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 In 1995 Act 27, the fee and waste tire program are repealed effective June 30, 1997.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]*

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MO# 26

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
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

AYE 16 NO 0 ABS 0

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

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
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

AYE 16 NO 0 ABS 0

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 and 4

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
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

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Safe Drinking Water Enforcement (Natural Resources -- Water Quality)

[LFB Summary: Page 441, #14]

CURRENT LAW

The federal Safe Drinking Water Act authorizes a state to have primary enforcement authority over drinking water matters if the state satisfies certain requirements. Wisconsin currently has primary enforcement authority. The federal Safe Drinking Water Act Amendments of 1996 require a state to have authority to impose administrative penalties for safe drinking water violations in order to maintain primary enforcement authority.

GOVERNOR

Authorize DNR to issue orders and assess penalties for violations of the safe drinking water program. Specify that if DNR determines that a civil forfeiture should be assessed, DNR would be required to issue an order to the person alleged to have committed the violation, specifying the amount of the forfeiture assessed, the violation and the rule alleged to have been violated and informing the licensee of the right to a hearing.

Specify that the amounts of the forfeiture would be: (a) for water systems that serve a population of more than 10,000, not less than $10 and not more than $1,000 each day of violation, up to $25,000 in one order; and (b) for water systems that serve a population of 10,000 or less, not less than $10 and not more than $500 each day of violation, up to $25,000 in one order. Require that DNR, when determining the amount of forfeiture that it assesses, must consider the following factors, as appropriate: (a) the gravity of the violation, including the probability of harm to persons served by the water system; (b) good faith exercised by the water

system owner or operator, including past or ongoing efforts to correct problems or achieve compliance with the safe drinking water program; (c) any previous violations committed by the owner or operator; (d) the financial benefit to the owner or operator of continuing the violation; and (e) any other relevant factors. If an order is suspended, stayed or enjoined, any forfeiture would not accrue.

Authorize any person who is assessed a forfeiture under the safe drinking water program to contest the assessment under existing procedures for a hearing. Require that all forfeitures be paid to DNR within 10 days after receipt of the order, or if the order is contested, within 10 days of the final decision in the case, unless the order is stayed by court order. The forfeitures would be given to the State Treasurer for deposit in the common school fund.

Authorize the Attorney General to collect any forfeiture that is not paid following the exhaustion of all administrative and judicial reviews. The only issue that could be contested in a collection action would be whether the forfeiture has been paid.

Specify that the penalties for any person who acts as a well driller or pump installer without the required permit or certificate of registration, or who violates other drinking water provisions, shall be not less than $10 and not more than $100 each day of violation (the same as current law) or not more than 30 days of imprisonment (currently, not less than 30 days), or both.

Specify that general statutory prohibitions against claims against governmental units or their officers, agents or employes would not apply to actions brought under these safe drinking water provisions.

DISCUSSION POINTS

1. The federal Safe Drinking Water Act Amendments of 1996 (SDWA) requires that states establish: (a) an administrative process for imposing penalties for violations of the SDWA; and (b) maximum penalties for systems serving a population of more than 10,000 that are not less than $1,000 per day of violation and for any other systems, that are adequate to ensure compliance, as determined by the state. The SDWA provides considerable flexibility to states to establish a process and penalties within these parameters.

2. While the federal government has not set a specific deadline for states to enact statutory changes to implement the federal changes, the federal changes are in effect now and the U.S. Environmental Protection Agency (EPA) expects states to enact needed changes within the next year or so. If Wisconsin does not enact statutory changes during the 1997-98 legislative session, EPA may review the state's status as having primacy in enforcing drinking water programs. A worst case scenario would be that EPA would determine Wisconsin to be out of compliance and to withhold the following federal funds: (a) a $41.5 million fiscal year 1997 safe

drinking water loan program federal capitalization grant; and (b) approximately $3.1 million in federal funds that support 34.5 DNR positions in the drinking water program.

3. The Municipal Environmental Group (MEG), an organization of 71 municipal water utilities providing service to 1.3 million people (approximately one-fourth of the state's population), raised concerns relating to the SB 77 provisions. MEG's main concerns are that the bill: (a) does not require DNR to provide notice to the utility before the Department would impose a penalty; (b) does not allow a municipality an opportunity to correct the violation before a penalty is imposed; and (c) does not allow a municipality to challenge a penalty directly through a contested case hearing or judicial review (the bill provides first for a less formal hearing).

4. DNR raised concerns that while a notice requirement is generally acceptable, it wants the authority to immediately impose penalties in emergency situations, (for example, drinking water contamination that is an imminent threat to life or health). It also argues that the federal law requires an administrative review procedure so the state could not enact a judicial review process as the first option for municipalities to object to a DNR penalty.

5. DNR and MEG recently agreed on several changes to the bill that would address the concerns of both entities. DNR and MEG believe that the suggested changes would improve DNR administration and municipal rights for notice, review and appeal. Their suggested changes include:

a. Specify that when DNR assesses forfeitures it do so for violations of rules adopted under the safe drinking water program (instead of just violations of the program).

b. Where the bill refers to orders issued to, or violations by a "person" or an "owner or operator," instead say "water system owner or operator."

c. In addition to the SB 77 requirement that the order would have to specify the violation, the rule alleged to have been violated and the amount of the forfeiture assessed, the order would have to inform the water system owner or operator of the right to contest the order (instead of the right to a hearing).

d. Add a requirement that DNR provide written notice of the alleged violation to the water system owner or operator at least 60 days before the final order is issued and the forfeiture is actually assessed. The notice would include an explanation of how the proposed forfeiture was determined and a proposed special order. DNR would be required to attempt to negotiate with the water system owner or operator after providing the written notice to attempt to remedy the alleged violation. If the alleged violation would be corrected or an acceptable compliance agreement is reached before the final order is issued, no forfeiture for the violation alleged in the proposed order may be assessed.

e. Specify that DNR could directly assess forfeitures in a special order without using the written notice and proposed special order requirements if the Department determines that the alleged violation either creates an acute risk to public health or safety, or is part of a documented pattern of noncompliance with one or more rules adopted under the safe drinking water program.

f. In addition to the SB 77 requirement that while an order issued is suspended, stayed or enjoined, any forfeiture would not accrue, also specify that while an order issued is contested, any forfeiture would not accrue.

g. Instead of allowing a person to contest the assessment of forfeiture, specify that a water system owner or operator may contest the assessment and also contest the issuance of the order. Authorize the water system owner or operator to choose whether to contest using the SB 77 administrative hearing procedure, or to proceed directly to a contested case hearing (under ch. 227 of the statutes). Specify that a water system owner or operator who timely requests a hearing under ch. 227 shall be entitled to a contested case hearing. (Chapter 227 contains criteria which must be met in order to be eligible for a contested case hearing. Although most or all municipalities would meet the criteria, the suggested change would guarantee that the municipality could have a contested case hearing.)

h. Require that forfeitures be paid to DNR within 60 days (instead of 10 under SB 77) after receipt of the order, and add that alternatively, the forfeitures shall be paid within a mutually agreed on schedule. The change to 60 days would reflect that the municipality would have 60 days to appeal the forfeiture, so the municipality would not have to pay the forfeitures during the period it is considering an appeal. The allowance of paying according to a mutually agreed on schedule would allow the possibility of installment payments or other arrangements to fit a municipality's budgeting or financing needs.

i. Specify that if the Attorney General brings an action to collect forfeitures, it must be under the safe drinking water program. Delete the SB 77 requirement that the only issue to be contested would be whether the forfeiture has been paid. This would allow the municipality to contest the issuance of the forfeiture.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to assess penalties for safe drinking water program violations, including: (a) establish penalty amounts; (b) direct DNR to consider specific factors when determining the amount of the penalty; (c) allow a person who is assessed a forfeiture to use existing procedures for a hearing; (d) authorize the Attorney General to collect forfeitures after other administrative and judicial reviews are exhausted; (e) establish penalties for well drillers or pump installers who act without the required permit or certificate of registration; and (f) specify that general prohibitions against claims against governmental units would not apply to actions brought under the safe drinking water provisions.

2. Modify the Governor's recommendation to include changes suggested by DNR and MEG, as described in discussion point 5.

3. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt. 2

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
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

AYE 16 NO 0 ABS 0