

**White Paper Outline: rule drafting relating to 2015 Wis. Act 204 requirements for financial responsibility and financial assurance for certain types of contaminated sediment cleanup sites**

A. Statutory changes under 2015 Wis. Act 204

1. Engineering controls and structural impediment removal under Wis. Stat. § 292.12(2)(d)
2. VPLE approval at contaminated sediment sites under Wis. Stat. § 292.15(2)(af)(3m)
3. VPLE partial cleanup approval at contaminated sediment sites under Wis. Stat. § 292.15(2)(am)(2m)(c)

B. Rules needed

1. Engineering controls and structural impediment removal
  - a. Plan and compliance schedule
  - b. Financial responsibility for cost of complying with an approved plan and schedule
2. VPLE approval at contaminated sediment sites
  - a. Insurance, other forms of financial assurance, and waiver to cover the cost of complying with Wis. Stat. § 292.11(3) with respect to the contaminated sediment if additional remedial action is necessary
3. VPLE partial cleanup approval at contaminated sediment sites
  - a. Agreement to complete cleanup
  - b. Financial assurance to cover cost of failure 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

C. Potential aspects of draft rules

1. Plan and compliance schedule (relating to engineering controls and structural impediment removal rule only)
  - a. Engineering control maintenance
    - i. Plan
    - ii. Compliance schedule
  - b. Structural impediment removal
    - i. Plan
    - ii. Compliance schedule
2. Common considerations for all three rules relating to insurance, financial assurance, and financial responsibility
  - a. What does the insurance/ FA need to be able to pay for? Further definition needed for each requirement
  - b. How to calculate cost/value of coverage
    - i. Estimate from consultant
    - ii. Risk (navigation hazard, toxicity, ecological and human health, surface water quality, mobility, cost to remove residual sediment and EC materials, contaminant volume and proximity to receptors)
      1. Be mindful of special considerations of sediment
      2. resides in dynamic waterbodies
      3. navigation condition
      4. higher probability of instability subject to normal flooding and catastrophic conditions
      5. contaminants are present in both solid and dissolved phases
      6. carried by water, can spread and transport in long distance

7. diffusive contaminant source
      8. directly affect surface water quality and hence ecosystem and human health.
      9. Drinking water source
    - iii. Contingency
  - c. Length of coverage (3 to 5 years, 50 years, longer than 50 years?)
    - i. Release trigger
    - ii. Coverage renewal
    - iii. Evergreen clauses/auto-extensions
    - iv. Feasibility (e.g., product availability)
  - d. Annual proof submitted to Department
  - e. Notice of expiration to DNR
    - i. Insolvency
    - ii. Receivership
    - iii. Bankruptcy
    - iv. Change in ownership of RP
  - f. Terms of insurance or financial assurance policy or agreement
  - g. Inspection costs
  - h. Amount adjustments
  - i. Interest rate (versus inflation)
  - j. Replacement
  - k. Forms of financial assurance
    - i. Bonds
    - ii. Letters of credit / irrevocable
    - iii. Insurance
    - iv. Escrow
    - v. Certificate of deposit
    - vi. Irrevocable trust
    - vii. Cash deposit with regulator
    - viii. Net worth test (caution)
  - l. Comparison of forms
    - i. Set aside / no set aside
    - ii. Administrative burden
    - iii. Transparency/monitoring
    - iv. Market conditions and external influences
    - v. Private versus public sector
  - m. What if insurance/financial assurance is not paid?
  - n. Enforcement/compliance/penalties
  - o. How to get insurance - VPLE
    - i. Open to any insurer
    - ii. One vendor
    - iii. Three approved vendors
    - iv. Similarity to natural attenuation policy / state policy for all sites
3. Special considerations for VPLE contaminated sediment cleanup sites (full cleanup rule only) – waiver
  - a. Criteria for when FA other than insurance would be acceptable
  - b. Waiver criteria