



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #495

### **Reimbursement for Disposal of PCB Contaminated Sediment (DNR -- Air, Waste, and Contaminated Land)**

[LFB 2011-13 Budget Summary: Page 326, #1 (part)]

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#### **CURRENT LAW**

In 2007 Act 20, a DNR appropriation was created from the segregated recycling and renewable energy fund to reimburse certain responsible parties for 95% of the difference between the cost of disposing in Wisconsin and transporting certain PCB (polychlorinated biphenyls) contaminated sediment to an out-of-state hazardous waste disposal facility. It is appropriated \$3,000,000 SEG in each of 2009-10 and 2010-11. DNR transferred the \$6,000,000 appropriated amount to the general fund to meet part of its obligation under deficit reduction requirements of 2009-11 legislation.

#### **GOVERNOR**

Transfer the appropriation from the recycling and renewable energy fund to the environmental management account of the environmental fund (along with most other recycling fund appropriations). Maintain base funding of \$3,000,000 SEG annually. However, the administration has indicated it intends that no expenditures be made from the appropriation, and the appropriated amount would lapse to the environmental management account.

#### **DISCUSSION POINTS**

1. An eligible applicant under the program is a responsible party under certain federal regulations or one who has entered into a consent decree with DNR or the U.S. Environmental Protection Agency (EPA) for remediation of PCB contaminated sediment in concentration of 50 parts per million or greater. This is the concentration level of PCBs that must be disposed of in federally-licensed hazardous waste disposal facilities. Sediments with concentrations below 50 parts per million can be disposed of in state-licensed facilities. The sediments eligible under the

program would be dredged from the bed or bank of a navigable water body in Wisconsin.

2. The applicant may request reimbursement of eligible costs incurred on or after May 1, 2007, including the costs of transportation, permits, and disposal fees for the disposal of PCB contaminated sediment out of state, less the costs for the disposal in state. DNR is required to pay each claim within 60 days of receiving a complete application. Applicants are required to submit a request for reimbursement within two years of the date the costs were incurred. However, 2009 Act 28 authorized applicants to submit a request for reimbursement for costs incurred between May 1, 2007, and June 30, 2009, no later than June 30, 2011.

3. It is anticipated most of the expenditures under the program would relate to the Fox River PCB cleanup project. In addition, PCB removal projects on the Milwaukee, Sheboygan and Manitowoc Rivers, and other Wisconsin waters may also qualify. No hazardous waste disposal facilities currently exist in Wisconsin that are licensed to accept contaminated sediments with concentrations of PCBs of 50 parts per million or greater. Remediation projects for removal of the higher concentrations of PCBs are transporting the PCBs to hazardous disposal facilities in other states.

4. DNR is required to promulgate administrative rules for the program, and is authorized to promulgate emergency rules without a finding of emergency. DNR convened a work group of potential claimants and interested parties in 2008 and began to promulgate rules. In the summer of 2008, DNR stopped the rule promulgation process. As of May, 2011, DNR has not forwarded proposed administrative rules to the Legislature.

5. Funding totaling \$10.5 million was appropriated for the program between 2007-08 and 2010-11. None of the appropriated funds have been spent on the program. The 2007-08 appropriation of \$1.5 million was lapsed to the balance of the recycling and renewable energy fund. The remaining \$9.0 million has been, or is planned to be, transferred to the general fund as part of 2007-09 and 2009-11 budget deficit reduction measures.

6. DOA and DNR officials indicate that it is the administration's intent that the base funding of \$3,000,000 SEG annually provided under the bill will not be spent, but will be lapse to the balance of the environmental management account. Both agencies indicate this reduction in expenditures would be done to help maintain a positive balance in the account. A separate paper describes the estimated condition of the environmental management account under the bill. If the PCB contaminated sediment transport reimbursement appropriation is fully expended, as authorized by the bill, the environmental management account would have a substantial deficit at the end of 2012-13.

7. To implement the Governor's intent that the program be maintained, but that no money be spent for the program during the biennium, the bill could be amended to delete the \$3,000,000 appropriated in each year, but to retain the statutory authorization for the program [Alternative 2]. This alternative would reflect a more accurate budgeting of funding for the program. DNR and the Governor could request funding for the program in the 2013-15 budget or under s. 13.10 of the statutes when they are ready to begin implementation.

8. The continued plan of the administration and DNR to not promulgate rules and not spend appropriated funds means the program would not be implemented and eligible costs incurred

between May, 2007, and June, 2011, would lose eligibility unless claims were submitted for reimbursement, because current law and the bill require requests for reimbursement to be submitted within two years of the date incurred. However, eligible costs incurred between May, 2007, and June, 2009, must be submitted by June 30, 2011. The statutes specify that if appropriated funds are insufficient to satisfy approved claims, the excess be paid when funds become available.

9. While the administration and DNR intend that all of the funding be lapsed to the environmental management account during the 2011-13 biennium to use for other programs, the statutes specify that DNR must pay eligible claims within 60 days of receipt.

10. DNR received one application under the program in July, 2009, requesting reimbursement of \$61,200 for transport of PCB contaminated sediment removed as part of the Sheboygan River Superfund site cleanup. DNR did not review, approve, or pay any reimbursement for the request. DNR officials indicate the reason for this action was that the Department had made a decision to not spend any of the appropriated funds, and there were no administrative rules in place that would specify the process for reviewing and approving an application. In 2009, the Department informed the applicant and other potential applicants and persons interested in the status of the program that it was DNR's intent to continue to transfer all of the appropriated funding as part of the Department's plan to meet general fund transfer obligations.

11. While it is uncertain how many potential claimants have incurred eligible costs, and for what amounts, it is probable that companies have incurred or will incur eligible costs for transport of PCB contaminated sediments to out-of-state hazardous waste disposal facilities. DNR officials indicate they are aware of the following current or potential PCB contaminated sediment cleanup projects with PCB concentrations exceeding 50 ppm that might result in claims under the program: (a) Fox River; (b) Sheboygan River Superfund site; (c) Lincoln Park/Milwaukee River; (d) Hayton Millpond/Jordan Creek (near Manitowoc); and (e) Cedar Creek/Milwaukee River Superfund site.

12. If the Committee wishes to maintain the program with a modest amount of funding to be available in the event DNR promulgates rules and begins to accept applications, it could delete most, but not all, of the funding. For example, the Committee could choose to delete \$2,900,000 of the \$3,000,000 appropriated under the bill, and maintain an appropriation of \$100,000 annually for potential applications [Alternative 3].

13. As well as deleting all funding, the Committee could choose to repeal the program [Alternative 4]. The program could be revived through future legislation if revenues become adequate to support the expenditures.

14. Any decrease in appropriated funds for the program under Alternative 2, 3 or 4 would remain in the balance of the environmental management account and would be available to address the anticipated revenue shortfall in the account.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to transfer the PCB contaminated sediment disposal reimbursement appropriation from the recycling and renewable energy fund to

the environmental management account of the environmental fund and maintain base funding of \$3,000,000 SEG annually.

2. Approve the Governor's recommendation to transfer the appropriation to the environmental management account. In addition, reduce funding for the program by \$3,000,000 SEG annually, to provide no funding but retain statutory authority for the program.

<b>ALT 2</b>	<b>Change to Bill</b>
	Funding
SEG	- \$6,000,000

3. Approve the Governor's recommendation to transfer the appropriation to the environmental management account. In addition, reduce funding for the program by \$2,900,000 SEG annually, to provide \$100,000 annually.

<b>ALT 3</b>	<b>Change to Bill</b>
	Funding
SEG	- \$5,800,000

4. Delete \$3,000,000 SEG annually and repeal the PCB contaminated sediment disposal reimbursement program.

<b>ALT 4</b>	<b>Change to Bill</b>
	Funding
SEG	- \$6,000,000

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