## 1. Type of Estimate and Analysis
- [x] Original
- [ ] Updated
- [ ] Corrected

## 2. Date
- April 6, 2020

## 3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
- NR 700-754 – Investigation and Remediation of Environmental Contamination; RR-10-17

## 4. Subject
- Implementation of 2015 Wisconsin Act 204 and 2017 Wisconsin Act 70, and other changes needed to update, clarify, and promote consistency within chs. NR 700 through NR 754, Wis. Adm. Code, including application of the code to contaminated sediment sites.

## 5. Fund Sources Affected
- [ ] GPR
- [x] FED
- [ ] PRO
- [ ] PRS
- [x] SEG
- [ ] SEG-S

## 6. Chapter 20, Stats. Appropriations Affected
- Wis. Stat. s. 20.370 (4) (dh) and (du)

## 7. Fiscal Effect of Implementing the Rule
- [x] No Fiscal Effect
- [ ] Increase Existing Revenues
- [x] Decrease Existing Revenues
- [x] Increase Costs
- [ ] Decrease Costs
- [ ] Could Absorb Within Agency's Budget

## 8. The rule will impact all of the following
- [ ] State's Economy
- [x] Local Government Units
- [ ] Public Utility Rate Payers
- [ ] Small Businesses (if checked, complete Attachment A)

- Approximately $1,018,751 to $1,768,460 per year

## 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
- [x] No

## 11. Policy Problem Addressed by the Rule

The Remediation and Redevelopment program is proposing revisions to chs. NR 700 to NR 754, Wis. Adm. Code, as well as 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, to provide consistency with 2017 Wisconsin Act 70, to ensure adequate direction is available in code for the investigation and remediation of contaminated sediment, and to make other targeted changes that are needed to update, clarify, and promote consistency within the NR 700 rule series.

Proposed revisions include the following:

### a. Implementation of 2015 Wis. Act 204 changes regarding definitions, continuing obligations, and interim actions.

2015 Wisconsin Act 204 (“Act 204”) established that the department can require continuing obligations for interim remedial actions. The act established access requirements and the responsibilities of owners of properties with continuing obligations, especially those with contaminated sediment, and clarified conditions under which persons are not liable for off-site contamination. Act 204 modified requirements regarding information to be included in the public database established in Wis. Stat. s. 292.12 (3).

The proposed revisions achieve consistency with Act 204 and provide sufficient clarifications, guidance, and procedures for those seeking to comply with new requirements. Revisions include revising and relocating the definition of the term “continuing obligations,” creating s. NR 708.16 to provide direction for documentation of continuing obligations imposed following an interim action, creating s. NR 708.165 to clarify the department’s response to interim...
action plans and reports, and revising ch. NR 725 to clarify that notification requirements apply to sites with continuing obligations imposed following an interim action.

b. Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.

Act 204 amended Wis. Stat. ch. 292 by establishing new requirements regarding the way contaminated sediments are assessed, managed, and remediated. Act 204 created requirements relating to sites where a person is using an engineering control to address contaminated sediment. At these sites, the department may require submission of a plan and compliance schedule and proof of financial responsibility for the maintenance of an engineering control and/or the investigation and remediation of residual contamination following the removal of a structural impediment. The act created the opportunity for persons to obtain the Voluntary Party Liability Exemption (VPLE) for sites with contaminated sediments and imposed insurance and financial assurance requirements on contaminated sediment sites enrolled in the VPLE program. It also outlined special conditions for partial cleanup approvals at VPLE properties with contaminated sediment.

Proposed revisions create consistency with statutory changes and include the addition of ch. NR 756 to provide clarity, guidance, forms, and procedures for changes relating to financial responsibility for engineering controls and for addressing contamination if a structural impediment is removed; and the addition of ch. NR 758 to provide clarity, guidance, forms, and procedures for changes relating to environmental insurance and financial assurance requirements for contaminated sediment sites in the VPLE program, including those that receive partial certificates of closure.

c. Adequate direction for contaminated sediment sites.

The proposed rule revisions clarify the application of several code processes and requirements to contaminated sediment and provide sediment-specific direction within provisions of code that apply directly to various other media (e.g., soil, groundwater).

d. Implementation of 2017 Wis. Act 70 changes to the Voluntary Party Liability Exemption program.

2017 Wisconsin Act 70 revised Wis. Stat. s. 292.15 to clarify which properties are eligible for the VPLE program and created a new process for property boundary changes that may occur following application. Revisions to code provide consistency and direction regarding these additions to statute, including a new definition of “property” as used in the VPLE program, and new requirements and procedures for property boundary changes in the VPLE program.

e. Clarifications and updates to geolocation, documentation, applicable standards for emerging contaminants.

Rule revisions include updated terminology and clarified submittal methods and requirements, unified geolocation specifications, and clarified application of legal standards for emerging contaminants throughout chs. NR 700 to 754, Wis. Adm. Code. Changes include elimination of required paper copy submittals in favor of an electronic submittal method approved by the department and the reorganization of geolocation requirements throughout code into a single section within ch. NR 700 to promote consistency. Changes also include revisions to include applicable references to other Wisconsin laws and standards for various contaminated media, to provide adequate direction for addressing hazardous substances and environmental pollution, as those terms are defined under Wis. Stat. ch. 292, across all media.

f. Updates to professional qualifications and fees.

Rule revisions include clarification of the applicability of professional standards under ch. NR 712 to closure submittals and the revision of ch. NR 749 to account for inflation and to provide clarity and flexibility regarding payment of fees, including fees for enforcement-related submittals, contracts under Wis. Stat. s. 292.31, and database entries.

g. Clarifications and updates to timelines and notification and closure requirements.

Rule revisions include additions throughout code to clarify requirements and procedures so that responsible parties make reasonable progress towards completing their cleanup, and revisions within ch. NR 726 to clarify and update the
methods and requirements for submitting closure requests and forms, and to clarify case closure response action goals. These revisions include the addition of content-related requirements for semi-annual reports required under s. NR 700.11, and clarification of the department’s response to site investigation reports under ch. NR 716. Changes also include clarification of the disposition of fees for incomplete closure requests and their application to other submittals required by code, and an articulated list of the submittals that are currently required under code within the closure chapter (ch. NR 726) to clarify the extent of the department’s ability to grant case closure.

h. Clarifications and updates to soil standards and soil management.

Rule revisions include streamlining of certain soil management procedures under ch. NR 718, cross-references between portions of code regarding documentation of soil management, creating consistency with federal soil direct exposure assumptions, and revisions to cumulative approach and background considerations for polycyclic aromatic hydrocarbon (PAH) contaminants.

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 Wis. Stat. s. 292.11 (3) for the investigation and cleanup of contamination, and parties that voluntary elect to pursue investigation and cleanup of contamination, and environmental consultants that provide professional assistance to these entities. All potentially affected parties will be contacted for comments during the solicitation period of the permanent rule.

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

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. All local government units that may be affected will be given the opportunity to participate in the development of the EIA during the solicitation period of the permanent rule.

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 proposed rule will have estimated economic impacts ranging from $1,018,751 to $1,768,460, relating mostly to costs of compliance with requirements for financial responsibility at sediment sites, the costs of compliance with processes and documentation requirements for interim actions, and the costs of increases in fees for technical assistance. Several rule revisions that result from statutory changes may increase costs, but the amounts of the costs are indeterminate. Proposed rule revisions that provide increased regulatory certainty, promote consistency with federal standards, provide better direction, and create consistency across code are likely to produce cost savings.

a. Implementation of 2015 Wis. Act 204 changes regarding definitions, continuing obligations, and interim actions.

The proposed rules include the creation of s. NR 708.16, which lists database requirements and fees for interim actions with continuing obligations. The rule changes may have an impact equal to the increases in documentation costs for meeting these requirements. Based on input from consultants and department experts, the department estimates that these costs to responsible parties and other persons pursuing cleanup under the NR 700 series may range from $173,250 to $630,000 per year in total.

Within s. NR 708.15, the proposed rules include the creation of a 45-day deadline for submission of an interim action report after an interim action is completed. This deadline reflects current industry practice and should not result in costs except for indeterminate costs in rare situations.
Chapter NR 725 lists situations for which responsible parties must notify owners of properties having contamination and continuing obligations. Proposed rule revisions require responsible parties to meet ch. NR 725 notification requirements for interim actions with continuing obligations. Based on input from consultants and department experts, the department estimates that costs to responsible parties and other persons subject to notification requirements would range from $26,500 to $98,050 per year in total.

Act 204 provided the department with authority to impose continuing obligations after an interim action. This statutory change, which is reflected in the rule revisions, may result in the imposition of continuing obligations earlier in the remediation process for a portion of interim actions. Cost of these rule changes are indeterminate.

Act 204 also provided further detail regarding rights and responsibilities of owners and occupants at sites with continuing obligations, mostly relating to sites with contaminated sediments. These statutory changes are reflected in consistent rule revisions and the costs are indeterminant.

b. Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.

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 that 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 are estimated to range from $42,500 to $257,225 per year 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 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 the financial assurance requirements for planned actions listed within the plan and compliance schedule and for potential events that may 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 per 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. Act 204 also requires financial assurance for remaining contamination at contaminated sediment sites for which a party is seeking a VPLE partial cleanup approval and does not provide for waiver of this requirement. The proposed rule, ch. NR 758, sets forth the procedures, criteria, and options for these sets of 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 are estimated to 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.

The estimated cost of financial assurance for VPLE partial cleanup sites is indeterminate. Very few or none of the parties pursuing VPLE for sediment sites are expected to pursue this option. Of all the expected VPLE sediment sites (estimated to be one site for every other year) a small fraction may consider this option. Less than 5% of all VPLE sites, including non-sediment sites, have requested a partial certificate of completion (about six sites in the history of the program). Also, since VPLE is optional, a party would only pursue this option if it was financially advantageous.

c. Adequate direction for contaminated sediment sites.

These revisions codify the current approval processes that are practiced by the department, which are similar to federal processes. The revisions are not anticipated to increase costs. Codification of these practices provides predictability for those seeking to remediate sediment sites and promotes consistent treatment of these sites.

Act 204 revised the statutory definition of “sediment” to include particles in navigable waters up to the ordinary high-water mark, and rule revisions create consistency with this change. The consideration of particles up to the ordinary high-water mark as sediment may result in differing cleanup standards and remedial options at some impacted sites; however, economic impacts of this change are caused by statute and costs are indeterminate.

d. Implementation of 2017 Wis. Act 70 changes to the Voluntary Party Liability Exemption program.

No impacts result from these revisions, which provide consistency with statutory changes.

e. Clarifications and updates to geolocation, documentation, applicable standards for emerging contaminants.

No impacts result from these changes; however, several changes may result in cost savings for responsible parties and other persons seeking to meet various submittal, documentation, and notification requirements. Omitting the paper submittal requirement may reduce time and material costs. Revising geolocation requirements to more closely reflect standard practices and to be consistent throughout code may reduce time spent meeting these requirements. Allowing electronic notification in ch. NR 714 may reduce the time and cost of meeting public participation and notification requirements.
**f.. Updates to professional qualifications and fees.**

Several revisions to ch. NR 749 are anticipated to increase costs to responsible parties and others seeking fee-based assistance under Wis. Stat. ch. 292. The expected increased annual fees resulting from the rule changes range from $145,382 to $146,487 and include the following:

- Payment of processing charges for electronic submission - $3,314 to $4,419
- Increase of fees in Table 1 by 2% upon effectiveness - $12,275
- Increase of fees in Table 1 by 5% every third calendar year, beginning Jan. 1, 2025 - $14,725
- New interim action report fees, assuming the report is submitted for each interim action - $112,350
- Increase of existing construction documentation report fee - $1,825
- New plan and compliance schedule and inspection report fees - $893

Additionally, a revision within ch. NR 750 increases the VPLE application fee from $250 to $500 and is anticipated to have a total impact of $2,400 per year on those that choose to apply.

**g. Clarifications and updates to timelines and notification and closure requirements.**

Rule revisions that add content-related requirements to the semi-annual reporting requirements set forth in s. NR 700.11 may have an impact of $622,790 per year. This estimate is based on input from consultants regarding the increased costs resulting from the additional requirements along with the numbers of annual reports received on average per year over the last five years.

An added requirement within s. NR 716.14 to provide a map showing sample and well locations for samples from water supply wells may result in an increase in documentation costs; however, this documentation is currently required at a later step in the NR 700 process. The result of the rule revision is to shift these costs to occur earlier in the process, therefore, costs are indeterminate.

**h. Clarifications and updates to soil standards and soil management.**

Overall, revisions to ch. NR 718 are anticipated to promote clarity and flexibility and therefore reduce costs to regulated parties. Costs for rule revisions relating to more stringent sample analysis for waste characterization during landspreading are indeterminate due to the infrequent use of landspreading as a soil management option.

Revisions to ch. NR 720 are likely to reduce costs to affected parties. The revision under s. NR 720.12 (1) to increase the residual contaminant level for polycyclic aromatic hydrocarbons (PAHs) will likely reduce the number of sites where a site investigation and a remedial action will be required by the department. The amount of soil that contains PAHs that could therefore be managed as exempt soil without department review and approval is also expected to increase. This should result in a reduction in cost for property owners, developers, municipalities, and utilities who cleanup and redevelop properties with PAH-impacted soil. The revisions to s. NR 720.12 (3) to adopt current U.S. EPA exposure assumptions for direct contact with soil will result in a lower threshold for responsible parties to meet and may save costs to the extent that aligning with federal requirements provides for more efficient cleanups.

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

The benefits of implementing the rule include:

- Cost savings from changes to ch. NR 720 to increase the residual contaminant level for PAHs. The higher residual contaminant level will lead to a reduction in the extent of soil remediation needed and reductions to the number of sites where a site investigation and a remedial action will be required by the department, reducing costs for responsible parties and parties redeveloping property.
- Cost savings to parties that are subject to submittal, notification, and geolocation requirements under various chapters, and parties that are seeking to manage soil under ch. NR 718.
- Clarity and regulatory certainty for parties seeking to investigate and remediate sites with contaminated sediment under 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.
- Increasing certainty on long-term liability for companies responsible for sediment cleanups by providing the VPLE option.

Alternatives to implementing the rule include not implementing the rule, which would result in the loss of these benefits and would prolong inconsistencies between Wis. Stat. 292 and the NR 700 rule series.

16. Long Range Implications of Implementing the Rule

These rule revisions implement changes to statute made by 2015 Wis. Act 204, which has 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 Voluntary Party Liability Exemption (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.

17. Compare With Approaches Being Used by Federal Government

Many of the proposed rule revisions are clarifications or updates that are specific to Wisconsin’s remediation process and are not readily comparable to federal approaches; however, available comparisons are provided below.

**Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.**

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).

**Adequate direction for remediation of contaminated sediments**

The NR 700 processes and standards for investigation and remediation of contaminated sites in Wisconsin is approved by U.S. EPA Region 5 as sufficient to meet federal requirements and the objectives of CERCLA. The proposed rule revisions codify the application of these processes to sediment, similar to the way that the code provides media-specific direction to groundwater, soil, and other media. The process for remediating contaminated sediment contains the same substantive elements as the federal process, including an investigation and risk-based selection of cleanup criteria, including the use of a conceptual site model and a risk assessment based on criteria for aquatic life with the evaluation of risk based on toxicity studies.
Clarifications and updates to documentation

Proposed revisions throughout code repeal paper submittal requirements and allow electronic submission alone. Certain federal regulations accomplish similar goals at the federal level, such as the Cross-Media Electronic Reporting Rule, 40 CFR Part 3, which provides the framework for electronic reporting under all of EPA’s environmental regulations.

Soil standards (exposure assumptions)

The revisions to s. NR 720.12 (3) to adopt current U.S. EPA exposure assumptions for direct contact with soil will result in a lower threshold for responsible parties to meet and will provide consistency with federal requirements.

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

Many of the proposed rule revisions are clarifications and/or updates that are specific to Wisconsin’s remediation process and are not readily comparable to other state approaches; however, available comparisons are provided below.

Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.

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 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.

Soil standards (direct contact residual contaminant levels)

The revision under s. NR 720.12 (1) to increase the direct contact residual contaminant level for polycyclic aromatic hydrocarbons (PAHs) will result in a standard that is less conservative than the current Wisconsin standard, but more within the range of what surrounding states have established. For example, the current standard imposed by Wisconsin for one compound, benzo(a)pyrene, is currently more restrictive than all surrounding states. Following the rule change, the Wisconsin standard imposed for benzo(a)pyrene will be less restrictive than the standards for non-metropolitan Illinois and Minnesota, but more restrictive than the standards for metropolitan Illinois, Iowa, and Michigan.

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This document can be made available in alternate formats to individuals with disabilities upon request.
1. Summary of Rule’s Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

*Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.*

No economic impacts on small businesses are anticipated for rules relating to Act 204 and contaminated sediments. Small businesses are rarely involved as responsible parties in sediment contamination sites. For all parties that are found to be responsible for contaminated sediment sites, including small businesses, the flexibility that the rules will provide to those seeking to meet the statutory requirements would counterbalance any economic impacts that may arise under various parts of the rule. With regard to the changes affecting rules relating to contaminated sediment sites within the VPLE program, the voluntary nature of the program fully mitigates any economic impacts on small businesses; parties can choose to participate depending upon whether they find the program to be advantageous.

*Continuing obligations for interim actions and notifications, semi-annual reporting, and fees.*

Other rule revisions are not anticipated to incur costs to small businesses, except in cases where the small business is a responsible party. While the department does not have a defined data set for small business, staff conservatively estimates that 30% or fewer responsible parties are small businesses. In this case, annual statewide costs to small business may be subject to the following costs:

- Database requirements within ch. NR 708 for interim actions with continuing obligations, ranging from $81,113 to $330,750 per year in total.
- Chapter NR 725 notification requirements ranging from $7,950 to $29,415 per year in total.
- Section NR 700.11 semi-annual reporting requirements may have an impact of $186,837 per year in total.
- Fee increases under ch. NR 749, including the following:
  - Payment of processing charges for electronic submission, ranging from $994 to $1325.
  - Increase of fees in Table 1 by 2% upon effectiveness, averaging $3,683.
  - Increase of fees in Table 1 by 5% every third calendar year, beginning Jan. 1, 2025, averaging $4,418.
  - New interim action report fees, averaging $67,410.
  - Increase to existing construction documentation report fee, averaging $548.

The total annual costs statewide range from $352,953 to $624,386. Please note that these estimates are conservative due to the lack of dependable data regarding the percentage of responsible parties that are small businesses.

2. Summary of the data sources used to measure the Rule’s impact on Small Businesses

Bureau of Remediation and Redevelopment Tracking System (BRRTS), input from various environmental consulting firms, and Remediation and Redevelopment staff expertise.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☒ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☐ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Several rule revisions may result in costs savings for small businesses that are responsible parties, including revisions that omitted paper submittal requirements, created consistent property geolocation requirements across code, and provided less prescriptive requirements for federal soil exposure assumptions and PAH contaminant thresholds.
Existing mechanisms to reduce costs for small businesses that are currently found within chs. NR 700 to 754 and in Wis. Stat. ch. 292 will apply to the rule revisions when effective. Some of these measures include performance standards in lieu of numeric cleanup standards, off-site liability exemptions, de minimus reporting standards, no further action determinations, brownfields team staff assistance, and investigation and cleanup funding programs.


Enforcement provisions that apply to these rule revisions are the same as those applicable through the NR 700 rule series. These provisions are detailed in ch. NR 728 and include Wisconsin Department of Justice referrals for rule violations, fees related to enforcement action, special orders, environmental agreements, and other enforcement tools that may be used in concert with the department’s stepped enforcement process.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
   □ Yes   ☒ No