

2001 DRAFTING REQUEST

Bill

Received: **09/18/2000**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wong**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Appropriation to receive clean-up funds for specific sites

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 11/29/2000	hhagen 11/29/2000	martykr 11/30/2000	_____	lrb_docadmin 11/30/2000		
/2	traderc 01/10/2001	hhagen 01/10/2001	jfrantze 01/10/2001	_____	lrb_docadmin 01/11/2001		
/3	traderc 02/04/2001	hhagen 02/04/2001	jfrantze 02/05/2001	_____	lrb_docadmin 02/05/2001		

FE Sent For:

<END>

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FE Sent For:

13 hmf
2/4/01

2/6

2/6

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<END>

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*12 hmk
11/30/01*

to 1/10

*to hmk
4/10
<END>*

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By/Representing: Wong

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May Contact:

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Extra Copies: DNR

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1/?	traderc	11/29/00 <i>hmb</i>	<i>km</i> 11/30	<i>RA</i> <i>km</i> 11/30			

FE Sent For:

<END>

2001-2003 Statutory Language Proposals

Division: AIR & WASTE
Bureau: REMEDIATION AND REDEVELOPMENT
Issue/Topic: SEGREGATED SITE CLEANUP SETTLEMENT APPROPRIATION

Proposed Change: Create an appropriation on the order of 20.370 (4)(au) to accommodate site specific remediation of contamination cases that involve negotiated agreements or court-ordered settlements. This would allow the Department to hold funds in a separate, identifiable account when the funds are paid on the condition or with the understanding that they be earmarked for a specific clean-up action.

Explanatory Note: Currently all funds received by the Department for environmental cleanups are deposited to the Environmental Fund, while expenditures for cleanup efforts are made from appropriation 20.370 (2)(dv), a sum-certain continuing appropriation. This funding structure works for the majority of settlements and cost recoveries, whether they be from court orders, bankruptcy, consent decrees, insurance settlements, or other receipts, and whether they come from responsible, potentially responsible or voluntary parties.

In a few cases however, the department needs a mechanism to receive funds for a specific site and have those funds maintain their identity and be used exclusively for that specific site. The lack of a mechanism to allow this has limited negotiations, forced ad hoc make-shift financial solutions, and shifted funding from appropriation 20.370 (2)(dv) away from projects of more pressing environmental concerns.

An examples of a case where this appropriation would be used is that of an insurance company that offers to settle with the state and provide a large sum on the condition that it be applied to clean up the site that is the subject of the dispute. The insurance company lacks the expertise to undertake the clean up themselves. Under current circumstances, the Department would deposit the money in the Environmental Fund; and if the Department were to undertake the cleanup immediately and pay for the cleanup from the spills appropriation, it would cause delays in other, previously planned or ongoing cleanups.

Although the Department might be able to administer funds from negotiated settlements through trust accounts, this mechanism would allow the Department to reflect these transactions on the state accounting system.

Desired Effective Date: Effective date of the budget act.

*On what basis does \$
now go into env. fund?*

Contact Person:

Lance Potter, MB/5 (7-7418); Eric Ebersberger, MB/5 (6-0818);
Robert Strous, RR/3 (6-2699).



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0357/1

RCT
hmt

SOON

DOA:.....Wong - Appropriation to receive clean-up funds for specific sites
FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Note

Do not go

1 AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

This bill creates an appropriation to DNR for funds that DNR receives to remedy environmental contamination at specific sites.

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

2 SECTION 1. 20.370 (2) (du) of the statutes is created to read:

3 20.370 (2) (du) Solid waste management ^{em dash} site-specific remediation. From the
4 environmental fund, all moneys received, other than from the federal government,
5 to remedy environmental contamination at specific sites to pay for remediation at
6 those sites.

✓ ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0357/1dn

RCT,mi...

hnh

Date

The request for this draft states that currently all funds received by DNR for environmental cleanups are deposited in the environmental fund. Looking at s. 25.46, I cannot tell for certain that current law provides for all of these funds to be deposited in the environmental fund. Please review s. 25.46 carefully to determine whether it covers all of these funds. If it does not, please let me know and I will redraft this proposal to expand s. 25.46. Also, please let me know if the language of the proposed appropriation is broader than you intend.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0357/1dn
RCT:hmh:km

November 30, 2000

The request for this draft states that currently all funds received by DNR for environmental cleanups are deposited in the environmental fund. Looking at s. 25.46, I cannot tell for certain that current law provides for all of these funds to be deposited in the environmental fund. Please review s. 25.46 carefully to determine whether it covers all of these funds. If it does not, please let me know and I will redraft this proposal to expand s. 25.46. Also, please let me know if the language of the proposed appropriation is broader than you intend.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Tradewell, Becky
Sent: Tuesday, January 09, 2001 4:50 PM
To: Wong, Manyee
Subject: RE: Statutory Language Updates

Manyee,

About DNR's requested changes to LRB-0357: The appropriation is a continuing appropriation as drafted, so it is improper to add "As a continuing appropriation" at the beginning. It is difficult for me to know how to respond to the rest of the changes that they ask for because they do not explain them. DNR wants to replace "remedy environmental contamination at specific sites" with "site-specific remediation". If these two phrases do not mean the same thing, then I do not know what "site-specific remediation" means. I do not want to use "site-specific remediation" because I think that it is not sufficiently clear. If you want me to redraft, please ask DNR to provide an explanation of the changes.

Becky

-----Original Message-----

From: Wong, Manyee
Sent: Tuesday, January 09, 2001 3:21 PM
To: Tradewell, Becky
Subject: FW: Statutory Language Updates

Hi Becky,

Please review DNR's comments on the following drafts. Please make any changes necessary.

Thanks.

-----Original Message-----

From: **Potter, Lance**
Sent: Tuesday, January 09, 2001 3:10 PM
To: Wong, Manyee
Cc: Felker-Donsing, Susan
Subject: Statutory Language Updates

Hello Manyee,

Here are the changes that I have today. I will hopefully have the rest to you by tomorrow (1/10) morning.

LRB - 0320/3 Dry Cleaning

<< File: Comments on Dry Cleaning 1.08.doc >>

LRB Draft - 0357/1 Funds for specific sites

<< File: Comments on LRB - 0357 .1.08.doc >>

LRB Draft - 0365/1 Criminal penalties for false filings in environmental programs

DNR staff has approved this draft.

LRB Draft - 0363/4 Immunity regarding the use of solid waste for public projects

DNR staff has approved the language. If the LRB analysis is used, please include the following suggested changes:

<< File: Comments on LRB 0363.4.doc >>

Comments on LRB – 0357/1:

Section 1. 20.370 (2)(du) of the statutes is created to read:

20.370(2)(du) Solid waste management—site specific remediation. As a continuing appropriation from the environmental fund, all moneys received for site-specific remediation, other than from the federal government, to remedy environmental contamination at specific sites to pay for future remediation of environmental contamination at those specific sites.

If needed, please make addition to the analysis by LRB:

This bill creates an appropriation to DNR for funds that DNR receives to remedy environmental contamination at specific sites where these funds need to be managed separately from other revenues received in order to ensure funds are available for future site-specific remediation costs.

Tradewell, Becky

From: Wong, Manyee
Sent: Tuesday, January 09, 2001 3:31 PM
To: Tradewell, Becky
Subject: FW: Addition to LRB -0357

FYI.

-----Original Message-----

From: Potter, Lance
Sent: Tuesday, January 09, 2001 3:29 PM
To: Wong, Manyee
Subject: Addition to LRB -0357

Manyee,

I forgot to add this note to the recent e-mail. Renee Sanford from RR and I talked about the drafter's note on LRB-0357/1. In the note, Becky is asking if current law provides for all the funds to be deposited in the environmental fund. The answers is, as far as we know, yes.

Thanks,

Lance

Tradewell, Becky

From: Potter, Lance
Sent: Wednesday, January 10, 2001 8:59 AM
To: Tradewell, Becky; Wong, Manyee
Cc: Sanford, Renee M; Strous Jr, Robert E
Subject: FW: Questions from LRB on Stat. Language

Becky and Manyee:

I am forwarding the response from Renee Sanford, Remediation and Redevelopment, on the phrasing in the new draft of LRB 0357/1. Becky, she agrees with your questions and wishes to default to your suggestions.

Thanks for the attention to this draft.

Lance

From: Sanford, Renee M
Sent: Wednesday, January 10, 2001 8:48 AM
To: Potter, Lance
Subject: RE: Questions from LRB on Stat. Language

I am not aware of any difference in meaning between the two phrases--I just thought it was clearer. I'm very happy to bow to experienced drafter. No problem, also, with deleting the "as a continuing appropriation"--I could not tell from the draft. Thanks again Lance.

From: Potter, Lance
Sent: Wednesday, January 10, 2001 8:43 AM
To: Sanford, Renee M
Cc: Strous Jr, Robert E
Subject: Questions from LRB on Stat. Language

Renee,

Becky Tradewell had a few questions for Manyee on the changes that were sent over yesterday:

DNR wants to replace "remedy environmental contamination at specific sites" with "site-specific remediation". If these two phrases do not mean the same thing, then I do not know what "site-specific remediation" means. I do not want to use "site-specific remediation" because I think that it is not sufficiently clear. If you want me to redraft, please ask DNR to provide an explanation of the changes.

We do want a redraft. Can you supply an answer as to the definition of "site-specific remediation" and why it should be used in a new draft? I think Becky is basically looking for an explanation.

Becky also mentioned that the appropriation is a continuing appropriation as drafted, so it is not necessary to add "As a continuing appropriation" at the beginning.

Thanks,

Lance



State of Wisconsin
2001 - 2002 LEGISLATURE

SOON

LRB-0357/2

RCT/hmh/km

Staysrnr

DOA:.....Wong - Appropriation to receive clean-up funds for specific sites
FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

DNate

1 Do not gen
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

This bill creates an appropriation to DNR for funds that DNR receives to remedy environmental contamination at specific sites.

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

2 SECTION 1. 20.370 (2) (du) of the statutes is created to read:

3 20.370 (2) (du) *Solid waste management - site-specific remediation.* From the
4 environmental fund, all moneys received, other than from the federal government,
5 ^{for} the remediation of ~~to remedy~~ environmental contamination at specific sites, ~~to pay for remediation at~~
6 those sites.

7 ✓ ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

(END)

if the remediation has not been conducted when the moneys are received

Deadline

Marylee Wong:

I have tried to capture what I think DNR intends by referring to "future remediation." We cannot just say "future" in the statute, because that leaves the statute unclear about does not explain as of when

the remediation must something must be in the "future." At some point, all of this remediation will be completed, and then it will be "future" remediation.
I have not provided a copy of this draft to DNR.

RET

supposed to speak

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0357/2dn
RCT:hmh:jf

January 10, 2001

Manyee Wong:

I have tried to capture what I think DNR intends by referring to "future remediation." We cannot just say "future" in the statute, because that does not explain as of when the remediation must be "future." At some point, all of this remediation will be completed, and then it won't be "future" remediation.

I have not provided a copy of this draft to DNR.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Wong, Manyee
Sent: Sunday, February 04, 2001 1:08 PM
To: Tradewell, Becky
Subject: FW: An appropriation to accommodate moneys paid to the DNR for specific water resource cases - LRB 0357

6-7597

Hi Becky,

Please view DNR's comments below. I am not sure if I understand entirely DNR's argument for not being able to use 2 (dv) for the proposed water resource related environmental work. From what I gather, DNR is saying that future environmental remediation not site specific is not covered under 2(dv). Let me know whether their proposed language might work.

- s. 20.370(2)(du) *Environmental remediation and restoration* - From the environmental fund, all moneys received, other than from the federal government, as a court settlement to remedy environmental contamination at specific sites and to pay for remediation at those sites; or moneys received as a settlement to any action initiated under 42 USC 9601, et seq., to pay for future environmental remediation, restoration, and development, including the replacement of fish or wildlife destroyed.

Thanks.
Manyee

-----Original Message-----

From: Ebersberger, Eric K
Sent: Saturday, February 03, 2001 10:53 AM
To: Wong, Manyee
Cc: Polasek jr., Joseph P; Felker-Donsing, Susan; Potter, Lance
Subject: RE: An appropriation to accommodate moneys paid to the DNR for specific water resource cases - LRB 0357

Manyee,

Becky has raised some excellent points. As far as using (2)(dv) for a situation such as the Fort Howard *damage* settlement (as opposed to cleanup) ... I'm not sure. To do so, I think we'd have to argue that we "contemplated" an action under §283.87 and that the consent decree somehow constitutes a court order under §283.87 ... which is a big stretch. Then we'd have to go to a §13.10 for additional expenditure authority every time we had a major damage settlement ... which seems to me to be bureaucratic overkill--especially since the purposes for which the funds would be used would be carefully spelled out in a legally binding agreement.

Our fallback option could be that we place the damage settlement moneys in (4)(mi) and use the proposed (2)(du) or the existing (2)(dv) for the cleanup portion--depending on the circumstances, e.g. whether it's earmarked for future cleanup [(2)(du)], or cost recovery for past cleanups [(2)(dv)]. The downside of this is that the environmental fund would do without the potentially considerable interest that may accumulate from the damage settlement \$ deposited to (4)(mi), and the fact that (4)(mi) references general program operations.

As an alternate suggestion, and as an attempt to address Becky's point that moneys deposited to the appropriation that we earlier proposed may be appropriated under other appropriations as well, we could do the following:

- Create §25.46(20) as follows:
(20) All moneys received as a settlement to any action initiated under 42 USC §9601 et seq. for environmental management.

I believe this would allow for *Superfund* settlement \$ to be deposited to the Environmental Fund. The existing (2)(dv) references 42 USC 960, et seq., but in the context of "this state's share of environmental repair which is funded under 42 USC 9601, et seq., and any additional costs which this state is required to incur under 42 USC 9601, et seq." In the case of the Fort Howard consent decree and other Fox River settlement dollars ... as well as other future settlements like it (e.g. Sheboygan River) ... the damage settlement moneys would come to the state as a result of *actions initiated* under 42 USC 9601, et seq. for future restoration or remediation. I don't know whether this is a significant enough distinction from the

existing (2)(dv) ... but I do see a distinction. Then, the proposed (2)(du) might read as follows:

- s. 20.370(2)(du) *Environmental remediation and restoration* - From the environmental fund, all moneys received, other than from the federal government, as a court settlement to remedy environmental contamination at specific sites and to pay for remediation at those sites; or moneys received as a settlement to any action initiated under 42 USC 9601, et seq., to pay for future environmental remediation, restoration, and development, including the replacement of fish or wildlife destroyed.

This would eliminate the references to s. 287.87, allowing those references to remain in (2)(dv)... and it would clarify that we're talking about *future* remediation, restoration, and development.

Let me know if you'd like to discuss this further.

Thanks,
Eric

Eric Ebersborgor
DNR Bureau of Management & Budget
608/266-0818
eberse@dnr.state.wi.us

From: Wong, Manyee
Sent: Friday, February 02, 2001 3:57 PM
To: Ebersberger, Eric K
Subject: FW: An appropriation to accomodate moneys paid to the DNR for specific water resource cases - LRB 0357

Hi Eric,

Please view Becky's response below. This is more problematic than I thought. Is this really necessary? Couldn't DNR just use 2(dv) for non-site specific water related projects? If the legislature raises this issue, maybe the fiscal bureau should deal with it. Anyway, let me know. Thanks!

-Manyee

-----Original Message-----

From: Tradewell, Becky
Sent: Friday, February 02, 2001 3:34 PM
To: Wong, Manyee
Subject: RE: An appropriation to accomodate moneys paid to the DNR for specific water resource cases - LRB 0357

Manyee,

1. An "all moneys received" appropriation first has to say what money goes into the appropriation and then what it is used for. (Notice how the current draft starts with a description of the money that goes into the appropriation and then states the purpose.) From the proposed language, I am not sure about what money is supposed to go into this appropriation. Also, we should try to be sure that money is not appropriated in more than one appropriation. With the proposed language (which is very broad), I think that some of the money described would also be appropriated under other appropriations, for example gifts and grants, but I am not sure how to identify which ones. It may be necessary to be much more specific about the sources of the funds than it seemed necessary when this appropriation was limited to site-specific purposes.

2. The appropriation under s. 20.370 (2) (dv) seems to include some of the same purposes as this proposed appropriation. I think that appropriation should be amended to at least delete the language about s. 283.87. S. 283.87 (4) will also have to be amended to reflect the source of the grants.

Becky

-----Original Message-----

From: Wong, Manyee
Sent: Friday, February 02, 2001 1:15 PM
To: Tradewell, Becky
Subject: FW: An appropriation to accomodate moneys paid to the DNR for specific water resource cases - LRB 0357

Hi Becky,

Please make the following changes to LRB 0357. The intent is to broaden the appropriation so it could accommodate broader environmental work under court settlements that are not site specific if needed (i.e., ecological restoration of habitat, water related environmental repair, land preservation). If the language below doesn't work, please provide alternatives. Thanks.

- s. 20.370(2)(du) *Environmental remediation and restoration* - From the environmental fund, all moneys received, other than from the federal government, to remedy environmental contamination at specific sites and to pay for remediation at those sites; to pay for future environmental remediation, restoration, and development, including the replacement of fish or wildlife destroyed; or to provide grants under s. 283.87 (4) consistent with a court approved settlement, or court order issued under s. 283.87(3).



Monday morning

DOA:.....Wong - Appropriation to receive clean-up funds for specific sites
FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Note

under settlement agreements or orders and all moneys received in settlement of actions initiated under 42 USC 9601 to 9675 for environmental remediation, restoration, and development, including the replacement of fish or wildlife, that.

1 Do not gen.
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
ENVIRONMENT

under settlement agreements or orders

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

*

This bill creates an appropriation to DNR for funds that DNR receives to remedy environmental contamination at specific sites and to restore the environment

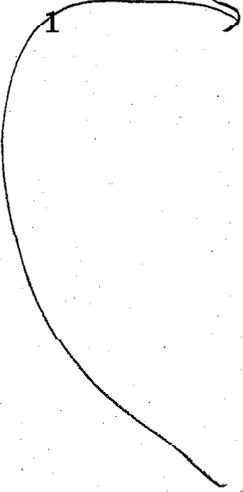
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2 SECTION 1. 20.370 (2) (du) of the statutes is created to read:

3 20.370 (2) (du) Solid waste management - site-specific remediation. From the
4 environmental fund, all moneys received, other than from the federal government,
5 for the remediation of environmental contamination at specific sites, ~~if the~~
6 ~~remediation~~ has not been conducted when the moneys are received, ~~to pay for~~
7 ~~remediation at those sites,~~ to carry out the purposes for which received

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

(END)



Section #. CR; 25.46 (20)
⁽³⁾ 25.46 (20) All moneys ^{received} in settlement of actions initiated
under 42 USC 9601 to 9675 for environmental management.

DNote

Date

Margaret Wong!

This may do what DNR wants. If you are not comfortable with it, let me know and we can go back to the language from the last version. As I mentioned in an early drafter's note, the use of "future" in an appropriation causes problems.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0357/3dn
RCT:hmh:jf

February 5, 2001

Manyee Wong:

This may do what DNR wants. If you are not comfortable with it, let me know and we can go back to the language from the last version. As I mentioned in an early drafter's note, the use of "future" in an appropriation causes problems.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0357/3

RCT:hmh:jf

DOA:.....Wong – Appropriation to receive clean-up funds for specific sites

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

This bill creates an appropriation to DNR for funds that DNR receives under settlement agreements or orders to remedy environmental contamination at specific sites and to restore the environment.

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

2 **SECTION 1.** 20.370 (2) (du) of the statutes is created to read:

3 20.370 (2) (du) *Solid waste management — site specific remediation.* From the
4 environmental fund, all moneys received, other than from the federal government,
5 for the remediation of environmental contamination at specific sites, under
6 settlement agreements or orders and all moneys received in settlement of actions

1 initiated under 42 USC 9601 to 9675 for environmental remediation, restoration,
2 and development, including the replacement of fish or wildlife, that has not been
3 conducted when the moneys are received, to carry out the purposes for which
4 received.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

5 **SECTION 2.** 25.46 (20) of the statutes is created to read:

6 25.46 (20) All moneys received in settlement of actions initiated under 42 USC
7 9601 to 9675 for environmental management.

8 (END)