

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> August 6, 2020
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> NR 700-754 – Investigation and Remediation of Environmental Contamination; RR-10-17	
<b>4. Subject</b> 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.	
<b>5. Fund Sources Affected</b> <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	<b>6. Chapter 20, Stats. Appropriations Affected</b> Wis. Stat. s. 20.370 (4) (dh) and (du)
<b>7. Fiscal Effect of Implementing the Rule</b> <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	
<b>8. The rule will impact all of the following</b> <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input checked="" type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> Approximately \$1,179,174 to \$2,864,526 per year	
<b>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)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 completion.

*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.

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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 Wis. Stat. s. 292.11 (3) 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. Various environmental consultants were contacted for data that was received and used in this analysis. Potentially affected parties were contacted for comments during the economic impact solicitation period of the permanent rule.

Entities contacted include: municipal clerks, county treasurers, members and friends of the Brownfields Study Group, subscribers to the RR Report newsfeed (est. 4,000 subscribers), persons that signed up to receive updates via the NR 700 rule changes listserv, small businesses on the department's small business listserv, consultants listed in the Bureau of Remediation and Redevelopment Tracking System (BRRTS), the Wisconsin Bar Association, Wisconsin Manufacturers & Commerce, Wisconsin Realtors Association, Wisconsin Builders Association, Wisconsin Paper Council, Wisconsin Commercial Ports Association, Transportation Builders Association, League of Wisconsin Municipalities, Wisconsin Counties Association, Wisconsin County Treasurers Association, Wisconsin Towns Association, Wisconsin Economic Development Corporation, Wisconsin Electric Cooperative Association, and the Army Corps of Engineers, St. Paul District.

The department received five letters of comment during the solicitation period. This analysis has been updated to adopt or respond to various comments made during the solicitation period.

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

All local governmental units that may be affected were given the opportunity to participate in the development of this EIA during the solicitation period. Local governments contacted during the solicitation include municipal clerks listed in the Wisconsin Department of Administration listserv (approx. 1,990 clerks), county treasurers (72), the League of Wisconsin Municipalities, the Wisconsin Counties Association, the Wisconsin County Treasurers Association, and the Wisconsin Towns Association. Two local government entities provided comments during the solicitation period.

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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 proposed rule will have estimated economic impacts ranging from \$1,179,174 to \$2,864,526 per year, 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. Some rule revisions may increase or decrease compliance costs, but the exact change in compliance cost or benefit are unclear and cannot reasonably be estimated, as explained herein for each instance. 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 regarding costs per site (\$2,200 to \$8,000), and the department estimate of 105 interim actions per year. 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. This estimate is based on the assumption that 75% of interim actions (79 out of 105 interim actions estimated) would be subject to this requirement.

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. The draft version of this analysis assumed that this deadline reflects current industry practice and would therefore not result in costs except for in rare situations; however, during the public comment period, the department received a request for review of this assumption. After further review, based on the assumption that the introduction of a report deadline may cause consultants to charge increased fees ("surge" pricing) at an estimated additional 25% of the s. NR 708.16 documentation costs discussed above, the department estimates that the introduction of a deadline may have costs related to additional consulting fees, ranging from \$43,313 to \$157,500, annually.

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 regarding the range of costs per site (\$500 to \$850), department's staff estimates of 105 interim actions per year, and the assumption that half of interim actions (53 out of 105 interim actions) would be subject to these requirements, 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. Outside of documentation costs, which have been accounted for above, the potential compliance cost increase of these changes cannot be reasonably determined and are expected to be minimal (if any). For the small number of sites where this would apply, a property owner could have continuing obligations (for example, requirements to maintain a cap or operate a vapor mitigation system) that apply to their property and building. The perceived effects on the property value would vary based on the situation and could be a benefit by providing regulatory certainty. The need to spend money to maintain these environmental remedies would not change whether or not the department sends a letter with required continuing obligations because once an environmental remedy is implemented those must be maintained for the cleanup to be effective and the site to obtain closure.

Act 204 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. The potential compliance costs or benefits (if any) of these changes are unclear and cannot reasonably be determined. Certain portions of the rule clarify ongoing responsibilities between landowners and responsible parties, other portions increase flexibility for transfers of responsibility or exemptions from responsibility, further enabling waterfront brownfields redevelopments to occur. There is insufficient data to establish a costs baseline with pre-existing practices and also insufficient certainty of future scenarios to project future costs.

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

1. 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. 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. Costs associated with the rule are estimated to range from \$65,181 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. Based on estimates received from consultants, the initial costs of completing the plan and compliance schedule are estimated to range between \$20,000 and \$30,000 per year and the 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 \$22,681 and \$199,725 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 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. The upper estimate assumes a method of financial assurance having an annual cost of 3%. The lower estimate assumes a method having an annual cost of 0.5% (the department assumes bond, letter of credit, or escrow to be preferred methods). Planned monitoring costs include complete annual engineering control monitoring with sediment/cap poling, sonar, or bathymetric survey; complete annual surface water and fish sampling and monitoring; an engineering analysis of the current conditions of the engineering control or structural impediment; complete wetland monitoring in accordance with permits under Wis. Stat. ch. 30 and section 404 of the federal Clean Water Act; and complete inspection and monitoring reports.

2. 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

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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. The total cost related to VPLE sediment rules is estimated to range from \$0 to \$177,400 and includes:

- 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 for 25 years and in most cases the voluntary party will obtain a common five-year insurance policy which will be renewed every five years. The premiums for five years of insurance are estimated to be between \$45,000 and \$100,800, which would be paid in the first year. 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. Therefore, 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 \$0 to \$50,400 annually.
- During the solicitation period, members of the public requested further information on costs related to VPLE partial cleanup financial assurance. The estimated cost of voluntarily complying with the financial assurance requirements for a VPLE partial cleanup range from \$0 to \$127,500 per year. Few of the parties pursuing VPLE for sediment sites are expected to pursue 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. There is no cost to anyone if no party elects to request a partial cleanup approval at a sediment site. If every sediment VPLE site (estimated 1 site every other year) pursues the partial cleanup approval, the total costs for financial assurance would range between \$0 and \$127,500 annually. This range is based on the assumption that the remaining cleanup cost at the time the partial cleanup approval may range between \$425,000 and \$8,500,000. As described in the analysis of the NR 756 rules, costs for financial assurance vary depending on the financial strength of the company and other factors and the voluntary party will select the method of financial assurance that is most financially advantageous. 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.

*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, the effect that this change will have on cleanup objectives and likewise, cleanup costs, is variable for each site. In some cases, particularly for sites with polycyclic aromatic hydrocarbons (PAH) contamination, the cost to clean up the site may be lower as a result of more of the material at a site being considered sediment. Due to the lack of baseline data and the site-specific variability of impacts, it is unclear which entities would be affected, and in what proportion entities would be positively or negatively affected by this change.

These sediment-related revisions codify the current approval processes that are practiced by the department, which are similar to federal processes; however, during the solicitation for input on economic impacts, industry representatives provided an estimate from businesses, stating annual compliance costs of cleanup and closure requirements for sediment sites under the rule changes range from \$50,000 to \$450,000. This estimate is included in the total estimated impacts of this analysis; however, the department maintains that the code revisions relating to sediment sites largely constitute codification of current practice rather than a change in practice and does not anticipate an increase in compliance costs.

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

The department does not anticipate any change in compliance costs from these revisions.

*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.

During the public comment solicitation period, the department received a comment expressing concern over the use of the phrase “emerging contaminants” in the draft economic impact analysis. The department used this phrase generally during rule drafting to describe certain contaminants that may not yet have a set numerical standard, and to explain the department’s current authority and duties under the inclusive statutory definitions of “hazardous substance” and “environmental pollution.” This interpretation of these terms is the longstanding practice of the department. Proposed rule clarifications that are related to this topic are not anticipated to have any costs.

*f. Updates to professional qualifications and fees.*

Several revisions to fee-related rules are anticipated to increase costs to responsible parties and others seeking fee-based assistance under Wis. Stat. ch. 292. The total costs of the rule changes relating to fees are estimated to range from \$149,211 to \$150,315. These fee related rule changes include revisions within chs. NR 749 and NR 750.

Based on the average amount of fees received over the last five years and the amounts of the various fee increases, the expected increased annual fees resulting from the rule changes within ch. NR 749 range from \$146,811 to \$147,915 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 - \$14,729
- 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
- New fee for Wis. Stat. s. 292.31 contracts - \$1,425

Additionally, a revision within ch. NR 750 increases the VPLE application fee from \$250 to \$500. Based on the average number of applicants per year over the last five years, this change is anticipated to have a total impact of \$2,400 per year on those that choose to apply to the VPLE program. Fees collected under these chapters are used by the department to offset operating costs and fund staff oversight expenses for the respective programs.

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

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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 \$623,000 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. During the solicitation for input on economic impacts, the department received a request for further information on the basis for this calculation. To calculate this estimate, the department requested opinions from three consulting firms regarding the increased costs of performing a semi-annual report under the revised rule. The department received two responses. The department used the average of the two responses (\$175) as the increased cost, and multiplied this cost by the average number of semi-annual reports received per year over the last 5 years (3,560 reports), to achieve an estimated impact of \$623,000 per year.

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 and the department does not track the number of times this documentation is submitted in a given year, therefore, any potential change in compliance costs are unclear; however, assuming that half of the sites submitting a site investigation report will also submit supply well documentation (approximately 122 sites), the department estimates that the costs of providing a map showing sample and well locations would be \$ 25,620 to \$297,436 per year. This estimate is based on data provided by consultants (range from \$210 to \$2,438 per site).

#### *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 unclear due to the infrequent use of landspreading as a soil management option. During the solicitation for input on economic impacts, the department received a request for further review of potential impacts of this rule change. Assuming a rate of one request per year, and assuming a request for landspreading of 4,000 cubic yards of contaminated material, the department estimates that this rule would have maximum costs of \$23,100 per year. This figure is included in the total impacts of this rule; however, no requests for the use of this landspreading option have been received by the department within the last twenty years.

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.

#### Impacts on Business Sectors

The rule changes discussed above may have differing impacts on different categories of entities, depending on the specific rule changes and the role that the entity plays in investigating and remediating hazardous substance discharges and environmental pollution. Impacts to business sectors are estimated to be 91% of total impacts of the rule, that is, \$1,065,858 to \$2,589,251 per year. Impacts to business sectors are discussed in further detail below for three categories of entities: responsible parties, voluntary parties, and those providing services to responsible and voluntary parties.

1. Impacts to private entities that are responsible parties. Generally, any person who is required to conduct a response action to address a hazardous substance discharge or environmental pollution under ch. 292, Stats., is a responsible party. A broad range of entities can become responsible parties by virtue of possessing or causing a discharge of a hazardous substance. The RR program does not typically track responsible parties by business

sector, unless a sector-targeted funding program creates a business need for the program to maintain this data; however, for the purpose of this economic impact statement, the RR program has included a list of industries that may be impacted. Industries are included based on the assumption that industries possessing or using hazardous substances, environmental pollution, or property containing a hazardous substance discharge may become responsible parties. Based on this assumption, the following industries **may** become responsible parties:

- Agriculture, Forestry, Fishing and Hunting (NAICS 11)
- Mining, Quarrying, and Oil and Gas Extraction (NAICS 21)
- Utilities (NAICS 22)
- Construction (NAICS 23)
- Manufacturing (NAICS 31-33)
- Wholesale Trade (NAICS 42)
- Retail Trade (NAICS 44-45)
- Transportation and Warehousing (NAICS 48-49)
- Real Estate and Rental and Leasing (NAICS 53)
- Other Services (except Public Administration) (NAICS 81)

Businesses that are members of these industries are not responsible parties unless they possess, control or cause a hazardous substance discharge or environmental pollution, or property containing a hazardous substance discharge.

The RR program does not typically track the business sectors of responsible parties; however, the RR program does track longer-term investigation and cleanup activities as either an Environmental Repair (ERP) activity or Leaking Underground Storage Tank (LUST). LUST activities are focused on investigation and cleanup of petroleum contamination, originating from underground storage tanks, which includes toxic and cancer-causing substances. ERP activities account for investigation and cleanup activities that are not LUST activities. The ERP category is too broad to draw any industry-based conclusions from; however, the LUST category is limited to petroleum-related discharges from underground storage tanks. The RR program therefore assumes that industries using petroleum, such as gasoline stations (NAICS #447), may be partially linked to LUST activities. From 2015 through 2019, about 29% of activities were LUST rather than ERP activities. The program estimates that, as a subset of responsible parties, petroleum-discharging industries may be impacted in similar proportion (29% of total impacts to responsible parties) by the rule changes listed above.

Responsible parties would be impacted by the costs stated under the following categories of rule changes:

- a. Implementation of 2015 Wis. Act 204 changes regarding definitions, continuing obligations, and interim actions.*
- b.1. Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.*
- c. Adequate direction for contaminated sediment sites.*
- e. Clarifications and updates to geolocation, documentation, applicable standards for emerging contaminants.*
- f. Updates to professional qualifications and fees.*
- g. Clarifications and updates to timelines and notification and closure requirements.*
- h. Clarifications and updates to soil standards and soil management.*

The total impacts to private entities that are responsible parties is estimated to be 68% of total impacts, or \$802,881 to \$1,950,411 per year.

2. Impacts to private entities that are voluntary parties. A voluntary party is a person who applies to obtain an exemption under the Voluntary Party Liability Exemption Program (VPLE), an elective cleanup program under Wis. Stat. s. 292.15 that provides a liability exemption for a property for which certain conditions have been met. Voluntary parties can be responsible parties that caused the discharge, local governments, or real estate

developers that may choose to remediate a property. The sectors that may choose to become voluntary parties include:

- Agriculture, Forestry, Fishing and Hunting (NAICS 11)
- Mining, Quarrying, and Oil and Gas Extraction (NAICS 21)
- Utilities (NAICS 22)
- Construction (NAICS 23)
- Manufacturing (NAICS 31-33)
- Wholesale Trade (NAICS 42)
- Retail Trade (NAICS 44-45)
- Transportation and Warehousing (NAICS 48-49)
- Real Estate and Rental and Leasing (NAICS 53)
- Other Services (except Public Administration) (NAICS 81)

Impacts to voluntary parties differ from impacts to responsible parties. The VPLE is optional and parties choose to pursue VPLE if they find it beneficial. Voluntary parties that choose to pursue VPLE would be impacted by the costs stated above for all RPs. Additionally, voluntary parties may be impacted by the following categories of rule changes:

*b.2. Implementation of 2015 Wis. Act 204 requirements for financial responsibility at contaminated sediment sites.*

*c. Adequate direction for contaminated sediment sites.*

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

Total impacts to all voluntary parties, including sediment sites, are estimated to be 20% of total impacts to private entities, that is, \$232,661 to \$565,194 per year.

3. Impacts to private entities that provide services to assist responsible parties and voluntary parties. Industries that provide services to responsible parties and voluntary parties to assist with compliance in the NR 700 investigation and remediation process may also be impacted. The sectors that may benefit include those providing engineering, construction, consultation, and remediation services, including:
  - Construction (NAICS 23)
  - Professional, Scientific, and Technical Services (NAICS 54)
  - Admin.; Support; Waste Mngt. and Remediation Services (NAICS 56)

Any of the rule categories listed above may impact service providers, depending on whether increased costs are borne by the regulated responsible parties and voluntary parties, or partially passed on to service providers. Conversely, service providers may realize an economic benefit if additional hours are billed to meet changing or increased requirements. Additionally, members of the Finance and Insurance (NAICS 52) sector that offer financial assurance products may benefit from the implementation of Act 204 requirements relating to financial assurance for certain types of contaminated sediment sites (b.1. and b.2.). The impact to service providers is estimated to range from a nominal beneficial impact to a nominal economic cost resulting from costs passed on from responsible parties and voluntary parties – estimated to be up to 3% of total impacts to private entities, that is, \$30,316 to \$73,646 per year.

### Impacts on Public Utility Rate Payers

Impacts to public utility rate payers may occur but would be nominal due to the low level of potential impacts on utilities as one of many types of potential responsible parties, contaminated sediment responsible parties, and voluntary parties. The RR program does not track responsible parties according to type of business or business sector; therefore, an estimate that is based on staff experience is provided for this economic impact statement.

Impacts to public utility ratepayers are estimated to be 9% of total impacts of the rule, that is, \$106,721 to \$259,254 per year, based on the estimated proportions of local governments that are responsible parties and voluntary parties. For this analysis we assumed that utilities will pass all costs to ratepayers.

### Impacts on Local Governmental Units

Local government units may be less likely than other industry subsectors to bear an impact as potential responsible parties and voluntary parties due to the availability of the local government unit exemption under Wis. Stat. 292.11 (9), which allows local governments to acquire lands containing a hazardous substance discharge free of liability if they acquire the land pursuant to the conditions stated in statute. In some cases, local governments may voluntarily undertake a cleanup of a brownfield site and the impacts described above for voluntary parties may apply to those projects.

The total impacts on local government units per year are estimated to be 1% of the total impacts, that is, \$6,595 to \$16,022, based on the estimated proportions of local governments that are responsible parties and voluntary parties.

### Impact on State Economy and Fiscal Impacts on State (Remediation and Redevelopment Program):

The department does not anticipate this rule to impact the state's economy adversely.

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

The cost of the additional workload for department 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 hydrogeologist, including fringe and indirect benefits, at a total hourly rate of \$67.94. For ch. NR 756, the department staff costs for reviewing the required plan and compliance schedule at 15 hours is approximately covered by the proposed \$1070 review fee. 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 department staff costs for reviewing required reports are covered by the current hourly VPLE review fee rate of \$105.

While the cost of department 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).

Additionally, the department may be positively impacted by rule changes that increase technical and liability assistance fees under chs. NR 749 and 750 in an amount ranging from \$149,211 to \$150,315 annually (see section f, above). This increase in technical and liability assistance fees is anticipated to lessen the impacts of inflation on providing program technical and liability assistance services.

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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.
- Implementation of 2017 Wis. Act 70 and 2015 Wis. Act 204 regulatory requirements and consistency between Wis. Stat. ch. 292 and the NR 700 rule series.
- Increased waterfront brownfields cleanup and redevelopment due to 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.
- Increasing 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 and would prolong inconsistencies between Wis. Stat. ch. 292 and the NR 700 rule series. This would entail loss of potential cost savings from changes to ch. NR 720 to increase the residual contaminant level for PAHs; loss of an opportunity to create consistency between state and federal direct exposure assumptions for soil contamination, loss of cost savings for the increased options for management of soil and sediment under ch. NR 718, less regulatory certainty for sediment investigation and cleanup, and delay in implementation of the option to obtain Voluntary Party Liability Exemption (VPLE) for sediment cleanups.

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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, 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.

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#### 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 CFR, 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 CFR, 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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19. Contact Name	20. Contact Phone Number
Molly Schmidt	(608) 267-7500

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ATTACHMENT A

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### 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 \$51,975 to \$189,000 per year in total.
- The deadline within ch. NR 708 for interim action reporting, ranging from \$12,994 to \$47,250 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 \$186,900 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 \$33,705.
  - Increase to existing construction documentation report fee, averaging \$548.

The total annual costs statewide range from \$303,167 to \$496,244. Please note that these estimates are conservative due to the lack of dependable data regarding the percentage of responsible parties that are small businesses.

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### 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.

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### 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:

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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 proscriptive 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.

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5. Describe the Rule's Enforcement Provisions

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.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes    No

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