



2011 ASSEMBLY BILL 333

October 20, 2011 – Introduced by Representatives PETROWSKI, MURSAU and SEIDEL, sponsored by Senator GALLOWAY. Referred to Committee on Natural Resources.

1 **AN ACT** *to repeal* 292.15 (4); *to amend* 20.370 (2) (dh), 292.15 (2) (a) 2., 292.15
2 (5), 292.15 (7) (d) and 292.15 (7) (e); and *to create* 289.31 (10) and 292.15 (2)
3 (av) of the statutes; **relating to:** the liability of certain persons for
4 environmental contamination on property on which a cleanup has been
5 conducted.

Analysis by the Legislative Reference Bureau

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable. Under current law, a person, called a voluntary party, who applies for a liability exemption may be exempt from absolute liability to restore the environment, and from the requirements of other laws relating to hazardous substances, even if a cleanup of the discharge is not completely successful. To qualify for this exemption, an environmental investigation of the contaminated property must be conducted, a cleanup performed, and a certificate obtained from the Department of Natural Resources (DNR) stating that the cleanup has restored the environment. In addition, if the voluntary party owns or controls the property, the voluntary party must maintain and monitor the property as required by DNR.

Under current law, the voluntary party liability exemption is not available for a landfill that was licensed by DNR. This bill expands the voluntary party liability exemption so that the exemption is available for a landfill unless the landfill was

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licensed by DNR and had a plan of operation approved by DNR under current law or was initially licensed on or after May 21, 1975, and DNR determined that the landfill's design and plan of operation complied substantially with the requirements for approval under current law.

This bill also authorizes DNR to remove a voluntary party from the process of obtaining the voluntary party liability exemption if the voluntary party fails to make reasonable progress toward completing the environmental investigation and the cleanup or if the voluntary party fails to provide DNR with information that DNR requests.

Under current law, in limited circumstances, DNR may agree to limit the monetary amount that a voluntary party may be required to spend on a cleanup if the voluntary party ceases the cleanup after the cost exceeds 125 percent of the anticipated cost of the cleanup and the voluntary party makes reasonable efforts to sell the property. The bill eliminates this provision.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.370 (2) (dh) of the statutes is amended to read:

2 20.370 (2) (dh) *Solid waste management — remediated property.* All moneys
3 received under ss. 292.11 (7) (d) 2., 292.13 (3), 292.15 (5), 292.21 (1) (c) 1. d., 292.35
4 (13), 292.55 (2), 292.57 (2), and 292.94 for the department's activities related to the
5 issuance of determinations under s. 292.13 (2), remedial action cost recovery under
6 s. 292.35, remediation of property under ss. 292.11 (7) (d), 292.15 (2) and (4), 292.55
7 (1), and 292.57 and conducting reviews described in s. 292.94.

8 **SECTION 2.** 289.31 (10) of the statutes is created to read:

9 289.31 (10) VOLUNTARY PARTY CERTIFICATE OF COMPLETION. When the
10 department issues a certificate of completion under s. 292.15 (2) (a) 3., (ae) 3., or (ag)
11 2. for all or a portion of a solid waste facility with an operating license under this
12 section, the operating license for the solid waste facility or the portion of the solid
13 waste facility covered by the certificate of completion is terminated.

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1 **SECTION 3.** 292.15 (2) (a) 2. of the statutes is amended to read:

2 292.15 (2) (a) 2. ~~Except as provided in sub. (4), the~~ The environment is restored
3 to the extent practicable with respect to the discharges and the harmful effects from
4 the discharges are minimized in accordance with rules promulgated by the
5 department and any contract entered into under those rules.

6 **SECTION 4.** 292.15 (2) (av) of the statutes is created to read:

7 292.15 (2) (av) *Withdrawal by department.* 1. If at any time after a voluntary
8 party submits an application to obtain an exemption under this section the voluntary
9 party fails to make reasonable progress toward completion of an environmental
10 investigation and environmental restoration of the property identified in the
11 application, the department may withdraw the voluntary party from the process of
12 obtaining an exemption under this section.

13 2. If a voluntary party fails to provide to the department requested reports or
14 updates on the status of an environmental investigation and environmental
15 restoration of the property identified in the voluntary party's application for one year
16 or longer, the department may request a written status update from the applicant.
17 If the voluntary party does not submit the status update within 60 days or submits
18 a status update that does not show that reasonable progress is being made, the
19 department may withdraw the voluntary party from the process of obtaining an
20 exemption under this section.

21 3. If the department decides to withdraw a voluntary party under this
22 paragraph, the department shall provide a written notice of its decision to the
23 voluntary party and shall return any unused portion of any advance deposit made
24 by the voluntary party, unless otherwise directed by the voluntary party.

