

Chapter NR 750

FEES FOR PROVIDING OVERSIGHT FOR THE CONTAMINATED LAND RECYCLING PROGRAM

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NR 750.01 Purpose. The purpose of this chapter is to establish the procedures and criteria that the department shall use to process applications and assess and collect fees to provide oversight to parties undertaking response actions in accordance with s. 144.765, Stats. This chapter is adopted pursuant to ss. 144.765 and 227.11 (2), Stats.

History: Cr. Register, February, 1996, No. 482, eff. 3-1-96

NR 750.02 Applicability. This chapter applies to persons seeking department review and approval of the response actions that will be or have been undertaken to receive the protection of the liability exemption in s. 144.765, Stats.

Note: The Land Recycling Law (1993 Wis. Act 453, effective May 13, 1994), created s. 144.765, Stats. The objective of this law is to provide persons, who satisfy all of the requirements of the statute, with a liability exemption from specific requirements of the state's Hazardous Substance Discharge Law, s. 144.76, Stats.

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NR 750.03 Definitions. In this chapter:

(1) "Applicant" means the person seeking department review and approval of the response action that will be taken or has been undertaken to receive the protection of the liability exemption under s. 144.765, Stats.

(2) "Arm's-length" means a transaction negotiated by unrelated persons who have no business ties, each acting in their own self interest.

Note: If fair market value has been paid to acquire the property, it is one indication that the transaction was an "arm's-length" transaction. However, the department does not rule out the possibility that, in some circumstances, a transaction may be an "arm's-length" transaction even though fair market value was not paid by the purchaser.

(3) "Good faith" means the absence of malice and design to defraud or to seek an unconscionable advantage over another person.

(4) "Owner of a business or entity" has the meaning specified in s. 144.765 (1) (b), Stats.

Note: Under s. 144.765 (1) (b), Stats., "owner of a business or entity" means "any person who owns or who receives direct or indirect consideration from the operation of a business or entity regardless of whether the business or entity remains in operation and regardless of whether the person owns or receives consideration at the time any discharge of a hazardous substance occurs. 'Owner of a business or entity' includes a subsidiary or parent corporation."

(5) "Phase I environmental assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.

(6) "Phase II environmental assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase I environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

(7) "Purchaser" has the meaning specified in s. 144.765 (1) (c), Stats.

Note: Under s. 144.765, (1) (c), Stats., "purchaser" means "a person who acquires property in an arm's-length, good faith transaction and to whom all of the following apply:

1. The person did not participate in the management of, and was not the owner of, a business or entity that caused the release of a hazardous substance on the property.
2. The person did not own the property at the time a hazardous substance was released.
3. The person did not otherwise cause the release of a hazardous substance on the property."

(8) "Release" has the meaning specified in s. 144.765 (1) (d), Stats.

Note: Under s. 144.765 (1) (d), Stats., "release" means "the original discharge."

(9) "Subsidiary or parent corporation" has the meaning specified in s. 144.765 (1) (e), Stats.

Note: Under s. 144.765 (1) (e), Stats., "subsidiary or parent corporation" means "any business entity, including a subsidiary, parent corporation or other business arrangement that has elements of common ownership or control or uses a long-term contractual arrangement with any person that has the effect of avoiding direct responsibility for conditions on a parcel of property."

(10) "Thorough environmental investigation" means a study of the entire property, approved by the department, consisting of a Phase I and Phase II environmental assessment and a site investigation, based on information documented in these environmental assessments.

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NR 750.05 Application. (1) APPLICATION SUBMITTAL. An applicant shall submit to the department a completed application form, requesting department oversight in reviewing and approving the proposed response actions. The applicant shall submit with the application a non-refundable fee of \$250.00, to cover the department's cost of reviewing the application. The department may not review the application until the specified fee is submitted to the department.

Note: The application form (Form 4400-178) is available by telephoning the Contaminated Land Recycling Information Line at 1-800-367-6076 or (608) 264-6020 or by writing the Emergency and Remedial Response Section, Public Information Requests, Bureau of Solid and Hazardous Waste Management, P.O. Box 7921, Madison, WI, 53707-7921.

(2) APPLICATION REVIEW AND ELIGIBILITY NOTIFICATION. (a) *Department review.* The department shall review each completed application to determine if all of the following criteria are satisfied:

1. The applicant is a "purchaser" under s. 144.765, Stats.
2. The response actions that are proposed will be conducted by the persons specified in s. 144.765 (2) (a), Stats.

Note: Section 144.765 (2) (a), Stats., requires that a "thorough environmental investigation of the property" be conducted. Either the "purchaser" may conduct the investigation or the person from whom the purchaser acquires the property may conduct the investigation under contract with the "purchaser." In addition, all necessary response actions required to restore the environment are to be conducted by the "purchaser."

(b) *Additional information.* The department may request from the applicant additional information needed to determine whether the criteria in par. (a) are met.

(c) *Notification to applicant.* The department shall mail written notice to the applicant stating whether or not the department believes that the applicant is eligible under s. 144.765, Stats. If the department finds that the applicant meets the criteria in par. (a) and

the applicant chooses to proceed in the program, the applicant shall, at a minimum, submit to the department a Phase I environmental assessment, and a scope of work necessary to conduct an adequate Phase II environmental assessment. If the department finds that the applicant does not meet the criteria in par. (a), the applicant will not receive department oversight under s. 144.765, Stats. The applicant may submit additional information to the department to try to establish that the applicant does meet the criteria in par. (a), and may proceed to conduct a response action, while the department makes that determination, if the response action is conducted in compliance with the requirements of chs. NR 700 to 750.

(3) **NOTICE FROM APPLICANT.** If at any time after an application is submitted to the department, the applicant decides not to pursue the liability exemption provided for in s. 144.765, Stats., the applicant shall promptly notify the department of that decision in writing, so as not to incur any additional obligation to pay department oversight fees.

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NR 750.07 Assessment and payment of fees for department oversight on or after March 1, 1996. (1) **ASSESSMENT OF OVERSIGHT FEES.** Beginning on March 1, 1996, applicants shall pay oversight fees to offset department costs incurred on or after July 1, 1995, for activities conducted under s. 144.765, Stats., and this chapter. Oversight fees assessed to applicants shall be based upon the hourly billing rate, established under sub. (2), for hours spent by department staff and other department costs, including, but not limited to, the following activities:

(a) Review of submittals required under this chapter, chs. NR 700 to 736 or under a contract entered into under s. NR 728.07, or participation in meetings with the applicants or their representatives to discuss an application or proposed project.

(b) Negotiating and entering into contracts under s. 144.765 (2) (a) 3. or 4., Stats.

(c) Negotiating and entering into an agreement under s. 144.765 (4), Stats.

(d) Review of file documents and required submittals to determine whether or not the project may be closed and a certificate of completion may be issued.

(e) Providing assistance in response to any other request by the applicant after the applicant is notified that the department believes that the applicant is eligible under s. 144.765, Stats.

(2) **HOURLY BILLING RATE.** The department shall calculate on an annual basis an hourly billing rate at which oversight fees shall be assessed. The hourly billing rate shall be calculated by averaging hourly wages of personnel employed by the department in the contaminated land recycling program, and by multiplying the sum by the annual fringe benefit rate and the annual indirect rate. Indirect costs include costs associated with personnel providing support to employees who provide oversight, daily operating costs, travel, equipment, supplies and training.

(3) **DEPOSIT.** (a) For all applications submitted after March 1, 1996, the applicant shall submit to the department an advance deposit to cover oversight fees. The advance deposit shall be submitted within 30 days after the applicant is notified that the department believes that the applicant is eligible under s. 144.765, Stats. The advance deposit shall be \$1,000 for properties of one acre or less and \$3,000 for properties larger than one acre.

(b) An applicant who is receiving department oversight under s. 144.765, Stats., who has submitted an application prior to March 1, 1996, and has not yet satisfied the requirements of ch.

NR 726 for case closure by March 1, 1996, shall within 30 days after March 1, 1996 submit to the department a deposit of \$1,000 for properties of one acre or less, and \$3,000 for properties larger than one acre, to be used to pay department oversight fees.

(4) **QUARTERLY PAYMENTS.** (a) *General.* If the advance deposit paid by the applicant is not sufficient to offset the department's costs for providing oversight, the department shall bill the applicant on a quarterly basis for additional costs incurred by the department. The applicant shall pay the department within 30 days after receiving the department's quarterly fee statement.

(b) *Information request.* The applicant may request, in writing, within 10 days after the date the fee statement is issued, that the department supply to the applicant a list of department staff and the hours that they spent on oversight activities associated with the project.

(5) **RETURN OF ANY UNUSED DEPOSIT.** When the applicant has been issued a certificate of completion under s. 144.765, Stats., or after department receipt of a notice under s. NR 750.05(3), the department shall return to the applicant any amount of the applicant's deposit that exceeds the amount of costs incurred by the department for the applicant's project.

(6) **OVERSIGHT FEE OPTIONS.** (a) In cases where the department has provided oversight beginning with the review of either a scope of work for a Phase II environmental assessment or an investigation work plan, the applicant has the option of continuing to pay assessed fees under sub. (4), or to elect to be assessed a final fee upon department approval of the final design report and operation and maintenance plan for a specific project.

(b) If the applicant is eligible and chooses the final fee option, the department shall determine the final fee by calculating the sum of the department costs incurred to date for providing oversight to the project, including the review and approval of the final design report, and shall assess a final fee equivalent to 40% of the sum of the department's previously-incurred oversight costs for the project.

(c) The final fee shall be submitted within 30 days after receiving the departments' final fee statement.

(7) **FAILURE TO PAY REQUIRED FEES.** If the applicant fails to pay department oversight fees that are required under this section, the department shall cease to provide oversight to the applicant and may not issue a certificate of completion as provided under s. 144.765 (2) (a) 3., Stats.

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NR 750.09 Completion of response actions. At the completion of all response actions taken by an applicant who is seeking the liability exemption under s. 144.765, Stats., the applicant shall request case closure in accordance with the requirements in ch. NR 726. The department shall provide the applicant with a written certificate of completion, as provided in s. 144.765 (2) (a) 3., Stats., when all of the following requirements are satisfied:

(1) The property has been closed out by the department in accordance with the requirements in ch. NR 726 and the applicant has provided proof that all conditions of case closure have been satisfied.

(2) The applicant satisfies all the requirements of s. 144.765, Stats., including conducting a thorough environmental investigation.

(3) The applicant has paid the department for all oversight fees assessed pursuant to this chapter.

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