



**Introduction to rule drafting for:  
2015 Wis. Act 204 requirements for  
financial responsibility and financial assurance  
for certain contaminated sediment cleanup sites**



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March 5, 2019**



# Overview

- Three statutory requirements from Act 204
- Overview
  - Statute change
  - Rule change
  - Scope of rule
- Aspects of rule





# Act 204 changes to ch. 292 engineering controls - sediment

- Wis. Stat. § 292.12(2)(d)(2)

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

1. A satisfactory plan and compliance schedule for satisfying any requirements imposed under par. (a) or (b).
2. Proof of financial responsibility, as determined by the agency with administrative authority by rule, sufficient to pay the costs of complying with a plan approved under subd. 1.

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



# Act 204 changes to ch. 292 engineering controls - sediment

- Wis. Stat. § 292.12(2)(d)(2)

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

1. A satisfactory plan and compliance schedule for satisfying any requirements imposed under [par. \(a\) or \(b\)](#).
2. Proof of financial responsibility, as determined by the agency with administrative authority by rule, sufficient to pay the costs of complying with a plan approved under subd. 1.



[\(a\) Require maintenance of an engineering control on the site.](#)

[\(b\) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.](#)



# Act 204 changes to ch. 292

## VPLE COC - sediment

- Wis. Stat. § 292.15(2)(af)(3m)

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



# Act 204 changes to ch. 292 VPLE partial cleanup - sediment

- Wis. Stat. § 292.15(2)(am)(2m)(c)

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



# Rules – engineering controls

- Emergency rule mandate
- Statute language: “proof of responsibility, as determined by the agency with administrative authority by rule”







# Rules – engineering controls

- Items to cover
  - Guidance, procedures, requirements for a plan and compliance schedule
  - Financial responsibility guidance, procedures, forms, costs covered, forms of financial responsibility
    - Cost covered = “costs of complying with a plan approved under subd. 1.”





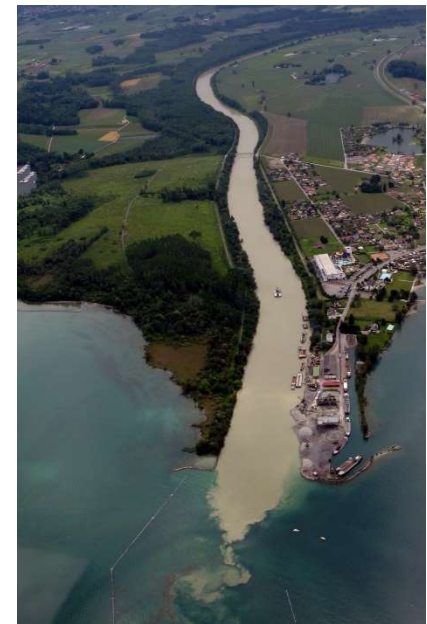
# Rules – engineering controls

- Rule chapters
  - NR 708
  - NR 722
  - NR 727
  - NR 756 (new) – financial responsibility
    - Calculation of cost/value of coverage (estimate, risk, contingency)
    - Length of coverage (3 to 5, 10, 50, 50+?)



# Rules – VPLE COC contaminated sediment

- Emergency rule mandate
- Statute language: “the insurance shall conform with rules promulgated by the department”





# Rules – VPLE COC contaminated sediment

- Items to cover
  - Insurance, other forms of financial assurance, and waiver: procedures, acceptable forms, criteria, acceptable “proof”
    - Cost covered = “the cost of complying with s. 292.11 (3) with respect to the contaminated sediment in the event that additional remedial action is necessary” Wis. Stat. § 292.15(2)(af)(3m)



# Rules – VPLE COC contaminated sediment

- Rule chapters
  - NR 750
  - NR 754
  - NR 758 (new) – calculation of coverage needed, insurance, FA, waiver





## **Rules – VPLE partial cleanup contaminated sediment**

- No emergency rule mandate
- Statute language: “[t]he voluntary party ...provides financial assurance to the department, in the manner required by the department...”



# Rules – VPLE partial cleanup contaminated sediment

- Items to cover
  - Requirements for agreement to finish cleanup
  - Financial assurance procedures, acceptable forms, acceptable proof
    - Cost covered = party “fails to restore the environment to the extent practicable and minimize the harmful effects from the contaminated sediment on the property or the discharges resulting in contaminated sediment”



# Rules – VPLE partial cleanup contaminated sediment

- Rule chapters
  - NR 750
  - NR 758 (new) – financial assurance







# Rule drafting

- Scope statement
- Act 21 and other legislation
  - Statutory authority for rule
  - Rule interpretation
  - Explicit agency authority
- Economic impact < \$4M



# Aspects of rule

- Discussion
  - Review white paper outline
  - Everything covered?
  - Tentative timeframe
    - White paper – May 7, 2019
    - Rule draft 1 – Aug. 6, 2019
    - Rule draft 2 – Oct. 1, 2019
  - Subgroup(s) formation
    - Value/cost of FA/FR items
    - Other?
    - Details



**Thank you!**

Post-meeting comments may be  
directed to:

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