

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 7/8/20
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3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)  
NR 700-754 – Investigation and Remediation of Environmental Contamination; RR-11-17(E)

4. Subject  
Financial responsibility for engineering controls for contaminated sediment remediation, and insurance and financial responsibility for Voluntary Party Liability Exemption projects.

5. Fund Sources Affected <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.370 (4) (dh) and (du)
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7. Fiscal Effect of Implementing the Rule

<input type="checkbox"/> No Fiscal Effect	<input checked="" type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	

8. The rule will impact all of the following

<input type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors
<input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).  
Approximately \$322,114 or less per year (Fiscal Impacts: \$54,809 and Economic Impacts: \$267,305)

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?

Yes     No

11. Policy Problem Addressed by the Rule

The Remediation and Redevelopment program is proposing the creation of chs. NR 756 and 758. The purpose of these revisions is to provide procedures for new requirements and statutory changes under 2015 Wisconsin Act 204 (“Act 204”).

Act 204 amended Wis. Stat. ch. 292 by establishing new financial assurance requirements for sites where an engineering control is used to address contaminated sediment. Under s. 292.12(2)(d), the department may require submission of a plan and compliance schedule and proof of financial responsibility for the maintenance of an engineering control or for the investigation and remediation of residual contamination following the removal of a structural impediment.

Act 204 also created the opportunity for parties to obtain a Voluntary Party Liability Exemption (VPLE) at sites with contaminated sediments. Under Wis. Stat. s. 292.15 (2) (af) 3m., one of the requirements of the VPLE program for contaminated sediment sites is proof of insurance or other financial assurance.

Proposed revisions add ch. NR 756 to implement changes relating to financial responsibility for engineering controls and for addressing contamination if a structural impediment is removed. The proposed rule adds ch. NR 758 to implement changes relating to environmental insurance and financial assurance requirements for contaminated sediment sites in the VPLE program.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Potentially affected parties include businesses, local governments, utilities, and developers and others who are responsible under s. 292.11 (3), Stats., for the investigation and cleanup of contamination, and parties that voluntarily elect to pursue investigation and cleanup of contamination, and environmental consultants that provide professional assistance to these entities. The impacts in this statement are estimated on an annual basis, consistent with the manner in which impacts are estimated for the permanent rule; however, the impact of this emergency rule will be limited to a duration of less than a year. All entities that may be affected have been contacted for comments during the solicitation period of the permanent rule and DNR received comments on the Economic Impact Analysis (EIA) from several affected parties. DNR is reviewing those comments and revising the EIA for the permanent rule.

The statutory emergency rulemaking process requires a public hearing following the effective date of the emergency rule. To encourage public input, DNR staff presented these rules throughout various stages of their development at five public meetings during the 14-month rule development phase of the rulemaking process. Following the receipt of comments on the emergency rule proposed for the May 2020 meeting of the Natural Resources Board, DNR staff withdrew the emergency rule and held two additional public meetings in June and July of 2020. DNR subsequently revised the proposed emergency rule to remove provisions not explicitly authorized by the emergency rulemaking mandate in s. 36, 2015 Wis. Act 204.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

All local government units that may be affected have been given the opportunity to participate in the development of the EIA during the solicitation period of the permanent rule. The local government units that will be consulted as part of the solicitation include those that have expressed interest in the Brownfields Study Group and those that may be contacted through county and municipal associations such as the League of Wisconsin Municipalities.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The total impact of this proposed rule (fiscal impacts of implementation and economic impacts) is estimated to range between \$101,809 to \$322,114, annually. The impacts in this statement are estimated on an annual basis, consistent with the manner in which impacts are estimated for the permanent rule; however, the impact of this emergency rule will be limited to a duration of less than a year.

Economic Impacts on Private Sector Businesses, Local Governments and Public Entities

The economic impact of this rule on private sector businesses, local governments units and public entities is estimated to be \$267,305. Details of this estimate are provided below.

Contaminated sediment sites with engineering controls: Act 204 requires parties that are responsible for addressing sediment contamination, and that use an engineering control to address this contamination, to maintain and monitor the engineering control and to demonstrate proof of financial responsibility to perform the maintenance and monitoring. Act 204 also requires sites with a structural impediment that prevents full remediation of contaminated sediments to meet these requirements with regard to investigation and remediation following the removal of the impediment. The proposed rule, ch. NR 756, describes the procedures and options for meeting these requirements. Costs associated with the rule range from \$42,500 to \$257,225 and include the following:

- *Planning and inspection.* The costs of completing the plan and compliance schedule and 5-year inspections for maintenance of an engineering control and investigation and remediation following the removal of a structural impediment. Initial costs of completing the plan and compliance schedule are estimated to range between \$20,000 and \$30,000 per year; 5-year inspection costs are anticipated to range between \$42,500 and \$57,000 per year. The estimates for initial costs assume the completion of the plan and compliance schedule and the

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completion of an engineering analysis by a licensed professional engineer. The estimates for 5-year inspection costs assume the completion of an engineering analysis, along with annual engineering control monitoring, annual surface water and fish sampling and monitoring, and wetland monitoring under federal and state permit requirements.

- *Financial assurance.* The fees and costs for financial assurance requirements for planned actions listed within the plan and compliance schedule and for potential events that may occur to affect the completion of the goals of the plan and compliance schedule. Assuming that all requirements are applied to each site, the costs of financial assurance are anticipated to range between no cost and up to \$257,225 per year. This estimate assumes a 30-year proof period for all commitments, a one-acre area for the investigation and remediation following an impediment removal, and a 5-acre area for investigation, dredge, and disposal of sediments following the failure of an engineering control. The upper estimate assumes a method of financial assurance having an annual cost of 3%.

Items that may have an indeterminate cost include the opportunity cost for funds that are set aside for financial assurance purposes, which will vary according to the nature of the responsible party's business and the selected financial assurance method, and the annual resubmission of financial assurance to adjust for inflation.

The number of contaminated sediment sites is estimated to be fewer than 50 and these sites are at various stages of investigation and cleanup and take many years to address. For the purpose of this estimate, the department estimates that one engineering control approval is granted every two years. The rule provides a range of financial assurance options to allow maximum flexibility to parties (e.g., a bond, a letter of credit, an escrow account). Costs can vary based on the cost to maintain and monitor the engineering control, for example, a surety bond or letter of credit can cost between 0.5% to 3% of the bonded or letter of credit amount; use of the department trust fund or escrow would range from 0 to 3% of the amount that is set aside.

Contaminated sediment sites in VPLE: Act 204 requires persons obtaining a VPLE at a property with contaminated sediment to maintain insurance for the cost of any further remediation that may be necessary. The statutory change includes allowing the department to waive this requirement or accept forms of financial responsibility other than insurance. The proposed rule, ch. NR 758, sets forth the procedures, criteria, and options for these requirements. The VPLE program is optional and not required by any party and any costs would be evaluated on a case by case basis by the party to consider against the VPLE benefits. Based on the number of potential sites and estimated premiums provided by the insurance broker for the State of Wisconsin, the costs associated with the rule range from \$4,500 to \$10,080 annually.

The department approves closure for approximately one contaminated sediment site per year; the department estimates that one business, local government, or individual may choose to enter the VPLE program every other year for properties with contaminated sediment. The rule requires insurance and the premiums for five years of insurance are estimated to be between \$45,000 and \$100,800. Therefore, the annual cost for insurance for each VPLE sediment site would be approximately \$9,000 to \$20,160. The costs of alternative financial assurance mechanisms would vary depending on the type of financial instrument selected, financial strength of the company, extent of sediment contamination, and other factors, however, insurance is expected to be less costly than other types of financial assurance. A waiver would incur no costs.

#### Fiscal Impacts on the WDNR Remediation and Redevelopment Program:

The fiscal impact of this proposed rule is estimated to be \$54,809 per year. The rule will have a minimal fiscal impact on the DNR Remediation and Redevelopment program. The financial responsibility requirements related to sediment (chs. NR 756 and NR 758) would affect few sites (1 or 2 every two years) and the workload for DNR technical staff would be covered by fee-based revenues. The department anticipates that most of the cost of additional DNR technical staff time required under this proposed rule can be absorbed within the agency's staff workload.

The cost of the additional workload for DNR technical staff is expected to be mostly or completely covered by fee-based program revenues. Staff costs in both cases are calculated as the median hourly rate for an advanced

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hydrogeologist, including fringe and indirect benefits, at a total hourly rate of \$67.94. For ch. NR 756, the DNR staff costs for reviewing the required plan and compliance schedule at 15 hours is nominally more than the current \$700 review fee. We anticipate that this additional cost could be absorbed within the agency's budget.

For ch. NR 758, the approximate number of technical oversight hours for a complex VPLE site is around 100, which would generate \$10,500 in fee revenue. The hourly DNR staff costs for reviewing required reports are covered by the current hourly VPLE review fee rate of \$105. This is an existing revenue source for the agency, and we do not anticipate any changes to occur under this proposed rule.

While the cost of DNR technical staff time can be absorbed, the financial assurance requirements will necessitate a staff member with specialized background and expertise. The department estimates that the cost of hiring an additional staff to administer financial assurance requirements would incur an estimated cost of \$54,809 per year (0.5 FTE Natural Resource Program Coordinator, including salary, fringe benefits, and indirect costs of the position).

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing the rule include:

- Implementation of 2015 Wis. Act 204 regulatory requirements and consistency between ch. 292, Stats., and the NR 700 rule series.
- Increased waterfront brownfields cleanup and redevelopment from regulatory certainty and option to obtain Voluntary Party Liability Exemption (VPLE) for sediment cleanups. The VPLE program incentivizes brownfields redevelopment, which helps return underused properties to productive use, provide jobs and tax revenue, and revitalize communities. The VPLE sediment option provided by Act 204, and the respective proposed rules, provide a liability incentive and better regulatory clarity for brownfield redevelopments in Wisconsin's many waterfront communities.
- Increased certainty on long-term liability for companies responsible for sediment cleanups by providing the VPLE option.
- Increased cleanup of contaminated sediment and more extensive sediment remediation, resulting in cleaner water bodies, reduced fish consumption advisories, and reduced human exposure to hazardous chemicals.

Alternatives to implementing the rule include not implementing the rule, which would result in the loss of these benefits.

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#### 16. Long Range Implications of Implementing the Rule

These rule revisions implement changes to statute made by 2015 Wis. Act 204. If adopted as part of the permanent rule, these provisions have long-term implications for the risks and resultant costs of contaminated sediment cleanups. Act 204 allows the department to require responsible parties to secure financial assurance for engineering controls at contaminated sediment sites. This financial assurance provides for the long-term maintenance of the engineering control remedy, which in turn protects the responsible party from costs of failure of the engineering control, or alternatively if the responsible party is unable to pay, protects the state against cleanup costs. Act 204 also extended the VPLE program to contaminated sediment sites and provides that the department may require financial assurance at these sites. While the financial assurance provided for a VPLE contaminated sediment site protects against a portion of the risk of further cleanup after a VPLE exemption is awarded, there is a possibility that the financial assurance required may not be sufficient to cover all costs.

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#### 17. Compare With Approaches Being Used by Federal Government

There are no federal regulations that address the specific activities to be regulated by the proposed rules; however, there are related federal regulations that require financial assurance in some cases for sites that are being processed under federal laws.

- Sites being cleaned up under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Superfund process or sites using the Superfund alternatives process may be required to provide

financial assurance in a settlement agreement or order. There are no federal regulations that apply to this specific subject; however, EPA has issued guidelines.

- The Resource Conservation and Recovery Act (RCRA) requires all hazardous waste treatment, storage and disposal facilities to demonstrate that they will have the financial resources to properly close the facility or unit when its operational life is over or provide the appropriate emergency response in the case of an accidental release. These financial assurance requirements are found at 40 C.F.R., Part 264, Subpart H, and Part 265, Subpart H.
- RCRA has rules that require financial assurance for Corrective Action sites that are found in 40 C.F.R., s. 264.101 (b) and (c).

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

There are no regulations at this time within Michigan, Minnesota, Illinois, or Iowa that address the specific activities to be regulated by the proposed rules; however, there are related requirements in certain states:

- The state of Michigan, under Part 201 of Natural Resources and Environmental Protection Act (Act 451) of 1994, requires financial assurance as part of a proposed post-closure agreements that are submitted as part of a “no further action report” following a remedial action. The financial assurance covers the costs of monitoring, operation and maintenance, oversight, and other costs determined by the Michigan Department of Environment, Great Lakes, and Energy to be necessary to assure the effectiveness and integrity of the remedial action (Mich. Stat. s. 324.20114d).
- The state of Iowa, under Iowa Code Chapter 455H, the Iowa Land Recycling and Environmental Remediation Standards Act, may require financial assurance from those participating in its voluntary Iowa Land Recycling Program. The director of the Iowa Department of Natural Resources may require reasonable proof of financial assurance for a technological control to ensure that it remains effective. The requirement is in statute (Iowa Stats. s. 455H.206 and Iowa Administrative Code s. 137.7(1)).

Minnesota, Illinois, Iowa, and Michigan all have adopted statutes or rules governing financial responsibility requirements for solid waste facility, hazardous waste facility, or corrective action sites or facilities as part of their respective delegations of authority to implement RCRA at the state level.

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