To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Brownfields -- Lender Liability Exemption (Natural Resources -- Air, Waste and Contaminated Land)

[LFB Summary: Page 424, #19]

CURRENT LAW

A lender that acquires title to a property through foreclosure is not liable under the hazardous substances spills law for a discharge of a hazardous substance on the property if certain conditions are met. One of the conditions is that the lender must conduct an environmental assessment of the property not more than 90 days after the date the lender acquires title to, or possession or control of, the property and files a copy of the environmental assessment with DNR not more than 180 days after the date the lender acquires title to, or possession or control of, the property.

GOVERNOR

Modify the lender liability exemption so that a lender may conduct an environmental assessment at any time before acquiring title to, or possession or control of the property. Require any lender who conducts the environmental assessment more than one year before acquiring title to the property to obtain a visual inspection of the property after acquiring title, possession or control of the property to verify the environmental assessment and submit the results of the environmental assessment and visual inspection to DNR within 90 days after the lender acquires the property. DNR would be required to review the environmental assessment and either determine that the environmental assessment is adequate or direct the lender to address any inadequacies in the environmental assessment. Require the lender to correct, to DNR's satisfaction, any inadequacies in the environmental assessment. The lender would be required

to permit access to the property to DNR and to any party who may have possessed or controlled a hazardous substance that is discharged, or who may have caused the discharge of a hazardous substance, on the property.

Require the lender to reimburse DNR for the costs of reviewing materials submitted by the lender. The fees would be deposited into the general fund.

DISCUSSION POINTS

1. The provision would provide a lender who seeks an exemption from liability under the spills law greater flexibility in allowing the lender to conduct an environmental assessment at any time before acquiring the property, in addition to the current allowance of conducting the assessment not more than 90 days after acquiring the property. This would encourage lenders to have an environmental assessment conducted before taking title to the property.

2. The bill would require that if the assessment is conducted more than one year before the lender acquires the property, the lender would have to visually inspect the property to verify the assessment, send the results of the assessment and inspection to DNR, correct any inadequacies in the assessment and reimburse DNR for its review costs.

3. Visually inspecting the property to verify an older environmental assessment would help to ensure that if any conditions on the property have changed, the assessment can be updated before the exemption is made possible. It could be argued that it is reasonable to require the lender to correct any inadequacies in the environmental assessment before receiving an exemption from the spills law, to insure that the best possible information is available about the existence of contamination on the property. Adding a requirement that lenders reimburse DNR for its review costs is consistent with other brownfields-related provisions that require persons who request DNR certification of exemption from liability or completion of cleanup to pay DNR costs.

4. Some have argued that lenders should not be subject to DNR review of the adequacy of the environmental assessment. While some lenders may prefer the flexibility of obtaining an environmental assessment more than a year before acquiring the property, the current requirement to obtain an assessment within 90 days after acquiring the property would insure that information about the contamination on the property is current.

5. The bill would deposit any fee collected in the general fund, which is inconsistent with other brownfields provisions for which fees would be deposited in a program revenue appropriation for conducting reviews, providing technical assistance and issuing determinations of liability. The bill could be amended to specify that the fees would be deposited in the program revenue appropriation. While the bill includes no estimate of general fund revenue, DNR recently estimated that eventually approximately five lender environmental assessments

would be reviewed annually, with an average cost of $500 and total annual revenue of approximately $2,500. DNR estimates that perhaps half this amount would be collected in 1998-99.

6. Currently, a lender may not obtain the liability exemption if the discharge was from a federally-regulated underground storage tank, but may obtain the exemption if the discharge is from a non-federally regulated tank such as certain farm, heating oil tanks and aboveground tanks. DNR suggests that the exemption be available if the lender complies with all federal and state requirements, whichever are more restrictive, pertaining to the removal of underground storage tanks. This would remove the current eligibility for the exemption for state-regulated tanks until the lender meets the state requirements for removal, but would provide the exemption for both federally- and state-regulated tanks after the lender meets requirements for removing the tanks.

7. DNR suggested that in addition to the SB 77 requirement that the lender permit access to the property by the Department and any party who may have possessed, controlled or caused the discharge, that the lender also be required to require access to the Department's representatives, or the responsible party's consultant or contractor in order to take appropriate response actions.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to: (a) allow a lender to conduct an environmental assessment at any time before acquiring title to, or possession or control of the property; (b) require any lender who conducts the environmental assessment more than one year before acquiring the property to obtain a visual inspection of the property to verify the environmental assessment and submit the results of the assessment and inspection to DNR within 90 days after the lender acquires the property; (c) require DNR to review the environmental assessment and direct the lender to address any inadequacies in the environmental assessment; (d) require the lender to correct any inadequacies in the environmental assessment; (e) require the lender to permit access to the property to DNR and to specified parties; (f) require the lender to reimburse DNR for the costs of reviewing materials submitted by the lender; and (g) deposit the fees into the general fund.

Alternative 1	GPR
1997-99 REVENUE (Change to Base)	$1,200
[Change to Bill	*$1,200]*

2. Modify the Governor's recommendation to: (a) specify that the exemption is available only if the lender complies with all federal and state requirements, whichever are more restrictive, pertaining to the removal of underground storage tanks; and (b) the lender also be

required to allow access to the Department's representatives, or the responsible party's consultant or contractor in order to take appropriate response actions.

Alternative 2	GPR
1997-99 REVENUE (Change to Base)	$1,200
[Change to Bill	*$1,200]*

3. In addition to Alternative 1 or 2, deposit any fees received under the provision in the program revenue appropriation for similar remediated property fees, instead of in the general fund.

Alternative 3	GPR	PR	TOTAL
1997-99 REVENUE (Change to Base)	- $1,200	$1,200	$0
[Change to Bill	*- $1,200]*	*$1,200*	*$0]*

4. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt #2 & 3

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Brownfields -- Civil Immunity for Lenders and Voluntary Parties (Natural Resources -- Air, Waste and Contaminated Land)

[LFB Summary: Page 424, #21]

CURRENT LAW

No provision.

GOVERNOR

Specify that any lender or voluntary party who qualifies for an exemption from liability for hazardous substances discharges would be immune from any civil liability related to a hazardous substance released on property that the person holds title to, or has possession or control of, if the hazardous substance was released on the property before the date that the person acquired title to, or possession or control of the property and the person acquired the property after the effective date of the biennial budget act. Specify that the provision would not provide any immunity from liability under a contract.

DISCUSSION POINTS

1. The civil immunity would protect an eligible lender or voluntary party from being sued by an adjacent or nearby property owner for damages from a hazardous substance that was released on the property before the person claiming immunity took title to or has possession or control of the hazardous substance. Examples of voluntary parties who might benefit are

ordinary purchasers (individuals, governments or corporations), people who inherit contaminated property or persons who took title to property to redevelop it.

2. An adjacent or nearby property owner would not be able to sue the eligible lender or voluntary party, although the release of the hazardous substance could have, for example, migrated and contaminated the adjacent owner's private well or spread explosive vapors into the adjacent owner's basement. The adjacent or nearby property owner would have the options of: (a) suing the party who actually caused the release (if known and solvent); (b) seeking an exemption from cleanup under the spills law under the SB 77 off-site discharges provision; or (c) replacing the well, responding to the vapors in the basement or cleaning up any other contamination at his or her own expense as necessary to protect his or her property.

3. If the lender or voluntary party had entered a contract agreeing to pay damages, the civil immunity would not apply to the contract. For example, if a lender or voluntary party would sign a contract to pay an adjacent or nearby property owner to replace a contaminated well, the contract would be valid.

4. This protection would provide greater incentive for a lender or voluntary party to take title to a property and redevelop it.

5. It could be argued that it is inappropriate to take away the right of a property owner to sue the person who owns, possesses or controls the property that is the source of a hazardous substance release that is causing damage to his or her property. Further, if these persons are denied their right to recover damages by statute, the state may see an increase in claims seeking state reimbursement for costs incurred.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide civil immunity for any lender or voluntary party who meets eligibility criteria.

2. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt #1

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

DNR -- [illegible] Lands (Paper #613)

AYE 8 NO 8 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Brownfields -- Stewardship Funding Priority (DNR -- Air, Waste and Contaminated Land)

[LFB Summary: Page 425, #22]

CURRENT LAW

The Warren Knowles-Gaylord Nelson stewardship program allocates $231 million over a ten-year period ($23.1 million annually) in general obligation bonding among twelve categories of land acquisition and development programs. Four of these components primarily provide grants to local governments and nonprofit conservation organizations (local park aids, urban rivers, trails and urban green space).

Local Park Aids. There is $2,250,000 authorized annually for the local park aids program. Under this program, local governments may apply for state aids to develop and improve community parks and acquire additional land for recreation. Up to 50% of the cost will be paid by the state, with the remaining part paid by the local government. Costs associated with the operation and maintenance of parks and other outdoor recreational facilities are not eligible for state aid.

Urban Rivers. The urban rivers program is funded at a level of $1,900,000 annually. The program provides grants to towns, cities, villages, counties and tribal governments for land acquisition on, or adjacent to, rivers that flow through urban areas. Urban rivers projects must emphasize the preservation or restoration of urban rivers or riverfronts for the purposes of economic revitalization and outdoor recreation. A municipality must provide at least a 50% match from private, local or federal funding, in-kind contributions or state funding (not including funds from other DNR grant programs).

Trails. Stewardship authorizes $1,000,000 annually for the development of state trails. DNR may expend up to $500,000 of this annual amount to match funds received from: (a) gifts, grants or bequests; or (b) an amount equal to the fair market value of land donated for a state trail system. DNR has promulgated administrative rules that provide nonprofit conservation organizations (NCOs) with grants for the acquisition of land or easements. In addition, administrative rules allow DNR to use those funds not committed to NCOs by January 1 of each year for state trail development projects.

Urban Green Space. There is $750,000 authorized annually for local governments to acquire urban green space (scenic or ecologically valuable sites in urban areas), either through the acquisition of land or the rights in land. Eligible local governments include cities, villages, towns, counties, lake sanitary districts or public inland lake protection and rehabilitation districts. Grant amounts are equal to 50% of the cost of acquiring land for these purposes. The local governmental unit is responsible for the remainder of the cost. The title to the land or the rights in the land acquired under this program belong to the local governmental units.

GOVERNOR

Require DNR to give higher priority to stewardship program grants to local units of government under the urban green space and local park aids components to those projects related to brownfields development. Also, require DNR to give higher priority to grants to nonprofit conservation organizations under the urban green space, local park aids, and trails components to those projects related to brownfields redevelopment. Add to the list of criteria for grants to localities and NCOs under the urban rivers component whether the project under consideration is related to brownfields development. Require DNR to assign the greatest weight to the brownfields criteria in awarding urban rivers grants. Define brownfields redevelopment as an abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

DISCUSSION POINTS

1. Administration officials indicate that the changes in stewardship funding priority were proposed as a way to utilize existing programs and funding sources for brownfields redevelopment. The stewardship components chosen were those judged to be the most likely to receive applications for brownfields projects. The administration indicates that while grants for brownfields projects might not be made in all four of the components included in SB 77, the language would provide DNR with a way to utilize stewardship funding for brownfields redevelopment to the extent such opportunities arise.

2. The intent of the language in SB 77 is to provide a preference in favor of a brownfields project over a non-brownfields project if all the other criteria are equal. The intent is not to fund all eligible brownfields projects before funding any other non-brownfields project regardless of the relative merits of the projects. SB 77 would provide DNR with considerable discretion in implementing a new priority system (except under urban rivers where the bill would require brownfield redevelopment as receiving the greatest weight).

3. Under the urban rivers program, DNR considers all of the following criteria in awarding grants: (a) the diversity of outdoor recreational opportunities provided to all segments of the population; (b) the extent of preservation or restoration of an urban riverfront; (c) the project's aesthetic value; (d) the project's potential for increased tourism; (e) potential economic benefits to the community; (f) the improvement of public access to the riverfront; (g) historical or cultural values; and (h) the extent of planning, coordination and local support which exists for the project.

4. Some brownfields-related criteria (restoration of urban riverfronts and the economic benefits to the community) are already included in the urban rivers program. DNR indicates that some brownfields redevelopment-related projects along the Rock River in Beloit and Janesville have already been funded through the existing urban rivers program. It could be argued that adding brownfields criteria to the urban rivers component is generally consistent with the overall focus of the program. However, some would argue that brownfields redevelopment should not be the top priority of the urban rivers program.

5. Under urban green space, DNR may approve grants for the following purposes: (a) to provide an open natural space near an urban development; (b) to protect from urban development an area or naturally-formed feature that is near an urban area and that has scenic, ecological or other natural value; and (c) to provide land for noncommercial gardening. The priorities for trail grants include providing connections between other trails and to resource areas of statewide significance or of outstanding natural scenery. Local park aids grants are given for the development of existing community parks and the acquisition of land that could be used for recreational purposes.

6. The primary focus of the urban green space, trails and local park aids components of stewardship is on the acquisition or development of land that is currently of scenic or environmental value for preservation or recreational purposes. These stewardship program purposes could be viewed as inconsistent with brownfields redevelopment, the focus of which is on the cleanup of sites that are currently contaminated and that could be used for industrial or commercial purposes.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to require DNR to give higher priority to stewardship program grants to local units of government and NCOs under the urban green space, local park aids and trails components of the stewardship program to those projects related to brownfields development. Require DNR to assign the greatest weight to the brownfields development criteria in awarding urban rivers grants.

2. Adopt the Governor's recommendation relating to one or more of the following:

a. add brownfields redevelopment to the list of criteria for grants under the urban rivers program.

b. in addition to "a.", require DNR to assign the greatest weight to the brownfields criteria in awarding urban river grants.

c. require higher priority for brownfields under the urban greenspace component.

d. require higher priority for brownfields under the local park aids component.

e. require higher priority for brownfields under the trails component.

3. Maintain current law (no statutory brownfields priority for stewardship programs).

Prepared by: Russ Kava

MO# AM #2 abcde

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Brownfields -- Spills Law Stepped Enforcement (Natural Resources -- Air, Waste and Contaminated Land)

[LFB Summary: Page 426, #23]

CURRENT LAW

A person who possesses, controls or causes the discharge of a hazardous substance is required to notify DNR and take the actions necessary to restore the environment to the extent practicable. DNR may require that the person take preventive measures and may specify necessary preventive measures by order. DNR may refer violators of orders to the Department of Justice (DOJ). If DNR determines that the person is not taking the necessary actions or if the person responsible for the discharge is unknown, DNR may take the necessary actions, including emergency actions, to respond to the discharge. If a responsible party is identified, the party is required to reimburse DNR for expenses incurred.

GOVERNOR

Authorize DNR to negotiate and enter into an agreement containing a schedule for conducting a cleanup required by the hazardous substances spills law with a person who possessed or controlled a hazardous substance that was discharged or who caused the discharge of a hazardous substance if the discharge does not endanger public health. Authorize DNR to refer, to DOJ for enforcement, any person who violates an agreement under the provision.

DISCUSSION POINTS

1. The bill would be consistent with DNR practice as outlined in a departmental enforcement manual. While the enforcement manual is not a statute or rule, it serves as guidance to departmental actions.

2. Currently, DNR does not take enforcement if a responsible party is complying with a cleanup schedule agreed to by DNR and the responsible party. DNR and a responsible party can agree to a consent order in which the responsible party agrees to take required cleanup actions according to a specified schedule and waive his or her right to further appeal. In return, DNR agrees not to take further enforcement action unless the responsible party violates the consent order. If a responsible party will not agree to a consent order, DNR issues an administrative order which specifies required cleanup actions and deadlines. The responsible party has the right to appeal and DNR can refer violations of the special order to DOJ for enforcement.

3. DNR has suggested three amendments to specify that: (a) the agreement would only relate to conducting a non-emergency action (in addition to the SB 77 requirement that the discharge not endanger public health); (b) the agreement be with a person who "possesses" or "controls" (instead of "possessed" or "controlled" under SB 77) a hazardous substance; and (c) DNR be authorized to charge fees to offset its costs of negotiating and entering into an agreement.

4. Authorizing fees for DNR to recover its costs would allow fees for an activity which DNR currently performs without charge. However, it could be argued that entering into an agreement is an optional action and that DNR could choose to enforce through administrative orders instead of taking the preliminary step of entering into an agreement or consent order. DNR estimates that eventually, it might issue 25 negotiated agreements annually. If authorized to collect fees, with an average cost of approximately $650, fees for the agreements could generate annual revenues of approximately $16,250. DNR estimates that it may generate, perhaps, half this amount in 1998-99.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to authorize DNR to : (a) negotiate and enter into an agreement containing a schedule for conducting a cleanup with a person who possessed or controlled a hazardous substance that was discharged or who caused the discharge of a hazardous substance if the discharge does not endanger public health; and (b) refer to DOJ for enforcement, any person who violates an agreement.

2. Modify the Governor's recommendation to specify one or more of the following:

a. the agreement would only relate to conducting a non-emergency action;

b. the agreement be with a person who possesses or controls (instead of possessed or controlled under SB 77) a hazardous substance;

c. DNR be authorized to charge fees to offset its costs of negotiating and entering into an agreement.

Alternative 2c	PR
1997-99 REVENUE (Change to Base)	$8,100
[Change to Bill	*$8,100]*

3. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt #2abtc

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 13 NO 3 ABS ____

Senator George

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND

Brownfields -- Spills Law Stepped Enforcement
(LFB Paper #615)

Motion:

Direct DOJ to review the effectiveness of the provision and submit a report of its findings to the Joint Committee on Finance and the appropriate standing committees by January 1, 2000.

MO# 7011

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
2 BURKE	Y	N	A
DECKER	Y	N	A
1 GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Brownfields -- Delay Spills Law Cleanup Requirement (Natural Resources -- Air, Waste and Contaminated Land)

[LFB Summary: Page 426, #24]

CURRENT LAW

A person who possesses, controls or causes the discharge of a hazardous substance is required to notify DNR and take the actions necessary to restore the environment to the extent practicable. DNR may require that the person take preventive measures and may specify necessary preventive measures by order. If DNR determines that the person is not taking the necessary actions or if the person responsible for the discharge is unknown, DNR may respond to the discharge. If a responsible party is identified, the party is required to reimburse DNR for expenses incurred.

GOVERNOR

Authorize a person who discovers a discharge of a hazardous substance on his or her property as a result of conducting an environmental investigation of the property to delay cleaning up the property if all of the following apply: (a) the person provides DNR with a legal description of the property and a summary of the environmental investigation; (b) DNR determines that the discharge does not pose an immediate and direct threat to human health or the environment; (c) the person does not take any action that increases the rate of migration of the hazardous substance or that otherwise worsens the effect of the discharge on human health or the environment; and (d) the person negotiates with DNR and within three years of conducting the investigation (or six years if the person qualifies under voluntary party provisions), enters into

an agreement with DNR that contains a schedule for conducting a cleanup under the hazardous substances spills law.

Prohibit DNR from issuing an order to the person to cleanup the property or from requiring the person pay DNR costs of responding to the hazardous substances spill if the person enters into an agreement under the provision, unless the person violates the agreement. Authorize DNR to promulgate rules to charge fees to offset the Department's costs of reviewing investigations submitted, making determinations and negotiating agreements under the provision. Direct that DNR deposit any fees collected for this purpose in a program revenue appropriation for conducting reviews, providing technical assistance and issuing determinations of liability.

DISCUSSION POINTS

1. The bill would benefit any person who wants to delay cleanup of contaminated property. Examples of this could include persons who want to delay cleanup until they have assembled several parcels of properties for a redevelopment project, persons who don't have funds or want to delay spending funds on cleanup until some time in the future or persons who will only take title to a potentially contaminated property if they believe they will be able to delay the cleanup into the future.

2. A person would be eligible to delay the cleanup if they discover a discharge of a hazardous substance on property owned by the person as a result of conducting an investigation, and if certain conditions are met. A person would not be eligible for a discharge that is obvious without conducting an investigation, for example, if there is a pool of petroleum or other chemicals evident at the surface.

3. The agreement would contain a schedule of when the cleanup would be done. While under current DNR practice and the SB 77 provision related to stepped enforcement, DNR and a responsible party could agree to a specific schedule for when the responsible party would agree to take required cleanup actions, the SB 77 authorization to delay cleanup means that the person could delay entering into the agreement and schedule with DNR for up to three years (if a responsible party) or six years (if a voluntary party) after conducting the environmental investigation. Thus, the actual cleanup could be started three to six years (later if agreed to) after the investigation first reveals contamination on the property. DNR could prohibit the delay in entering the agreement if the Department determines that the discharge poses an immediate and direct threat to human health or the environment.

4. It could be argued that authorizing the responsible party or voluntary party to delay entering into an agreement with the Department might be a helpful economic development or redevelopment tool that encourages persons to take possession of contaminated property.

5. Alternatively, it could be argued that statutorily authorizing a delay in entering into an agreement could result in unnecessary delays in cleanups. The provision could result in contamination levels increasing during the three to six years between the completion of the investigation and the agreement. The delay could also lead to a need for the investigation to be updated or redone to reflect current conditions at the time the agreement is negotiated. For example, during the three to six years after an investigation is completed, groundwater contamination could move or spread, or soil contamination could move into the groundwater. In addition, delays could lead to increased cleanup costs.

6. While the bill includes no estimate of fee revenue, DNR recently estimated that eventually approximately 25 delay of response action letters would be reviewed annually, with an average cost of $650 and total annual revenue of approximately $16,250. DNR estimates that perhaps half this amount would be collected in 1998-99.

7. DNR and DOA have suggested that the bill be amended in the following ways: (a) make the delay in entering into an agreement available only to brownfields, defined as abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination; (b) authorize an eligible party to delay taking "remedial actions" (instead of "actions" under SB 77); (c) require the person to provide DNR with the results of the environmental investigation (instead of a summary under SB 77); (d) require the person to take all necessary emergency actions to adequately address discharges that pose an imminent threat to public health, safety, welfare or the environment and take all non-emergency actions to prevent a new or continuing release of the hazardous substance from becoming an imminent threat to public health, safety, welfare or the environment (instead of the SB 77 requirement that DNR determine that the discharge does not pose an immediate and direct threat to human health or the environment); (e) require that a voluntary party must enter into an agreement within six years after conducting the investigation (instead of the SB 77 requirement that the voluntary party is not required to enter into the agreement until six years after conducting the investigation); and (f) make the delay unavailable if the site is eligible for the PECFA program.

8. The agencies argue that the changes would better target the provision only to brownfields sites that do not pose an imminent threat to public health, safety, welfare or the environment. It could also be argued that either: (a) if the provision is made available for brownfields it should also be available to non-brownfields; or (b) that the SB 77 provision for stepped enforcement and a negotiated schedule should be sufficient to reach an agreed cleanup schedule without a statutory provision delaying the entering into the agreement.

9. The agencies' suggestion that the delay be unavailable for PECFA sites could result in some PECFA sites not being able to delay cleanup, while a non-PECFA site that may pose a greater risk to public health or the environment could delay cleanup.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to authorize a person who discovers a discharge of a hazardous substance on his or her property as a result of conducting an environmental investigation of the property to delay cleaning up the property if the person meets certain conditions and enters into an agreement with DNR within three or six years after conducting the investigation that contains a schedule for conducting the cleanup.

Alternative 1	PR
1997-99 REVENUE (Change to Base)	8,200
[Change to Bill	*$8,200]*

2. Modify the Governor's recommendation consistent with DOA and DNR recommendations to: (a) make the delay in entering into an agreement available only to brownfields, defined as abandoned, idle or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination; (b) authorize an eligible party to delay taking remedial actions; (c) require the person to provide DNR with the results of the environmental investigation; (d) require the person to take all necessary emergency actions to adequately address discharges that pose an imminent threat to public health, safety, welfare or the environment and takes all non-emergency actions to prevent or contain a new or continuing release of the hazardous substance from becoming an imminent threat to public health, safety, welfare or the environment; (e) require that a voluntary party must enter into an agreement within six years after conducting the investigation; and (f) make the delay unavailable if the site is eligible for the PECFA program.

Alternative 2	PR
1997-99 REVENUE (Change to Base)	8,200
[Change to Bill	*$8,200]*

3. Maintain current law. Default

MO# AH #2

JENSEN	~~Y~~	N	A
OURADA	~~Y~~	N	A
HARSDORF	~~Y~~	N	A
ALBERS	Y	~~N~~	A
GARD	~~Y~~	N	A
KAUFERT	~~Y~~	N	A
LINTON	Y	~~N~~	A
COGGS	Y	~~N~~	A
BURKE	Y	~~N~~	A
DECKER	Y	~~N~~	A
GEORGE	~~Y~~	N	A
JAUCH	Y	~~N~~	A
WINEKE	Y	~~N~~	A
SHIBILSKI	Y	~~N~~	A
COWLES	~~Y~~	N	A
PANZER	~~Y~~	N	A

Prepared by: Kendra Bonderud

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Air Quality Monitoring and Data Acquisition and Reporting System (Natural Resources -- Air, Waste and Contaminated Land)

[LFB Summary: Page 416, #1]

CURRENT LAW

No provision.

GOVERNOR

Provide $723,100 PR in 1997-98 and $343,000 PR in 1998-99 as one-time funding during the biennium for two air quality programs. Funding would be provided from emissions fees program revenue and would be used for:

a. $220,100 in 1997-98 for capital equipment to set up a statewide fine particulate monitoring network to monitor particulates smaller than 2.5 microns in diameter in response to proposed U.S. Environmental Protection Agency standards. The funds would be placed in unallotted reserve, subject to release by DOA.

b. $846,000 ($503,000 in 1997-98 and $343,000 in 1998-99) to contract for computer programming for a new automated data acquisition and reporting system, primarily for ozone, and to purchase computer equipment to operate the new system. A 10-year-old air monitoring system would be replaced. The new system would collect and report levels of air pollutants in the state and allow users of the data to have immediate access to information on pollutant levels. Of the requested funding, $550,000 would be used to hire a contractor to develop and program a new data acquisition system, $286,000 would be used to purchase computers, software, two

computer servers and a hardware maintenance contract, and $10,000 would be used to purchase development software to be used to write the new system.

DISCUSSION POINTS

Particulate Monitoring Equipment

1. Current EPA standards require DNR to monitor particulates 10 microns or smaller (PM_{10}) in diameter. These particles, sometimes called soot, are comprised of tiny pieces of solid particles and liquid droplets that refract light and create haze and brown clouds. Particulates can originate from emitters such as trucks, power plants, other industrial processes, crushing and grinding operations, windblown dust and wood stoves. Particulates can cause bronchial, respiratory and cardiovascular problems for susceptible people. There have been no known violations of the PM_{10} standard in Wisconsin since 1988.

2. In response to a court-ordered deadline, in November, 1996, EPA issued proposed rules to create an additional standard for particulates 2.5 microns or smaller ($PM_{2.5}$). These fine particles can penetrate more deeply into the lungs compared to larger particles. EPA is expected to finalize the new $PM_{2.5}$ standards and monitoring regulations by a court-ordered deadline of June 28, 1997. The effective date of the monitoring standards would be six months after the actual promulgation date.

3. Under the bill, the funds for particulate monitoring equipment would purchase 12 sampling units to measure the amount of fine particulates in the air. DNR indicates that EPA will not allow use of monitoring equipment that measures both PM_{10} and $PM_{2.5}$ particles, so separate equipment will be required for the two standards. DNR plans to establish three $PM_{2.5}$ monitoring sites in the Milwaukee area (and possibly more), two in Waukesha County, and one each in Kenosha, Madison, Appleton, Wausau, Superior, Vernon County (to measure rural background levels) and possibly in Wisconsin Rapids.

4. DNR purchased three $PM_{2.5}$ sampler units in early 1997 with federal EPA grant funds, which it installed in Milwaukee, Waukesha and Kenosha. DNR began to obtain monitoring data in April, 1997. The Department will use the current three samplers to audit and calibrate the 12 samplers that would be provided under the bill.

5. The National Conference of State Legislatures and industry representatives contend that EPA did not comply with the federal Unfunded Mandates Reform Act of 1995 when promulgating the proposed standards, and that EPA should estimate the costs of the proposed standards and consider alternative regulatory possibilities.

6. EPA has requested additional federal funds to pay for states' costs of additional monitoring equipment. It is not known whether additional federal funds will be made available

to Wisconsin for $PM_{2.5}$ monitoring equipment. If EPA provides additional funds, the need for state funds may be reduced or eliminated.

7. The funds provided under SB 77 would allow DNR to purchase $PM_{2.5}$ samplers upon enactment of the bill if the EPA standards are finalized. If the SB 77 funds are not provided and EPA does not provide additional federal funds, DNR could request use of emissions fee program revenues under the s. 16.515, 14-day passive review process.

Data Acquisition and Reporting System

8. The $846,000 in one-time funds provided under SB 77 would include the following components: (a) $350,000 in 1997-98 and $200,000 in 1998-99 to hire contractors to develop and program a new data acquisition system to handle monitoring data collected in a "real-time" mode (which means users could access information about pollutants at the current moment); (b) $143,000 annually to purchase two computer servers and six desktop or laptop computers; and (c) $10,000 in 1997-98 to purchase development software needed to write the new system.

9. The current system for collecting data from the Department's network of air monitoring sites was developed in 1986 to 1988. It has almost reached capacity and will be obsolete within approximately two years when DNR moves to the new DOA computer technology standards. The current system includes three separate components that are separately maintained by program staff rather than by the DNR information technology support staff.

10. A new system developed with SB 77 funds would be integrated into the DNR computer system and would receive technical support from current DNR information technology staff. DNR indicates that the new system would provide increased customer service because it would allow Wisconsin residents to instantaneously obtain information about air pollutant levels.

11. Emissions fees are assessed on the tonnage of emissions generated by a facility (mainly the larger electric utilities, paper-related industries and large chemical plants). EPA requires that emissions fees offset the state's costs associated with reducing the emissions of facilities being assessed the fees. DNR argues that use of emissions fees is an appropriate funding source because provision of integrated and real-time data will help reduce emissions from facilities. However, it could be argued that DNR should seek federal funding for the computer system upgrades because the system would help meet federal clean air monitoring requirements.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide $723,100 PR in 1997-98 and $343,000 PR in 1998-99 from emissions fees as one-time funding that includes: (a) $220,100 in

1997-98 for capital equipment to set up a statewide fine particulate monitoring network; and (b) $503,000 in 1997-98 and $343,000 in 1998-99 to contract for computer programming for a new automated data acquisition and reporting system.

Alternative 1	PR
1997-99 FUNDING (Change to Base)	$1,066,100
[Change to Bill	*$0]*

2. Modify the Governor's recommendation to approve $846,000 in one-time funding ($503,000 in 1997-98 and $343,000 in 1998-99) to contract for computer programming for a new automated data acquisition and reporting system. (The funding for the particulate monitoring equipment would not be approved.)

Alternative 2	PR
1997-99 FUNDING (Change to Base)	$846,000
[Change to Bill	*- $220,100]*

3. Maintain current law.

Alternative 3	PR
1997-99 FUNDING (Change to Base)	$0
[Change to Bill	*- $1,066,100]*

Prepared by: Kendra Bonderud

MO# Alt #2

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS

Senator Cowles

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND

Air Quality Monitoring and Data Acquisition and Reporting System
(LFB Paper #617)

Motion:

Move to direct DNR to examine raising the emission fee cap of 4,000 tons per billable pollutant. Direct DNR to, in consultation with the Acid Rain Deposition Research Council, study the feasibility of utilizing emission fees for the enhanced monitoring of sulfur dioxide, nitrogen dioxide and mercury deposition in Wisconsin. Direct DNR to submit a report of its findings and recommendations to the Joint Committee on Finance no later than December 1, 1997.

Note:

Emissions fees are assessed on the tonnage of emissions generated by a facility. The current cap for billable air pollutants is 4,000 tons per pollutant. The fees are adjusted annually based on the change in the consumer price index.

MO# 5024

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
2 SHIBILSKI	Y	N	A
1 COWLES	Y	N	A
PANZER	Y	N	A

AYE 11 NO 5 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Program Revenue Reestimate - Air Management, Asbestos Abatement (Natural Resources -- Air, Waste and Contaminated Land)

GOVERNOR

No provision.

MODIFICATION TO BASE

Delete $70,000 PR annually from supplies and services to reflect a reestimate of available program revenues.

Explanation: The adjustment is necessary to hold expenditures within available revenues. Resulting expenditure authority of $283,000 annually would exceed estimated revenues of $200,000 annually and would spend down the carry-in balance. Fees imposed on persons proposing asbestos abatement projects are used to fund contracts for asbestos abatement inspections. If revenues exceed estimates in the future, additional expenditure authority could be sought under s. 16.515 of the statutes.

Modification	PR
1997-99 FUNDING (Change to Base)	- $140,000
[Change to Bill	*- $140,000]*

Prepared by: Kendra Bonderud

MO# Modification to Base

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS

Natural Resources -- Air, Waste a [illegible] 618)

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Air Management Permit Review Program Revenue Deficit (Natural Resources -- Air, Waste and Contaminated Land)

CURRENT LAW

The Air Management new source permit review program revenue appropriation has 1996-97 adjusted base funding of $1,451,800 PR and 21.0 PR positions. The appropriation receives revenues from permit fees from new air emissions sources or modification of existing emissions sources which are required to secure an air emissions permit from DNR. The appropriation funds the staff who administer permit review requirements.

GOVERNOR

No provision.

DISCUSSION POINTS

1. Under base expenditure authority in the bill, the air permit program revenue appropriation would have an estimated deficit of $570,000 on June 30, 1999, unless DNR reduces expenditures below authorized levels by $570,000 during 1997-99. Estimated permit revenues will be $1.2 million annually, while expenditure authority plus reserves will be almost $1.5 million.

2. The Department is beginning to discuss the possibility of permit fee increases. However, no fee increases are proposed at this time to balance the account. Therefore, DNR will

have to: (a) keep two vacancies unfilled; (b) reduce other account expenditures; or (c) move staff into positions funded from other sources.

3. DNR suggests that a possible way to reduce the deficit would be to move four to six positions funded from the permit review appropriation to the emissions fee program revenue appropriation. That appropriation receives revenues from air emissions tonnage-based fees, and funds 109.5 positions that administer programs to reduce emissions from stationary sources. The positions that would be moved perform some activities related to stationary source emission reduction. However, if permit review activities increase, the positions would return to performing permit review activities.

4. Transferring $285,100 PR annually and 4.5 PR positions from the permit review appropriation to the emissions fee appropriation would balance the permit review appropriation. The balance of the emissions fee appropriation would be reduced from approximately $700,000 under the bill to $125,000, and estimated expenditures in 1998-99 ($10.1 million) would exceed revenues ($9.6 million) by $500,000. If the positions are transferred, the Department may have to consider increasing emissions fees in 1999-2001.

5. Alternatively, $285,100 PR annually and 4.5 PR positions could be deleted from the permit review appropriation, including 2.0 vacant and 2.5 filled positions. DNR could choose to move the 2.5 incumbents of the filled positions into 2.5 of the 10.75 vacant positions in the emissions fee appropriation. However, DNR indicates that the vacant emissions positions are primarily field staff positions that have been held vacant until the reorganization is finalized, and that the positions will be filled this summer. An alternative to deleting all of the 4.5 positions would be to delete the two vacant positions with associated funding of $114,000 PR annually, and to transfer the 2.5 filled positions with associated funding of $171,000 PR annually to the emissions fee appropriation.

6. DNR indicates that the volume of air permits processed in 1996 was less than anticipated, at approximately 150 instead of the expected 200. If the volume of air permits increases above current levels, staff time and fee revenue could increase. If funding and positions are deleted from the appropriation, and DNR receives future revenues that would fund additional staff, the Department could seek expenditure and position authority in future legislation or under s. 16.505/515 of the statutes.

ALTERNATIVES TO BASE

1. Delete 2.0 vacant PR permit review positions and $114,000 PR annually. Further, transfer 2.5 PR positions and $171,000 PR annually from the permit review to the air emissions fee appropriation.

Alternative 1	PR
1997-99 FUNDING (Change to Base)	- $228,000
[Change to Bill	*- $228,000]*
1998-99 POSITIONS (Change to Base)	- 2.00
[Change to Bill	*- 2.00]*

2. Transfer $285,100 PR and 4.5 PR positions annually from the permit review appropriation to the emissions fee appropriation.

3. Delete $285,100 PR and 4.5 PR positions annually from the permit review appropriation. (If revenues increase in the future, additional expenditure and position authority could be sought under s. 16.505/515.)

Alternative 3	PR
1997-99 FUNDING (Change to Base)	- $570,200
[Change to Bill	*- $570,200]*
1998-99 POSITIONS (Change to Base)	- 4.50
[Change to Bill	*- 4.50]*

4. Take no action. (DNR would have to administratively reduce expenditures by $570,000 in 1997-99.)

Prepared by: Kendra Bonderud

MO# AH #1

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 14 NO 2 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Environmental Management Account Condition, Vehicle Environmental Impact Fee and Spills Cleanup (DNR -- Air, Waste and Contaminated Land)

[LFB Summary: Page 417, #4 and Page 418, #6]

CURRENT LAW

A tire recovery fee of $2 per tire ($10 per car, including the spare) is collected by the Department of Transportation when a new vehicle is registered in Wisconsin for the first time. The $10 fee generated $3.2 million in 1995-96. It is deposited in a program revenue account and used to administer the waste tire removal and recycling program, including cleanup of stockpiles of tires, reimbursement grants to end-users and processors of waste tires and management or recovery grants to fund activities that reduce illegal dumping of tires. In 1995 Act 27, the fee and waste tire program are repealed effective June 30, 1997.

Base funding for state-funded cleanup of contaminated sites is $2,271,000 SEG from the environmental repair account of the environmental fund. The spills cleanup appropriation is utilized when DNR funds the cleanup at high-priority contaminated sites where no known responsible party is willing or able to cleanup the property in the immediate future.

GOVERNOR

Create an environmental impact fee of $5 per vehicle on the sale of new cars and trucks, to be collected by DOT at the time a new vehicle is registered in Wisconsin for the first time. The fee would first apply to vehicles registered on the effective date of the bill. Deposit fee revenues in the environmental management account of the environmental fund. The new fee

would generate $3,116,700 during 1997-99 ($1,416,700 during 10 months of 1997-98 and $1,700,000 in 1998-99).

Provide $968,500 SEG annually from the environmental management account of the environmental fund to increase expenditure authority for the spills appropriation from $2,271,000 to $3,239,500 annually.

DISCUSSION POINTS

A. Environmental Management Account Revenues and Expenditures

1. The Committee will be reviewing several issues relating to revenues and expenditures of the environmental management account of the environmental fund. The bill includes two revenue increases to the environmental management account: (a) a vehicle environmental impact fee of $5 per vehicle; and (b) a 3¢ per ton increase in the well compensation fee. The bill includes the following major expenditure increases from the account: (a) $968,500 annually to increase expenditure authority for state-funded cleanup of contaminated sites from $2,271,000 to $3,239,500 annually; (b) the transfer of $262,400 annually and 4.0 positions from GPR to environmental fund SEG (most of the GPR would be retained by DNR to fund various staff-related supplies and services); (c) $487,400 in 1997-98 and $504,400 in 1998-99 and 9.0 positions for brownfields activities; and (d) $200,000 annually to increase well compensation grants from $300,000 to $500,000.

2. Based on a reestimate of revenues and SB 77 expenditures as modified by Committee action to date, the environmental management account of the environmental fund will have an estimated deficit of $240,000 on June 30, 1999.

3. The following table shows the estimated condition of the environmental management account of the environmental fund. In general, segregated funds are statutorily required to have positive year-end balances. Thus, if all revenues and expenditures under the bill are approved, agencies with appropriations from the environmental management account would have to administratively reduce expenditures by $240,000 over the 1997-99 biennium.

Environmental Management Account Condition Statement*
($ Millions)

	1997-98	1998-99
Beginning Balance	$1.0	$0.2
Revenues	11.7	12.1
Expenditures	-12.5	-12.5
Ending Balance	$0.2	-$0.2

* Includes SB 77 levels, plus $77,000 in annual revenues from pesticide surcharges on certain wood preservatives provided by Joint Committee on Finance action and $90,000 in annual expenditure decreases related to deletion of a proposed Environmental Performance Council.

4. In developing the DNR request and Governor's recommendations, DNR and DOA based revenue estimates on an assumption that solid waste tons landfilled in the state would increase 6.8% per year in calendar year 1995 through 1998 and that solid waste tons landfilled would increase from 8.5 million tons in 1994 to 11.4 million tons in 1998.

5. Recent analysis results in a reestimate that the number of solid waste tons landfilled will increase approximately 1.5% per year from 8.4 million tons in 1996 to approximately 8.7 million tons in 1998. Reestimated tonnage-based revenues decrease by $1.1 million. The revenue reestimate is based on review of actual 1995 and 1996 tonnage figures, trends over the last eight years (1989 through 1996), trends related to exemption of certain materials from the fee for beneficial reuse, recycling and waste reduction, landfilling of out-of-state solid waste and estimates made during the recent DNR NR 500 solid waste management administrative rule promulgation process (when DNR estimated that tonnages would remain constant during the next few years).

6. The account is not structurally balanced, which means that expenditure levels in each year exceed estimated revenues. Expenditures would exceed revenues by $0.8 million in 1997-98 and $0.4 million in 1998-99. If 1998-99 revenues would be increased by $400,000 or 1998-99 expenditures would be decreased by $400,000, or a combination of both, the fund would be structurally balanced in the biennium and, potentially, thereafter, and the deficit would be eliminated (there would be an estimated $160,000 balance on June 30, 1999).

7. Estimated revenues to the environmental management account of the environmental fund are shown in the following table.

1997-99 Environmental Management Account Estimated Revenues

Revenue Source	1997-98	1998-99
Environmental Repair Landfill Tipping Fee	$3,299,000*	$3,300,000
Petroleum Inspection Fund Transfer	1,814,000	1,816,300
Vehicle Environmental Impact Fee	1,416,700	1,700,000
Hazardous Spills Reimbursement	1,145,000	1,145,000
Pesticide Labelers Fee (DATCP)	901,600	901,600
Groundwater Waste Generator Tipping Fee	897,800*	863,700
Sanitary Permit Surcharge (Commerce)	563,300	563,300
Hazardous Waste Generator Fee	366,400	366,400
Well Compensation Tipping Fee	234,000*	347,800
Cooperative Remedial Action	190,000	190,000
Fertilizer Fee (DATCP)	120,000	120,000
Land Disposal Permit	82,400	82,400
Environmental Assessment	80,000	80,000
Wood Preservatives Fee (DATCP)	77,000	77,000
Bulk Tank Surcharge (Commerce)	65,700	65,700
Civil Action Damages	25,000	25,000
Septic System Fee	23,800	23,800
Environmental Repair Base Fee	8,400	8,400
Environmental Repair Surcharge	6,200	6,200
Investment Income	405,000	405,000
Miscellaneous Income	11,100	11,100
Total	$11,732,400	$12,098,700

* Includes $51,900 in one-time revenue expected to be received from the Flambeau mine for each of the three fees.

8. Solid waste tonnage fees deposited into the account total 61¢ per ton for municipal solid waste or 31¢ per ton for high volume industrial waste, which would increase by 3¢ per ton for each of the two categories under the SB 77 well compensation fee increase. The fees include the: (a) environmental repair landfill tipping fee of 50¢ per ton for municipal solid waste or 20¢ per ton for high-volume industrial waste; (b) groundwater landfill tipping fee of 10¢ per ton; and (c) well compensation fee, currently 1¢ per ton and increasing to 4¢ per ton under the bill. Mining waste is subject to a 1¢ per ton fee for each of the three previous fees. It should be noted that in addition to these tonnage fees, all landfilled solid waste is also subject to fees of: (a) 1.7¢ per ton to support the Solid Waste Facility Siting Board; and (b) 10¢ per ton temporary

landfill license surcharge that is deposited in the solid waste management program revenue appropriation.

9. The following table lists appropriations funded from the environmental management account of the environmental fund.

1997-99 Environmental Management Account Expenditures

Program	1997-98 Expenditure	1998-99 Expenditure	1998-99 Positions
Natural Resources			
Environmental repair spills cleanups	$3,239,500	$3,239,500	--
Well compensation grants	500,000	500,000	--
Household hazardous waste grants	150,000	150,000	--
Groundwater monitoring and research contracts	125,000	125,000	--
Air and Waste Division administration	3,401,600	3,418,600	51.0
Enforcement and Science Division administration	786,000	786,000	10.0
Water Division administration	2,037,600	2,037,600	18.0
Administrative services	1,386,100	1,386,100	3.5
Customer Assistance and External Relations Division administration	485,400	485,400	8.0
Health and Family Services			
Groundwater and air quality standards	292,200	291,700	3.5
Military Affairs			
Emergency response training	75,300	75,300	--
Public Instruction			
Environmental education	30,000	30,000	--
Compensation reserves	62,200	129,800	
Estimated lapses	-83,900	-84,100	
Total	$12,487,000	$12,570,900	94.0

10. The 90.5 DNR positions funded from the environmental management account under the bill represent a 17% increase over 1996-97, including 4.0 positions that would be converted from GPR and 9.0 positions provided for brownfields activities. However, some or all of 9.0 SEG brownfields positions would be filled by persons who are in 21.5 positions deleted under the bill: (a) 9.5 federal Superfund and leaking underground storage tank program positions deleted to reflect reductions in federal funding; or (b) 12.0 petroleum inspection fund SEG project positions that end June 30, 1997.

B. Deficit Reduction Options

11. If all of the Governor's remaining recommendations for revenues to and expenditures from the environmental management account would be approved, actions would be needed to balance the account.

12. Landfill tipping fees are the largest revenue source for the account. Every 1¢ per ton increase in any of the three tonnage-based fees assessed on all solid waste disposed of in landfills would generate approximately $87,000 for a full year, or approximately $52,000 annually for municipal solid waste and $35,000 annually for high-volume industrial waste. Due to the landfill tipping fee billing cycle, the 1997-98 revenue would be for 4.5 months instead of 12, and a 1¢ per ton fee increase on all solid waste as of the effective date of the bill would generate revenues of $119,600 in 1997-99 ($32,600 in 1997-98 and $87,000 in 1998-99). An increase in the landfill tipping fee of 2¢ above the 3¢ well compensation fee increase in the bill would provide additional revenues of $239,200 in 1997-99 ($65,200 in 1997-98 and $174,000 in 1998-99), which would be sufficient to eliminate the deficit.

13. The transfer from the petroleum inspection fund to the environmental management account is the second largest revenue source. If the transfer is increased, it would result in less funding available for the PECFA program, which will have an estimated $200 million backlog by June 30, 1997.

14. A $0.40 per vehicle increase beyond the proposed $5 per vehicle environmental impact fee would increase revenues by approximately $249,300 in 1997-99 ($113,300 in 1997-98 and $136,000 in 1998-99).

15. Certain revenues from the pesticide labelers fee assessed by DATCP on manufacturers and labelers of pesticides could be deposited in the environmental management account. Currently, $110 per each household pesticide product and $80 per each nonhousehold pesticide product is deposited in the environmental management account and the remaining fees (which range from $235 to $1,470 based on the annual sales) are deposited in the agrichemical management fund. In its budget request, DNR proposed increasing the transfer by $20 per pesticide product to generate revenues of approximately $360,000 ($180,000 annually). The Governor did not include the provision in the bill. The DNR request would restore the pesticide product fee to the amount transferred before the agrichemical cleanup program was created in DATCP. Any increase in the transfer of pesticide product fees to the environmental management account would not increase the amount of license fee paid, but would result in a decrease in revenues to the agrichemical management fund equal to the environmental fund increase. Transfer of an additional $14 would provide $252,000 in account revenues in 1997-99 ($126,000 annually). Based on Committee action to date, the transfer would decrease the estimated agrichemical management fund balance by $252,000 to $4.0 million on June 30, 1999.

16. Every 1.0 position reduction in administrative appropriations would reduce costs by approximately $56,000 annually. One DNR program assistant position funded from the environmental management account is vacant, so additional position reductions could result in layoffs. The bill converts GPR positions to SEG to reduce GPR costs, adds positions for brownfields and reduces the number of federally-funded positions by 6.5 to reflect federal funding reductions for the Superfund and leaking underground storage tank programs.

17. Expenditure reductions could be made completely in direct cleanup appropriations such as the spills appropriation or completely in administrative appropriations or in a combination of the two. Five non-administrative appropriations comprise one-third of the account expenditures, including spills cleanup, well compensation grants, household hazardous waste, groundwater monitoring contracts and DMA emergency response training. The remaining two-thirds of account expenditures are administrative appropriations funding 94 positions. For example, if $120,000 in expenditure reductions would be made in each year of the biennium (less than 1%), one-third of the reduction ($39,600) could be made in the spills appropriation and two-thirds of the reduction ($80,400) could be made by deleting 1.4 DNR administrative positions.

C. Vehicle Environmental Impact Fee

18. In his 1995-97 budget, the Governor recommended renaming the tire fee to be an "environmental fee," depositing the fees in the environmental repair account of the environmental fund and converting the waste tire program from program revenue to environmental fund SEG. Instead, the Legislature continued the waste tire program as PR, transferred $1,250,000 from the balance of the waste tire PR appropriation to the environmental fund, repealed the program and fee effective June 30, 1997, and directed that any remaining program balance lapse to the general fund on June 30, 1997. In December, 1996, the Committee approved an increase in the 1996-97 waste tire appropriation of $2,428,000. On June 30, 1997, an estimated $1.5 million will lapse from the waste tire program to the general fund.

19. By June 30, 1997, 500 to 700 stockpiles containing approximately 20 million waste tires, will be cleaned up or have a consent order or agreement in place for the responsible party to clean up. DNR estimates that 40 stockpiles will remain, with cleanup costs that total approximately $150,000, where the responsible party is unable or unwilling to cleanup the tires.

20. Under SB 77, the $5 per vehicle environmental impact fee would be collected by DOT at the same time and in the same manner as the existing $2 per tire fee. Changing the fee to a per vehicle fee and setting it at $5 would result in new car buyers paying half the amount of the current fee (but $5 more than they would after June 30, 1997, under current law). Large semi-trucks (18-wheelers), would pay the same $5 as cars (instead of at least $36 before June 30, 1997), but comprise a minimal percentage of total new vehicles.

21. Some would argue that the vehicle fee should not be recreated because its intended use for the waste tire program was completed. Using the current tire fee to cleanup waste tires directly links the fee and the use of the fee. Depositing the fee in the environmental management account does not provide a direct link between tire usage and tire cleanup.

22. Others argue that recreating the fee and depositing it in the environmental management account of the environmental fund should be done to make the fee available for any of the purposes of the account. It could be argued that automobile or tire usage should contribute to cleanup of contaminated land and groundwater, because transportation infrastructure, vehicles and their components contribute to contamination. Retention of the fee would make use of an existing mechanism for collecting a small amount of revenue from a large number of payers (approximately 340,000 vehicles per year). Some of the activities funded from the environmental management account may relate to contamination from automobiles, their components, petroleum spills and salvage yard operations.

23. In March, 1997, the Joint Legislative Council's Special Committee on the Future of Recycling recommended reinstating the tire recovery fee, increasing the fee from $2 to $4 per tire ($20 per car), depositing the revenues ($6.8 million annually) in the recycling fund and recreating the waste tire reimbursement grant with expenditure authority of $1.2 million annually. The reimbursement grants would pay persons who process or use tires (for example utilities burning tires as fuel, remaking tire material into new products or using tire material as road base).

24. If the Governor's recommendation is not adopted, actions would need to be taken to balance the environmental management account. Other revenues would have to be increased by $3,116,700 during the biennium, expenditures would have to be reduced by $3,116,700 or a combination of revenue increases or expenditure decreases would be required.

25. Some advocate increasing the solid waste landfill tipping fee instead of recreating the vehicle fee. Every 1¢ per ton increase in the tipping fee would generate approximately $119,600 during 1997-99 ($32,600 for 4.5 months in 1997-98 and $87,000 in 1998-99). Of the total fee, approximately $52,000 annually would be for municipal solid waste and the remaining $35,000 would be for high-volume industrial waste. Under SB 77, municipal solid waste would be subject to environmental management account fees of 64¢ per ton (50¢ environmental repair, 10¢ groundwater and 4¢ well compensation) and high-volume industrial waste would be subject to environmental management account fees of 34¢ per ton (20¢ environmental repair, 10¢ for groundwater and 4¢ for well compensation). If the combined solid waste tipping fees would be increased by an amount sufficient to replace the $1,700,000 vehicle fee in 1998-99, tipping fees would have to be increased by approximately 33.4%. The increase would increase tipping fees to 85.4¢ per ton (an increase of 21.4¢ per ton from 64¢) for municipal and to 45.4¢ per ton (an increase of 11.4¢ per ton from 34¢) for high-volume industrial waste, the increase would generate revenues of approximately $2,267,900 during 1997-99 ($565,800 in 1997-98 and $1,702,100 in 1998-99). The 1998-99 revenue would replace the vehicle fee on an ongoing basis. However,

due to the landfill tipping fee billing cycle, 1997-98 revenue would be for 4.5 months instead of 10 months for the vehicle fee under SB 77. Therefore, additional revenues of $848,800 or expenditure reductions of the same amount would be required in 1997-98.

26. Many municipalities and industrial generators of large quantities of waste subject to the tipping fees are opposed to increasing the fees because it would increase local government costs of disposing of municipal solid waste and industrial costs of conducting businesses. However, most of the tipping fees deposited in the environmental fund have not been increased since the late 1980s (the 1.7¢ per ton Waste Facility Siting Board fee was created in the 1993-95 biennial budget act and a 10¢ per ton solid waste landfill license surcharge became effective in 1996).

27. If the vehicle fee is not created and expenditure reductions of 12.5% would be made from every account appropriation, annual reductions of $1,562,100 and 18.5 positions would save $3,124,200 during 1997-99. Approximately 33% of the reductions would be from non-administrative appropriations and the remaining 67% would be from administrative appropriations. The following annual expenditure reductions would be required to achieve the 12.5% reduction: (a) $404,900 from spills cleanups, to provide $2,834,600; (b) $62,500 from well compensation grants, to provide $437,500; (c) $18,800 from household hazardous waste grants, to provide $131,200; (d) $15,600 from groundwater monitoring contracts, to provide $109,400; (e) $1,014,400 and 18 DNR administrative positions; (f) $36,500 and 0.5 DHFS position; and (g) $9,400 from Department of Military Affairs emergency response training.

D. Spills Cleanup

28. High priority environmental cleanups (imminent threats to health and safety) where no responsible party is known or where the responsible party is unable or unwilling to fund the cleanup (reimbursement is sought from responsible parties with the ability to pay) are funded through a continuing spills appropriation in DNR. In the 1995-97 budget, the appropriation was reduced in order to (a) maintain a positive environmental fund balance and (b) draw down a continuing balance in the account. In 1995-97 of the $11.5 million available ($4.5 million appropriated and $7 million carried into the biennium) approximately $7.4 million will be expended and the remaining $4.1 million will be contractually committed for work to be completed primarily in 1997. Under SB 77, DNR would be appropriated $6.5 million for spills cleanup from the environmental fund during 1997-99. Total authorized expenditures, including the $4.1 million in current commitments, would be $10.6 million in 1997-99. It has been the Department's practice to encumber funds in the year that project contracts are entered into while expending funds in the same or later years as work is completed. If DNR continues its current pattern of expenditures and encumbrances, it may have to delay encumbering funds for some projects in the spring of 1999 until 1999-2001 funds are available.

29. A reduction in the appropriation from the amount provided in the bill could reduce expenditures from the 1995-97 level and delay some cleanup activity.

30. If the vehicle fee is not created and the spills appropriation for state-funded cleanups would be reduced by the amount of the fee revenue (by $1,416,000 in 1997-98 to $1,822,800 and by $1,700,000 in 1998-99 to $1,539,500), state-funded cleanups would be reduced by approximately 50%. The reduction would lead to delays in cleanup of high-priority sites where groundwater or drinking water supplies are contaminated.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendations to: (a) create a $5 per vehicle environmental impact fee; and (b) increase the expenditure authority for spills cleanup by $968,500 SEG annually. (The agencies would have to administratively reduce expenditures by an estimated $240,000 during 1997-99 to avoid a deficit.)

Alternative 1	SEG
1997-99 REVENUE (Change to Base)	$3,116,700
[Change to Bill	*$0]*
1997-99 FUNDING *(Change to Base)*	$1,937,000
[Change to Bill	*$0]*

2. Approve the Governor's recommendation and in addition, approve one of the following alternatives to balance the environmental management account of the environmental fund:

a. Increase the environmental repair landfill tipping fee by 2¢ per ton for all solid waste disposed of in landfills or incinerators as of the effective date of the bill (in addition to the 3¢ per ton increase under the bill). This would generate revenues of approximately $239,200 in 1997-99 ($65,200 in 1997-98 and $174,000 in 1998-99).

Alternative 2a	SEG
1997-99 REVENUE (Change to Base)	$3,355,900
[Change to Bill	*$239,200]*
1997-99 FUNDING *(Change to Base)*	$1,937,000
[Change to Bill	*$0]*

b. Increase the transfer of revenues from the pesticide labelers fee assessed by DATCP and currently deposited in the environmental management account by $14 per household pesticide product and by $14 per nonhousehold pesticide product. Revenues of approximately $252,000 ($126,000 annually) would be deposited in the environmental management account during 1997-99. There would be a corresponding decrease in agrichemical management fund revenues.

Alternative 2b	SEG
1997-99 REVENUE (Change to Base)	$3,116,700
[Change to Bill	*$0]*
1997-99 FUNDING *(Change to Base)*	$1,937,000
[Change to Bill	*$0]*

c. Increase the proposed vehicle environmental impact fee by $0.40 per vehicle (from the $5 under the bill to $5.40). This would generate revenues to the environmental management account of approximately $249,300 in 1997-99 ($113,300 in 1997-98 and $136,000 in 1998-99).

Alternative 2c	SEG
1997-99 REVENUE (Change to Base)	$3,366,000
[Change to Bill	*$249,300]*
1997-99 FUNDING *(Change to Base)*	$1,937,000
[Change to Bill	*$0]*

d. Decrease expenditure authority in the spills cleanup appropriation by $120,000 SEG annually from the amount provided under the bill, to provide total expenditure authority of $3,011,500 SEG annually.

Alternative 2d	SEG
1997-99 REVENUE (Change to Base)	$3,116,700
[Change to Bill	*$0]*
1997-99 FUNDING *(Change to Base)*	$1,697,000
[Change to Bill	*-$240,000]*

e. Decrease expenditure authority: (1) in the spills cleanup appropriation by $39,600 SEG annually from the amount provided under the bill, to provide total expenditure authority of $3,199,900 SEG annually; and (2) by $80,400 SEG annually to delete 1.4 SEG DNR positions.

Alternative 2e	SEG
1997-99 REVENUE (Change to Base)	$3,116,700
[Change to Bill	*$0]*
1997-99 FUNDING (Change to Base)	*- $240,000*
[Change to Bill	*- $240,000]*
1998-99 POSITIONS (Change to Base)	- 1.4
[Change to Bill	*- 1.4*

f. Decrease expenditure authority by $120,000 SEG annually to delete 2.2 SEG DNR positions.

Alternative 2f	SEG
1997-99 REVENUE (Change to Base)	$3,116,700
[Change to Bill	*$0]*
1997-99 FUNDING (Change to Base)	*- $240,000*
[Change to Bill	*- $240,000]*
1998-99 POSITIONS (Change to Base)	- 2.2
[Change to Bill	*- 2.2*

3. Delete the Governor's recommended vehicle environmental impact fee increase. In addition, provide one of the following revenue increases or expenditure reductions to balance the environmental management account of the environmental fund:

a. Increase the combined landfill tipping fees (environmental repair, groundwater and well compensation), effective on the effective date of the bill, from 64¢ to 87.4¢ per ton for municipal solid waste and from 34¢ to 47.4¢ per ton for high-volume industrial waste to generate revenues of $2,507,100 in 1997-99 ($631,000 in 1997-98 and $1,876,100 in 1998-99). In addition, increase expenditure authority for DNR-funded spills cleanup by $544,100 SEG annually (instead of by $968,500 under the bill) to provide $2,815,100 SEG annually.

Alternative 3a	SEG
1997-99 REVENUE (Change to Base)	$2,507,100
[Change to Bill	*- $609,600]*
1998-99 FUNDING (Change to Base)	$1,088,200
[Change to Bill	*- $848,800]*

b. Decrease expenditure authority for DNR-funded spills cleanup from the amount provided in the bill by $1,416,700 SEG in 1997-98 (to provide $1,822,800) and by $1,700,000 SEG in 1998-99 (to provide $1,539,500).

Alternative 3b	SEG
1997-99 REVENUE (Change to Base)	$0
[Change to Bill	*- $3,116,700]*
1998-99 FUNDING (Change to Base)	- $1,179,700
[Change to Bill	*- $3,116,700]*

c. Decrease expenditure authority from the amounts provided under the bill by $1,682,100 SEG annually and 20.2 SEG positions to reduce all appropriations funded from the environmental management account by approximately 13.5%. The expenditure reductions would include: (a) $436,100 from spills cleanups; (b) $67,300 from well compensation grants; (c) $20,200 from household hazardous waste grants; (d) $16,800 from groundwater monitoring contracts; (e) $1,092,300 and 19.5 DNR administrative positions; (f) $39,300 and 0.7 DHFS position; and (g) $10,100 from Department of Military Affairs emergency response training.

Alternative 3c	SEG
1997-99 REVENUE (Change to Base)	$0
[Change to Bill	*- $3,116,700]*
1997-99 FUNDING (Change to Base)	- $1,427,200
[Change to Bill	*- $3,364,200]*
1998-99 POSITIONS (Change to Base)	- 20.20
[Change to Bill	*- 20.20*

4. Maintain current law. (There would be $2,271,000 SEG annually available for state-funded cleanup and the agencies would have to administratively reduce expenditures from the environmental management account to avoid a $1,419,700 deficit during 1997-99.)

Alternative 4	SEG
1997-99 REVENUE (Change to Base)	$0
[Change to Bill	*-$3,116,700]*
1997-99 FUNDING *(Change to Base)*	$0
[Change to Bill	*-$1,937,000]*

Prepared by: Kendra Bonderud

DNR -- Air, Waste and Contaminated Land (Paper #620)

MO# AH #26

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Well Compensation Fee and Grants (Natural Resources -- Water Quality)

[LFB Summary: Page 440, #11 and #12]

CURRENT LAW

A well compensation fee of 1¢ per ton is assessed on municipal and industrial solid or hazardous waste. Owners or operators of licensed solid or hazardous waste disposal facilities are required to collect the fee when waste is disposed of at the facility. Fee revenue, which generated $87,500 in 1995-96, is deposited in the environmental repair account of the environmental fund.

The well compensation grant program provides grants to private well owners for a portion of the costs of replacing the water supply for wells that have become contaminated and unusable for drinking water purposes. Funding during 1995-97 is $300,000 annually. In addition, in April, 1996, the Joint Committee on Finance approved, under s. 13.10, one-time funding of an additional $384,000 for the program in 1996-97.

GOVERNOR

Increase the well compensation fee from 1¢ to 4¢ per ton for solid or hazardous waste disposed of on or after the effective date of the bill. DOA estimates that the fee increase will generate $325,000 in 1997-98 and $375,000 in 1998-99 and that total revenue from the 4¢ per ton fee would be $431,700 in 1997-98 and $497,000 in 1998-99. Provide $200,000 SEG annually from the environmental management account of the environmental fund to increase well compensation grants from $300,000 SEG to $500,000 SEG annually.

DISCUSSION POINTS

1. The fee increase is intended to provide sufficient revenue from the tonnage-based well compensation fee to fund anticipated demand for well compensation grants during 1997-99. Under DNR and DOA's original revenue estimates, annual fee revenues would be $497,000 in 1998-99 (which assumes $125,000 in revenue per cent of well compensation fee) and expenditure authority would be $500,000 in 1998-99 under the bill.

2. Recent analysis of the number of tons of solid waste disposed of in landfills results in a reestimate of well compensation fee revenues to $87,000 per cent annually. In addition, the reestimate includes 4.5 months in 1997-98 (mid-August through December 31, 1997) instead of the 10.5 months of revenue estimated under the bill because the fees are assessed in May for the previous calendar year. Under the reestimated revenues, the 3¢ fee increase would generate approximately $357,300 during 1997-99 ($96,400 in 1997-98 and $260,900 during 1998-99) instead of the $700,000 estimated under the bill. Total estimated revenue collections from the 4¢ per ton well compensation fee would be approximately $234,000 in 1997-98 (including one-time revenue of $51,900 expected to be received from the Flambeau mine) and $347,800 in 1998-99.

3. The well compensation fee is imposed on all solid waste disposed of in landfills. Up to 60% of solid waste is municipal solid waste and the remaining 40% is from industries (such as paper mills that dispose of paper mill sludge, electric utilities that dispose of ash and industries that dispose of foundry process waste). In addition, $80,000 from the petroleum inspection fund is transferred to the environmental fund for the well compensation program.

4. It could be argued that landfill tipping fees are an inappropriate source of revenue for the well compensation grants program because there is no direct connection between solid waste collection and disposal and the replacement of contaminated wells. Alternatively, it could be argued that the landfill tipping fee is an appropriate source of revenue because landfills are a major source of contaminated wells.

5. Demand for well compensation grants has totalled $1,487,700 over the last four years, including $795,600 in expenditures from July 1, 1993, through May 19, 1997, $382,400 in encumbrances and $309,700 in notices to proceed when 1997-98 funds become available. This means that demand has averaged $372,000 annually. Well compensation grant applications are processed as they are received and are funded at 75% of eligible costs for households with income up to $45,000, and a lesser prorated amount for households with incomes between $45,000 and $65,000.

6. If 1997-99 demand continues at the average rate, the total need for funds will be approximately $1,050,000 (including the $309,700 in existing commitments). Available funding would total $1,080,500, which includes the $500,000 per year provided in the bill and $80,500 in unencumbered funds. DNR believes that $500,000 annually is the amount needed to fund

ongoing need, including the backlog of cases awaiting payment and any future areawide contamination cases such as recent situations in Oshkosh and Edgerton, where over 50 grants are being made in each of the two communities. If demand exceeds the appropriation, DNR would have to either issue proceed notices for 1999-2001 funding or request the Committee to provide additional funds under s. 13.10.

7. It is difficult to predict what future program demand will be. If demand continues at the average rate, total funding of $600,000 could be provided in 1997-98 and $400,000 in 1998-99, which would provide the same amount of grant funding during the biennium as under the bill. The $600,000 in 1997-98, along with the $80,500 in carry-forward funds from 1996-97, would fund the $309,700 in existing proceed notices and the anticipated demand for 1997-98. The $400,000 in 1998-99 would fund estimated ongoing demand.

8. The environmental management account of the environmental fund, which funds the program, will have an estimated deficit of $240,000 on June 30, 1999, under SB 77 and Committee actions to date. If the well compensation fee would be set at an amount to fully fund well compensation grants in 1998-99 (as intended under SB 77), an additional 1.75¢ per ton over the 4¢ fee under the bill would be needed. A 1.75¢ per ton increase in the fee would generate $57,000 in 1997-98 and $152,200 in 1998-99, and well compensation fee revenues would total $791,000 in 1997-99 ($291,000 in 1997-98 and $500,000 in 1998-99).

ALTERNATIVES TO BASE

1. Approve the Governor's recommendations to: (a) increase the well compensation fee from 1¢ to 4¢ per ton; and (b) provide an additional $200,000 SEG annually for well compensation grants (a total of $500,000 annually). In addition, reestimate the amount of revenue from the fee increase to be $357,300 ($96,400 in 1997-98 and $260,900 in 1998-99). Well compensation fee revenue from the 4¢ per ton fee would total $234,000 in 1997-98 and $347,800 in 1998-99.

Alternative 1	SEG
1997-99 REVENUE (Change to Base)	$357,300
[Change to Bill	*- $342,700]*
1997-99 FUNDING (Change to Base)	$400,000
[Change to Bill	*$0]*

2. Modify the Governor's recommendation to increase well compensation grants by $300,000 in 1997-98 and by $100,000 in 1998-99 (instead of by $200,000 annually). This would result in grant funding of $600,000 in 1997-98 and $400,000 in 1998-99.

Alternative 2	SEG
1997-99 REVENUE (Change to Base)	$357,300
[Change to Bill	*- $342,700]*
1997-99 FUNDING (Change to Base)	$400,000
[Change to Bill	*$0]*

3. Maintain current law ($300,000 annually in base funding for grants).

Alternative 4	SEG
1997-99 REVENUE (Change to Base)	$0
[Change to Bill	*- $700,000]*
1997-99 FUNDING (Change to Base)	$0
[Change to Bill	*- $400,000]*

Prepared by: Kendra Bonderud

MO# Alt #2

JENSEN	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS ____

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Nonmetallic Mining Reclamation (Natural Resources -- Air, Waste and Contaminated Land)

[LFB Summary: Page 431, #33]

CURRENT LAW

1993 Wisconsin Act 464, effective April 28, 1994, created the current nonmetallic mining reclamation program (related to extraction of substances such as sand and gravel) and authorized DNR to promulgate administrative rules to implement the program and assess fees for the costs of reviewing local nonmetallic mining reclamation programs. DNR has not promulgated rules, implemented the program or assessed fees.

GOVERNOR

Provide $172,000 PR and 3.0 PR positions in 1998-99 funded from fees for reviewing local nonmetallic mining programs to administer changes in nonmetallic mining and reclamation requirements. Make the following changes in nonmetallic mining program requirements:

a. Modify the definition of nonmetallic mining site so that it will include the location where nonmetallic mining is proposed or conducted, storage and processing areas related to the nonmetallic mining, and areas where grading or regrading is necessary to conduct nonmetallic mining or to achieve a land use specified in an approved nonmetallic mining reclamation plan.

b. Require local governments to enact ordinances that comply with nonmetallic mining reclamation rules promulgated by DNR (but not strictly conform with text prescribed by

DNR), including nonmetallic mining reclamation standards and requirements and procedures for local program administration.

c. Specify that nonmetallic mining reclamation standards and ordinances do not apply to any area that is not used for nonmetallic mining or related purposes on or after the effective date of the bill. Eliminate the requirement that standards for reclamation must differ depending on whether the portion of a nonmetallic mining site was mined before or after the effective date of the ordinance.

d. Require that the operator submit a mining reclamation plan but not a mining operation plan. Require that the reclamation plan include a proposed land use for which the nonmetallic mining site will be rehabilitated after mining is completed.

e. Provide that the term of the nonmetallic mining permit obtained from the local government be equal to the period during which mining is conducted, instead of the current five years. Require the local government to approve a mining reclamation plan for the site before it issues a nonmetallic mining permit.

f. Beginning on the effective date of the bill, allow a landowner to register land owned by the person with the county register of deeds only if: (1) the land has a marketable nonmetallic mineral deposit, as determined by a registered geologist or engineer; (2) the landowner notifies each local government that has authority to zone the land of his or her intent to register the marketable nonmetallic mineral deposit; and (3) nonmetallic mining is a permitted or conditional use for the land under any zoning that is in effect on the day the owner makes the notification. Specify that the registration would last for 10 years and could be renewed for one additional ten-year period. Authorize a local government to contest the registration in the Circuit Court for the county in which the land is located on the grounds that the land does not satisfy the requirements for registration. Require that the local government would have the burden of proving, by a preponderance of the evidence, that one of those grounds exists.

g. Authorize a local government to change the zoning of land that is registered as containing a nonmetallic mineral deposit if the change is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before the rezoning. Specify that the zoning change would not apply to the registered land during the registration period in effect when the zoning is changed or during the ten-year renewal period if the land is eligible for a renewal.

h. Decrease from three to 10 years, the frequency with which DNR must issue a written determination of whether a local government is in compliance with nonmetallic mining requirements. If DNR would determine that a county is in noncompliance, DNR would retain its current responsibility to administer the nonmetallic mining reclamation program in the county. However, the DNR would be prohibited from administering the program in a city, village or town

that enacted a complying ordinance before DNR made the determination of noncompliance and the municipality is administering the ordinance.

i. Direct DNR to promulgate administrative rules that contain all of the following: (1) a definition of "marketable nonmetallic mineral deposit"; (2) procedures and requirements for registering marketable nonmetallic mineral deposits; (3) procedures and criteria for objecting to the proposed registration of a nonmetallic mineral deposit; (4) procedures for terminating the registration of land under this section when there is no longer a marketable nonmetallic mineral deposit on the land; (5) procedures and criteria for renewing the registration of land that allow renewal for one ten-year period without review of the marketability of the deposit or the zoning of the land; and (6) procedures for renewing the registration of land registered before the effective date of the bill.

DISCUSSION POINTS

1. DNR drafted administrative rule Chapter NR 135 to implement 1993 Act 464, the nonmetallic mining reclamation law. Public hearings were held in April and May of 1995, which generated a number of concerns about underlying statutory requirements such as the registration process, permit renewal and requirements for existing mines relating to the administrative rule requirements, a model nonmetallic mining ordinance and public hearing requirements.

2. DNR staff began working with the Nonmetallic Mining Council which had been appointed by the Governor and the Technical Advisory Committee (TAC) appointed by the DNR Secretary to develop an "ideal" rule for the program. After the rule was revised, the Council and TAC developed statutory changes needed in order to implement the rule changes. The Council and TAC spent much of 1996 developing proposed rule changes and the necessary statutory changes. In January, 1997, the DNR Board approved the recommendation to endorse the statutory changes. DNR will bring the proposed rule changes to the Board for public hearing authorization after passage of the proposed statutory changes. The statutory changes recommended by DNR, the Council and TAC are the same as the SB 77 provision. No public hearings were held during development of the proposed statutory changes and administrative rule.

3. The Council and TAC membership included representatives of the UW-System, Wisconsin Geologic and Natural History Survey, Department of Transportation, County Code Administrators, Environmental Decade, County Highways Association, Counties Association, Road Builders Association, Aggregate Producers, Wisconsin Manufacturers and Commerce, Towns Association, Sierra Club, small independent mine operators and larger nonmetallic mining companies. A representative of a citizen group opposed to a neighboring mine sat in on some of the meetings. The Council and TAC did not include other individuals who live near nonmetallic mines.

4. DNR indicates that the major provisions under the bill are: (a) the law would emphasize reclamation rather than mining activities; (b) there would be one set of reclamation standards; (c) local governments would be provided greater flexibility in how they word their nonmetallic mining ordinances; (d) a nonmetallic mine would receive a permit for the life of the mine; and (e) registration on nonmetallic mineral deposits would no longer be perpetual but would instead be for a 10-year period with a 10-year renewal.

5. On March 12, 1997, the Nonmetallic Mining Council and the Nonmetallic Mining Technical Advisory Committee recommended an amendment to the bill that would specify the following: (a) the local government would have to hold a public informational hearing before modification of a reclamation permit, in addition to before issuance of a reclamation permit; (b) an operator seeking a nonmetallic mining reclamation permit would have the right to a contested case hearing (under s. 68.11 which prescribes the process for a municipality to hear an administrative appeal) on the issuance, modification or denial of a reclamation permit and for a person holding a reclamation permit to a contested case hearing on an order related to a violation of a local nonmetallic mining ordinance; (c) a local government would be authorized to issue an order suspending or revoking a nonmetallic mining reclamation permit (instead of nonmetallic mining permit); (d) delete the SB 77 requirement that a registration of a nonmetallic mining site could be renewed for one additional 10-year period but retain the SB 77 requirement that the renewal be as provided for in DNR rules; (e) in addition to the SB 77 requirements that a local government may enact an ordinance changing the zoning of registered land if the ordinance is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before the rezoning, require that mining has not begun on any portion of the registered land; (f) registration of buffer areas is deleted; (g) DNR rules contain procedures and requirements for registering land containing a marketable nonmetallic mineral deposit (instead of the SB 77 requirement that rules contain procedures for registering marketable nonmetallic mineral deposits); (h) the SB 77 requirement would be retained that requires DNR rules to contain procedures and criteria for renewing the registration of the land, including allowing renewal for one 10-year period without review of the marketability of the deposit or the zoning of the land, but an exception would be added so that when mining has begun on any portion of the registered land, the rules shall allow the person to renew the registration for an unlimited number of 10-year periods as long as active mining continues; and (i) DNR would have to include in rules criteria under which contiguous parcels of land owned by the same person and containing the same marketable nonmetallic mineral deposit may be included in one registration.

6. DNR indicates that if the bill is effective in mid-August, 1997, the Department would shortly thereafter request the NR Board to authorize public hearings on the administrative rule changes. The earliest the rules would be effective would likely be June, 1998. Counties would adopt local nonmetallic mining ordinances approximately nine months later, in March, 1999, and would begin issuing nonmetallic mining reclamation permits in approximately September, 1999. Counties would collect annual permit fees which would include a local fee to recover its costs of reviewing the permit and a state share. The state share would include a flat fee portion and a variable portion that would be based on a per acre fee (to be determined) based

on the area of the mine site affected by nonmetallic mining but not yet reclaimed. Counties would send DNR its share of the fee by March 31 for the previous calendar year. This means that DNR would be likely to receive its first fee revenue from nonmetallic mining annual permit fees in approximately March, 2000 (21 months after the positions would be authorized under SB 77).

7. Under SB 77, the nonmetallic mining annual permit fees would be deposited in a program revenue appropriation and the three positions would be funded from that revenue. DNR indicates that the Council and TAC agreed that the industry would support three DNR positions to administer the program, provide technical assistance to local governments who want to participate in the program and audit local nonmetallic mining reclamation programs to ensure that they comply with program requirements. However, DNR indicates that the Department did not discuss start-up funding with the Council and TAC.

8. It could be argued that since no revenue would be available during 1997-99 to fund the DNR positions, the funding and positions should be deleted. If DNR develops a plan for providing funding for the positions, the Department could submit a request under s. 16.505/515 for expenditure and position authority. DOA indicates that DNR would need to develop a proposal for DOA's approval before DOA would authorize DNR to fill the positions under the bill. DNR indicates that the positions are crucial to starting up local programs and that without DNR staff to provide technical assistance to counties, only eight to 10 counties would develop local programs. If staff are not provided, DNR could reallocate existing staff to nonmetallic mining activities until sufficient revenues are generated to fund the program.

9. DNR recently suggested that the three positions could be provided for the program effective January 1, 1999, (instead of July 1, 1998, under SB 77) by funding the positions with $90,500 SEG in 1998-99 from the environmental management account of the environmental fund and by depositing all nonmetallic mining annual fee revenue in the environmental management account. However, based on SB 77 and Committee actions through May 23, 1997, the environmental management account will have an estimated deficit of $240,000 on June 30, 1999. In order to provide environmental fund SEG for the nonmetallic mining staff, revenue increases or expenditure reductions would be required to balance the account.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendations to: (a) provide $172,000 PR and 3.0 PR positions in 1998-99 to administer the nonmetallic mining program; and (b) make changes in the program related to the definition of a nonmetallic mining site, requirements for local ordinances, nonmetallic mining reclamation standards, nonmetallic mining reclamation plans, nonmetallic mining permits, registration of nonmetallic mining sites, zoning changes and DNR promulgation of administrative rules.

Alternative 1	PR
1997-99 FUNDING (Change to Base)	$172,000
[Change to Bill	*$0]*
1998-99 POSITIONS (Change to Base)	3.00
[Change to Bill	*0.00]*

2. Adopt the Governor's recommendation as modified to delete the funding and positions. (DNR could submit a request for funding and staff under s. 16.505/515 when revenues are identified.)

Alternative 2	PR
1997-99 FUNDING (Change to Base)	$0
[Change to Bill	*- $172,000]*
1998-99 POSITIONS (Change to Base)	0.00
[Change to Bill	*- 3.00]*

3. Adopt the Governor's recommendation as modified to delete the PR funding and staff. Rather provide $90,500 SEG and 3.0 positions in 1998-99 from the environmental fund and deposit the associated fees in the environmental fund.

Alternative 3	PR	SEG	TOTAL
1997-99 FUNDING (Change to Base)	$0	$90,500	$90,500
[Change to Bill	*- $172,000*	*$90,500*	*- $81,500]*
1998-99 POSITIONS (Change to Base)	0.00	0.00	0.00
[Change to Bill	*- 3.00*	*3.00*	*0.00]*

4. In addition to any of the above alternatives, approve changes to the nonmetallic mining program as proposed by the Nonmetallic Mining Council and Technical Advisory Committee (described in discussion point #5).

5. Maintain current law. (DNR could not implement its revised rule package.)

Alternative 5	PR
1997-99 FUNDING (Change to Base)	$0
[Change to Bill	*- $172,000]*
1998-99 POSITIONS (Change to Base)	0.00
[Change to Bill	*- 3.00]*

Prepared by: Kendra Bonderud

MO# Alt #2 #4

JENSEN	Y	N	A
1 OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A
2 BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS ____