Rule Development Subgroup Discussion:
Financial responsibility and financial assurance for certain contaminated sediment cleanup sites

April 18, 2019
Remediation and Redevelopment Program
Overview

- 2015 Wis. Act 204 created three FR/FA requirements for certain sites with contaminated sediment:
  - Engineering controls & impediment removals
  - VPLE full cleanup
  - VPLE partial cleanup
Engineering controls - sediment

Wis. Stat. § 292.12(2)(d)(2)

(d) If the site is one for which a person is required to take action under sub. (5m) (a), require submission to the agency with administrative authority of any of the following:

1. A satisfactory plan and compliance schedule for satisfying any requirements imposed under par. (a) or (b).

2. Proof of financial responsibility, as determined by the agency with administrative authority by rule, sufficient to pay the costs of complying with a plan approved under subd. 1.

sub. (5m) (a) “... a person who is required to take action under s. 292.11 (3), (4), or (7) (b) with respect to contaminated sediment and who takes action that includes the use of an engineering control ...”
Wis. Stat. § 292.12(2)(d)(2)

(d) If the site is one for which a person is required to take action under sub. (5m) (a), require submission to the agency with administrative authority of any of the following:

1. A satisfactory plan and compliance schedule for satisfying any requirements imposed under par. (a) or (b).

2. Proof of financial responsibility, as determined by the agency with administrative authority by rule, sufficient to pay the costs of complying with a plan approved under subd. 1.

(a) Require maintenance of an engineering control on the site.

(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.
VPLE full cleanup - sediment

- Wis. Stat. § 292.15(2)(af)(3m)

3m. The voluntary party obtains and maintains insurance to cover the cost of complying with s. 292.11 (3) with respect to the contaminated sediment in the event that additional remedial action is necessary, unless additional action is not required under par. (b). The insurance shall conform with rules promulgated by the department and shall name the state as the insured. The department may waive the requirement to obtain and maintain insurance or accept a form of financial responsibility other than insurance if the hazardous substance contained in the contaminated sediment is not mercury, PCBs, as defined in s. 299.45 (1) (a), or dioxin and the department determines that insurance is not necessary.
VPLE partial cleanup - sediment

- Wis. Stat. § 292.15(2)(am)(2m)(c)

  c. The voluntary party or the person who has entered into a legally enforceable agreement under subd. 2m. b. provides financial assurance to the department, in the manner required by the department, in the event that the voluntary party or the person who has entered into a legally enforceable agreement under subd. 2m. b. fails to restore the environment to the extent practicable and minimize the harmful effects from the contaminated sediment on the property or the discharges resulting in contaminated sediment.
FA/FR costs & length of requirement

- Engineering controls & impediment removals
- VPLE full cleanup
- VPLE partial cleanup
FA/FR mechanisms

- Engineering controls & impediment removals
- VPLE full cleanup
- VPLE partial cleanup
Other FA/FR policies & procedures

- Engineering controls & impediment removals
- VPLE full cleanup
- VPLE partial cleanup
Next steps

• Tentative timeframe
  – White paper – May 7, 2019
  – Rule draft 1 – Aug. 6, 2019
  – Rule draft 2 – Oct. 1, 2019

• Post-meeting comments may be directed to: DNRRRN700input@wisconsin.gov
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SWF Long-Term Care FR

- With license application:
  - LTC Cost Estimate – NR 520.07
    - Min. costs
    - 3rd party
    - Each year (40)
    - Inflation
  - FR Amount – NR 520.08
    - Annual payments until end of facility life
    - Sum of costs
  - Method FR – NR 520.06
SWF Long-Term Care FR

Methods

- Interest
- Escrow
- Deposit with department
- Insurance
- No interest
- Letter of credit
- Bond
- Insurance
- Net Worth
SWF Long-Term Care FR

• Thereafter (LTC only)
  – Annual adjustments
  – Annual release
  – Duration & changes
  – Default
  – Fees
  – Successors & bankruptcy