for environmental repair or hazardous substance spill program response actions, abandoned container response actions and emergency immediate actions, to commit to a Superfund state cost share for remedial actions to be taken at a national priorities list site.

**(d) Money available from other sources.** The department shall consider the money available from other sources to pay the capital cost and annual operation and maintenance costs for remedial actions taken at a national priorities list site. Sources may include any one of the following:

1. Potentially responsible parties or interested persons, including local governments, who are willing and able to pay any part of the remedial action costs.

2. Funding from the Wisconsin well compensation program under s. 281.75, Stats.

3. For mining facilities, the investment and local impact fund under s. 289.68 (2) to (4), Stats.

4. Closure bonds or other proof of financial responsibility that were previously submitted to the department.

**(e) Timing of response actions.** The department shall consider whether or not the threat to public health, safety or welfare or the environment at the site or facility shall become greater if remedial action is delayed.

**(f) Preclusion of other projects.** The department shall consider whether the department's ability to take response action at other sites or facilities shall be precluded by committing state funds for the Superfund state cost share for the proposed remedial action to be taken at a national priorities list site.

**(g) Department staff resources.** The department shall consider the availability of department staff to serve as project managers and to review submittals.

**(h) Other criteria.** The department may consider any other criteria it deems appropriate.

**(3) NOTIFICATION.** After consideration of the criteria in sub. (2), the department shall notify EPA as to whether or not the department shall commit the required Superfund state cost share for the proposed remedial action to be taken under CERCLA.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (1), (2) (a), (c) (intro.), (d) 2. and 3. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 730.07 Municipal cost share. (1) GENERAL. (a)** The department may require a municipality that is not a potentially responsible party under CERCLA to pay up to 50% of the amount expended by the department, for a Superfund-financed response action taken in cooperation with the U.S. EPA, under CERCLA. A payment schedule for the municipal cost-share amount shall be negotiated between the municipality and the department, and shall include credit to the municipality for provision of operation and maintenance activities, as well [as] credit for payment of any capital costs. A municipality shall not be required to pay more than \$3 per capita in any one year.

(b) A response action need not be taken within the boundaries of a municipality for that municipality to be required to pay a share of the state's Superfund cost share. More than one municipality may be required to pay a share of the state's cost share at a CERCLA site, with the total amount charged to all municipalities at a given site not to exceed 50% of the amount of the state's cost-share. If more than one municipality will benefit, the analysis performed pursuant to sub. (2) shall be done for each municipality.

(2) **METHOD.** The department shall use the following methods specified in pars. (a) to (d), including Tables 1 and 2, to determine the portion of the state's Superfund cost share a municipality shall be required to pay.

(a) The department shall use Table 1 to determine the appropriate percentage for the full property value per capita in the municipality, as specified in subd. 1., and the appropriate percentage for the average per capita income of residents in the municipality, as specified in subd. 2.

1. The full property value per capita in the municipality. The full property value per capita for each municipality shall be determined using the most recent data published by the Wisconsin department of revenue. The full property value per capita for a municipality shall be compared with the full property value per capita for all municipalities in Wisconsin to determine the municipality's relative ability to pay with respect to per capita property value.

2. The average per capita personal income of residents in the municipality. The most recent Wisconsin department of revenue statistics that are available shall be used to determine the per capita personal income for all municipalities in Wisconsin. The average per capita personal income for a municipality shall be compared with the average per capita personal income for all municipalities in Wisconsin to determine the municipality's relative per capita personal income.

(b) The full property value per capita in the municipality and the per capita personal income of the residents in the municipality, compared to all Wisconsin municipalities, shall be calculated separately and the resulting percentages shall be summed together to get a total percentage for Table 1.

**Table 1**

Municipality's Property Value per Capita Divided by Average Property Value per Capita for All Wisconsin Municipalities	Relative Ability to Pay
>100%	25%
75% – 99.9%	18%
50% – 74.99%	12%
25% – 49.99%	6%
0% – 24.99%	1%
Municipality's per Capita Income Divided by Average per Capita Income for All Wisconsin Municipalities	Relative Ability to Pay
>100%	25%
75% – 99.99%	18%
50% – 74.99%	12%
25% – 49.99%	6%
0 – 24.99%	1%

(c) The department shall use Table 2 to determine the benefit received by the municipality. The benefit of a remedial action to a municipality shall be defined in terms of the cost savings to the municipality resulting from implementation of the remedial action. To calculate the benefit, cost savings for the 10 years following construction of the remedial action shall be used in situations where the remedial action will require operation and maintenance after construction is completed. In calculating the benefit, only those projects that would be performed by the municipality (i.e. installation of a new water supply, road maintenance or flood protection) shall be counted.

**Table 2**

Benefit to the municipality, measured as a percentage of most recent annual budget	Percentage for purposes of determining amount municipality is required to pay
>50%	50%
25.1 – 49.9%	25%
10.1 – 24.9%	10%
<10%	1%

(d) After the individual percentages have been determined using the methods in pars. (b) and (c), the percentages shall be summed and divided by 2 to get a final percentage. The final percentage shall represent the percentage of the state's Superfund cost share the municipality shall have to pay.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.