

## CHAPTER 292

### REMEDIAL ACTION

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Note: 1995 Wis. Act 227 renumbered the provisions of chs. 144, 147, 159 and 162, Stats. 1993–94, to be chs. 280–299, Stats. 1995–96. For a table tracing former section numbers see the Addenda & Errata at the end of Volume 5.

#### SUBCHAPTER I DEFINITIONS

**292.01 Definitions.** In this chapter:

- (1) “Approved facility” has the meaning given in s. 289.01 (3).
- (1m) “Approved mining facility” has the meaning given in s. 289.01 (4).
- (2) “Department” means the department of natural resources.
- (3) “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.
- (4) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.
- (5) “Hazardous substance” means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.
- (6) “Hazardous waste” means any solid waste identified by the department as hazardous under s. 291.05.
- (7) “Landfill” means a solid waste facility for solid waste disposal.
- (8) “Lender” means a bank, credit union, savings bank, savings and loan association, mortgage banker or similar financial institution, the primary business of which is to engage in lending activities or an insurance company, pension fund or government agency engaged in secured lending.
- (9) “Lending activities” means advancing funds or credit to and collecting funds from another person; entering into security agreements, including executing mortgages, liens, factoring agreements, accounts receivable financing arrangements, conditional sales, sale and leaseback arrangements and instalment sales contracts; conducting inspections of or monitoring a borrower’s business and collateral; providing financial assistance; restructuring or renegotiating the terms of a loan obligation; requiring pay-

ment of additional interest; extending the payment period of a loan obligation; initiating foreclosure or other proceedings to enforce a security interest in property before obtaining title; requesting and obtaining the appointment of a receiver; and making decisions related to extending or refusing to extend credit.

(10) “Long-term care” means the routine care, maintenance and monitoring of a solid or hazardous waste facility following closing of the facility.

(11) “Municipality” means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(12) “Nonapproved facility” has the meaning given in s. 289.01 (24).

(13) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(15) “Preventive measures” mean the installation or testing of equipment or devices, a designated way of performing a specified operation or the preparation of an emergency response plan.

(16) “Representative” means any person acting in the capacity of a conservator, guardian, court-appointed receiver, personal representative, executor, administrator, testamentary trustee of a deceased person, trustee of a living trust or fiduciary of real or personal property.

(17) “Secretary” means the secretary of natural resources.

(18) “Site or facility” means, except in s. 292.35, an approved facility, an approved mining facility, a nonapproved facility or a waste site.

(19) “Solid waste” has the meaning given under s. 289.01 (33).

(21) “Waste site” means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred or where a hazardous substance is discharged before May 21, 1978.

History: 1995 a. 227 s. 599, 600, 702, 993; 1997 a. 27.

#### SUBCHAPTER II REMEDIAL ACTION

**292.11 Hazardous substance spills. (2) NOTICE OF DISCHARGE.** (a) A person who possesses or controls a hazardous substance or who causes the discharge of a hazardous substance shall notify the department immediately of any discharge not exempted under sub. (9).

(b) Notification received under this section or information obtained in a notification received under this section may not be

used against the person making such a notification in any criminal proceedings.

(c) The department shall designate a 24-hour statewide toll free or collect telephone number whereby notice of any hazardous discharge may be made.

(d) The department shall report notifications that it receives under this subsection related to discharges of agricultural chemicals, as defined in s. 94.73 (1) (a), to the department of agriculture, trade and consumer protection. The department shall report notifications under this paragraph according to a memorandum of understanding between the department and the department of agriculture, trade and consumer protection under s. 94.73 (12).

(e) The department shall report notifications that it receives under this subsection related to discharges from petroleum storage tanks, as defined in s. 101.144 (1) (bm), to the department of commerce.

**(3) RESPONSIBILITY.** A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

**(4) PREVENTION OF DISCHARGE.** (a) The department may require that preventive measures be taken by any person possessing or having control over a hazardous substance if the department finds that existing control measures are inadequate to prevent discharges.

(b) The department shall specify necessary preventive measures by order. The order shall be effective 10 days after issuance, unless the person named requests a hearing, in which case no order may become effective until the conclusion of the hearing.

**(5) CONTINGENCY PLAN.** (a) After consultation with other affected federal, state and local agencies and private organizations, the department shall establish by rule criteria and procedures for the development, establishment and amendment of a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances.

(b) The contingency plan shall:

1. Provide for efficient, coordinated and effective action to minimize damage to the air, land and waters of the state caused by the discharge of hazardous substances;
2. Include containment, clean-up and disposal procedures;
3. Provide for restoration of the lands or waters affected to the satisfaction of the department;
4. Assign duties and responsibilities among state departments and agencies, in coordination with federal and local agencies;
5. Provide for the identification, procurement, maintenance and storage of necessary equipment and supplies;
6. Provide for designation of persons trained, prepared and available to provide the necessary services to carry out the plan; and
7. Establish procedures and techniques for identifying, locating, monitoring, containing, removing and disposing of discharged hazardous substances.

**(6) HAZARDOUS SUBSTANCES SPILLS; APPROPRIATIONS AND RELATED PROVISIONS.** (a) *Contingency plan; activities resulting from discharges.* The department may utilize moneys appropriated under s. 20.370 (2) (dv) and (my) in implementing and carrying out the contingency plan developed under sub. (5) and to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in identifying, locating, monitoring, containing, removing and disposing of discharged substances.

(b) *Limitation on equipment expenses.* No more than 25% of the moneys available under the appropriation under s. 20.370 (2) (dv) or (my) during any fiscal year may be used for the procure-

ment and maintenance of necessary equipment during that fiscal year.

(c) *Reimbursements.* 1. Reimbursements to the department under sub. (7) (b) shall be credited to the environmental fund for environmental management.

2. Reimbursements to the department under section 311, federal water pollution control act amendments of 1972, P.L. 92–500, shall be credited to the appropriation under s. 20.370 (2) (my).

**(7) REMOVAL OR OTHER EMERGENCY ACTION.** (a) Subject to ss. 94.73 (2m) and 101.144 (3), in any case where action required under sub. (3) is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its authorized representative may identify, locate, monitor, contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

(b) The person who possessed or controlled a hazardous substance which was discharged or who caused the discharge of a hazardous substance shall reimburse the department for actual and necessary expenses incurred in carrying out its duties under this subsection.

(c) Subject to ss. 94.73 (2m) and 101.144 (3), the department, for the protection of public health, safety or welfare, may issue an emergency order or a special order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by sub. (3).

(d) 1. The department may negotiate and enter into an agreement containing a schedule for conducting nonemergency actions required under sub. (3) with a person who possesses or controls a hazardous substance that was discharged or who caused the discharge of a hazardous substance if the discharge does not endanger public health.

2. The department may charge fees, in accordance with rules that it promulgates, to offset the costs of negotiating and entering into an agreement under subd. 1.

(e) If a person violates an order under par. (c) or an agreement under par. (d), the department may refer the matter to the department of justice for enforcement under s. 299.95.

**(8) ACCESS TO PROPERTY AND RECORDS.** Any officer, employee or authorized representative of the department, upon notice to the owner or occupant, may enter any property, premises or place at any time for the purposes of sub. (7) if the entry is necessary to prevent increased damage to the air, land or waters of the state, or may inspect any record relating to a hazardous substance for the purpose of ascertaining the state of compliance with this section and the management rules promulgated under this section. Notice to the owner or occupant is not required if the delay attendant upon providing it will result in imminent risk to public health or safety or the environment.

**(9) EXEMPTIONS.** (a) Any person holding a valid permit under ch. 283 is exempted from the reporting and penalty requirements of this section with respect to substances discharged within the limits authorized by the permit.

(b) Law enforcement officers or members of a fire department using hazardous substances in carrying out their responsibility to protect public health, safety and welfare are exempted from the penalty requirements of this section, but shall report to the department any discharges of a hazardous substance occurring within the performance of their duties.

(c) Any person discharging in conformity with a permit or program approved under chs. 281, 285 or 289 to 299 is exempted from the reporting and penalty requirements of this section.

(d) 1. In this paragraph:

- a. “Fertilizer” has the meaning given in s. 94.64 (1) (e).
- b. “Label” has the meaning given in s. 94.67 (19).
- c. “Pesticide” has the meaning given in s. 94.67 (25).

d. “Registered” means registered under the federal insecticide, fungicide, and rodenticide act, as amended (7 USC 136 et seq.), and regulations issued under that act or registered under the rules of the department of agriculture, trade and consumer protection.

2. Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates, is exempted with respect to the application from the reporting and penalty requirements of this section.

(e) 1. “Local governmental unit” means a municipality, a redevelopment authority created under s. 66.431, a public body designated by a municipality under s. 66.435 (4) or a housing authority.

1m. A local governmental unit is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property acquired by the local government unit if any of the following applies:

a. The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

b. The local governmental unit acquired the property from a local governmental unit that acquired the property under a method described in subd. 1m. a.

c. The local governmental unit acquired the property through condemnation or other proceeding under ch. 32.

d. The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

1s. An economic development corporation described in section 501 (c) of the Internal Revenue Code, as defined in s. 71.22 (4), that is exempt from federal taxation under section 501 (a) of the Internal Revenue Code, or an entity wholly owned and operated by such a corporation, is exempt from subs. (3), (4) and (7) (b) and (c) with respect to property acquired before, on or after October 14, 1997, if the property is acquired to further the economic development purposes that qualify the corporation as exempt from federal taxation.

2. Subdivisions 1m. and 1s. do not apply to a discharge of a hazardous substance caused by any of the following:

a. An action taken by the local governmental unit or corporation.

b. A failure of the local governmental unit or corporation to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

c. A failure of the local governmental unit or corporation to sample and analyze unidentified substances in containers stored aboveground on the property.

d. A failure of the local governmental unit or corporation to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

3. Subdivisions 1m. and 1s. do not apply if the discharge is a discharge of a hazardous substance from an underground storage tank that is regulated under 42 USC 6991 to 6991i.

4. Subdivisions 1m. and 1s. do not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit or corporation to take that necessary action and the local governmental unit or corporation does not take that action as directed.

5. Subdivision 1s. does not apply if the corporation fails to do any of the following:

a. Respond to a discharge of a hazardous substance that poses an imminent threat to public health, safety or welfare or to the environment, on or off of the property.

b. Enter into an agreement with the department to conduct any necessary investigation and remediation activities at the property no later than 3 years after acquiring the property.

c. Allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take necessary action to respond to the discharge.

(f) Any person discharging high-volume industrial waste used in a highway improvement project under s. 84.078 is exempted from the penalty requirements of this section.

(10) WAIVER. The department may waive compliance with any requirement of this section to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

(11) ENFORCEMENT EXCLUSIONS. (a) Any person proceeded against for a violation of this section shall not be subject to penalties under s. 291.97 for the same act or omission.

(b) Any person who discharges a hazardous substance, where the responsibilities for such a discharge are prescribed by statute other than ch. 291, shall be subject to the penalty under either this section or the other section but not both.

(12) APPLICABILITY. (a) Action by the department under this section is not subject to s. 292.31.

(b) This section applies to all releases of hazardous substances for which a notification must be made under s. 166.20 (5) (a) 2.

(13) LIEN. Any expenditures made by the department under sub. (4), (6) or (8) shall constitute a lien upon the property for which the expenses are incurred, as provided in s. 292.81.

History: 1995 a. 227 ss. 700, 703 to 707, 710, 993; 1997 a. 27, 35.

Owner of property from which hazardous substance seeped into neighboring properties was required to take remedial action. Seepage was “discharge” even though not related to current human activity. *State v. Mauthe*, 123 W (2d) 288, 366 NW (2d) 871 (1985).

Sub. (11) (b) allows the imposition of both a monetary penalty and an administrative clean-up order against a violator of this section. Where another regulatory statute is implicated the penalty imposed may be the penalty under this section or the other section, but not both. *State v. Block Iron & Supply Co.* 183 W (2d) 357, 515 NW (2d) 332 (Ct. App. 1994).

Sub. (3) is not a safety statute. A violation of it is not negligence *per se*. *Grube v. Daun*, 210 W (2d) 682, 563 NW (2d) 523 (1997).

This section is applicable in actions by the state to compel remediation of, and to impose penalties for, hazardous waste spills, which although initially caused by actions preceding the 1978 effective date of this section, continue to discharge after that date. *State v. Chrysler Outboard Corp.* 219 W (2d) 130, 580 NW (2d) 203 (1998).

### 292.13 Property affected by off-site discharge. (1)

EXEMPTION FROM LIABILITY FOR GROUNDWATER CONTAMINATION. A person, other than a state agency, is exempt from s. 292.11 (3), (4) and (7) (b) and (c) with respect to the existence of a hazardous substance in the groundwater on property possessed or controlled by the person if all of the following apply:

(a) The discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person.

(b) The person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge.

(c) The person conducts an investigation or submits other information, that the department determines is adequate, to substantiate that pars. (a) and (b) are satisfied.

(d) The person agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.

(f) The person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

(g) The person agrees to any other condition that the department determines is reasonable and necessary to ensure that the

department or other person described in par. (d) can adequately respond to the discharge.

**(1m) EXEMPTION FROM LIABILITY FOR SOIL CONTAMINATION.** A person, other than a state agency, is exempt from s. 292.11 (3), (4) and (7) (b) and (c) with respect to the existence of a hazardous substance in the soil on property possessed or controlled by the person if all of the following apply:

(a) The discharge of the hazardous substance originated from a source on property that is not possessed or controlled by the person.

(b) The person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge.

(c) The person conducts an investigation or submits other information, that the department determines is adequate, to substantiate that pars. (a) and (b) are satisfied.

(d) The person agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.

(e) The person agrees to take one or more of the following actions at the direction of the department if, after the department has made a reasonable attempt to notify the party who caused the discharge of the hazardous substance about the party's responsibilities under s. 292.11, the department determines that the action or actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment:

1. Limit public access to the property.
2. Identify, monitor and mitigate fire, explosion and vapor hazards on the property.
3. Visually inspect the property and install appropriate containment barriers.

(f) The person agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.

(g) The person agrees to any other condition that the department determines is reasonable and necessary to ensure that the department or other person described in par. (d) can adequately respond to the discharge.

**(2) DETERMINATIONS CONCERNING LIABILITY.** The department shall, upon request, issue a written determination that a person who possesses or controls property on which a hazardous substance exists in the soil or groundwater is exempt from s. 292.11 (3), (4) and (7) (b) and (c) if the person satisfies the applicable requirements in subs. (1) and (1m). The department may revoke its determination if it determines that any of the requirements in sub. (1) or (1m) cease to be met.

**(3) FEES.** The department may, in accordance with rules that it promulgates, assess and collect fees to offset the costs of issuing determinations under sub. (2).

**History:** 1997 a. 27.

### 292.15 Voluntary party remediation and exemption from liability. (1) DEFINITIONS.

In this section:

(b) "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.

(d) "Release" means the original discharge.

(e) "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.

(f) "Voluntary party" means a person to whom all of the following apply:

1m. The person did not intentionally or recklessly cause the release of a hazardous substance on the property.

**(2) EXEMPTION FROM LIABILITY.** (a) Except as provided in sub. (6) or (7), a voluntary party is exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, with respect to the existence of a hazardous substance on the property, if all of the following occur at any time before or after the date of acquisition:

1. An environmental investigation of the property is conducted that is approved by the department.

2. Except as provided in sub. (4), the property is cleaned up by restoring the environment to the extent practicable and minimizing the harmful effects from a discharge of the hazardous substance in accordance with rules promulgated by the department and any contract entered into under those rules.

3. The voluntary party obtains a certificate of completion from the department that the property has been satisfactorily restored to the extent practicable and that the harmful effects from a discharge of a hazardous substance have been minimized.

4. The voluntary party maintains and monitors the property as required under rules promulgated by the department and any contract entered into under those rules.

5. The voluntary party does not engage in activities that are inconsistent with the maintenance of the property.

6. The voluntary party has not obtained the certification under subd. 3. by fraud or misrepresentation, by the knowing failure to disclose material information or under circumstances in which the voluntary party knew or should have known about more discharges of hazardous substances than were revealed by the investigation conducted under subd. 1.

(am) The department may approve a partial cleanup and issue a certificate of completion as provided in par. (a) that states that not all of the property has been satisfactorily restored or that not all of the harmful effects from a discharge of a hazardous substance have been minimized. Approval of a partial cleanup exempts a voluntary party from ss. 291.37 (2) and 292.11 (3), (4) and (7) (b) and (c) with respect to the portion of the property or hazardous substances cleaned up under this paragraph. In addition to meeting the requirements of par. (a), a certificate for a partial cleanup under this paragraph may be issued only if:

1. Public health, safety or the environment will not be endangered by any hazardous substances remaining on or originating from the property after the partial cleanup, given the manner in which the property will be developed and used and any other factors that the department considers relevant to the endangerment of public health, safety or the environment.

2. The activities associated with any proposed use or development of the property will not aggravate or contribute to the discharge of a hazardous substance and will not unduly interfere with, or increase the costs of, restoring the property and minimizing the harmful effects of the discharge of a hazardous substance.

3. The owner of the property agrees to cooperate with the department to address problems caused by hazardous substances remaining on the property. Such cooperation shall include allowing access to the property or allowing the department or its authorized representatives to undertake activities on the property, including placement of borings, equipment and structures on the property.

(ar) The department may require the owner of the property to grant an easement or other interest in the property for any of the purposes specified in par. (am) as a condition of issuing a certificate under par. (am).

(b) The exemptions provided in pars. (a) and (am) continue to apply after the date of certification by the department under par. (a) 3., or approval by the department under par. (am), notwithstanding the occurrence of any of the following:

1. Statutes, rules or regulations are created or amended that would impose greater responsibilities on the voluntary party than those imposed under par. (a) 2.

2. The voluntary party fully complies with the rules promulgated by the department and any contract entered into under those rules under par. (a) 2. but it is discovered that the cleanup fails to fully restore the environment and minimize the effects from a discharge of a hazardous substance.

3. The contamination from a hazardous substance that is the subject of the cleanup under par. (a) 2. is discovered to be more extensive than anticipated by the voluntary party and the department.

(c) The department of justice may not commence an action under 42 USC 9607 against any voluntary party meeting the criteria of this subsection to recover costs for which the voluntary party is exempt under pars. (a), (am) and (b).

(d) This subsection does not apply to a municipal waste landfill, as defined in s. 289.01 (22), or to an approved facility.

**(3) SUCCESSORS AND ASSIGNS.** The exemption provided in sub. (2) applies to any successor or assignee of the voluntary party who qualifies as a voluntary party and who complies with the provisions of sub. (2) (a) 4. and 5. unless the successor or assignee knows that a certificate under sub. (2) (a) 3. or (am) was obtained by any of the means or under any of the circumstances specified in sub. (2) (a) 6.

**(4) LIMITED RESPONSIBILITY.** The responsibility of a voluntary party under sub. (2) (a) 2. may be monetarily limited by agreement between the voluntary party and the department if the voluntary party purchased the property from a local governmental unit that acquired the property in a way described in s. 292.11 (9) (e) 1m. a., b., c. or d. The agreement shall stipulate all of the following:

(a) That the voluntary party may cease the cleanup when the cost of the cleanup equals 125% of the anticipated expense of the cleanup.

(b) That the voluntary party will continue to receive the benefit of the exemption under sub. (2) (a) after cessation of the cleanup if the voluntary party complies with sub. (2) (a) 4. and 5.

(c) That, if the voluntary party ceases the cleanup, the voluntary party shall use reasonable efforts to sell the property in accordance with rules of the department that define “reasonable efforts” in a manner substantively equivalent to 40 CFR 300.1100 (d) (2) (i).

**(5) FEES.** The department may, in accordance with rules that it promulgates, assess and collect fees from a voluntary party to offset the cost of the department’s activities under subs. (2) and (4). The fees may include an advance deposit, from which the department shall return the amount in excess of the cost of the department’s activities under subs. (2) and (4).

**(5m) PROSPECTIVE PURCHASER ASSURANCE LETTERS.** The department, in accordance with rules promulgated by the department, may issue to a prospective purchaser of property a letter certifying that the prospective purchaser is entitled to the exemptions described under sub. (2). The department may condition the entitlement to the exemptions upon the prospective purchaser’s taking action as provided in this section and in a manner considered satisfactory to the department. Notwithstanding sub. (1) (f), a person to whom the department issues a letter under this subsection shall be considered to be a voluntary party under this section. Any letter issued under this subsection is void if the letter was obtained by fraud or misrepresentation.

**(6) LIENS.** This section does not exempt property from any lien filed under s. 292.81 (3) for costs incurred by the department prior to the date that certification is issued under sub. (2) (a) 3.

**(7) APPLICABILITY.** This section does not apply to any of the following:

(a) A hazardous waste treatment, storage or disposal facility that first begins operation after the date on which the voluntary party acquired the property.

(b) A licensed hazardous waste treatment, storage or disposal facility operated on the property before the date on which the voluntary party acquired the property and that is operated after the date on which the voluntary party acquired the property.

(c) Any hazardous waste disposal facility that has been issued a license under s. 144.441 (2), 1995 stats., or s. 289.41 (1m), or rules promulgated under those sections, for a period of long-term care following closure of the facility.

**History:** 1993 a. 453; 1995 a. 225; 1995 a. 227 s. 712, 714, 715; 1997 a. 27, 237. The Land Recycling Act. Borchert & Burke. Wis. Law. Aug. 1994.

### 292.16 Responsibility of certain municipalities acquiring closed landfills. (1) DEFINITION. In this section:

(a) “Generator” has the meaning given in s. 292.35 (1) (b).

(b) “Transporter” has the meaning given in s. 292.35 (1) (g).

**(2) APPLICATION.** A municipality may apply to the department for an exemption from liability with respect to property that contains a closed landfill and that is acquired by the municipality before, on or after the effective date of this subsection.

**(3) CONDITIONS FOR APPROVAL.** The department shall approve an application under sub. (2) if all of the following apply:

(a) The landfill is closed when the municipality acquires the property.

(b) The landfill closure complies with all rules of the department at the time of the application under sub. (2).

(c) The municipality did not have an ownership interest in the landfill while the landfill was in operation.

(d) The municipality enters into an agreement with the department that contains requirements for the municipality to maintain the property.

(e) The department determines that an exemption from liability under this section is in the public interest.

(f) The landfill was privately owned while it was in operation.

(g) The landfill has caused groundwater contamination.

(h) A steering committee of local public and private representatives was formed to address the contamination caused by the landfill in a cooperative effort with the department that prevented the landfill from being listed on the national priority list under 42 USC 9605 (a) (8) (B).

(i) The remedial action approved by the department authorized a recreational use for the property and was completed by December 31, 1995.

**(4) SCOPE OF EXEMPTION.** An approval by the department under sub. (3) exempts the municipality from liability imposed under ss. 289.05, 289.41, 289.46, 289.95, 291.37, 291.85 (2), 292.11 (3), (4) and (7) (b) and (c) and 292.31 (8), and rules promulgated under those provisions, based on the municipality’s ownership of the property. The exemption does not apply to any liability based on hazardous substances for which the municipality is responsible as a generator or transporter.

**(5) REQUIREMENTS.** If the department approves a municipality’s application under sub. (3), the municipality shall do all of the following:

(a) Obtain the prior approval of the department for any proposed uses of the property, for any physical disturbance of the soil and for any construction on the property.

(b) Allow access to the property by any person who is required to conduct monitoring, to operate and maintain equipment or to undertake remedial action in connection with the closed landfill.

**History:** 1997 a. 27.

### 292.19 Responsibility of persons conducting investigations. (1) For purposes of this chapter, a person who con-

ducts an investigation of property to determine the existence of, or to obtain information about, a discharge of a hazardous substance does not possess or control the hazardous substance or cause the discharge of the hazardous substance as the result of conducting the investigation.

(2) If the person who conducts the investigation physically causes a discharge, sub. (1) does not apply with respect to the portion of the property on which the person causes the discharge.

History: 1997 a. 27.

### 292.21 Responsibility of lenders and representatives.

(1) RESPONSIBILITY OF LENDERS; LENDING ACTIVITIES; ACQUISITION OF PROPERTY. (a) *Lending*. 1. Subject to subd. 2. and par. (b), for purposes of this chapter, a lender does not possess or control a hazardous substance or cause the discharge of a hazardous substance as a result of engaging in lending activities.

2. Subdivision 1. does not apply in any of the following situations:

- a. A lender physically causes a discharge.
- b. The lender through tortious conduct with respect to lending activities causes a discharge of a hazardous substance or exacerbates an existing discharge of a hazardous substance.
3. The department may, by rule, designate as lending activities other activities, in addition to those listed in s. 292.01 (9), that are related to undertaking appropriate actions to preserve and protect property or are related to the advancing of funds or credit or the collecting of funds.

(b) *Preacquisition inspections of real property*. For purposes of this chapter, a lender does not possess or control a hazardous substance or cause the discharge of a hazardous substance as the result of inspecting real property for compliance with environmental laws, conducting any portion of an environmental assessment of the property in the manner specified in par. (c) 2., conducting an investigation to determine the degree and extent of contamination or performing remedial action to clean the discharge of a hazardous substance. This paragraph applies to a lender only if all of the following conditions are satisfied:

1. The activities described in this paragraph occur before the date on which the lender acquires title to, or possession or control of, real property through enforcement of a security interest.
2. The lender notifies the department, in accordance with s. 292.11 (2), of any discharge of a hazardous substance identified as the result of activities described in this paragraph.
3. If the lender conducts an investigation or performs remedial action, the lender does so in accordance with department rules.
4. The lender does not physically cause a discharge.
5. The lender through tortious conduct with respect to the activities described in this paragraph does not cause a new discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.

(c) *Acquisition of real property*. 1. A lender that acquires title to, or possession or control of, real property through enforcement of a security interest is not subject to s. 292.11 (3), (4) and (7) (b) and (c) and is not liable under this chapter or chs. 281, 285, 289, 291 or 293 to 299 for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

- a. The lender, through action or inaction, does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge of a hazardous substance.
- b. Any discharge of a hazardous substance was not from an underground storage tank regulated under 42 USC 6991 to 6991i.
- c. The lender notifies the department, in accordance with s. 292.11 (2), of any known discharge of a hazardous substance.
- d. The lender conducts an environmental assessment of the real property in accordance with subd. 2. at any time, but not more than 90 days after the date the lender acquires title to, or possession or control of, the real property. The lender shall file a complete copy of the environmental assessment with the department

not more than 180 days after the date the lender acquires title to, or possession or control of, the real property. If an environmental assessment is conducted more than one year before the date on which the lender acquires title to, or possession or control of, the real property, the exemption under this subd. 1. d. applies only if the lender does all of the following: visually inspects the property in accordance with subd. 2. a. and b. after the date on which the lender acquires title to, or possession or control of, the real property to verify the environmental assessment; submits a complete copy of the environmental assessment and the results of the visual inspection to the department not later than 90 days after the lender acquires title to, or possession or control of, the real property; receives notice from the department that the department determines that the environmental assessment is adequate or that the department directs the lender to address any inadequacies in the environmental assessment; corrects, to the satisfaction of the department, any inadequacies of an environmental assessment; and reimburses the department for the cost to the department of reviewing materials submitted under this subd. 1. d.

e. For a hazardous substance released on or after the date on which the lender acquires title to, or possession or control of, the real property, the lender is not engaged in the operation of a business at the property, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business.

f. If the discharge of a hazardous substance occurs on or after the date on which the lender acquires title to, or possession or control of, the real property, the lender implements an emergency response action in response to the discharge of the hazardous substance.

2. The environmental assessment under subd. 1. d. shall be performed by a qualified environmental technician or consultant and shall include all of the following:

- a. A visual inspection of the real property.
- b. A visual inspection and description of the personal property located on the real property that may constitute a hazardous waste or hazardous substance or that has a significant risk of being discharged.
- c. A review of the ownership and use history of the real property, including a search of title records showing prior ownership of the real property for a period of 80 years previous to the date of the visual inspection under subd. 2. b.
- d. A review of historic and recent aerial photographs of the real property, if available.
- e. A review of the environmental licenses, permits or orders issued with respect to the real property.
- f. An evaluation of the results of any environmental sampling and analysis that has been conducted.

g. A review to determine if the real property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment, including the national priorities list under 42 USC 9605 (a) (8) (B); the federal environmental protection agency's information system for the comprehensive environmental response, compensation and liability act, 42 USC 9601 to 9675, (CERCLIS); the department's most recent Wisconsin remedial response site evaluation report, including the inventory of sites or facilities which may cause or threaten to cause environmental pollution required by s. 292.31 (1) (a); and the department's registry of abandoned landfills.

h. The collection and analysis of representative samples of soil or other materials in the ground that are suspected of being contaminated based on observations made during a visual inspection of the real property or based on aerial photographs, or other information available to the lender, including stained or discolored soil or other materials in the ground and including soil or materials in the ground in areas with dead or distressed vegetation. The collection and analysis shall identify contaminants in the soil or other materials in the ground and shall quantify concentrations.

i. The collection and analysis of representative samples of unknown wastes or potentially hazardous substances found on the real property and the determination of concentrations of hazardous waste and hazardous substances found in tanks, drums or other containers or in piles or lagoons on the real property.

3. An environmental assessment filed under subd. 1. d. does not constitute notice required under s. 292.11 (2).

(d) *Personal property and fixtures.* A lender that enforces a security interest in personal property or fixtures at a particular location, filed under ch. 409, and that does not acquire title to, or possession or control of, the real property at that location, except for purposes of protecting and removing personal property or fixtures, is not subject to s. 292.11 (3), (4) and (7) (b) and (c) and is not liable under this chapter for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

1. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender notifies the department and the borrower of any decision not to accept specific personal property or fixtures.

2. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender provides the department with a written general description of the personal property or fixtures, the location of the personal property or fixtures on the real property and the location of the real property by street address.

3. The lender, within its ability to do so, permits reasonable access to the personal property or fixtures to the department or the borrower or others acting on the borrower's behalf.

4. The lender does not engage in the operation of a business at the location of the personal property or fixtures, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business except for actions that are undertaken to protect the property and are approved by the department in writing.

(e) *Rules; approvals.* The department may promulgate rules further specifying the activities to be carried out by a lender for the environmental assessment required under par. (c) 1. d. The department may not, by rule, require a lender to undertake sampling and analysis beyond that required under par. (c) 2. h. and i. in order to determine the degree and extent of contamination or require a lender to perform any remedial action to clean any discharge. The department may approve, by rule or in a site-specific approval, the use of reliable methods of identification other than the collection and laboratory analysis of samples.

(2) **RESPONSIBILITY OF REPRESENTATIVES.** (a) A representative who acquires title to, or possession or control of, real or personal property is not personally liable under this chapter for a discharge of a hazardous substance if all of the following circumstances apply:

1. The representative acquires title to, or possession or control of, the real or personal property in the capacity of a representative.

2. The representative, through action or inaction, does not knowingly, wilfully or recklessly cause a discharge of a hazardous substance.

3. The representative does not physically cause a discharge of a hazardous substance.

4. The representative does not have a beneficial interest in a trust, estate or similar entity that owns, possesses or controls the real or personal property.

5. The representative does not knowingly, wilfully or recklessly fail to notify the department in accordance with s. 292.11 (2) of the discharge of a hazardous substance.

(b) Paragraph (a) does not apply to any of the following:

1. A representative that knew or should have known that the trust, estate or similar entity for which the representative is acting as a representative was established, or that assets were transferred

to the trust, estate or similar entity, in order to avoid responsibility for a discharge of a hazardous substance.

2. A representative that fails to act in good faith to cause the trust, estate or similar entity for which the representative is acting as a representative to take the actions described in s. 292.11 (3) or to reimburse the department under s. 292.11 (7) (b). It is not a lack of good faith for a representative to resign as representative, to seek a court order directing the representative to act or refrain from acting or to challenge the department by any legal means.

(c) This subsection does not limit the responsibility of any trust, estate or similar entity to take the actions required under s. 292.11 (2), (3), (4) or (7) (c) or any other provision of this chapter or to reimburse the department under s. 292.11 (7) (b).

*History:* 1995 a. 227 s. 708, 709, 993; 1997 a. 27.

## 292.26 Civil immunity; local governmental units.

(1) In this section, "local governmental unit" has the meaning given in s. 292.11 (9) (e) 1.

(2) Except as provided in sub. (3), a local governmental unit is immune from civil liability related to the discharge of a hazardous substance on or from property formerly owned or controlled by the local governmental unit if the property is no longer owned by the local governmental unit at the time that the discharge is discovered and if any of the following applies:

(a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

(b) The local governmental unit acquired the property from a local governmental unit that acquired the property under a method described in par. (a).

(c) The local governmental unit acquired the property through condemnation or other proceeding under ch. 32.

(d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

(3) Subsection (2) does not apply with respect to a discharge of a hazardous substance caused by an activity conducted by the local governmental unit while the local governmental unit owned or controlled the property.

*History:* 1997 a. 27.

## 292.31 Environmental repair. (1) INVENTORY; ANALYSIS;

HAZARD RANKING. (a) *Inventory.* 1. The department shall compile and maintain an inventory of sites or facilities which may cause or threaten to cause environmental pollution. In compiling the inventory, the department shall collect all relevant information about a site or facility which is or may become available. No later than January 1, 1992, the department shall publish the initial inventory of sites or facilities. Every 4 years, beginning no later than January 1, 1996, the department shall publish a revised inventory of sites or facilities.

2. The department shall publish the initial inventory and each revised inventory as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The notice shall include a statement that the list is not subject to judicial review.

3. The decision of the department to include a site or facility on the inventory or exclude a site or facility from the inventory is not subject to judicial review.

4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list of sites or facilities which results from the inventory is not a rule.

(b) *Investigation; analysis.* 1. The department may take direct action under subd. 2. or 3. or may enter into a contract with any person to take the action. The department may take action under subd. 2. or 3. regardless of whether a site or facility is included on the inventory under par. (a) or the hazard ranking list under par. (c).

2. The department may conduct an investigation, analysis and monitoring of a site or facility and areas surrounding the site or facility to determine the existence and extent of actual or potential

environmental pollution from the site or facility including, but not limited to, monitoring by means of installing test wells or by testing water supplies. The department may conduct an investigation to identify persons who are potentially responsible for actual or potential environmental pollution from a site or facility. If the department conducts an investigation to identify persons who are potentially responsible for actual or potential environmental pollution from a site or facility, the department shall make a reasonable effort to identify as many persons as possible responsible for the environmental pollution.

3. The department may determine whether a site or facility presents a substantial danger to public health or welfare or the environment and evaluate the magnitude of the danger.

(c) *Hazard ranking.* 1. The department shall promulgate by rule criteria for determining the ranking of sites and facilities which are included in the inventory under par. (a), based on the degree to which sites or facilities present a substantial danger to public health or welfare or the environment and the potential urgency of taking remedial action. To the extent applicable, the criteria shall be based on the population at risk, the potential for contamination of drinking water supplies, the potential for other direct human contact, the potential for destruction of sensitive ecosystems, the hazard potential of the hazardous substances which may be released and other appropriate factors. The department is not required to use hazard ranking criteria promulgated by the federal environmental protection agency under 42 USC 9601, et seq.

2. From time to time, the department shall issue documents, consistent with the criteria in subd. 1., which list the hazard ranking of sites and facilities which are included in the inventory under par. (a). The hazard ranking list shall include in a single category those sites or facilities determined by the department to present a substantial danger to public health or welfare or the environment. The department may include subcategories in the hazard ranking list which group together, without assigning a specific degree of risk and without establishing an individual hazard ranking, sites or facilities which do not present a substantial danger to public health or welfare or the environment. No later than January 1, 1994, the department shall complete the hazard ranking of all sites or facilities which are included in the initial inventory compiled under par. (a). Notwithstanding s. 227.01 (13) or 227.10 (1), documents issued under this subdivision are not rules.

3. The department shall publish the hazard ranking list and any amendments to the hazard ranking list as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The notice shall invite the submission of written comments within the 30-day period after the notice is published. The notice shall include a description of the procedure for requesting a public hearing and a statement that the list is not subject to judicial review.

4. Within 30 days after the hazard ranking list or any amendments to the hazard ranking list are published, any person may submit to the department a request for a public hearing. If a hearing is requested within the 30-day period, the department shall publish a notice of the hearing, at least 10 days prior to the hearing, as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The department shall conduct the public hearing within 90 days after the hearing is requested. The department may publish a notice and conduct a public hearing if a request is received after the 30-day period. Notwithstanding s. 227.42, the hearing under this paragraph shall not be conducted as a contested case.

5. The decision of the department concerning the hazard ranking assigned to a site or facility is not subject to judicial review.

(d) *Access to information.* Upon the request of any officer, employe or authorized representative of the department, any person who generated, transported, treated, stored or disposed of solid or hazardous waste which may have been disposed of at a site or facility under investigation by the department shall provide the

officer, employe or authorized representative access to any records or documents in that person's custody, possession or control which relate to:

1. The type and quantity of waste generated, transported, treated or stored which was disposed of at the site or facility and the dates of these activities.

2. The identity of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

3. The identity of subsidiary or parent corporations, as defined in 292.31 (8) (a) 3., of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

(2) *ENVIRONMENTAL RESPONSE PLAN.* The department shall promulgate by rule a waste facility environmental response plan. The plan shall contain the following provisions:

(a) Methods for preparing the inventory and conducting the analysis under sub. (1).

(b) Methods for remedial action under sub. (3).

(c) Methods and criteria for determining the appropriate extent of remedial action under sub. (3).

(d) Means of ensuring that the costs of remedial action are appropriate in relation to the associated benefits over the period of potential human exposure to substances released by the site or facility.

(e) Appropriate roles and responsibilities under this section for federal, state and local governments and for interstate and non-governmental entities.

(3) *ENVIRONMENTAL REPAIR.* (b) *Department authority.* 1. The department may take direct action under subs. 2. to 9. or may enter into a contract with any person to take the action.

2. The department may take action to avert potential environmental pollution from the site or facility.

3. The department may repair the site or facility or isolate the waste.

4. The department may abate, terminate, remove and remedy the effect of environmental pollution from the site or facility.

5. The department may restore the environment to the extent practicable.

6. The department may establish a program of long-term care, as necessary, for a site or facility which is repaired or isolated.

7. The department may provide temporary or permanent replacements for private water supplies damaged by a site or facility. In this subdivision, "private water supply" means a well which is used as a source of water for humans, livestock, as defined in s. 95.80 (1) (b), or poultry.

8. The department may assess the potential health effects of the occurrence, not to exceed \$10,000 per occurrence.

9. The department may take any other action not specified under subs. 2. to 8. consistent with this subsection in order to protect public health, safety or welfare or the environment.

(c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider the hazard ranking of each site or facility, the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors. The department shall give the highest priority to remedial action at sites or facilities which have caused contamination of a municipal water system in a town with a population greater than 10,000. If any such site or facility is eligible for federal funds under 42 USC s. 9601 to 9675, but the federal funds will not be available before January 1, 2000, the department shall proceed with remedial action using state funds.

(cm) *Remedial action schedule.* The department shall commence remedial action as required under this paragraph for sites or facilities which are included on the hazard ranking list and are



determined to present a substantial danger to public health or welfare or the environment. The department shall commence remedial action at no less than 2 of the sites or facilities by January 1, 1989. The department shall commence remedial action at all of the sites or facilities by January 1, 2000. After January 1, 1989 and before January 1, 2000, the department shall annually commence remedial action at no less than 2 of the sites or facilities.

(d) *Emergency responses.* Notwithstanding rules promulgated under this section, the hazard ranking list, the considerations for taking action under par. (c) or the remedial action schedule under par. (cm), the department may take emergency action under this subsection and subs. (1) and (7) at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

(e) *Access to property.* Any officer, employe or authorized representative of the department may enter onto any site or facility and areas surrounding the site or facility at reasonable times and upon notice to the owner or occupant to take action under this section. Notice to the owner or occupant is not required if the delay required to provide this notice is likely to result in an imminent risk to public health or welfare or the environment.

(f) *Notice; hearing.* The department shall publish a class 1 notice, under ch. 985, prior to taking remedial action under this subsection and subs. (1) and (7), which describes the proposed remedial action and the amount and purpose of any proposed expenditure. Except as provided under par. (d), the department shall provide a hearing to any person who demands a hearing within 30 days after the notice is published for the purpose of determining whether the proposed remedial action and any expenditure is within the scope of this section and is reasonable in relation to the cost of obtaining similar materials and services. The department is not required to conduct more than one hearing for the remedial action proposed at a single site or facility. Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case. The decision of the department to take remedial action under this section is a final decision of the agency subject to judicial review under ch. 227.

**(4) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY MUNICIPALITIES.** Notwithstanding the inventory, analysis and hazard ranking under sub. (1), the environmental response plan prepared under sub. (2) or the environmental repair authority, remedial action sequence and emergency response requirements under sub. (3), the department shall pay that portion of the cost of any monitoring requirement which is to be paid under s. 289.31 (7) (f) from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

**(5) MUNICIPAL INCINERATOR ASH TESTING.** Notwithstanding the inventory, analysis and hazard ranking under sub. (1), the environmental response plan prepared under sub. (2), the environmental repair authority, remedial action sequence and emergency response requirements under sub. (3), or the monitoring costs under sub. (4), the department shall pay the cost incurred by a municipality after June 30, 1986, and before January 30, 1988, for testing required to determine whether the ash from a municipally owned incinerator is hazardous. The department shall make payments under this subsection from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

**(6) PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND.** The department may expend moneys received from the investment and local impact fund for the purposes specified under sub. (3) only for approved mining facilities and only if moneys in the environmental fund that are available for environmental repair are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the environmental fund that is available for environmental repair at the beginning of that fiscal year or 50% of the balance in

the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

**(7) IMPLEMENTING THE FEDERAL SUPERFUND ACT.** (a) The department may advise, consult, assist and contract with other interested persons to take action to implement the federal comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601, et seq., in cooperation with the federal environmental protection agency. These actions include all of the actions under subs. (1) to (3). The department may enter into agreements with the federal environmental protection agency.

(b) The department may expend moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg) as required under 42 USC 9601, et seq. The department shall promulgate by rule criteria for the expenditure of moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg). The criteria shall include consideration of the amount of moneys available in the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg), the moneys available from other sources for the required sharing of costs, the differences between public and private sites or facilities, the potential for cost recovery from responsible parties and any other appropriate factors.

(c) 1. The department may require a municipality to pay a reasonable share of the amount expended by the department for a project under par. (b). The department shall base any share charged to a municipality for a project under par. (b) on the following factors:

a. The municipality's responsibility for the site or facility affected by the project.

b. The benefit that the municipality receives from the project.

c. The municipality's ability to pay for the project.

2. The total amount charged to all municipalities who are charged for the project may not exceed 50% of the amount expended by the department under par. (b) for the project.

3. The department shall promulgate rules establishing criteria for determining the responsibility, for the purposes of this subsection, of a municipality for a site or facility affected by the project under par. (b); the benefit a municipality receives from a project under par. (b); and the ability of a municipality to pay for a project under par. (b).

4. All moneys received under this paragraph shall be credited to the environmental fund for environmental management.

**(8) RECOVERY OF EXPENDITURES.** (a) *Definitions.* In this subsection:

1. "Operator" means any person who operates a site or facility or who permits the disposal of waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits disposal of waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

2. "Owner" means any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

3. "Subsidiary or parent corporation" means any business entity, including a subsidiary, parent corporation or other business arrangement which has elements of common ownership or control or uses a long-term contractual arrangement with any person to avoid direct responsibility for conditions at a site or facility.

(b) *Applicability.* 1. This subsection does not apply to the release or discharge of a substance which is in compliance with a permit, license, approval, special order, waiver or variance issued under this chapter or ch. 30, 31 or 283, or under corresponding federal statutes or regulations.

2. This subsection applies to an owner who purchases the land where a site or facility is located only if the owner knew or should

have known of the existence of the site or facility at the time of purchase.

3. This subsection does not apply to the release or discharge of high-volume industrial waste used in a highway improvement project under s. 84.078.

(c) *Persons responsible.* 1. An owner or operator is responsible for conditions at a site or facility which presents a substantial danger to public health or welfare or the environment if the person knew or should have known at the time the disposal occurred that the disposal was likely to result in or cause the release of a substance into the environment in a manner which would cause a substantial danger to public health or welfare or to the environment.

2. Any person, including an owner or operator and including a subsidiary or parent corporation which is related to the person, is responsible for conditions at a site or facility which present a substantial danger to public health or welfare or the environment if:

a. The person violated any applicable statute, rule, plan approval or special order in effect at the time the disposal occurred and the violation caused or contributed to the condition at the site or facility; or

b. The person's action related to the disposal caused or contributed to the condition at the site or facility and would result in liability under common law in effect at the time the disposal occurred, based on standards of conduct for that person at the time the disposal occurred.

(d) *Right of action.* A right of action shall accrue to the state against any person responsible under par. (c) if an expenditure is made for environmental repair at the site or facility or if an expenditure is made under sub. (7).

(f) *Action to recover costs.* The attorney general shall take action as is appropriate to recover expenditures to which the state is entitled.

(g) *Disposition of funds.* If the original expenditure was made from the environmental repair fund, under s. 25.46, 1987 stats., or the environmental fund, the net proceeds of the recovery shall be paid into the environmental fund for environmental management. If the original expenditure was made from the investment and local impact fund, the net proceeds of the recovery shall be paid into the investment and local impact fund.

(h) *Cleanup agreements; waiver of cost recovery.* The department and any person who is responsible under par. (c) may enter into an agreement regarding actions which the department is authorized to take under sub. (3). In the agreement, the department may specify those actions under sub. (3) which the responsible person may take. As part of the agreement, the department may agree to reduce the amount which the state is entitled to recover under this subsection or to waive part or all of the liability which the responsible person may have under this subsection.

(i) *Lien.* Any expenditures made by the department under sub. (1), (3) or (7) shall constitute a lien upon the property for which the expenses are incurred, as provided in s. 292.81.

(9) **RELATION TO OTHER LAWS.** The department shall coordinate its efforts under this section with the federal environmental protection agency acting under the comprehensive environmental response, compensation and liability act, 42 USC 9601, et seq. The department may not duplicate activities or efforts of the federal environmental protection agency if such duplication is prohibited under 42 USC 9601, et seq.

(10) **LIABILITY.** (a) No common law liability, and no statutory liability which is provided in other statutes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statute or provided at common law.

(b) If a person takes any remedial action at a site or facility, whether or not an agreement is entered into with the department under sub. (8) (h), any agreement and the action taken are not evi-

dence of liability or an admission of liability for any potential or actual environmental pollution.

**History:** 1995 a. 227 ss. 605 to 610, 612; 1995 a. 378 s. 45; 1997 a. 27.

### 292.35 Local governmental unit negotiation and cost recovery. (1) DEFINITIONS. In this section:

(b) "Generator" means a person who, by contract, agreement or otherwise, either arranges or arranged for disposal or treatment, or arranges or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, if the disposal or treatment is done by another person at a site or facility owned and operated by another person and the site or facility contains the hazardous substance.

(bm) "Local governmental unit" means a municipality, a redevelopment authority created under s. 66.431 or a public body designated by a municipality under s. 66.435 (4).

(c) "Owner or operator" means any of the following:

1. If the property is taken for tax delinquency, a person who owns or operates a site or facility at the time that the site or facility is taken for tax delinquency.

2. A person who owns or operates a site or facility at the time that the disposal or discharge of a hazardous substance at the site or facility occurs.

(e) "Responsible party" means a generator, an owner or operator, a transporter or a person who possesses or controls a hazardous substance that is discharged or disposed of or who causes the discharge or disposal of a hazardous substance.

(f) "Site or facility" means an approved facility, an approved mining facility, a nonapproved facility, a waste site or any site where a hazardous substance is discharged on or after May 21, 1978.

(g) "Transporter" means a person who accepts or accepted a hazardous substance for transport to a site or facility.

(2) **APPLICABILITY.** This section only applies to a site or facility if the site or facility is owned by a local governmental unit. This section does not apply to a landfill until January 1, 1996.

(2g) **IDENTIFICATION OF RESPONSIBLE PARTIES.** (a) A local governmental unit that intends to use the cost recovery procedures in this section shall attempt to identify all responsible parties. All information obtained by the local governmental unit regarding responsible parties is a public record and may be inspected and copied under s. 19.35.

(b) Upon the request of an employe or authorized representative of the local governmental unit, or pursuant to a special inspection warrant under s. 66.122, any person who generated, transported, treated, stored or disposed of a hazardous substance that may have been disposed of or discharged at the site or facility or who is or was an owner or operator shall provide the employe or authorized representative access to any records or documents in that person's custody, possession or control that relate to all of the following:

1. The type and quantity of hazardous substance that was disposed of or discharged at the site or facility and the dates of the disposal or discharge.

2. The identity of any person who may be a responsible party.

3. The identity of subsidiary or parent corporations, as defined in s. 292.31 (8) (a) 3., of any person who may be a responsible party.

(c) The local governmental unit shall maintain a single repository that is readily accessible to the public for all documents related to responsible parties, the investigation, the remedial action and plans for redevelopment of the property.

(2r) **PRELIMINARY REMEDIAL ACTION PLAN.** (a) The local governmental unit shall, in consultation with the department, prepare a draft remedial action plan.

(b) Upon completion of the draft remedial action plan, the local governmental unit shall send written notice to all responsible parties identified by the local governmental unit, provide public notice and conduct a public hearing on the draft remedial action

plan. The notice to responsible parties shall offer the person receiving the notice an opportunity to provide information regarding the status of that person or any other person as a responsible party, notice and a description of the public hearing and a description of the procedures in this section. At the public hearing, the local governmental unit shall solicit testimony on whether the draft remedial action plan is the least costly method of meeting the standards for remedial action promulgated by the department by rule. The local governmental unit shall accept written comments for at least 30 days after the close of the public hearing.

(c) Upon the conclusion of the period for written comment, the local governmental unit shall prepare a preliminary remedial action plan, taking into account the written comments and comments received at the public hearing and shall submit the preliminary remedial action plan to the department for approval. The department may approve the preliminary remedial action plan as submitted or require modifications.

**(3) OFFER TO SETTLE; SELECTION OF UMPIRE.** (a) Upon receiving the department's approval of the preliminary remedial action plan, the local governmental unit shall serve an offer to settle regarding the contribution of funds for investigation and remedial action at the site or facility on each of the responsible parties identified by the local governmental unit, using the procedure for service of a summons under s. 801.11 and shall notify the department that the offer to settle has been served. The local governmental unit shall include in the offer to settle all of the following information:

1. The amount of the offer and a rationale for the amount.
2. The names, addresses and contact persons, to the extent known, for all of the responsible parties identified by the local governmental unit.
3. The location and availability of documents that support the claim of the local governmental unit against the responsible party.
4. The location of the public repository where documents relating to the site or facility are maintained, the times during which the repository is open and the name and telephone number of the contact person at the repository.
5. A description of the procedures under this section.

(b) The department shall maintain a list of competent and disinterested umpires qualified to perform the duties under subs. (4) to (6). None of the umpires may be employes of the department. Upon receiving notice from a local governmental unit under par. (a), the secretary or his or her designee shall select an umpire from the list and inform the local governmental unit and responsible parties of the person selected.

(c) Within 10 days after receiving notice of the umpire selected by the department under par. (b), the local governmental unit may notify the department that the umpire selected is unacceptable. Within 10 days after receiving notice of the umpire selected by the department under par. (b), a responsible party may notify the department that the umpire selected is unacceptable or that the responsible party does not intend to participate in the negotiation. Failure to notify the department that the umpire is unacceptable shall be considered acceptance. If all responsible parties identified by the local governmental unit indicate that they do not intend to participate in the negotiation, the department shall inform the local governmental unit and the local governmental unit shall cease further action under this section.

(d) Upon receiving notice under par. (c) that the selected umpire is unacceptable, the secretary or his or her designee shall select 5 additional umpires from the list and inform the local governmental unit and responsible parties of the persons selected.

(e) Within 10 days after receiving notice of the umpires selected by the department under par. (d), the local governmental unit or a responsible party may notify the department that one or more of the umpires selected are unacceptable. Failure to notify the department shall be considered acceptance. The secretary or his or her designee shall select an umpire from among those umpires not identified as unacceptable by the local governmental

unit or a responsible party or, if all umpires are identified as unacceptable, the secretary or his or her designee shall designate a person to be umpire for the negotiation.

**(4) NEGOTIATION PROCESS.** (a) The umpire, immediately upon being appointed, shall contact the department, the local governmental unit and the responsible parties that received the offer to settle and shall schedule the negotiating sessions. The umpire shall schedule the first negotiating session no later than 20 days after being appointed. The umpire may meet with all parties to the negotiation, individual parties or groups of parties. The umpire shall facilitate a discussion between the local governmental unit and the responsible parties to attempt to reach an agreement on the design and implementation of the remedial action plan and the contribution of funds by the local governmental unit and responsible parties.

(b) The umpire shall permit the addition to the negotiation, at any time, of any responsible party or any other person who wishes to be a party to the negotiated agreement.

(c) Negotiations may not continue for more than 60 days after the first negotiating session, unless an extension is approved by the department for cause, at the request of any party to the negotiation. The department shall approve an extension if necessary to settle insurance claims.

(d) The local governmental unit and the responsible parties that participate in negotiations shall pay for the costs of the umpire, whether or not an agreement among the parties is reached under sub. (5) or the parties accept the recommendation of the umpire under sub. (6). The umpire shall determine an equitable manner of paying for the costs of the umpire, which is binding.

**(5) AGREEMENT IN NEGOTIATION.** The local governmental unit and any of the responsible parties may enter into any agreement in negotiation regarding the design and implementation of the remedial action plan and the contribution of funds by the local governmental unit and responsible parties for the investigation and remedial action. The portion of the agreement containing the design and implementation of the remedial action plan shall be submitted to the department for approval. The department may approve that portion of the agreement as submitted or require modifications.

**(6) FAILURE TO REACH AGREEMENT IN NEGOTIATION.** (a) If the local governmental unit and any responsible parties are unable to reach an agreement under sub. (5) by the end of the period of negotiation, the umpire shall make a recommendation regarding the design and implementation of the remedial action plan and the contribution of funds for investigation and remedial action by the local governmental unit and all responsible parties that were identified by the local governmental unit and that did not reach an agreement under sub. (5), whether or not the responsible parties participated in negotiations under sub. (4). The umpire shall submit the recommendation to the department for its approval within 20 days after the end of the period of negotiation under sub. (4) (c). The department may approve the recommendation as submitted or require modifications. The umpire shall distribute a copy of the approved recommendation to the local governmental unit and all responsible parties identified by the local governmental unit.

(b) The local governmental unit and the responsible parties that did not reach an agreement under sub. (5) shall accept or reject the umpire's recommendation within 60 days after receiving it. Failure to accept or reject the recommendation within 60 days shall be considered rejection of the recommendation. If the local governmental unit rejects the recommendation with respect to any responsible party, the recommendation does not apply to that responsible party. If a responsible party rejects the recommendation, it does not apply to that responsible party.

**(7) RESPONSIBLE PARTIES SUBJECT TO AN AGREEMENT OR RECOMMENDATION.** A responsible party that enters into an agreement under sub. (5) with a local governmental unit or that accepts the umpire's recommendation under sub. (6), if the local governmental unit does not reject the recommendation, is required to comply

with the agreement or recommendation. When the responsible party has complied with the agreement or recommendation, the responsible party is not liable to the state, including under s. 292.11 (7) (b) or 292.31 (8), or to the local governmental unit for any additional costs of the investigation or remedial action; the responsible party is not liable to any other responsible party for contribution to costs incurred by any other responsible party for the investigation or remedial action; and the responsible party is not subject to an order under s. 292.11 (7) (c) for the discharge that is the subject of the agreement or recommendation.

**(8) RESPONSIBLE PARTIES NOT SUBJECT TO OR NOT COMPLYING WITH AN AGREEMENT OR RECOMMENDATION.** (a) In this subsection:

1. “Interest” means interest at the annual rate of 12%, commencing on the date of the umpire’s recommendation under sub. (6) or, if there is no umpire’s recommendation, on the date of the agreement under sub. (5).

2. “Litigation expenses” means the sum of the costs, disbursements and expenses, including engineering fees and, notwithstanding s. 814.04 (1), reasonable attorney fees necessary to prepare for or participate in proceedings before any court.

(b) A local governmental unit is entitled to recover litigation expenses and interest on the judgment against a responsible party if any of the following occurs:

1. The local governmental unit accepts the recommendation of an umpire under sub. (6), the responsible party rejects it and the local governmental unit recovers a judgment under sub. (9) against that responsible party that equals or exceeds the amount of the umpire’s recommendation.

2. The local governmental unit and the responsible party enter into an agreement under sub. (5) or accept the umpire’s recommendation under sub. (6), the responsible party does not comply with the requirements of the agreement or recommendation and the local governmental unit recovers a judgment against that responsible party based on the agreement or recommendation.

(c) A responsible party is entitled to recover litigation expenses from a local governmental unit if the responsible party accepts the recommendation of an umpire under sub. (6), the local governmental unit rejects the recommendation of the umpire under sub. (6) with respect to the responsible party, the local governmental unit institutes an action under sub. (9) against the responsible party and the local governmental unit recovers a judgment under sub. (9) against the responsible party that is equal to or less than the amount of the umpire’s recommendation.

**(9) LIABILITY FOR REMEDIAL ACTION COSTS.** (a) 1. This subsection applies only to a site or facility that satisfies the applicability provisions of sub. (2) and for which the remedial action specified in an agreement under sub. (5) or a recommendation under sub. (6) is completed.

(b) Except as provided in pars. (bm), (br) and (e), sub. (7) and s. 292.21, a responsible party is liable for a portion of the costs, as determined under pars. (c) to (e), incurred by a local governmental unit for remedial action in an agreement under sub. (5) or a recommendation under sub. (6) and for any related investigation. A right of action shall accrue to a local governmental unit against the responsible party for costs listed in this paragraph.

(bm) Paragraph (b) does not apply with respect to a discharge if the discharge was in compliance with a permit license, approval, special order, waiver or variance issued under ch. 283 or 285 or under corresponding federal statutes or regulations.

(br) Paragraph (b) applies with respect to a transporter only if the transporter does any of the following:

1. Selects the site or facility where the hazardous substance is disposed of without direction from the generator.

2. Violates an applicable statute, rule, plan approval or special order in effect at the time the disposal occurred and the violation causes or contributes to the condition at the site or facility.

3. Causes or contributes to the condition at the site or facility by an action related to the disposal that would result in liability

under common law in effect at the time the disposal occurred, based on standards of conduct for the transporter at the time the disposal occurred.

(c) The liability of each party to the action to recover costs under par. (b) is limited to a percentage of the cost of the remedial action that is determined by dividing the percentage of that party’s contribution to the environmental pollution resulting from the disposal or discharge of a hazardous substance at the site or facility by the percentage of contribution of all responsible parties to the environmental pollution resulting from the disposal or discharge of a hazardous substance at the site or facility. Section 895.045 does not apply to this paragraph.

(cm) Notwithstanding par. (c), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for the total contribution of all parties involved in the common scheme or plan.

(d) The finder of fact shall apportion the contribution of each responsible party to the environmental pollution resulting from the disposal or discharge of hazardous substances at the site or facility for the purposes of par. (c), using the following criteria, and any other appropriate criteria:

1. The ability of the responsible parties to demonstrate that their contribution to the environmental pollution resulting from the disposal or discharge of hazardous substances can be distinguished from the contribution of other responsible parties.

2. The amount of hazardous substances involved.

3. The degree of toxicity of the hazardous substances involved.

4. The degree of involvement by the responsible parties in the generation, transportation, treatment, storage, disposal or discharge of the hazardous substances.

5. The degree of cooperation by the responsible parties with federal, state or local officials to prevent or minimize harm to the public health or the environment.

6. The degree of care exercised by the parties with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.

(e) A responsible party is not liable under par. (b) if the responsible party establishes by a preponderance of the evidence that the responsible party’s contribution to the environmental pollution resulting from the disposal or discharge of hazardous substances was caused solely by any of the following:

1. An act of God.

2. An act of war.

3. An act or omission of a 3rd party, other than an officer, director, employe or agent of the responsible party, or other than a person whose act or omission occurs in connection with a direct or indirect contractual relationship with the responsible party if all of the following apply:

a. The responsible party establishes by a preponderance of the evidence that the responsible party exercised due care with respect to the hazardous substances that caused environmental pollution.

b. In exercising due care under subd. 3. a., the responsible party took into consideration the characteristics of the hazardous substances, in light of all relevant facts and circumstances.

c. The responsible party took precautions against foreseeable acts or omissions of the 3rd party and the consequences that could foreseeably result from those acts or omissions.

(f) Any responsible party may seek contribution from any other responsible party. Such a contribution claim may be brought as a separate action or may be brought in the action commenced against the responsible party under this section.

**(10) TECHNICAL ASSISTANCE.** The department shall provide technical assistance to an umpire at the request of the umpire. The department may limit the amount of staff time allocated to each negotiation.

**(11) LIABILITY.** Except as provided in sub. (7), no common law liability, and no statutory liability that is provided in other stat-

utes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

**(13) FEES.** The department may, by rule, assess and collect fees to offset the cost of the department's activities under this section. The fees may include an advance deposit, from which the department shall return the amount in excess of the cost of the department's activities under this section.

**History:** 1995 a. 227 s. 613 to 616; 1997 a. 27.

**292.37 Confidentiality of records. (1) RECORDS.** Except as provided under sub. (2), any records or other information furnished to or obtained by the department in the administration of ss. 292.31 and 292.35 are public records subject to s. 19.21.

**(2) CONFIDENTIAL RECORDS.** (a) *Application.* An owner or operator of a solid waste facility may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of ss. 292.31 and 292.35.

(b) *Standards for granting confidential status.* Except as provided under par. (c), the department shall grant confidential status for any records or information received by the department and certified by the owner or operator of the solid waste facility as relating to production or sales figures or to processes or production unique to the owner or operator of the solid waste facility or which would tend to adversely affect the competitive position of the owner or operator if made public.

(c) *Emission data; analyses and summaries.* The department may not grant confidential status for emission data. Nothing in this subsection prevents the department from using records and other information in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific owner or operator or the analyses or summaries do not reveal records or other information granted confidential status.

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of ss. 292.31 and 292.35. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency, or its authorized representative, records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency, or its authorized representative, to protect the confidentiality of the records or other information.

**History:** 1995 a. 227 s. 993.

**292.41 Abandoned containers. (1) DEFINITION.** In this section, "abandoned container" means any container which contains a hazardous substance and is not being monitored and maintained.

**(2) APPLICABILITY.** (a) This section does not apply to abandoned containers which are located in an approved facility or a nonapproved facility.

(b) Action by the department under this section is not subject to s. 292.31.

**(3) CONTINGENCY PLAN.** (a) After consultation with other affected federal, state and local agencies and private organizations, the department shall establish by rule criteria and proce-

dures for the development, establishment and amendment of a contingency plan for the taking of emergency actions in relation to abandoned containers.

(b) The contingency plan shall establish procedures and techniques for locating, identifying, removing and disposing of abandoned containers.

**(4) REMOVAL OR OTHER EMERGENCY ACTION.** The department or its authorized representative may contain, remove or dispose of abandoned containers or take any other emergency action which it deems appropriate under the circumstances.

**(5) ACCESS TO PROPERTY AND RECORDS.** Any officer, employee or authorized representative of the department, upon notice to the owner or occupant, may enter onto any property, premises or place at any time for the purposes of sub. (3) if the entry is necessary to prevent increased damage to the air, land or waters of the state, or may inspect any record relating to abandoned container management for the purpose of ascertaining the state of compliance with this section and the rules promulgated under this section. Notice to the owner or occupant is not required if the delay in providing the notice is likely to result in imminent risk to public health or welfare or the environment.

**(6) ABANDONED CONTAINERS; APPROPRIATIONS.** (a) The department may utilize moneys appropriated under s. 20.370 (2) (dv) and (my) in taking action under sub. (4). The department shall utilize these moneys to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in locating, identifying, removing and disposing of abandoned containers.

(b) No more than 25% of the total of all moneys available under the appropriation under s. 20.370 (2) (dv) and (my) may be used annually for the procurement and maintenance of necessary equipment during that fiscal year.

(c) The department is entitled to recover moneys expended under this section from any person who caused the containers to be abandoned or is responsible for the containers. The funds recovered under this paragraph shall be deposited into the environmental fund for environmental management.

**History:** 1983 a. 410; 1985 a. 29 ss. 1957, 3202 (39); 1987 a. 27, 384; 1989 a. 31; 1991 a. 39; 1993 a. 453; 1995 a. 27; 1995 a. 227 s. 716; Stats. 1995 s. 292.41; 1995 a. 378 s. 46; 1997 a. 27.

**292.51 Cooperative remedial action. (1)** In this section, "costs of remedying environmental contamination" means costs determined by the department to be necessary to reduce or eliminate environmental contamination and restore the environment, including costs of investigation and of providing public information and education related to reducing or eliminating environmental contamination and restoring the environment.

**(2)** The department may seek and receive voluntary contributions of funds from a municipality or any other public or private source for all or part of the costs of remedying environmental contamination if the activities being funded are part of a cooperative effort, by the department and the person providing the funds, to remedy that environmental contamination. All contributions received under this subsection shall be deposited in the environmental fund.

**(2m)** Any person engaged in a cooperative effort with the department that is described in sub. (2) may seek and receive voluntary contributions of funds on behalf of the effort.

**(3)** Provision of funding under sub. (2) or (2m) is not evidence of liability or an admission of liability for any environmental contamination.

**(4)** In carrying out its regulatory and enforcement duties, the department may not base its treatment of a person on whether the person did or did not provide funding under sub. (2).

**History:** 1995 a. 27; 1995 a. 227 s. 824; Stats. 1995 s. 292.51; 1997 a. 27.

**292.55 Requests for liability clarification and technical assistance. (1)** (a) The department may, upon request,

assist a person to determine whether the person is or may become liable for the environmental pollution of a property.

(b) The department may, upon request, assist in, or provide comments on, the planning and implementation of an environmental investigation of a property or the environmental cleanup of a property.

(c) The department may determine whether further action is necessary to remedy environmental pollution of a property.

(d) The department may issue a letter to a person seeking assistance under this subsection concerning any of the following:

1. The liability of a person owning or leasing a property for environmental pollution of the property.
2. The type and extent of environmental pollution of a property.
3. The adequacy of an environmental investigation.
4. Any other matter related to the request for assistance under this subsection.

(2) The department may assess and collect fees from a person to offset the costs of providing assistance under sub. (1). The department shall promulgate rules for the assessment and collection of fees under this subsection. Fees collected under this subsection shall be credited to the appropriation account under s. 20.370 (2) (dh).

History: 1997 a. 27.

### 292.65 Dry cleaner environmental response program.

(1) DEFINITIONS. In this section and s. 292.66:

(b) “Case closure letter” means a letter provided by the department that states that, based on information available to the department, no further remedial action is necessary with respect to a dry cleaning solvent discharge.

(d) “Dry cleaning facility” means a facility for dry cleaning apparel or household fabrics for the general public other than a facility that is one of the following:

1. A coin-operated facility.
2. A facility that is located on a U.S. military installation.
3. An industrial laundry.
4. A commercial laundry.
5. A linen supply facility.
6. A facility that is located at a prison or other penal institution.
7. A facility that is located at a nonprofit hospital or at another nonprofit health care institution.
8. A facility that is located on property that is owned by the federal government or by this state or that is located on property that was owned by the federal government or by this state when the facility was operating.

(e) “Dry cleaning solvent” means a chlorine-based or hydrocarbon-based formulation or product that is used as a primary cleaning agent in dry cleaning facilities.

(g) “Groundwater” has the meaning given in s. 281.75 (1) (c).

(gm) “Immediate action” means a remedial action that is taken within a short time after a discharge of dry cleaning solvent occurs, or after the discovery of a discharge of dry cleaning solvent, to halt the discharge, contain or remove discharged dry cleaning solvent or remove contaminated soil or water in order to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety or welfare.

(h) “Operator” means any of the following:

1. A person who holds the license under s. 77.9961 (2) for a dry cleaning facility.
2. A subsidiary or parent corporation of the person specified under subd. 1.

(i) “Owner” means any of the following:

1. A person who owns, or has possession or control of, a dry cleaning facility, or who receives direct or indirect consideration from the operation of a dry cleaning facility regardless of whether the dry cleaning facility remains in operation and regardless of whether the person owns or receives consideration at the time that environmental pollution occurs.

2. A subsidiary or parent corporation of the person specified under subd. 1.

(j) “Program year” means the period beginning on July 1, and ending on the following June 30.

(L) “Service provider” means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for which an application for reimbursement has been or will be filed under this section, or a subcontractor of such a person.

(m) “Subsidiary or parent corporation” means a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long-term contractual arrangement with a person to avoid direct responsibility for conditions at a dry cleaning facility.

(3) DUTIES OF THE DEPARTMENT. (a) The department shall promulgate rules for the administration of the program under this section.

(am) 1. The department shall establish a method for determining the order in which it pays awards under this section. Except as provided in subs. 2. and 3., the method shall be based on environmental factors and on the order in which applications are received.

2. The department shall pay an award for immediate action activities. For the purposes of this subdivision, removal of contaminated soils and recovery of free dry cleaning solvent are not considered immediate action activities.

3. After awards for immediate action activities, the department shall give highest priority to paying awards for eligible costs incurred before October 14, 1997.

(b) The department shall promote the program under this section to persons who may be eligible for awards.

(c) The department shall allocate 9.7% of the funds appropriated under s. 20.370 (6) (eq) in each fiscal year for awards for immediate action activities and applications that exceed the amount anticipated.

(d) The department shall keep records and statistics on the program under this section and shall periodically evaluate the effectiveness of the program.

(e) No later than January 1, 2002, the department shall complete a review of the program under this section and shall submit a report on the results of the review to the joint committee on finance and to the appropriate standing committees of the legislature, as determined by the speaker of the house and the president of the senate, under s. 13.172 (3). The report shall include the department’s recommendations for changes to the program. The review shall include consideration of whether the program should be expanded or ended, whether the program should be incorporated into a broader program of financial assistance for the remediation of environmental contamination and whether private insurance coverage should be required for any dry cleaning facilities.

(4) PROCESS; ELIGIBILITY. (a) *General requirements.* To be eligible for an award under this section, the owner or operator of a dry cleaning facility shall comply with pars. (b), (c), (e), (f) and (j) and the other requirements of this section applicable to the owner or operator.

(b) *Report.* An owner or operator shall report a dry cleaning solvent discharge to the department in a timely manner, as provided in s. 292.11.

(c) *Notification of potential claim.* 1. An owner or operator shall notify the department, before conducting a site investigation or any remedial action activity, of the potential for submitting an

application for an award under this section, except as provided in subd. 2.

2. Subdivision 1. does not apply to an owner or operator who began a site investigation or remedial action activity before October 14, 1997.

(d) *Information from department.* When an owner or operator notifies the department under par. (c) 1., the department shall provide the owner or operator with information on the program under this section and the department's estimate of the eligibility of the owner or operator for an award under this section.

(e) *Investigation.* After notifying the department under par. (c) 1., if applicable, and before conducting remedial action activities, an owner or operator shall complete an investigation to determine the extent of environmental impact of the dry cleaning solvent discharge, except as provided in pars. (g) and (h).

(f) *Remedial action plan.* After completing the investigation under par. (e) and before conducting remedial action activities, an owner or operator shall prepare a remedial action plan, based on the investigation under par. (e), that identifies specific remedial action activities proposed to be conducted, except as provided in pars. (g) and (h).

(g) *Immediate action.* An owner or operator is not required to complete an investigation or prepare a remedial action plan before conducting an immediate action activity if the department determines that an immediate action is necessary.

(h) *Interim remedial equipment.* An owner or operator may install interim remedial equipment for which the owner or operator would be eligible for reimbursement under s. 292.66 before completing a site investigation or remedial action plan.

(i) *Review of site investigation and remedial action plan.* The department shall, at the request of an owner or operator, review the site investigation results and the remedial action plan and advise the owner or operator on the adequacy of the proposed remedial action activities in meeting the requirements of this section. The department shall complete the review of the site investigation and remedial action plan within 45 days. The department shall also provide an estimate of when funding will be available to pay an award for remedial action conducted in response to the dry cleaning solvent discharge.

(j) *Remedial action.* The owner or operator shall conduct all remedial action activities that are required under this section in response to the dry cleaning solvent discharge, including all of the following:

1. Recovering any recoverable dry cleaning solvent from the environment.
2. Managing any residual solid or hazardous waste in a manner consistent with local, state and federal law.
3. Restoring groundwater according to the standards promulgated by the department under ss. 160.07 and 160.09.

(k) *Agents.* An owner or operator may enter into a written agreement with another person under which that other person acts as an agent for the owner or operator in conducting the activities required under par. (j). The owner or operator and the agent shall jointly submit the application for an award under this section.

(L) *Awards for dry cleaning facilities on tribal trust lands.* The owner or operator of a dry cleaning facility located on trust lands of an American Indian tribe may be eligible for an award under this section if the owner or operator otherwise satisfies the requirements of this subsection and complies with the rules promulgated under this section and any other rules promulgated by the department concerning dry cleaning facilities.

(5) **ENHANCED POLLUTION PREVENTION MEASURES.** (a) 1. The owner or operator of a dry cleaning facility on which construction begins after October 14, 1997, is not eligible for an award under this section unless the owner or operator has implemented the enhanced pollution prevention measures described in par. (b).

2. The owner or operator of a dry cleaning facility on which construction began on or before October 14, 1997, is ineligible for an award under this section with respect to a discharge that occurs on or after the 91st day after the day on which the department issues a case closure letter with respect to an earlier discharge of dry cleaning solvent from the dry cleaning facility, unless the owner or operator has implemented the enhanced pollution prevention measures described in par. (b).

(b) An owner or operator who is required to implement enhanced pollution prevention measures shall demonstrate all of the following:

1. That the owner or operator manages all wastes that are generated at the dry cleaning facility and that contain dry cleaning solvent as hazardous wastes in compliance with ch. 291 and 42 USC 6901 to 6991i.

2. That the dry cleaning facility does not discharge dry cleaning solvent or wastewater from dry cleaning machines into any sanitary sewer or septic tank or into the waters of this state.

3. That each machine or other piece of equipment in which dry cleaning solvent is used, or the entire area in which those machines or pieces of equipment are located, is surrounded by a containment dike or other containment structure that is able to contain any leak, spill or other release of dry cleaning solvent from the machines or other pieces of equipment.

4. That the floor within any area surrounded by a dike or other containment structure under subd. 3. is sealed or is otherwise impervious to dry cleaning solvent.

5. That all dry cleaning solvent is delivered to the dry cleaning facility by means of a closed, direct-coupled delivery system.

(6) **ADDITIONAL REQUIREMENT FOR CLOSED FACILITIES.** (a) To be eligible for an award under this section, the owner or operator of a dry cleaning facility that has ceased operating at the time that the owner or operator applies under sub. (8) (a) shall agree to pay all of the following each year for 30 years after the department issues the award:

1. An amount equal to the average annual license fee paid under s. 77.9961 (1) for that year.

2. An amount equal to the total amount collected under s. 77.9962 for that year divided by the number of dry cleaning facilities in operation during that year.

(b) An owner or operator to whom par. (a) applies shall guarantee payment under par. (a) by executing a note and mortgage on the site of the dry cleaning facility and a payment bond acceptable to the department.

(c) All funds paid under this subsection shall be deposited in the dry cleaner environmental response fund.

(7) **ELIGIBLE COSTS.** (a) *General.* Subject to pars. (c), (ce), (cm) and (d), eligible costs for an award under this section include reasonable and necessary costs paid for the following items only:

1. Removal of dry cleaning solvents from surface waters, groundwater or soil.

2. Investigation and assessment of contamination caused by a dry cleaning solvent discharge from a dry cleaning facility.

3. Preparation of remedial action plans.

4. Removal of contaminated soils.

5. Soil and groundwater treatment and disposal.

6. Environmental monitoring.

7. Laboratory services.

8. Maintenance of equipment for dry cleaning solvent recovery performed as part of remedial action activities.

9. Restoration or replacement of a private or public potable water supply.

10. Restoration of environmental quality.

11. Contractor costs for remedial action activities.

12. Inspection and supervision.

13. Those costs of purchase and installation of interim remedial equipment that qualify for reimbursement under s. 292.66 for which reimbursement was not received under s. 292.66.

14. Other costs identified by the department as reasonable and necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of s. 292.11.

16. Financing for eligible activities under this paragraph as provided in par. (b).

(b) *Financing costs.* Costs of financing activities that are undertaken after October 14, 1997, and that are undertaken without the department's advance written approval are not eligible costs.

(c) *Exclusions from eligible costs.* Eligible costs for an award under this section do not include the following:

1. Costs incurred before January 1, 1991.
2. Costs of retrofitting or replacing dry cleaning equipment.
3. Other costs that the department determines to be associated with, but not integral to, the investigation and remediation of a dry cleaning solvent discharge from a dry cleaning facility.
4. Costs that the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the remedial action plan.
5. Costs for investigations or remedial action activities conducted outside this state.

(ce) *Usual and customary costs.* The department may establish a schedule of usual and customary costs for any items under par. (a) and may use that schedule to determine the amount of an applicant's eligible costs.

(cm) *Eligible cost; service providers.* The department may promulgate rules under which the department selects service providers to provide investigation or remedial action services in specified areas. The rules may provide that the costs of a service for which the department has selected a service provider in an area are not eligible costs under par. (a), or that eligible costs are limited to the amount that the selected service provider would have charged, if an owner or operator of a dry cleaning facility located in that area uses a service provider other than the service provider selected by the department to perform the services. If the department selects service providers under this paragraph, it shall regularly update the list of service providers that it selects.

(d) *Discharges from multiple activities.* If hazardous substances are discharged at a dry cleaning facility as a result of dry cleaning operations and as a result of other activities, eligible costs under this section are limited to activities necessitated by the discharge of dry cleaning solvent.

**(8) AWARDS.** (a) *Application.* An owner or operator shall submit an application on a form provided by the department. An owner or operator may not submit an application before September 1, 1998. An owner or operator may not submit an application after August 30, 2003, if the application relates to a dry cleaning facility that ceased to operate before September 1, 1998. An owner or operator may not submit an application after August 20, 2008, if the application relates to any other dry cleaning facility. The department shall authorize owners and operators to apply for awards at stages in the process under sub. (4) that the department specifies by rule. An application shall include all of the following documentation of activities, plans and expenditures associated with the eligible costs incurred because of a dry cleaning solvent discharge from a dry cleaning facility:

1. A record of investigation results and data interpretation.
2. A remedial action plan.
3. Contracts for eligible costs incurred because of the discharge and records of the contract negotiations.
4. Accounts, invoices, sales receipts or other records documenting actual eligible costs incurred because of the discharge.
5. Other records and statements that the department determines to be necessary to complete the application.

(b) *Acknowledgement.* The department shall acknowledge, in writing, the receipt of an application under par. (a).

(c) *Approval.* Subject to par. (d), if the department finds that an applicant meets the requirements of this section and rules promulgated under this section, the department shall make an award as provided in this subsection to reimburse the applicant for eligible costs paid. The department may not make an award for an investigation before it approves the investigation. The department may not make an award for remedial action activities before it approves the remedial action activities.

(d) *Denial of applications.* The department shall deny an application under this section if any of the following applies:

1. The application is not within the scope of this section.
2. The applicant submits a fraudulent application.
3. The applicant has been grossly negligent in the maintenance of the dry cleaning facility.
4. The applicant intentionally damaged the dry cleaning equipment.
5. The applicant falsified records.
6. The applicant willfully failed to comply with laws or rules of this state concerning the use or disposal of dry cleaning solvents.
7. The applicant has not paid all of the fees under ss. 77.9961, 77.9962 and 77.9963.

8. The dry cleaning solvent discharge was caused by a person who provided services or products to the owner or operator or to a prior owner or operator of the dry cleaning facility.

(e) *Deductible.* 1. The department may reimburse the owner or operator of a dry cleaning facility that is operating at the time that the owner or operator applies under par. (a) only for eligible costs incurred at each dry cleaning facility that exceed the following deductible:

- a. If eligible costs are \$200,000 or less, \$10,000.
- b. If eligible costs exceed \$200,000 but do not exceed \$400,000, \$10,000 plus 8% of the amount by which eligible costs exceed \$200,000.
- c. If eligible costs exceed \$400,000, \$26,000 plus 10% of the amount by which eligible costs exceed \$400,000.

3. The department may reimburse the owner or operator of a dry cleaning facility that has ceased operation before the owner or operator applies under par. (a) only for eligible costs that exceed the sum of the following:

- a. Ten thousand dollars.
- b. For each year in which the owner or operator has not paid the annual license fee under s. 77.9961 (1) for the dry cleaning facility, an amount equal to the average annual license fee paid under s. 77.9961 (1) for that year.
- c. For each year in which the dry cleaning solvents fee under s. 77.9962 was imposed and the dry cleaning facility was not in operation, an amount equal to the total amount collected under s. 77.9962 for that year divided by the number of dry cleaning facilities in operation during that year.
- d. If the owner or operator did not pay the inventory fee under s. 77.9963 with respect to the dry cleaning facility, an amount equal to the total amount collected under s. 77.9963 divided by the number of dry cleaning facilities paying the inventory fee.

(f) *Maximum awards.* The department may not issue financial assistance under this section for reimbursement for costs incurred at a single dry cleaning facility that totals more than \$500,000.

(g) *Waiver of deductible.* Notwithstanding par. (e), the department may waive the requirement that an owner or operator pay the deductible amount if the department determines that the owner or operator is unable to pay. If the department waives the requirement that an owner or operator pay the deductible, the department shall record a statement of lien with the register of deeds of the county in which the dry cleaning facility is located. If the department records the statement of lien, the department has a lien on the property on which the dry cleaning facility is located in the



amount of the deductible that was waived. The property remains subject to the lien until that amount is paid in full.

(h) *Contributory negligence.* The department may not diminish or deny an award under this section as a result of negligence attributable to the applicant or any person who is entitled to submit an application, except as provided in par. (d) 3.

(i) *Assignment of awards.* The filing by an applicant with the department of an assignment of an award under this section to a person who loans money to the applicant for the purpose of conducting activities required under sub. (4) creates and perfects a lien in favor of the assignee in the proceeds of the award. The lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this paragraph has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

(j) *Reduction of awards.* 1. If an owner or operator prepares and submits an application that includes ineligible costs that are identified under subd. 3., the department shall calculate the award by determining the amount that the award would otherwise be under pars. (e) and (f) based only on the eligible costs and then by reducing that amount by 50% of the ineligible costs under subd. 2. that are included in the application.

2. If a consultant prepares an application that is submitted by an owner or operator and that includes ineligible costs that are identified under subd. 3., the consultant shall pay to the department an amount equal to 50% of the ineligible costs identified under subd. 3. that are included in the application. A consultant may not charge the owner or operator for any amount that the consultant is required to pay under this subdivision. Payments made under this subdivision shall be deposited in the dry cleaner environmental response fund.

3. The department shall promulgate a rule identifying the ineligible costs to which subds. 1. and 2. apply.

**(9) RECOVERY OF AWARDS.** (a) *Right of action.* A right of action under this section shall accrue to the state against an owner or operator only if the owner or operator submits a fraudulent application or does not meet the requirements under this section and if an award is issued under this section to the owner or operator for eligible costs under this section.

(b) *Action to recover awards.* The attorney general shall take appropriate actions to recover awards to which the state is entitled under par. (a). The department shall request that the attorney general take action if the department discovers a fraudulent application after an award is issued.

(c) *Disposition of funds.* The net proceeds of the recovery under par. (b) shall be paid into the dry cleaner environmental response fund.

**(10) LIABILITY.** (a) No common law liability, and no statutory liability that is provided in a statute other than this section, for damages resulting from a dry cleaning facility is affected by this section. Except as provided in par. (b), the authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any statute other than this section or provided at common law.

(b) An award under this section is the exclusive method for the recovery of the amount of eligible costs equal to the amount of the award that may be issued under this section.

(c) If a person conducts a remedial action activity for a discharge at a dry cleaning facility site, whether or not the person files an application under this section, the remedial action activity conducted and any application filed under this section are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

**(12) RECORDS.** (a) The department shall promulgate rules prescribing requirements for the records to be maintained by an owner, operator or service provider and the periods for which they must retain those records.

(b) The department may inspect any document in the possession of an owner, operator or service provider or any other person if the document is relevant to an application for reimbursement under this section.

**(13) COUNCIL.** The dry cleaner environmental response council shall advise the department concerning the programs under this section and s. 292.66. The dry cleaner environmental response council shall evaluate the program under this section at least every 5 years, using criteria developed by the council.

**(14) SUNSET.** This section does not apply after June 30, 2032. History: 1997 a. 27.

### 292.66 Assistance for purchase and installation of interim remedial equipment at dry cleaning facilities.

**(1)** The department shall allocate 46% of the funds appropriated under s. 20.370 (6) (eq) in each fiscal year for awards to reimburse owners and operators for costs of preliminary site screening and the purchase and installation of equipment to begin the cleanup of discharges of dry cleaning solvent from dry cleaning facilities before the completion of full site investigations and remedial action plans. The department may not make an award under this section before September 1, 1998, or after June 30, 2002.

**(2)** The owner or operator of a dry cleaning facility is eligible for an award under this section if all of the following apply:

(a) The owner or operator reports the dry cleaning solvent discharge to the department in a timely manner, as provided in s. 292.11.

(b) The owner or operator conducts a preliminary site screening, including an onsite mobile laboratory analysis of any soil and groundwater affected by the discharge to determine the location for installation of the interim remedial equipment.

(c) Immediate action is not necessary at the affected dry cleaning facility.

(d) The owner or operator installs equipment that is approved by the department to begin the cleanup of the discharge of dry cleaning solvent.

(e) The dry cleaning facility is operating at the time that the owner or operator applies for assistance under this section.

(f) The owner or operator submits an application for reimbursement in a form and manner specified by the department and complies with any inspection requirements established by the department.

**(3)** An award under this section may not exceed \$15,000, of which not more than \$2,500 may be for the cost of conducting the preliminary site screening.

**(4)** The department may promulgate rules for determining the usual and customary costs for items for which it may make awards under this section and may use the rules to determine the amount of an applicant's eligible costs.

History: 1997 a. 27, 237.

**292.81 Notice; lien.** **(1)** In this section, "valid prior lien" means a purchase money real estate mortgage that is recorded before the lien is filed under this section, including any extension or refinancing of that purchase money mortgage, or an equivalent security interest, or a 2nd or subsequent mortgage for home improvement or repair that is recorded before the lien is filed under this section, including any extension or refinancing of that 2nd or subsequent mortgage.

**(2)** (a) Before incurring expenses under s. 292.11 or 292.31 (1), (3) or (7) with respect to a property, the department shall provide to the current owner of the property and to any mortgagees of record a notice containing all of the following:

1. A brief description of the property for which the department expects to incur expenses under s. 292.11 or 292.31 (1), (3) or (7).

2. A brief description of the types of activities that the department expects may be conducted at the property under s. 292.11 or 292.31 (1), (3) or (7).

3. A statement that the property owner could be liable for the expenses incurred by the department.

4. A statement that the department could file a lien against the property to recover the expenses incurred by the department.

5. An explanation of whom to contact in the department to discuss the matter.

(b) The department shall provide notice under par. (a) by certified mail, return receipt requested, to the property owner and to each mortgagee of record at the addresses listed on the recorded documents. If the property owner is unknown or if a mailed notice is returned undelivered, the department shall provide the notice by publication thereof as a class 3 notice under ch. 985.

(c) The failure to provide the notice or include information required under this subsection does not impair the department's ability to file a lien or to seek to establish the property owner's liability for the expenses incurred by the department.

(d) No notice under this subsection is necessary in circumstances in which entry onto the property without prior notice is authorized under s. 292.11 (8).

(3) Any expenditures made by the department under s. 292.11 or 292.31 (1), (3) or (7) shall constitute a lien upon the property for which expenses are incurred if the department files the lien with the register of deeds in the county in which the property is located. A lien under this section shall be superior to all other liens that are or have been filed against the property, except that if the property is residential property, as defined in s. 895.52 (1) (i), the lien may not affect any valid prior lien on that residential property.

(4) (a) Before filing a lien under sub. (3), the department shall give the owner of the property for which the expenses are incurred a notice of its intent to file the lien, as provided in this subsection.

(b) The notice required under par. (a) shall provide all of the following:

1. A statement of the purpose of the lien.
2. A brief description of the property to be affected by the lien.
3. A statement of the expenses incurred by the department.
4. The date on or after which the lien will be filed.

(c) The department shall serve the notice required in par. (a) on the property owner at least 60 days before filing the lien. The notice shall be provided by certified mail, return receipt requested, to the property owner and to each mortgagee of record at the addresses listed on the recorded documents. If the property owner is unknown or if a mailed notice is returned undelivered, the department shall provide the notice by publication thereof as a class 3 notice under ch. 985.

(d) In the foreclosure of any lien filed under this subsection, ch. 846 shall control as far as applicable unless otherwise provided in this subsection. All persons who may be liable for the expenses incurred by the department may be joined as defendants. The judgment shall adjudge the amount due the department, and shall direct that the property, or so much of the property as is necessary, be sold to satisfy the judgment, and that the proceeds be brought into court with the report of sale to abide the order of the court. If the sum realized at the sale is insufficient after paying the costs of the action and the costs of making the sale, the court shall determine the liability of the defendants for the remaining unreimbursed expenses and costs.

(e) This subsection does not apply if the lien is filed after the department obtains a judgment against the property owner and the lien is for the amount of the judgment.

History: 1995 a. 227 s. 711; 1997 a. 27.

### SUBCHAPTER III

#### ENFORCEMENT; PENALTIES

**292.93 Orders.** The department may issue orders to effectuate the purposes of ss. 292.31 and 292.35 and enforce the same by all appropriate administrative and judicial proceedings.

History: 1995 a. 227.

**292.95 Review of alleged violations; environmental repair and cost recovery.** Any 6 or more citizens or any municipality may petition for a review of an alleged violation of s. 292.31 or 292.35 or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under those sections in the following manner:

(1) They shall submit to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of the petitioners and the name and address of a person authorized to appear at a hearing in behalf of the petitioners.

(2) Upon receipt of a petition under this section, the department may:

(a) Conduct a hearing in the matter within 60 days of receipt of the petition. A hearing under this paragraph shall be a contested case under ch. 227. Within 60 days after the close of the hearing, the department shall either:

1. Serve written notice specifying the law or rule alleged to be violated, containing findings of fact, conclusions of law and an order, which shall be subject to review under ch. 227; or

2. Dismiss the petition.

(b) Initiate action under s. 292.98.

(3) If the department determines that a petition was filed maliciously or in bad faith, it shall issue a finding to that effect, and the person complained against is entitled to recover expenses on the hearing in a civil action.

History: 1995 a. 227.

**292.98 Violations and enforcement; environmental repair and cost recovery.** (1) (a) If the department has reason to believe that a violation of s. 292.31 or 292.35 or any rule promulgated or special order, plan approval, or any term or condition of a license issued under those sections occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the law or rule alleged to be violated, and contain the findings of fact on which the charge of violation is based, and may include an order that necessary corrective action be taken within a reasonable time. This order shall become effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. Instead of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or

2. Initiate action under s. 299.95.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of other corrective action as may be appropriate. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating or controlling the violation.

History: 1995 a. 227.

**292.99 Penalties.** (1) Any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

(2) In addition to the penalties provided under sub. (1), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. Ten percent of the money deposited in the general fund that was awarded under this subsection for the costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

**History:** 1995 a. 227.