



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 5, 2015

Joint Committee on Finance

Paper #483

Environmental Enforcement (DNR -- Environmental Quality)

[LFB 2015-17 Budget Summary: Page 327, #13]

CURRENT LAW

Environmental programs are generally administered through statutory Chapters 160 (groundwater), 30 (navigable waters) and 280 through 299, which include drinking water, water, wastewater, air pollution, solid waste, recycling, hazardous waste, remedial action of contaminated land, nonferrous metallic mining, nonmetallic mining reclamation, ferrous metallic mining, and general environmental provisions. The Department of Natural Resources (DNR) is authorized base funding of \$1,016,800 environmental management account SEG with 8.08 positions for enforcement of the hazardous substances spills program under s. 292.11 and groundwater activities under Chapter 160 of the statutes.

GOVERNOR

Provide \$300,000 environmental management account SEG annually for environmental enforcement of the hazardous substances spills program under s. 292.11 and groundwater activities under Chapter 160 of the statutes.

DISCUSSION POINTS

1. DNR is authorized funding for various environmental enforcement activities under several separate appropriations, including: (a) a GPR appropriation for environmental enforcement of Chapters 280 to 299, for conservation and environmental enforcement under Chapters 30 and 31, and for certain other conservation enforcement activities, with base funding of \$1,588,000 GPR with 15.27 positions for both conservation and environmental enforcement; (b) environmental management account SEG for enforcement of the hazardous substances spills program under s.

292.11 and groundwater activities under Chapter 160 of the statutes, with base funding of \$1,016,800 SEG with 8.08 positions; (c) environmental management account SEG for enforcement of solid waste reduction and recycling under Chapter 287, with base funding of \$261,000 SEG with 2.4 positions; (d) PR from federally-regulated air emission fees for enforcement related to stationary sources of air contaminants under Chapter 285, with base funding of \$93,200 PR with 1.0 position; and (e) federally-funded enforcement appropriations that receive grants for wastewater, air management, and leaking underground storage tank programs. The fish and wildlife account of the segregated conservation fund is authorized funding for enforcement of conservation activities including primarily those related to fishing, hunting, wildlife, and public safety on state lands and navigable waters as well as for review of environmental impact requirements (separate appropriations support state parks, state forests, and recreational vehicle enforcement).

2. The Governor directed state agencies to submit no budget requests for increases in environmental fund appropriations. Thus, DNR did not include this request in its 2015-17 biennial budget submission. Discussions between DNR and DOA after submission of the agency budget request resulted in the provision being included in the budget bill.

3. Administration officials indicate the recommended \$300,000 annual increase is intended to cover part of the environmental enforcement costs that exceed the amount authorized in the environmental management account appropriation, so that the GPR and fish and wildlife SEG appropriations do not have to cover as much of those costs. The request is approximately half of the six-year average difference between total environmental enforcement expenditures and the amount authorized to be spent from the environmental management account. They further indicate that DNR reduced expenditures in the GPR appropriation and from fish and wildlife SEG enforcement funds for other program activities to cover environmental enforcement activities in some years.

4. During the most recent six years, from 2008-09 through 2013-14, the environmental management SEG enforcement appropriation has been authorized an average of almost \$1,043,000 annually, with 8.08 permanent positions. The positions include law enforcement wardens, environmental enforcement specialists, and a natural resources policy coordinator. DNR indicates that during the six years, total environmental enforcement expenditures averaged almost \$1,640,000 annually. DNR spent all authorized environmental management account funds, and provided the \$597,000 average annual difference from the following sources: (a) \$325,000 was spent from the GPR appropriation that is authorized for environmental and conservation enforcement; (b) \$240,000 was spent from fish and wildlife SEG enforcement funds; and (c) \$32,000 was reallocated from the science services subprogram within the same environmental management account appropriation, and from pay plan supplements for that appropriation.

5. The amounts spent from sources other than the authorized levels in the environmental management SEG enforcement has varied by year. For example, DNR indicates that in 2012-13, environmental enforcement expenditures exceeded authorized levels by \$699,000, and were paid through allocation of \$618,500 GPR, \$47,300 fish and wildlife account SEG, and \$33,200 from reallocation or pay plan supplements within the environmental management account appropriation. In 2013-14, environmental enforcement expenditures exceeded authorized levels by \$727,100, and were paid through allocation of \$72,000 GPR, \$73,100 fish and wildlife account SEG, and through

DOA approval of a \$582,000 environmental management account pay plan supplement. While this represented a supplement of over 50% of the base appropriation amount, officials indicated it was allowed due to the substantial environmental enforcement costs incurred and fit within the allowable pay plan amount for the agency.

6. The funding provided in the bill includes \$259,400 annually for permanent salaries, and \$40,600 for fringe benefits, at the overtime rate. This would equal over 9,000 hours, which is over 1,100 hours annually for each of the 8.08 existing authorized positions in the environmental management account appropriation. Typically, a full-time position works 2,080 hours per year. The administration indicates that, in addition to overtime hours performed by the 8.08 existing staff, the increase in funding would also cover overtime hours related to environmental enforcement performed by staff authorized in the GPR and conservation fund SEG enforcement appropriations, and charged to the environmental management account enforcement appropriation. Further, they indicate that funding for overtime hours is provided instead of new positions because the costs of fringe benefits for new positions would cost more than the fringe benefits for overtime hours of existing positions.

7. DNR has a system of coding hours worked to numerous activity codes, then allocating time spent on the activities to relevant appropriations. DNR allocates the time they spend on environmental enforcement to several activity codes. The Department then administratively allocates as many of the environmental enforcement costs as possible, which cannot be allocated to other specific enforcement appropriations (such as federal wastewater, segregated recycling and water resources), to the environmental management account SEG appropriation. When funds in that appropriation are fully spent, DNR then allocates environmental enforcement costs to other subprograms or pay plan supplement within that appropriation, or to the GPR or fish and wildlife SEG enforcement appropriations.

8. Table 1 shows the number of hours coded to environmental enforcement activity codes which the Department would apply to the environmental management account SEG appropriation if expenditure authority were sufficient, by DNR permanent and limited-term employees in 2011-12 through 2013-14. This includes hours charged to the environmental management SEG, GPR, or conservation SEG appropriations. It does not include hours charged to federal appropriations (wastewater, air, and leaking underground storage tanks), recycling SEG, or air management program revenue. Table 2 shows the amount DNR spent from each of the three appropriations for the same three years.

9. DNR indicates that the Department is trying to reserve GPR enforcement funding for responding to emergencies and assisting local, county, and state law enforcement agencies with public safety duties. However, the GPR appropriation is currently the only appropriation authorized to be used for enforcement of all environmental chapters of the statutes administered by DNR.

TABLE 1**Environmental Enforcement Activity Codes and Hours Reported by
DNR - Permanent and Limited-Term Positions ***

<u>Activity Code Description</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Chapter 280 Pure drinking water; Chapter 281 Water and sewage; private water supply enforcement	1,084.00	1,217.50	964.00
Chapter 280 Pure drinking water; Chapter 281 Water and sewage; public water supply enforcement	2,413.50	2,342.25	3,125.25
Chapter 287 Solid waste reduction, recovery and recycling; electronic recycling	0.00	2.50	28.50
Chapter 289 Solid waste facilities; Chapter 293 Nonferrous metallic mining; Chapter 295 Nonmetallic mining reclamation	2,117.25	1,914.75	1,754.00
Chapter 291 Hazardous waste management	1,575.50	1,015.50	1,127.00
Chapter 292 Remedial action; spills investigation and enforcement	1,575.00	1,440.50	1,898.75
Chapter 292 Remedial action; spills, abandoned containers, cleanup of drug lab products and wastes	62.50	40.00	49.50
Chapter 293 Nonferrous metallic mining; Chapter 295 Nonmetallic mining; water runoff enforcement	1,306.50	1,742.75	2,069.75
Chapter 299 General environmental provisions; lab certification	219.00	19.00	13.50
Chapter 29 Pesticide enforcement	105.50	116.00	78.50
Computer forensics	293.00	0.00	6.00
Supervision, management and reporting	13,972.00	13,747.75	10,817.50
Staff training and instruction	0.00	3,281.00	4,569.25
Public relations	0.00	539.50	1,904.00
Specific hazardous waste investigation	<u>0.00</u>	<u>7.00</u>	<u>0.00</u>
 Total Hours	 24,723.75	 27,426.00	 28,405.50

* Excludes hours charged to federally-funded appropriations for air, wastewater and leaking underground storage tanks; SEG recycling; and PR air emissions fees.

TABLE 2**Environmental Enforcement Expenditures Reported by DNR**

<u>Fund Source</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
SEG Environmental Management	\$1,139,773	\$1,082,075	\$1,586,573
GPR	377,427	618,550	72,081
SEG Fish and Wildlife	<u>139,858</u>	<u>47,325</u>	<u>73,093</u>
 Total	 \$1,657,058	 \$1,747,950	 \$1,731,747

* Excludes expenses charged to federally-funded appropriations for air, wastewater and leaking underground storage tanks; SEG recycling; and PR air emissions fees.

10. The bill provides an increase in total funding for DNR enforcement workload, and allocates all of the increase to overtime hours for environmental enforcement. It would provide sufficient funding for over 9,000 hours of overtime performed as a portion of the workload of many enforcement staff funded from environmental management SEG, GPR and fish and wildlife SEG. Rather than funding additional amounts of overtime for existing enforcement positions, position authority could be provided to reflect an overall increase in law enforcement workload. The \$300,000 provided in the bill would fund approximately 3.0 positions of workload. The bill could be amended to provide 3.0 SEG permanent positions, instead of overtime [Alternative 2]. This option would allow currently-authorized GPR to be more focused on emergencies and public safety issues, and would allow currently-authorized fish and wildlife SEG to be focused on activities that are more clearly related to conservation.

11. If the Committee prefers not to increase the total amount DNR is authorized to spend on enforcement, it could consider reallocating authorization and positions from conservation enforcement to environmental enforcement, to more accurately reflect the amount of staff effort spent on environmental enforcement. For example, the bill could be amended to reduce the GPR and conservation fund SEG appropriations by the amount of the environmental enforcement increase. The GPR and fish and wildlife SEG appropriations could each be reduced by \$150,000 annually, and 1.5 positions could be transferred from each of the appropriations to the environmental management SEG appropriation [Alternative 3].

12. If the funding is not provided, DNR could continue to allocate GPR for environmental enforcement, as is currently authorized [Alternative 4]. The Department might also again request substantial pay plan supplements for the environmental management SEG appropriation, when funding is available from the environmental management account, and as it fits within the pay plan needs of the entire Department.

13. DNR has been making expenditures from the environmental management appropriation as if it is authorized to be used for all environmental enforcement activities. However, the appropriation is only authorized to be used for enforcement of the hazardous substance spills program under s. 292.11 and groundwater standards and related activities under Ch. 160. The current GPR enforcement appropriation is authorized to be used for enforcement of the environmental programs in Chapters 280 to 299, navigable waters regulation under Chapter 30, and the various conservation programs. It is uncertain why the environmental management account enforcement appropriation was never updated to be authorized for enforcement of all environmental appropriations. However, as the Department relies more on the environmental management account for DNR administration of environmental statutes, it would be appropriate to amend the statutes to specifically authorize use of the environmental management SEG appropriation for enforcement of all of the environmental statutes, which would include adding authorization for enforcement of Chapters 280 through 299 and the navigable waters portions of Chapter 30 [Alternative 5a].

14. As mentioned earlier, DNR also has an environmental management SEG appropriation for enforcement of solid waste reduction and recycling under Chapter 287 of the statutes. Prior to 2011-12, this appropriation was funded from the segregated recycling fund. In 2011 Act 32, revenues and most appropriations related to recycling were transferred to the environmental management account from the former recycling fund. The Committee could consider merging the

two environmental management account appropriations into one, and specify that the one appropriation would be authorized for enforcement of all of the environmental statutes [Alternative 5b]. If maintained as a separate appropriation, the recycling appropriation would continue to be authorized solely for enforcement of recycling statutes.

15. The fish and wildlife SEG appropriation is intended for enforcement operations related to conservation laws. Some would argue fish and wildlife funds from hunter and angler user fees should not be utilized for activities that do not directly benefit them. In an audit released in June, 2006, concerning DNR fish and wildlife funding, the Legislative Audit Bureau (LAB) found that out of the total \$120,156,100 in fiscal year 2004-05 fish and wildlife expenditures, \$1,921,900 (1.6%) did not directly benefit hunters and anglers, including \$92,500 in environmental enforcement expenditures. The audit noted that in fiscal year 2004-05, DNR time coding records showed that fish and wildlife staff worked 30,600 hours on activities that did not directly benefit hunters and anglers, such as endangered resources activities, work on state parks, trails, and forests, and environmental enforcement. However, LAB found that during that same period, non-fish and wildlife staff worked 43,700 hours on activities that benefited hunters and anglers, such as habitat protection.

16. In addition, the Department indicates that DNR law enforcement staff have a duty to protect public safety and health and are statutorily authorized with police supervision over all state-owned lands or lands under its supervision. For example, if a conservation warden were to witness a violation of a state law of an environmental nature, the warden would make the initial contact with the violator and then an environmental enforcement staff person would conduct any necessary follow up investigation. Further, some violations of environmental laws also have a conservation impact. For example, a manure spill could result in contaminated land and water and could potentially decrease the oxygen available in the water body resulting in a fish kill. If the Committee wished to more clearly indicate that fish and wildlife account funds should not be utilized for environmental enforcement, an alternative could be to modify the conservation fund enforcement appropriation language to specify that the funding may only be used for conservation-related enforcement provisions of the currently authorized statutes [Alternative 5c].

17. In addition, if the Committee approves the Governor's recommendation to transfer regulation of private onsite wastewater treatment system regulation from the Department of Safety and Professional Services, as discussed in a separate budget paper, it would be appropriate to authorize use of the environmental management account and GPR appropriations for enforcement of that program [Alternative 5d].

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$300,000 environmental management account SEG annually for enforcement of the hazardous substances spills program under s. 292.11 and groundwater activities under Chapter 160 of the statutes.

2. Approve the Governor's recommendation to provide \$300,000 environmental management account SEG annually for enforcement. In addition, authorize 3.0 environmental management account SEG positions. (The funding would be used for new permanent positions

rather than for overtime for existing positions.)

ALT 2	Change to Bill	
	Positions	
SEG	3.00	

3. Approve the Governor's recommendation to provide \$300,000 environmental management account SEG annually for enforcement. In addition: (a) delete \$150,000 GPR annually for enforcement; (b) delete \$150,000 fish and wildlife SEG annually for enforcement; (c) transfer 1.5 GPR enforcement positions to the environmental management SEG enforcement appropriation; and (d) transfer 1.5 fish and wildlife SEG enforcement positions to the environmental management SEG enforcement appropriation.

ALT 3	Change to Bill	
	Funding	Positions
GPR	- \$300,000	- 1.50
SEG	<u>- 300,000</u>	<u>1.50</u>
Total	-\$600,000	0.00

4. Delete provision.

ALT 4	Change to Bill
SEG	- \$600,000

5. In addition to any of the above alternatives, adopt one or more of the following:

a. Amend the environmental management SEG appropriation [s. 20.370 (3)(mq)] to be used for enforcement of environmental provisions of Chapter 30, and for Chapters 280 through 299.

b. Combine the two existing environmental management SEG enforcement appropriations into one, including s. 20.370 (3)(mq) for spills and groundwater activities, and s. 20.370 (3)(mr) for recycling enforcement. Amend the language of the combined appropriation to authorize it to be used for environmental provisions of Chapter 30, and for Chapters 280 through 299.

c. Amend the conservation fund SEG enforcement appropriation to specify that funding be used for conservation-related enforcement activities under the various statutes.

d. In addition, if private onsite wastewater system regulation is transferred from the Department of Safety and Professional Services, authorize use of the environmental management SEG appropriation for enforcement of the transferred program under Chapter 145.

Prepared by: Kendra Bonderud and Erin Probst