

## **Voluntary Party Liability Exemption for Sediment Sites Legislative Proposal from Mark Thimke**

Amend s. 292.15, Stats. to include new section that would provide liability exemptions for certain sediment cleanups and amend s. 292.12 to clarify continuing obligations that apply to sediment cleanups.

**Applicability:** Properties with hazardous substance discharges that have impacted sediments in a surface water body (river or lake), unless otherwise excluded below. This could include properties where the source of the contamination may not be adjacent to the water body if there were discharges through a sewer or other situations.

**Exclusions:** Sites with the following would not be eligible for the liability exemption and would receive a Certificate of Completion:

:

1. Properties that are listed on the National Priorities List (“NPL”) list or proposed to be on the NPL;
2. Properties that are hazardous waste treatment, storage or disposal facilities.
3. Cleanups which require a long-term engineered control or cover as part of the final remedy for sediment areas in the water and that require the long-term maintenance and monitoring of the engineered control;
4. Where an investigation of the discharge or extent of contamination is incomplete.

This would allow for most sites to pursue VPLE; however, it may be technically difficult, or in some cases, not possible for some to meet the technical requirements necessary to qualify for the liability exemption and a Certificate of Completion.

**Purpose:** Promote Brownfields Cleanup and Redevelopment of properties along waterways where historic operations resulted in sediment contamination. Also to provide finality and clear end point for responsible parties conducting such cleanups and encourage more extensive cleanups and accelerated cleanup actions.

### **Requirements:**

- Conduct Site Investigation of the Property and the “site” – Phase I and ii environmental assessment, degree and extent of contamination including all sediments (NR 347, NR 716) and all upland issues soil and groundwater and vapors, surface water. The site investigation must be submitted for Department review and approval.

- For sites where the remediation of sediment requires monitoring to evaluate effectiveness of monitored natural recovery, the liability exemption cannot be approved until monitoring is no longer required.
- The environment is restored to the extent practicable with respect to the discharges and the harmful effects from the discharges are minimized in accordance with rules promulgated by the department and any contract entered into under those rules.
- Voluntary party is required to obtain insurance coverage to cover the potential risk of one or more of the following regarding contamination in the water body: regulations change, the remediation failed or contamination is more extensive than anticipated.

**Partial Cleanup:** A party can receive a partial Certificate of Completion similar to what is allowed now under 292.15(2)(am) if the following are done:

- Remediation of the upland property including any sources which may be discharging into the water is completed
- a complete investigation of all environmental media (e.g., soil, groundwater, surface water, sediment, vapors) is completed
- the voluntary party has entered into an agreement (under s. 292.11(7), Stat.) with the Department, that includes a schedule to complete the remedial actions.

**Liability Exemption:** The Voluntary Party would obtain an exemption from liability under spill law as well as solid and hazardous waste laws currently listed in 292.15. The Exemption would apply to any past discharges of hazardous substances on the property or that have migrated from the property onto other properties or into the waters of the state. Specifically, the exemption would apply if: regulations change, the remedy fails or more contamination is discovered.

**Natural Resources Damages:** The proposal MAY include a provision that says the state's interest in the Natural Resources Damage Claim is satisfied by the issuance of the VPLE.

**Insurance Requirements:**

- Give DNR authority to negotiate and secure a state insurance policy for all sediment sites- working with DOA Risk Management (similar to s. 292.15(2)(e)):
  - *“(e) Contract with insurer. If the department requires insurance under par. (ae) 3m., the department may contract with an insurer to provide insurance required under par. (ae) 3m. and may require voluntary parties to obtain coverage under the contract.”*
- Voluntary Party would be required to pay premium and a portion of the anticipated deductible.

- Insurance would be set up to cover remedy failure, when the additional contamination is discovered which was missed during the investigation and if standards were to change necessitating more cleanup.

### **292.12 – Site with Residual Contamination – Sediments**

For standard remediation sites, this section of the statutes may require property owners who are impacted by contamination from discharges that originated on or off the site to comply with certain continuing obligations. Changes to the statute related to sediment contamination include:

- DNR may require RP to enter into agreement to maintain engineering control in a water-body if sediment contamination remains after closure.
- DNR may require RP to provide financial assurance that is available to fund maintenance of an engineering control in a water-body if sediment contamination remains after closure.
- If maintenance of an engineering control in a water-body when sediment contamination remains after closure is required, the RP for the sediment contamination is responsible for the maintenance even if it is a water-body adjacent to land the RP doesn't own but the impacted property owner would need to follow any requirements not to interfere with limitations imposed at closure (don't put in pier or bridge for example).

Issue: Who is responsible for maintaining the "off-site" engineered covers in the water body if the responsible party no longer owns the source property.