

292.31 Environmental repair.

(1) DATABASE; ANALYSIS.

(a) Database.

1. The department shall compile, maintain, and make available to the public a database of all sites or facilities and other properties at which the discharge of a hazardous substance or other environmental pollution has been reported to the department. The department shall update the database regularly.
3. The decision of the department to include a site or facility or other property on the database under subd. 1. or exclude a site or facility or other property from the database is not subject to judicial review.
4. Notwithstanding s. 227.01 (13) or 227.10 (1), the database under subd. 1. 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.
 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.
- (d) **Access to information.** Upon the request of any officer, employee 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, employee 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 sub. (8) (a) 3., of persons who generated, transported, treated or stored waste which was disposed of at the site or facility.

(2) ENVIRONMENTAL RESPONSE RULES. The department shall promulgate rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution, including all of the following provisions:

- (a) Methods for investigating the degree and extent of contamination for actions under sub. (3).
- (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 nongovernmental entities.

(3) ENVIRONMENTAL REPAIR.

(b) Department authority.

1. The department may take direct action under subsds. [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 subsds. [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 significance to public health, the community, and the environment 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.
- (d) *Emergency responses.* Notwithstanding rules promulgated under this section or the considerations for taking action under par. (c), 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, employee 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](#), shall publish the notice on its Internet website, and, upon request, shall provide the notice to interested members of the public, prior to taking remedial action under this subsection and subs. [\(1\)](#) and [\(7\)](#). The department's notice to interested members of the public may be given through an electronic notification system established by the department. The notice shall describe the proposed remedial action, the amount and purpose of any proposed expenditure, the name and address of the facility that is the subject of the proposed remedial action, a brief description of the proposed remedial action, and information indicating where more information regarding the proposed remedial action may be viewed on the department's Internet website. For the purpose of determining the date on which notice is provided under this paragraph, the date on which the department first publishes the notice on its Internet website shall be considered the date of notice. 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 environmental response rules 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 \(4\) \(dv\)](#) 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 percent 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.
- (am)**
1. The department may accept the transfer of an interest in property that was acquired by the federal environmental protection agency as part of a remedial action under the federal Comprehensive Environmental Response, Compensation, and Liability Act, [42 USC 9601](#) to [9675](#).
 2. The department may acquire an interest in property from any person as part of a remedial action conducted in cooperation with the federal environmental protection agency if the acquisition is necessary to implement the remedy. Under this subdivision, the department may acquire an interest in property that is necessary to ensure that restrictions on the use of land or groundwater are enforceable. The department may expend moneys from the appropriations under ss. [20.370 \(4\) \(dv\)](#) and [20.866 \(2\) \(tg\)](#) if necessary to compensate a person for an interest in property acquired by the department under this subdivision.
 3. The department may enforce the terms of any interest in property that it acquires under this paragraph.
- (b)** The department may expend moneys from the appropriations under ss. [20.370 \(4\) \(dv\)](#) 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 \(4\) \(dv\)](#) and [20.866 \(2\) \(tg\)](#). The criteria shall include consideration of the amount of moneys available in the appropriations under ss. [20.370 \(4\) \(dv\)](#) 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 percent 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.
- (d) The department may enter into an agreement with a responsible party under the federal Comprehensive Environmental Response, Compensation, and Liability Act, [42 USC 9601 to 9675](#), to provide management and technical support for a remedial action under the act. A responsible party shall reimburse the department for the costs the department incurs under an agreement, using the hourly billing rate calculated under s. [NR 750.07 \(2\)](#), Wis. Adm. Code.

(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).
- (e) *Interest payment.* If the department authorizes an amount that the state is entitled to recover under this subsection to be paid over time, it shall require monthly payments of interest, at a rate determined by the department, on the unpaid balance of that amount.
- (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 statutes 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 evidence 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](#); [2001 a. 16](#); [2005 a. 418](#); [2009 a. 28](#); [2011 a. 167](#); [2013 a. 20](#); [2015 a. 197](#) s. [51](#); [2017 a. 59](#); [2017 a. 365](#) s. [112](#).

Cross-reference: See also chs. [NR 708](#), [714](#), [716](#), [718](#), [720](#), [722](#), [724](#), [726](#), and [747](#), Wis. adm. code.