

Background Information About NR 750 Rule Changes

RR program has included a number of changes to ch. NR 750, Wis. Adm. Code in a larger package of changes to the NR 700 rule series. NR 750, the rule which describes VPLE fees and procedures, needs most of these changes to bring it into consistency with statutory changes which have occurred since the VPLE law was initially written. In addition to the cleanup changes, there are three policy issues which the program recommends including:

1. Increase to Advanced Deposit Amount

The RR staff are proposing to increase the amount of the advanced deposit required to be submitted to pay for hourly oversight fees. The DNR charges by the hour for staff time spent reviewing technical reports to evaluate whether the site investigation and remediation are adequate to qualify for a Certificate of Completion. The rule currently requires an advanced deposit of \$1,000 for properties less than one acre and \$3,000 for properties one acre or larger. If the cost of the hourly oversight fees is less than the advance deposit, the voluntary party will receive a refund from the DNR. These fees are used to cover DNR oversight costs.

The Hourly Oversight Charge is required to be recalculated based on formula in the rule. The hourly rate went up to \$90 hour in July 2007. Deposit has not changed since rule was written. Due to rising hourly rate, deposit covers less oversight time than in the past.

VPLE Oversight Fees – Statistics based on sites that received COC after 2004.

Sites with \$1000 deposits (1 acre or less)

Average amount of oversight cost billed \$2055
Every site went over deposit

Sites with deposits over \$3000 (greater than an acre)

26 COCs issues
Sites that got refunds - 7 (27%)
Average refund - \$1,746
Sites that incurred costs beyond the deposit – 19 (73%)

Average amount of oversight costs (for all sites) - \$5,160
Average amount of oversight costs (for sites in billing) - \$6,599
Average total amount billed over deposit (for all sites)- \$2,160
Average total amount billed over deposit (for sites in billing) - \$3,599
Range of total oversight costs
Low - \$360 High - \$14,910.00

Proposed Change:

Sites 1 acre or less - \$2000

Sites more than 1 acre - \$4000

2. Provision to address inactive sites

While most businesses and local governments in the VPLE program are actively working to get their sites cleaned up and redeveloped, there are some projects that run into unanticipated delays and problems. Despite efforts on behalf of the department staff to contact the parties involved with the projects, there are some sites who fail to provide any updates or communication with us and make no action toward obtaining the liability exemption, some of them for years.

According to our database, of the 123 sites that are currently in the VPLE program we have found that 62 sites have not had any milestones entered into BRRTS (i.e., provided any information to the department) regarding the site cleanup in the past year, and 47 have not provided anything to us in at least two years.

To address this concern, the RR staff is proposing to add a provision to NR 750 that would allow the department to withdraw sites from the VPLE process, based on a set of criteria and adequate notification. The person could reapply, but would have to resubmit the necessary information and fee.

3. Clarify How a Property is Defined for VPLE

The VPLE statute indicates that the program applies to a “property” that someone plans investigate and remediate in order to obtain the liability exemptions. The DNR staff, working with our attorneys, have been interpreting the term “property” using the following definition for several years and we are planning to incorporate this term into the rule.

"Property" means a single parcel of land, with the entire legal description found on one deed and which has been conveyed as an undivided parcel in the past.

A related issue that we are proposing to clarify in the rule is the common situation that occurs when the property boundaries change for a redevelopment project while the site is in the VPLE process. For example, a former industrial site may be on property and enrolled in the VPLE program and then a couple of years later the developer may do a new certified survey map and subdivide the property into 2 or more smaller properties which they intend to sell. We are proposing that the rule that the voluntary party must submit new VPLE applications with the new property boundaries within a certain period of time when the boundaries change after the property is enrolled in the program. The appropriate fees would need to be included with these applications.