

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



**April 18, 2019**  
**Remediation and Redevelopment Program**



# Overview

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






# Engineering controls - sediment

- Wis. Stat. § 292.12(2)(d)(2)

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

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

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





# 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.](#)



# VPLE full cleanup - sediment

- Wis. Stat. § 292.15(2)(af)(3m)

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



# VPLE partial cleanup - sediment

- Wis. Stat. § 292.15(2)(am)(2m)(c)

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

# FA/FR costs & length of requirement

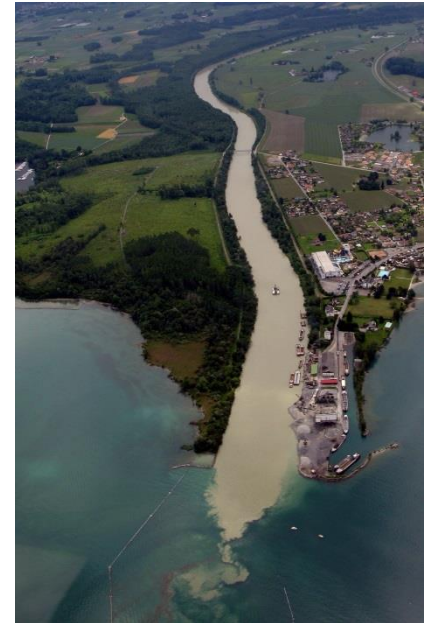
- Engineering controls & impediment removals
- VPLE full cleanup
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# FA/FR mechanisms

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





# Other FA/FR policies & procedures

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





# Next steps

- Tentative timeframe
  - White paper – May 7, 2019
  - Rule draft 1 – Aug. 6, 2019
  - Rule draft 2 – Oct. 1, 2019
- Post-meeting comments may be directed to:  
[DNRRRNR700input@wisconsin.gov](mailto:DNRRRNR700input@wisconsin.gov)



**Thank you!**



## Quick reference table - FA/FR requirements in Wis. Stat. s. 289.41 and Wis. Admin. Code ch. 520

### 1. General requirement - who must submit, what costs are assured, when is it due

requirements	<a href="#">Wis. Stat. s. 289.41(1m)</a>
responsibility, when submitted	<a href="#">Wis. Admin. Code s. NR 520.05(1)</a>

### 2. Length of requirement, termination, successors

duration, termination, successors	<a href="#">Wis. Stat. s. 289.41(1m)</a>
sale of facility	<a href="#">Wis. Stat. s. 289.41(10)</a>
successors	<a href="#">Wis. Admin. Code s. NR 520.05(2)</a>
bankruptcy	<a href="#">Wis. Admin. Code s. NR 520.13</a>

### 3. Compliance and use of funds, inspection, fees

compliance, forfeiture, conversion	<a href="#">Wis. Stat. s. 289.41(11)</a>
access and default	<a href="#">Wis. Admin. Code s. NR 520.11</a>
authorization to release funds	<a href="#">Wis. Admin. Code s. NR 520.12</a>
fees	<a href="#">Wis. Admin. Code s. NR 520.04(7)</a>

### 4. Methods of FA/FR

methods	<a href="#">Wis. Stat. s. 289.41(3) and (4)</a>
methods	<a href="#">Wis. Admin. Code s. NR 520.06</a>

### 5. Duration of methods and changes to methods

duration of methods	<a href="#">Wis. Stat. s. 289.41(3)(b)</a>
changing methods	<a href="#">Wis. Stat. s. 289.41(3)(c)</a>
changing methods	<a href="#">Wis. Admin. Code s. NR 520.09</a>

### 6. Costs: calculation, estimates, adjustments

cost estimates	<a href="#">Wis. Admin. Code s. NR 520.07</a>
calculating the amount	<a href="#">Wis. Admin. Code s. NR 520.08</a>
adjustments	<a href="#">Wis. Admin. Code s. NR 520.10</a>



# SWF Long-Term Care FR

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



# SWF Long-Term Care FR

## Methods

- Interest
  - Escrow
  - Deposit with department
  - Insurance
- No interest
  - Letter of credit
  - Bond
  - Insurance
- Net Worth



# SWF Long-Term Care FR

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