

Natural Resources

Environmental Quality

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May, 2019

Joint Committee on Finance

Paper #525

Environmental Fund Overview (Natural Resources -- Environmental Quality)

CURRENT LAW

The segregated (SEG) environmental fund consists of the environmental management account and the nonpoint account. The two accounts are statutorily designated as one fund but are tracked separately for budgetary purposes. Both accounts rely heavily on revenues from several state solid waste tipping fees. Wisconsin landfills pay state solid waste tipping fees for each ton of solid waste disposed of in the landfill. State solid waste tipping fees total \$12.997 per ton for most solid waste disposed of at Wisconsin landfills, including municipal solid waste and non-high-volume industrial waste. Of this total, \$12.84 per ton is deposited in the environmental fund, including \$9.64 per ton in the environmental management account and \$3.20 per ton in the nonpoint account. The nonpoint account is also funded with an annual general purpose revenue (GPR) transfer of \$7,991,100. The environmental fund supports programs primarily at the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP), including financial assistance programs for local governments and collaborating partners.

GOVERNOR

Major actions related to expenditures from the two accounts are as follows: (a) providing \$4,000,000 each year of the biennium from the environmental management account to the Department of Administration (DOA) for clean energy grants in a new Office of Sustainability and Clean Energy (the Committee removed this item from the budget on May 9, 2019); (b) providing \$1,500,000 nonpoint SEG annually for DATCP soil and water resource management grants; (c) providing \$924,000 nonpoint SEG annually for DATCP county conservation staffing grants; (d) providing \$730,000 nonpoint SEG each year for DNR nonpoint source contracts; and (e) providing \$400,000 nonpoint SEG each year for DNR nonpoint source grants. Additionally, the bill would authorize a total of \$45.5 million in new bonding as follows: (a) \$25,000,000 for

contaminated sediment removal, the debt service for which is supported by environmental management SEG; (b) \$10,000,000 for DATCP soil and resource management grants and animal waste discharge grants; (c) \$6,500,000 for DNR rural nonpoint source grants and animal waste discharge grants; and (d) \$4,000,000 for DNR urban nonpoint source grants.

DISCUSSION POINTS

1. This paper provides a general overview of the environmental management account and the nonpoint account of the segregated environmental fund, including the estimated condition of each of the two accounts and general information about revenues and expenditures in each account. Discussion and alternatives for individual budget issues affecting each account are included in separate budget papers. However, any changes in expenditures from the accounts under specific budget issues will impact the balances of each account and amounts available for expenditure for other appropriations funded from the two accounts. Due to the imbalance between revenues and expenditures in the nonpoint account under the bill, this paper also offers a number of alternatives to provide sufficient funding for expenditure items considered under other papers.

2. Wisconsin landfills pay state solid waste tipping fees for each ton of solid waste disposed of in the landfill. Table 1 shows the state tipping fee rates per ton. State tipping fee rates are \$12.997 per ton for municipal solid waste and non-high-volume industrial waste. The recycling and solid waste landfill administration tipping fees are assessed and collected quarterly. Other environmental management (environmental repair, groundwater, and well compensation), nonpoint, and Solid Waste Facility Siting Board fees are assessed annually in May for tons disposed of during the previous calendar year. Of the total state tipping fees, \$9.64 per ton of municipal solid waste and non-high-volume industrial waste is deposited in the environmental management account. High-volume industrial waste is subject to tipping fees of \$0.497 per ton, of which \$0.34 per ton is deposited in the environmental management account. The state tipping fee was increased from \$3.80 per ton to \$5.90 per ton in the fall of 2007 and to \$12.997 per ton by the fall of 2009.

TABLE 1
State Solid Waste Tipping Fees Per Ton

<u>Fund, Fee</u>	<u>Type</u>	<u>Municipal and Non- High-Volume Industrial Waste</u>	<u>High-Volume Industrial Waste</u>	<u>PCB- Contaminated Sediment</u>
Recycling	SEG	\$7.000	\$0.000	\$0.000
Environmental repair	SEG	2.500	0.200	0.850
Groundwater	SEG	0.100	0.100	0.100
Well compensation	SEG	<u>0.040</u>	<u>0.040</u>	<u>0.040</u>
Subtotal Environmental Management		\$9.640	\$0.340	\$0.990
Nonpoint account	SEG	3.200	0.000	3.200
DNR solid waste landfill administration	PR	0.150	0.150	0.150
DOA Solid Waste Facility Siting Board	PR	<u>0.007</u>	<u>0.007</u>	<u>0.007</u>
Subtotal Nonpoint/Program Revenue Accounts		\$3.357	\$0.157	\$3.357
Total State Tipping Fee		\$12.997	\$0.497	\$4.347

-High-volume industrial waste includes fly ash, bottom ash, paper mill sludge and foundry process waste.

-Municipal and non-high-volume industrial waste includes solid waste generated by: residences; business, commercial and government facilities; construction and demolition; and industrial uses that are not high-volume.

-PCB (polychlorinated biphenyls) contaminated sediments are subject to the rates in Table 1 if they are removed from a navigable water of the state in connection with a phase of a project to remedy contamination of the bed of the navigable water, and the quantity of sediments removed will exceed 200,000 cubic yards. If the PCB sediments do not meet these criteria, they are subject to the fees for non-high-volume industrial waste.

-Waste used as daily cover, lining, capping or constructing berms, dikes or roads in the facility is exempt from the fees if use for that purpose is approved by DNR and the waste is used in that way.

3. Table 2 shows the total tons of solid waste disposed of in Wisconsin landfills for the past six years, from 2013 through preliminary data for calendar year 2018. Tonnages are shown on a calendar-year basis, and fees are mostly received before the end of the following fiscal year; fees for calendar year 2018 disposal will primarily be received as fiscal year 2018-19 revenues. The number of tons of waste subject to state statutory tipping fees has ranged between 6.2 million to 6.9 million tons during the past six years.

TABLE 2**Tons of Solid Waste Landfilled in Wisconsin
by Category and Year**

<u>Type of Waste</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Tons subject to nonpoint and environmental tipping fees ⁽¹⁾	5,094,088	5,383,896	5,448,036	5,415,827	5,741,122	5,869,137
High-volume industrial waste subject to environmental tipping fees ⁽²⁾	<u>1,136,766</u>	<u>1,223,081</u>	<u>1,185,236</u>	<u>1,263,949</u>	<u>988,999</u>	<u>1,054,519</u>
Tons subject to state statutory tipping fees	6,230,854	6,606,977	6,633,272	6,679,776	6,730,121	6,923,656
Tons exempt from state statutory tipping fees ⁽³⁾	<u>1,619,116</u>	<u>1,558,091</u>	<u>1,586,691</u>	<u>1,898,128</u>	<u>1,726,215</u>	<u>1,849,430</u>
Total waste landfilled in Wisconsin	7,849,970	8,165,068	8,219,963	8,577,904	8,456,336	8,773,086
Percent change in total tons landfilled in Wisconsin	-9.9%	4.0%	0.7%	4.4%	-1.4%	3.7%
Landfilled tons from out-of-state ⁽⁴⁾	375,266	347,253	328,413	354,510	384,802	363,348

⁽¹⁾ Some of these tons are subject to reduced rates for, or exemption from, certain state tipping fees.

⁽²⁾ Includes utility power plant ashes and sludges, pulp and papermill waste, foundry manufacturing waste, and energy recovery incinerator ash. These wastes are not subject to nonpoint or recycling tipping fees.

⁽³⁾ DNR assesses a \$0.15 per ton landfill license surcharge fee to some of these tons under administrative code provisions.

⁽⁴⁾ Tons from out-of-state are a subset of total waste landfilled in Wisconsin, and may be included in various categories of waste.

Environmental Management Account

4. The environmental management account provides funding for several recycling and environmental programs. Under the bill, during the 2019-21 biennium, the largest expenditure from the environmental management account would be base funding of \$20 million annually for DNR recycling grants to local governments, which pays for a portion of local costs of operating a recycling program that meets state program requirements. Second would be approximately \$15.4 million annually for DNR administration of contaminated land, brownfields cleanup, and recycling programs, including 109.45 staff in remediation and redevelopment, solid waste management, air management, groundwater management, and central administrative programs. The third largest expenditure area would be debt service costs for general obligation bonds issued for state-funded cleanup of contaminated land and sediment, for the former point source water pollution abatement grant program that ended in 1990, and for DNR administrative facilities. Additional expenditure areas include: (a) brownfields and well compensation grant programs; (b) state-funded cleanup of contaminated properties where there is no responsible party able or willing to pay for the cleanup; (c) certain environmental and recycling programs in DATCP, the UW System, and the Departments of Health Services and Military Affairs; and (d) remediation of specific sites using moneys received under

court-approved settlement agreements or orders (primarily for Fox River cleanup).

5. Table 3 shows the condition of the environmental management account in 2017-18 through 2020-21 under the bill, and including Committee action to date. In the 2019-21 biennium, approximately 90% of revenue to the environmental management account is anticipated to be received from solid waste tipping fees. The remaining 10% of revenues include a transfer from the segregated petroleum inspection fund, several license and other environmental fees, and revenues received for designated purposes.

6. The environmental management account is expected to have an available balance of approximately \$26.6 million on June 30, 2021. This includes the Committee action of May 9, 2019, to remove \$8 million in proposed expenditures for DOA clean energy grants. Further, the account is anticipated to have a positive structural balance in the next biennium. That is, after excluding site-specific remediation figures primarily related to the Fox River polychlorinated biphenyls (PCB) cleanup project, anticipated revenues of \$59.4 million in 2020-21 (the base year for consideration of the 2021-23 biennial budget) are expected to exceed authorized expenditures of \$50.5 million by approximately \$8.9 million, or approximately 17%. (An additional \$2.9 million in the 2020-21 expenditures shown in Table 3 reflect expenditure of prior year continuing appropriation balances.)

7. The main reasons for the significant estimated balance in the environmental management account are: (a) debt service payments have declined for the former point source water pollution abatement grant program that ended in 1990; (b) the 2015-17 biennial budget eliminated \$4 million in annual expenditures for the University of Wisconsin System Bioenergy Initiative; (c) the 2019-21 biennial budget does not recommend continuance of the 2017-19 one-time transfers of \$3,652,500 from the environmental management account to the nonpoint account; and (d) the Committee removed \$4 million annually in recommended expenditures for DOA clean energy grants.

TABLE 3
Environmental Management Account Condition,
Through May 16, 2019, Committee Action

	Actual <u>2017-18</u>	Estimated <u>2018-19</u>	Estimated <u>2019-20</u>	Estimated <u>2020-21</u>	2020-21 <u>Staff</u>
Opening Balance	\$13,446,000	\$21,696,000	\$23,069,700	\$26,928,500	
Revenues:					
Solid Waste Tipping Fees ⁽¹⁾	\$52,644,300	\$53,028,000	\$53,377,000	\$53,511,200	
Transfer to Nonpoint Account	-3,652,500	-3,652,500	0	0	
Transfer from Petroleum Inspection Fund	1,704,800	1,704,800	1,704,800	1,704,800	
Site-Specific Remediation	5,700	0	0	0	
Other Fees and Income	3,931,900	3,753,000	4,118,000	4,118,000	
Additional Prior Year Collections ⁽¹⁾	9,848,200	6,809,400	6,870,900	6,852,200	
Billed Amounts Outstanding on June 30 ⁽¹⁾	<u>-6,809,300</u>	<u>-6,870,900</u>	<u>-6,852,200</u>	<u>-6,818,000</u>	
Total Revenue	\$57,673,100	\$54,771,800	\$59,218,500	\$59,368,200	
Total Revenue Available	\$71,119,100	\$76,467,800	\$82,288,200	\$86,296,700	
Expenditures:					
DNR Recycling Grants to Local Governments	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	
DNR Programs and Operations	12,498,000	14,688,300	15,346,000	15,457,200	109.45
DNR State-Funded Cleanup	1,441,700	2,292,700	4,200,000	3,300,000	
DNR Well Compensation Grants	123,300	200,000	1,000,000	1,000,000	
DNR Site-Specific Remediation	2,322,000	2,000,000	2,000,000	1,900,000	
Debt Service for General Obligation Bonds	10,567,200	11,586,800	10,718,200	9,696,400	
WEDC Brownfields Grants	1,000,000	1,000,000	1,000,000	1,000,000	
Other Agencies ⁽²⁾	1,470,900	1,068,600	1,095,500	1,095,500	<u>2.00</u>
Expenditure of prior year encumbrances	<u>0</u>	<u>561,700</u>	<u>0</u>	<u>0</u>	
Total Expenditures	\$49,423,100	\$53,398,100	\$55,359,700	\$53,449,100	111.45
Cash Balance	\$21,696,000	\$23,069,700	\$26,928,500	\$32,847,600	
Encumbrances, Continuing Balances	-\$15,591,100	-\$13,029,400	-\$9,122,100	-\$6,214,800	
Available Balance	\$6,104,900	\$10,040,300	\$17,806,400	\$26,632,800	

⁽¹⁾ Tipping fee revenues reflect amounts billed, with adjustments shown for previously billed amounts collected and current billings not received by the close of the fiscal year.

⁽²⁾ Other agencies include Department of Agriculture, Trade and Consumer Protection clean sweep grants, Department of Health Services groundwater and air quality standards, and Department of Military Affairs emergency response training.

Nonpoint Account

8. The nonpoint account supports state and local programs that are intended to prevent and reduce nonpoint source water pollution, which is water pollution such as storm water or agricultural runoff that does not originate from a well-defined source. Both DATCP and DNR operate nonpoint source water pollution abatement programs, which provide administration, regulation, technical assistance, and grants. The programs are supported primarily by nonpoint SEG, although funding also comes from federal Clean Water Act (Section 319) funding, bond revenues, and GPR. The nonpoint

account-supported portion of programs support 20.30 positions at DATCP and 17.17 at DNR. The departments also provide nonpoint SEG for contracts with UW-Extension, UW System schools, and local conservation organizations for education, research and technical assistance activities related to nonpoint source water pollution.

9. As seen in Table 4, revenue to the nonpoint account consists primarily of solid waste tipping fees and a GPR transfer. In the 2019-21 biennium, tipping fees are expected to account for approximately 69% of nonpoint revenues, and the GPR transfer will contribute 30% of revenues, with the remaining amount reflecting interest income from investment of the fund balance. The nonpoint account has received a number of one-time transfers from other funds in recent biennia. These include: (a) \$650,000 in 2013-14, \$1,300,000 in 2014-15, \$3,652,500 in 2017-18, and \$3,652,500 in 2018-19 from the environmental management account; and (b) \$1,000,000 in 2015-16 and 2016-17 from the segregated agricultural chemical cleanup fund. The environmental management account transfer in the 2017-19 biennium offset a decrease of \$3,152,500 in the base GPR transfer to the nonpoint account under the biennial budget. 2017 Wisconsin Act 176 later increased funding for producer-led watershed protection grants by \$500,000 each year, and transferred an additional \$500,000 annually from the environmental management account to the nonpoint account, for a total of \$3,652,500 each year of the 2017-19 biennium. While the environmental management account transfer was one-time, the reduction in the GPR transfer was ongoing, which has contributed to the imbalance of revenues and expenditures in the 2019-21 biennium.

10. Expenditures from the nonpoint account include debt service payments for general obligation bonds issued for grant programs that support the installation of structural best management practices. Total estimated nonpoint SEG debt service payments are \$16.3 million in 2019-20 and \$15.8 million in 2020-21, or 47% of budgeted expenditures during the biennium. Other budgeted spending under the bill would include: (a) \$6,860,900 annually as grants for county conservation staff; (b) \$4,825,000 annually for soil and water resource management grants, primarily nutrient management planning cost sharing; (c) \$500,000 each year for urban nonpoint source grants; (d) \$997,600 each year for contracts with UW-Extension and others for education, research and technical assistance that support DNR's nonpoint program; (e) \$400,000 each year for targeted runoff management and notice of discharge/notice of intent grants; and (f) approximately \$4.6 million annually for administrative and regulatory activities at DATCP and DNR related to nonpoint programs. The bill would also provide \$20.5 million in new nonpoint SEG-supported general obligation bonding authority for DATCP and DNR nonpoint grant programs, up from \$16.85 million in new bonding authorizations provided in the 2017-19 biennium.

11. The nonpoint account is estimated to begin the 2019-21 biennium with an available balance of approximately \$5.0 million. Nonpoint account expenditures are estimated to exceed revenues by \$7.7 million each year. Account balances are not expected to be sufficient to support the Governor's proposal. The nonpoint account would be expected to have an available balance of approximately -\$10.8 million on June 30, 2021, under the bill, meaning commitments of the account would exceed available reserves by that amount.

TABLE 4

Nonpoint Account Fund Condition

	Actual <u>2017-18</u>	Estimated <u>2018-19</u>	Estimated <u>2019-20</u>	Estimated <u>2020-21</u>	2020-21 <u>Staff</u>
Opening Balance	\$6,619,900	\$11,058,600	\$10,062,500	\$2,365,700	
Revenues:					
GPR Transfer	\$7,991,100	\$7,991,100	\$7,991,100	\$7,991,100	
Tipping Fee*	21,921,800	18,765,000	18,535,100	18,105,900	
Transfers**	3,652,500	3,652,500	0	0	
Interest and Misc. Income	<u>28,900</u>	<u>105,000</u>	<u>280,000</u>	<u>280,000</u>	
Total Revenue	\$33,594,300	\$30,513,600	\$26,806,200	\$26,377,000	
Total Available	\$40,214,200	\$41,572,200	\$36,868,700	\$28,742,700	
Expenditures:					
<i>Agriculture, Trade and Consumer Protection</i>					
Soil and water management admin.	\$2,216,400	\$2,217,600	\$2,316,200	\$2,319,000	20.30
County staffing grants	5,512,600	5,936,900	6,860,900	6,860,900	0.00
Soil and water management grants	2,257,100	3,825,000	4,825,000	4,825,000	0.00
Debt service	4,114,400	4,668,200	4,992,200	5,071,800	0.00
<i>Natural Resources</i>					
Nonpoint source operations	\$1,215,000	\$1,769,000	\$595,200	\$595,200	15.25
Department operations	366,500	370,000	1,710,900	1,734,600	1.92
Nonpoint source contracts	831,100	767,600	997,600	997,600	0.00
Urban nonpoint source grants	1,005,200	500,000	500,000	500,000	0.00
Rural TRM/NOD grants	65,000	100,000	400,000	400,000	0.00
Debt service – Facilities	104,200	109,700	109,900	113,200	0.00
Debt service – Priority watershed	6,106,200	5,675,900	5,431,800	4,772,100	0.00
Debt service – TRM	2,165,800	2,206,700	2,308,600	2,384,200	0.00
Debt service – UNPS	<u>3,196,100</u>	<u>3,363,100</u>	<u>3,454,700</u>	<u>3,464,500</u>	<u>0.00</u>
Total Expenditures	\$29,155,600	\$31,509,700	\$34,503,000	\$34,038,100	37.47
Cash Balance	\$11,058,600	\$10,062,500	\$2,365,700	-\$5,295,400	
Encumbrances/Continuing	-13,495,200	-13,495,200	-13,495,200	-13,495,200	
Tipping fees receivable	<u>8,377,500</u>	<u>8,393,900</u>	<u>8,194,900</u>	<u>8,009,000</u>	
Available Balance	\$5,940,900	\$4,961,200	-\$2,934,600	-\$10,781,600	

* Tipping fees vary based on timing of year-end billings, which may be collected the following fiscal year.

** Includes a transfer of \$3,652,500 annually in the 2017-19 biennium from the environmental management account.

12. The estimated shortfall in the nonpoint account is due to both increasing expenditures and decreasing revenues over time. As seen in Table 5, increased expenditures have been associated with increasing grants and debt service payments. Debt service associated with nonpoint programs was converted from GPR-supported to nonpoint account SEG-supported beginning in 2009-10. Nonpoint expenditures in 2018-19 are budgeted at \$31,509,700, or 90% higher than their level in 2009-10, the last time tipping fees were increased.

TABLE 5**Nonpoint Expenditures by Category**

	<u>Grants</u>	<u>Debt Service</u>	<u>Operations</u>	<u>Total Expenditures</u>	<u>Lapses</u>
2007-08	\$6,610,300	\$929,000	\$4,912,200	\$12,451,500	\$301,400
2008-09	6,851,100	942,800	5,244,400	13,038,300	4,230,300
2009-10	6,833,800	5,309,800	4,478,500	16,622,100	7,547,500
2010-11	5,915,200	10,810,700	4,194,600	20,920,500	6,943,500
2011-12	6,053,800	13,365,500	4,436,400	23,855,700	0
2012-13	7,968,000	14,486,300	5,226,800	27,681,100	0
2013-14	6,850,300	15,637,900	4,345,200	26,833,400	0
2014-15	8,684,600	14,953,400	5,462,300	29,100,300	0
2015-16	9,599,000	15,826,700	5,258,700	30,684,400	0
2016-17	9,537,100	15,409,100	5,552,600	30,498,800	0
2017-18	8,839,900	15,686,700	4,629,000	29,155,600	0
2018-19*	10,361,900	16,023,600	5,124,200	31,509,700	0

*Budgeted

13. Table 6 shows nonpoint revenues by category over time. Tipping fee revenues were last increased to \$3.20 per ton beginning in 2009-10. Additionally, the GPR transfer to the account was decreased by \$3,152,500 under 2017 Wisconsin Act 59. Tipping fee revenue fluctuates based on when tipping fee billings are received. While fees are typically billed in May, not all revenue is received until the following fiscal year; this is most notable in 2011-12, 2013-14, and 2015-16 in Table 6. Other revenues include investment income and miscellaneous revenue.

TABLE 6**Nonpoint Revenues by Category**

	<u>GPR Transfer</u>	<u>SEG Transfers</u>	<u>Tipping Fee^a</u>	<u>Other Revenue</u>	<u>Total Revenue</u>
2007-08	\$11,514,000	\$0	\$792,600	\$333,900	\$12,640,500
2008-09	13,625,000	0	5,259,400	35,300	18,919,700
2009-10	12,863,700	0	10,662,000	-2,300	23,523,400
2010-11	12,863,700	0	17,773,900	-4,500	30,633,100
2011-12	10,974,200	0	12,851,400	-2,500	23,823,100
2012-13	11,315,500	0	24,399,100	31,100	35,745,700
2013-14	11,143,600	650,000 ^b	13,432,800	27,600	25,254,000
2014-15	11,143,600	1,300,000 ^b	19,822,700	2,000	32,268,300
2015-16	11,143,600	1,000,000 ^c	8,615,800	3,100	20,762,500
2016-17	11,143,600	1,000,000 ^c	14,977,700	10,200	27,131,500
2017-18	7,991,100	3,652,500 ^b	21,921,800	28,900	33,594,300
2018-19 ^d	7,991,100	3,652,500 ^b	18,765,000	105,000	30,513,600

^aTipping fees vary based on timing of year-end billings, which may be collected the following fiscal year.

^bFrom the environmental management account.

^cFrom the segregated agricultural chemical cleanup program fund.

^dEstimated.

Nonpoint Account Funding

14. Under both a cost-to-continue funding level (adjusted base plus standard budget adjustments and debt reestimates) and the Governor's proposed budget, it is expected the nonpoint account would not have combined revenue and balances sufficient to support expenditures during the 2019-21 biennium. While changes to expenditures for various programs are discussed in other issue papers, it is expected any action on nonpoint expenditures, including base funding, will necessitate adjustments in nonpoint revenues to maintain a positive balance in the account.

15. The condition of the nonpoint account can be measured on either a structural basis or based on the closing available balance as of June 30, 2021. Table 7 outlines the anticipated shortfall under each scenario, and notes the alternative that would provide sufficient funding under the Governor's proposal, or a cost-to-continue funding level. Also shown in Table 7 is the effect of providing 50% of the funding increases proposed by the Governor. The Committee may, through action on other issue papers, select a level of funding different from any of these levels. However, Table 7 is intended to show the range of funding needed to accommodate nonpoint SEG expenditures under current law, the bill, and the midpoint of these scenarios.

16. In any given year, if expenditures exceed revenue, such an imbalance will draw down the balance of the account. Under both the Governor's proposal and a cost-to-continue budget, the nonpoint account would overspend revenues by \$15.4 million or \$8.1 million, respectively, during the 2019-21 biennium. If the Committee wished to provide funding sufficient to cover appropriations under any of the expenditure scenarios in Table 7 without reducing the account balance, it could consider Alternatives 1, 2, or 3.

TABLE 7

2019-21 Estimated Shortfall (millions)

	<u>Governor</u>	<u>50% Funding</u>	<u>Cost-to-Continue*</u>
Structural Basis	-\$15.4 (Alternative 1)	-\$11.7 (Alternative 2)	-\$8.1 (Alternative 3)
Closing Basis	-10.8 (Alternative 4)	-7.2 (Alternative 5)	-3.5 (Alternative 6)

*Adjusted base, plus standard budget adjustments and debt service reestimates.

17. While expenditures under the bill would substantially exceed revenues, the estimated \$5.0 million available (unobligated) balance of the account on July 1, 2019, would support some additional appropriations. The closing basis in Table 7 represents the available account balance at the end of the biennium. The available balance consists of the difference of proposed expenditures and revenues of the account plus the existing balance, including: (a) any receivable income, such as tipping fees that are billed near the end of the fiscal year, but not received until the following fiscal year; and (b) any outstanding encumbrances, which is primarily grant funding that has been awarded, but not yet paid because grants are on a reimbursement basis. If the Committee wished to provide funding sufficient to avoid a negative available balance under any of the expenditure scenarios in Table 7, it could consider Alternatives under 4, 5, or 6.

18. Because the account's available balance captures the future obligations of the account, any shortfall in available funds means funding would be insufficient once all expenditures were recorded. However, because the nonpoint account and the environmental management account are statutorily one fund, a negative nonpoint account balance would draw from funds otherwise dedicated to environmental management account programs.

19. As discussed previously, 2017 Act 59 reduced the GPR transfer to the nonpoint account by \$3,152,500 each year on an ongoing basis to \$7,991,100. The transfer was offset by an equivalent transfer of environmental management account funding on a one-time basis during the biennium. At the time, the administration provided the environmental management transfer on a one-time basis because it was not clear environmental management revenues would continue to have a surplus in future years. Considering the anticipated surplus of base revenues relative to base expenditures in the environmental management account of \$8.9 million in 2020-21, it is expected that surplus revenues will continue in the 2021-23 biennium. While funding could be provided on a one-time basis, both the environmental management account and nonpoint account conditions are due to ongoing factors, thus any imbalance would continue in future years. The Committee could consider providing funding as an ongoing transfer from the environmental management account (Alternatives ending in a).

20. Another way of providing an ongoing transfer of revenue from the environmental management to the nonpoint account would be to increase the nonpoint tipping fee for municipal and non-high-volume industrial waste and decrease the environmental repair tipping fee deposited in the environmental management account by the same amount. This would not change the total amount per ton paid on solid waste disposed of in the state and deposited into the environmental fund, but would change the statutory amount of the fee deposited in each of the two accounts. While a transfer of the environmental management account balance and a rebalancing of tipping fees have the same effect, a reallocation of statutory fees would provide more transparency to fee payers about the final use of their contributions. The Committee could consider rebalancing the deposit of tipping fees into each account (Alternatives ending in b).

21. Transferring accumulated environmental management account balances to the nonpoint account would allow the fund to limit its dependence on GPR. This rationale is consistent with actions taken in previous biennia to use environmental management account balances to support nonpoint SEG-funded programs. In 2013-14 and 2014-15, transfers of \$650,000 and \$1,300,000 were intended in part to support additional nonpoint SEG appropriations for county land and water conservation staffing grants, as GPR for the same purpose was reduced during the biennium. Further, transfer of \$3,652,500 each year in the current biennium used existing environmental management balances to support the nonpoint account and limit GPR transfers.

22. Although revenues are segregated into separate accounts, environmental management account programs and nonpoint programs both generally seek to prevent and remediate environmental pollution. Thus, use of environmental management account revenues for nonpoint account programs could be considered an appropriate use of segregated revenue primarily intended to support environmental programs. On the other hand, maintaining balances in the environmental management account may be preferable in the event the Legislature in the future may wish to appropriate funds for current programs, such as well compensation grants, or remediation of emerging contaminants, such as per- and polyfluoroalkyl substances (PFAS).

23. In addition to tipping fees, and recent environmental management account transfers, the nonpoint account receives considerable revenue from its GPR transfer. An interfund transfer to the account originated from an automobile title transfer fee deposited into the account. At the time, the fee was chosen in recognition of nonpoint source water pollution attributable to the state's transportation infrastructure and vehicle operation. In 1997, statutory changes required the fee be deposited into the transportation fund. The fee was subsequently set at a fixed transfer amount consistent with historical amounts of title fee transfer revenue. The GPR transfer to the nonpoint account exceeded \$10.5 million each year from 1997-98 to 2016-17. The fee was reduced from \$11,143,600 to \$7,991,100 annually under 2017 Act 59. Given the wide variety of activities that cause nonpoint source pollution, and that general fund revenues are received from similarly diverse sources, it could be considered appropriate to continue to support nonpoint source pollution abatement with GPR. The Committee could consider increasing the GPR transfer to the nonpoint account (Alternatives ending in c).

ALTERNATIVES

1. Increase revenues to the nonpoint account by \$7,700,000 annually during the 2019-21 biennium. (This would cover the anticipated structural imbalance under the Governor's proposal.) Fund the increase by:

a. Providing an ongoing transfer from the environmental management account of the environmental fund.

b. Decreasing the environmental repair tipping fee for waste that is not high-volume industrial waste by \$1.38 per ton and increasing the nonpoint tipping fee by \$1.38 per ton, effective for fees assessed in 2019-20 for wastes disposed of in calendar year 2019.

c. Increasing the GPR transfer to the nonpoint account.

ALT 1c	Change to	
	Base	Bill
GPR	\$15,400,000	\$15,400,000

2. Increase revenues to the nonpoint account by \$5,850,000 annually during the 2019-21 biennium. (This would cover the anticipated structural imbalance if 50% of the Governor's proposed funding increases were approved.) Fund the increase by:

a. Providing an ongoing transfer from the environmental management account of the environmental fund.

b. Decreasing the environmental repair tipping fee for waste that is not high-volume industrial waste by \$1.04 per ton and increasing the nonpoint tipping fee by \$1.04 per ton, effective for fees assessed in 2019-20 for wastes disposed of in calendar year 2019.

- c. Increasing the GPR transfer to the nonpoint account.

ALT 2c	Change to	
	Base	Bill
GPR	\$11,700,000	\$11,700,000

3. Increase revenues to the nonpoint account by \$4,050,000 annually during the 2019-21 biennium. (This would cover the anticipated structural imbalance under the cost-to-continue funding level.) Fund the increase by:

- a. Providing an ongoing transfer from the environmental management account of the environmental fund.

- b. Decreasing the environmental repair tipping fee for waste that is not high-volume industrial waste by \$0.73 per ton and increasing the nonpoint tipping fee by \$0.73 per ton, effective for fees assessed in 2019-20 for wastes disposed of in calendar year 2019.

- c. Increasing the GPR transfer to the nonpoint account.

ALT 3c	Change to	
	Base	Bill
GPR	\$8,100,000	\$8,100,000

4. Increase revenues to the nonpoint account by \$5,400,000 annually during the 2019-21 biennium. (This would cover the anticipated unsupported commitments as of June 30, 2021, under the Governor's proposal.) Fund the increase by:

- a. Providing an ongoing transfer from the environmental management account of the environmental fund.

- b. Decreasing the environmental repair tipping fee for waste that is not high-volume industrial waste by \$1.38 per ton and increasing the nonpoint tipping fee by \$1.38 per ton, effective for fees assessed in 2019-20 for wastes disposed of in calendar year 2019.

- c. Increasing the GPR transfer to the nonpoint account.

ALT 4c	Change to	
	Base	Bill
GPR	\$10,800,000	\$10,800,000

5. Increase revenues to the nonpoint account by \$3,600,000 annually during the 2019-21 biennium. (This would cover the anticipated unsupported commitments as of June 30, 2021, if 50%

of the Governor's proposed funding increases were approved.) Fund the increase by:

a. Providing an ongoing transfer from the environmental management account of the environmental fund.

b. Decreasing the environmental repair tipping fee for waste that is not high-volume industrial waste by \$0.65 per ton and increasing the nonpoint tipping fee by \$0.65 per ton, effective for fees assessed in 2019-20 for wastes disposed of in calendar year 2019.

c. Increasing the GPR transfer to the nonpoint account.

ALT 5c	Change to	
	Base	Bill
GPR	\$7,200,000	\$7,200,000

6. Increase revenues to the nonpoint account by \$1,750,000 annually during the 2019-21 biennium. (This would cover the anticipated unsupported commitments as of June 30, 2021, under the cost-to-continue funding level.) Fund the increase by:

a. Providing an ongoing transfer from the environmental management account of the environmental fund.

b. Decreasing the environmental repair tipping fee for waste that is not high-volume industrial waste by \$0.31 per ton and increasing the nonpoint tipping fee by \$0.31 per ton, effective for fees assessed in 2019-20 for wastes disposed of in calendar year 2019.

c. Increasing the GPR transfer to the nonpoint account.

ALT 6c	Change to	
	Base	Bill
GPR	\$3,500,000	\$3,500,000

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May, 2019

Joint Committee on Finance

Paper #526

Contaminated Sediment Bonding (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 302, #1]

CURRENT LAW

Since 2007, the Department of Natural Resources (DNR) has been authorized a total of \$32 million in general obligation bonds to pay a portion of the costs of removal of contaminated sediment from Lake Michigan or Lake Superior or their tributaries, if the project is in a water body that DNR has identified, under the federal Clean Water Act, as being impaired by contaminated sediment. Debt service costs to repay the bonds are paid from a sum-sufficient appropriation from the segregated (SEG) environmental management account of the environmental fund, and totaled \$1,418,300 in 2017-18.

GOVERNOR

Authorize bonding revenue (BR) of \$25,000,000 to increase, from \$32 million to \$57 million, the total amount of SEG-supported general obligation bonds authorized to pay for a portion of the costs of removal of contaminated sediment from certain water bodies.

DISCUSSION POINTS

1. Under 2007 Wisconsin Act 20 (the 2007-09 biennial budget act), DNR was authorized \$17 million in general obligation bonding authority for removal of contaminated sediment from Lake Michigan or Lake Superior or their tributaries if federal funds were provided for the project under the federal Great Lakes Legacy Act. In each of the three subsequent biennial budgets (2009-11 through 2013-15), an additional \$5 million in bonding authority was provided, to reach the current authorization of \$32 million. Under 2009 Wisconsin Act 28, eligibility for use of the bonding authority was expanded so that projects do not have to receive federal funding under the Great Lakes

Legacy Act for a portion of costs, but projects must be in Lake Superior or Lake Michigan or their tributaries, and DNR must have identified the waterway as being impaired by contaminated sediment.

2. DNR has focused use of the contaminated sediment bonding authority on five Great Lakes Areas of Concern under EPA designation. These include the Milwaukee Estuary, Sheboygan River, Lower Green Bay and Fox River, Lower Menominee River (in Marinette, shared with Michigan), and St. Louis River (in Superior, shared with Minnesota).

3. The administration's rationale for recommending \$25 million in bonding authority rather than some other amount is that it would be a sufficient amount to fund potential project costs in several areas of the state over multiple years, based on priorities identified by DNR.

4. Contaminated sediment cleanup projects funded from the current bonding authority are shown in Table 1. A total of \$28.1 million in state bonding expenditures or encumbrances have funded or are currently funding six projects in Milwaukee, Sheboygan, Marinette, and Portage. In the fall of 2015, DNR made a determination that the Portage Canal, which connects the Great Lakes Basin to the Wisconsin River and Mississippi River, is an eligible tributary of Lake Michigan because the Portage Canal flows to the Fox River, Green Bay, and Lake Michigan. DNR estimates the state bonding expenditures leveraged approximately \$171 million in other expenditures, including almost \$135 million in federal and local government funding, \$35 million by responsible parties, and \$1 million in state funds from environmental repair bonding authority.

TABLE 1

Contaminated Sediment Projects Funded from Existing Bonding Authority

<u>Project</u>	<u>Bonding Expenditures Encumbrances/Commitments</u>
Milwaukee – Kinnickinnic River	\$7,617,953
Milwaukee – Lincoln Park / Milwaukee River Phase I	9,719,434
Sheboygan Harbor	3,319,998
Milwaukee – Lincoln Park / Milwaukee River Phase II	3,387,420
Marinette – Menominee River, Ansul/Tyco site	1,000,000
Marinette - Menekaunee Harbor	500,000
Portage Canal Phase 1	533,814
Superior -- St. Louis River, Howards Bay	<u>2,000,000</u>
Total	\$28,078,619
Remaining Uncommitted Currently Authorized Authority	\$3,921,381

5. Table 2 shows the potential contaminated sediment projects that meet eligibility requirements under current law, listed in DNR's estimated chronological order of work. The timeline for each project varies, depending on the specific situation of each project, status of investigations of contamination, and status of negotiation or agreements with responsible parties and local and federal government funding partners. While there is uncertainty about the timing of work at several of these

sites, DNR anticipates committing all of the remaining \$3.9 million in existing bonding authority and recommended \$25 million under the bill for a portion of \$70.9 million in anticipated state costs for projects in Superior, Milwaukee, and Portage before the end of the 2019-21 biennium. Approval of the recommended \$25 million would be expected to move several of these projects forward during the biennium [Alternative 1]. DNR estimates \$70.9 million in state bonding expenditures for these projects will leverage \$165 million in other expenditures, including almost \$130 million in federal and local government funding, and \$35 million by responsible parties.

TABLE 2

Potential Sites for Cleanup with Contaminated Sediment Bonding Authority

<u>Project</u>	<u>Potential Bonding Expenditures (state cost share)</u>
Portage Canal Phase 2	\$2,000,000
Milwaukee -- Milwaukee River Confined Disposal Facility	10,600,000
Milwaukee -- Milwaukee River downstream of Estabrook Dam	43,200,000
Milwaukee -- South Menomonee Canal	1,200,000
Milwaukee -- Milwaukee River Harbor, Kinnickinnic River, including Solvay Coke manufacturing gas plant site	3,700,000
Superior -- St. Louis River, Superior Slips	5,100,000
Superior -- St. Louis River, Munger Landing	2,100,000
Superior -- St. Louis River, Crawford Creek	<u>3,000,000</u>
 Total	 \$70,900,000

6. In general, when DNR has bonding authority in place and available for allocation to a project, it makes it easier to assemble project funding packages that include federal and local governments and private responsible parties or other entities who can contribute funding to a contaminated sediment project. The Department needs bonding authority in place before it can allocate it to a project. DNR commits or allocates funding for a project when the project study reaches a stage of feasibility, and negotiations with other potential funding partners result in development of a complete funding package.

7. Debt service costs for bonds issued under the contaminated sediment bonding authority are expected to total approximately \$1.9 million in 2018-19, \$2.0 million in 2019-20, and \$2.0 million in 2020-21. The \$25 million in new bonding authority under the bill would not be expected to result in an increase in debt service costs in the 2019-21 biennium, but would be anticipated to increase debt service costs in future biennia as bonds are gradually issued to pay for contaminated sediment cleanup projects. Debt service costs on \$25 million in general obligation bonds would be approximately \$2 million annually when all of the bonds are issued, assuming a 20-year term and an interest rate of 5%. As the amount authorized and spent for contaminated sediment cleanup increases, the amount spent from the environmental management account for debt service would generally increase. This would decrease funding available for other purposes of the account, such as other contaminated land cleanup and recycling programs.

8. Another option would be to provide a smaller increase in bonding authority than the amount provided in the bill. For example, \$12.5 million could be provided instead of \$25 million [Alternative 2]. This would provide a total of \$16.4 million in authority for use in the 2019-21 biennium (\$3.9 million existing and \$12.5 million new) that has not been allocated to projects yet. This might provide DNR with sufficient flexibility to commit to move forward on some of the projects shown in Table 2.

9. Other contaminated sediment removal projects have been accomplished in the state with separate general obligation authority for remedial action and contaminated sediment cleanup, with debt service paid from a separate environmental management account SEG appropriation. This has included projects in Superior, Marinette, Milwaukee, and the Fox River (excluding the Fox River PCB cleanup). There is approximately \$5.2 million in authorized, unallocated bonding from this source. DNR officials anticipate the Department will allocate all or almost all of it during the 2019-21 biennium for four projects (Refuse Hideaway landfill in Dane County, Kewaunee Marsh, N.W. Mauthe building in Outagamie County, and La Crosse Marsh). This bonding is used primarily for the state's share of cleanup of federal Superfund sites, and state-funded cleanups under the environmental repair and hazardous substances spills statutes. Since the separate contaminated sediment bonding authority was created in 2007, DNR has tried to separately manage the remedial action bonding authority for contaminated land cleanup projects, and the contaminated sediment bonding authority for projects in the Great Lakes and their tributaries. However, if the Committee chooses to not provide an increase in contaminated sediment bonding authority, DNR could choose to use the remedial action bonding authority for contaminated sediment projects if it allocates all of the existing contaminated sediment bonding authority and needs additional authority during the 2019-21 biennium.

10. If no action is taken to provide additional bonding authority, DNR would need to prioritize commitment of the currently authorized, unobligated authority for projects, or it could allocate remedial action bonding authority [Alternative 3]. Although uncertain, local governments and responsible parties might be able to provide part of the funding for priority projects.

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$25,000,000 BR to increase from \$32 million to \$57 million the amount of SEG-supported general obligation bonding authority for contaminated sediment cleanup.

ALT 1	Change to	
	Base	Bill
BR	\$25,000,000	\$0

2. Provide \$12,500,000 BR for contaminated sediment cleanup (instead of \$25,000,000 under the bill) to increase from \$32 million to \$44.5 million the amount of SEG-supported general obligation bonding authority for contaminated sediment cleanup.

ALT 2	Change to	
	Base	Bill
BR	\$12,500,000	- \$12,500,000

3. Take no action.

ALT 3	Change to	
	Base	Bill
BR	\$0	- \$25,000,000

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Joint Committee on Finance

Paper #527

Lake and River Protection Grants (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 303, #3]

CURRENT LAW

Lake and river protection grants help communities and eligible organizations engage in projects to protect and improve surface water quality and the quality of aquatic ecosystems. Eligible grantees include counties, towns, villages, cities, nonprofit conservation organizations, qualified lake or river associations, town sanitary districts, and public inland lake districts, among others. Eligible projects vary between programs, but generally include: (a) purchase of land or conservation easements; (b) restoration of wetlands and shoreline habitat; (c) developing and updating management plans for water bodies; (d) development of local regulations that protect or improve water quality; (e) installation of pollution control practices; (f) assessments of water quality and wildlife habitat; (g) nonpoint source pollution evaluation and prevention; and (h) informational or educational initiatives. Grants are funded from the water resources account of the segregated (SEG) conservation fund. On June 30, 2018, the water resources account had an available balance of approximately \$1.3 million.

GOVERNOR

Provide a total increase of \$2,915,800 SEG over the biennium (\$747,400 SEG each year for lake protection grants and \$710,500 SEG each year for river protection grants) from the water resources account of the conservation fund. Under the bill, lake protection grants are budgeted at \$3,000,000 SEG each year, and river protection grants are budgeted at \$1,000,000 SEG each year.

DISCUSSION POINTS

1. The water resources account is funded primarily by an annual motorboat fuel tax transfer to the account. The amount of the transfer is calculated by multiplying the motor fuel tax on 50 gallons of gasoline on April 1 of the previous fiscal year by the number of motorboats registered as of January 1 of the previous fiscal year, and then multiplying this result by 1.4. In 2019-20, absent a change to current law, it is expected \$13,059,500 will be transferred to the water resources account under this formula (603,766 motorboats x 50 gallons per motorboat x 30.9¢ per gallon x 1.4).

2. The administration reports that the proposed increase to lake and river protection grants is intended to reflect an increase in the transfer to the water resources account associated with the bill's proposed increase in the motor fuel tax. However, as motor fuel tax transfers are determined based on amounts as of certain dates in the prior fiscal year, and because the bill does not change the formula for determining the transfer, the transfer for the first year of the biennium is not affected by an increase in the motor fuel tax. In errata item, the administration reestimates the 2019-20 transfer to its current law amount of \$13,059,500, a decrease of \$2,744,500 from the bill.

3. As seen in Table 1, on June 30, 2018, the water resources account had an available balance of approximately \$1.3 million. Under the bill, increased expenditures on lake and river protection grants would result in a negative balance at the end of 2019-20, since increased revenues from a higher motor fuel tax would not yet be in effect. However, it is expected that revenues would be sufficient to support increased lake and river protection grants funding in 2020-21 onward.

TABLE 1

Water Resources Account Condition

	Actual <u>2017-18</u>	Estimated <u>2018-19</u>	Governor <u>2019-20</u>	Governor <u>2020-21</u>
Opening Balance	\$18,006,800	\$18,399,400	\$18,228,400	\$16,173,200
Fuel Tax Transfer	\$12,950,100	\$13,235,300	\$13,059,500	\$16,440,500
Other Income	36,900	40,000	25,000	25,000
Expenditures	<u>-12,594,400</u>	<u>-13,446,300</u>	<u>-15,139,700</u>	<u>-15,055,900</u>
Cash Balance	\$18,399,400	\$18,228,400	\$16,173,200	\$17,582,800
Encumbrances/Continuing	-\$17,129,500	-\$17,129,500	-\$17,129,500	-\$17,129,500
Available Balance	\$1,269,900	\$1,098,900	-\$956,300	\$453,300

4. If no motor fuel tax increase were approved under the bill, and lake and river protection grant funding were approved, it is expected the water resources account available balance would be approximately -\$2.9 million by the end of 2020-21. If current law funding were maintained, with no increases to the motor fuel tax or lake and river protection grants, the water resources account would

be expected to have a balance of approximately \$29,700 at the end of 2020-21. Thus, without increased revenue to the water resources account, substantial increases in lake and river protection grants would not be supportable by the existing balance of the account.

5. Table 2 outlines grant requests and awards of state funding for 2015-16 to 2018-19. Federal funding occasionally supports lake and river protection grants, but is excluded from this table. Amounts shown in the table do not necessarily match appropriated amounts for each grant, as lake protection grants are appropriated on a continuing basis, meaning funds may be expended at any time and are not subject to lapse, and river protection grants are appropriated on a biennial basis, meaning funds may be expended any time during the biennium, after which they lapse to the water resources account balance. Further, due to the proximity and interdependence of lakes and rivers, certain projects may be eligible for funding under either appropriation.

TABLE 2

Lake and River Protection Grants

	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Lake Protection				
Requested	\$2,319,700	\$2,472,000	\$2,840,400	\$1,946,000
Awarded	<u>1,881,000</u>	<u>2,142,300</u>	<u>2,680,700</u>	<u>1,887,000</u>
Unmet Requests	\$438,700	\$329,700	\$159,700	\$59,000
River Protection				
Requested	\$288,600	\$502,400	\$383,600	\$461,400
Awarded	<u>288,600</u>	<u>289,900</u>	<u>284,700</u>	<u>444,300</u>
Unmet Requests	\$0	\$212,500	\$98,900	\$17,100

6. As seen in the table, requests have exceeded awards by an average of approximately \$250,000 per year for lake protection grants and \$82,000 per year for river protection grants during the period. However, DNR reports that applications that do not receive funding often reapply for funding the following year after modifying their proposal and improving their application. DNR estimates that perhaps 50% of projects reapply and are successful. If demand were to remain unchanged, the Governor's proposal would be expected to result in unexpended funds, as unmet requests over the past two biennia are less than the increase proposed by the Governor.

7. Given that the proposed increase to the motor fuel tax would increase revenues to the water resources account and thus funding available for grants, the Committee could consider increasing awards for lake and river protection grants by \$747,400 and \$710,500 each year, respectively (Alternative 1). Considering demand for lake and river protection grants during the last two biennia, the Committee could instead provide an additional \$250,000 each year for lake protection grants and \$80,000 each year for river protection grants (Alternative 2). If revenues in the biennium were insufficient to accommodate increased grant awards, it would be incumbent on DNR to manage grant or other expenditures according to the available revenues and account balance.

8. As increases in to the motor fuel tax are subject to future Committee action, and

considering that the current account balance and revenue structure are unable to support increased grant funding, the Committee could consider taking no action (Alternative 3). If account revenues increase, available funds in the water resources account could be appropriated under subsequent legislation.

ALTERNATIVES

1. Adopt the Governor's proposal to provide water resources account SEG of \$747,400 each year for lake protection grants and \$710,500 each year for river protection grants. Lake protection grants would be budgeted at \$3,000,000 each year, and river protection grants would be budgeted at \$1,000,000 each year.

ALT 1	Change to	
	Base	Bill
SEG	\$2,915,800	\$0

2. Provide water resources account SEG of \$250,000 each year for lake protection grants and \$80,000 each year for river protection grants. Lake protection grants would be budgeted at \$2,502,600 each year, and river protection grants would be budgeted at \$369,500 each year.

ALT 2	Change to	
	Base	Bill
SEG	\$660,000	- \$2,255,800

3. Take no action. Lake protection grants would be budgeted at \$2,252,600 each year, and river protection grants would be budgeted at \$289,500 each year from the water resources account.

ALT 3	Change to	
	Base	Bill
SEG	\$0	- \$2,915,800

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May, 2019

Joint Committee on Finance

Paper #528

Multi-Discharger Variance Implementation (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 303, #4]

CURRENT LAW

In 2010, the Department of Natural Resources (DNR) promulgated standards for maximum allowable phosphorus concentration in Wisconsin's waters. As a result, it began incorporating these standards into Wisconsin pollutant discharge elimination system (WPDES) permits for point sources of water pollution, primarily municipal and industrial wastewater treatment facilities. Alongside these standards, it established more stringent agricultural performance standards related to nonpoint source phosphorus runoff.

Phosphorus limits imposed under WPDES permit conditions may be established under total maximum daily load (TMDL) plans. Under Section 303(d) of the Clean Water Act, DNR is required by the Environmental Protection Agency (EPA) to report biennially on all waters it has identified as impaired, meaning they do not meet water quality standards. DNR is then required to develop a TMDL plan for these impaired waters and submit it to EPA for approval. TMDLs study pollution in a water body and set goals to limit total point source and nonpoint source pollution to a level that will allow the water body to meet water quality standards. Approved TMDLs in Wisconsin include the Lower Fox River, Milwaukee River, Rock River, St. Croix River, and Wisconsin River watersheds. Other TMDLs currently in development include the St. Louis River, Upper Fox and Wolf Rivers, and northeastern lakeshore of Lake Michigan from Ozaukee County to Door County.

GOVERNOR

Provide \$4,000,000 in general obligation bonding for water pollution control infrastructure grants. Specify that bonding revenues (BR) would support grants to municipalities and counties

for infrastructure projects that control water pollution in watersheds with a federally approved TMDL. Additionally, provide 1.0 position with \$76,600 annually in a segregated (SEG) conservation fund (split-funded) operations appropriation to administer these grants. Require DNR to promulgate rules for the administration of these grants. Further, create an appropriation within the water resources account of the conservation fund to support principal and interest payments on these bonds. Budget debt service at \$41,600 SEG in 2020-21.

DISCUSSION POINTS

A. Total Maximum Daily Load Implementation Grant Program

1. DNR reports that under the new phosphorus standards, almost 80% of facilities must meet standards more stringent than those previously in effect. In 2015, the Department of Administration estimated that expenditures of at least \$3.45 billion are required by Wisconsin businesses and municipalities to comply with the new phosphorus rule. Federal law provides regulatory flexibility to states for implementing water quality standards in the form of variances. A variance is a short-term deviation from pollution abatement standards that allows incremental step-ups over a period of time to enable a more feasible and cost-effective implementation of pollution abatement technology. Typically, variances are provided on an individual basis, with each application requiring DNR and Environmental Protection Agency (EPA) approval. However, in February, 2017, DNR received approval from EPA for a statewide multi-discharger variance (MDV) for phosphorus, which allows eligible municipal and industrial wastewater treatment plants to participate without the need for an individualized permit.

2. The MDV allows qualifying municipal and industrial wastewater treatment facilities to incrementally reduce their phosphorus discharges over a period of 20 years, while also undertaking one of three options to reduce other sources of discharges within their watershed. One option is for the permit holder to make payments to counties in support of county nonpoint source pollution abatement activities. The other two options consist of either a permit holder or a third-party contractor implementing adaptive management (AM) practices. AM is the implementation of both urban and agricultural best management practices (BMPs) to reduce total discharges of a pollutant into a watershed. By targeting nonpoint sources of phosphorus into a watershed, it is expected that a point source would be able to more cost-effectively reduce total pollutant discharges in a watershed as compared to facility improvements. Under the MDV, the amount of phosphorus reduction is required to be at least as much as the difference between the point source's actual phosphorus contributions and the level it would be expected to reach to meet effluent limits.

3. The proposed funding would support BMPs related to preventing and reducing both urban and agricultural nonpoint source water pollution under AM programs. Under current law, DNR and the Department of Agriculture, Trade and Consumer Protection administer a number of programs that provide cost-share grants and technical assistance to landowners and municipalities to limit nonpoint pollution. While many of these programs seek to implement the same BMPs, current law excludes WPDES-permitted facilities from most such funding. The administration indicates that the proposed program would provide financial assistance to point sources to support AM activities under a WPDES permit, which are the same activities that other landowners, as well as municipalities in

general, implement with cost-share funding. Further, while municipal point sources are eligible for clean water fund financial assistance programs related to implementing facilities upgrades to reduce effluent in their point source discharge, limited programs are available for municipal sewage treatment facilities or industrial dischargers to reduce phosphorus through nonpoint abatement activities.

4. DNR estimates approximately 400 municipal wastewater treatment facilities and other industrial dischargers face phosphorus limits. While some facilities are still in planning stages related to their permits, DNR reports 20 have already selected AM, and estimates approximately 25 more will in the next five years. Of the 20 facilities that have already selected AM, DNR reports 15 have approved plans and would be ready to use funding under this proposal. Considering that half of facilities expected to participate in AM activities in the next five years are not currently ready to receive funding, the Committee could consider providing \$2 million in bonding authority, and consider further allocations under subsequent budget legislation (Alternative A2).

5. Currently, while WPDES-permitted dischargers conduct AM activities in a watershed, they do so alongside other non-permitted landowners and municipalities that receive cost-share assistance for the same types of practices that have the same intended effect. For agricultural BMPs, cost-sharing is generally offered at a 70% state match, while urban BMPs are generally offered a 50% state match. Under the bill, no grantee match is required, and DNR could provide grants that fully fund the cost of AM by WPDES-permitted dischargers. Given that current law requires point source dischargers to implement conservation activities without cost-share assistance while other nonpoint participants that implement the same conservation practices for the same purposes receive cost-sharing, it could be considered appropriate to specify the same cost-share rates for municipal point sources as well. To provide uniformity in state funding for nonpoint abatement activities across programs, the Committee could consider specifying the proposed program require a 30% non-state match from grantees for funding that supports agricultural BMPs, and 50% match from grantees for funding that supports urban BMPs, consistent with other state nonpoint grant programs (Alternative A4). Conversely, subsequent rulemaking by DNR as required under the bill could establish cost-share rates for the proposed grants.

6. Under the bill, counties and municipalities would be eligible to receive funding for projects that improve water quality in watersheds with a federally approved TMDL. As noted previously, the administration intends for funding to be directed toward municipal wastewater treatment facilities that are seeking to implement AM practices as part of their WPDES permit. Under the bill, these facilities would be eligible to receive funding. However, as the bill provides that funding may be directed toward municipalities and counties in general, it is possible that DNR could allocate funding to projects not related to AM activities under WPDES permits. Given that municipalities and counties are currently eligible for financial assistance related to implementation of nonpoint pollution abatement through other DNR and DATCP programs, the Committee could consider specifying that only WPDES-permitted entities would be eligible for funding under this provision (Alternative A5).

7. The debt service on bonds issued under this provision would be supported by the water resources account of the conservation fund (Alternative A3a). On June 30, 2018, the account had an available balance of approximately \$1.3 million. Under the bill, revenues to the water resources account would increase beginning in 2020-21 due to increases in the motor fuel tax. Further, the bill

proposes increases of approximately \$1.5 million each year to lake and river protection grants, as discussed in a separate issue paper entitled "Lake and River Protection Grants." If current law revenues were maintained, with no increases to the motor fuel tax, and lake and river protection grants were not increased, the water resources account would be expected to have a balance of approximately \$29,700 at the end of 2020-21. Considering the available balance of the water resources account, the Committee could consider specifying a different funding source to support debt service.

8. The administration reports it chose to support bonding with water resources account SEG because TMDLs are impacted by both point and nonpoint source pollution. However, nonpoint source pollution abatement programs historically have been supported by general purpose revenues (GPR) and SEG revenue from the nonpoint account of the environmental fund. Given that funding would support nonpoint conservation practices, the Committee could consider specifying that bonding would be supported by the nonpoint account (Alternative A3b). However, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021. The Committee could also consider supporting bonding with GPR (Alternative A3c).

9. The proposed program would effectively provide financial assistance to such facilities as municipal sewerage works who otherwise would use rates for service to cover the cost of required plant upgrades and AM activities under the new phosphorus standards. While point source dischargers face financial constraints to meeting statewide phosphorus standards, it could be considered appropriate that costs are borne by dischargers. By imposing pollution abatement requirements on dischargers of phosphorus, DNR is able to capture the cost to the environment of phosphorus pollution. Thus, when customers of point source dischargers pay fees associated with the discharger's service, they are covering the actual cost of such pollution, rather than passing part of that cost on to others in the watershed who would experience negative effects associated with excess phosphorus. If the Committee took no action (Alternative A6), it is expected the cost of implementing phosphorus pollution controls would continue to be passed on to customers or ratepayers creating the costs associated with that pollution.

B. Grants Administration Position

10. The administration indicates the proposed position would assist in implementation of the TMDL implementation grant program as well as address increased workload associated with proposed increases to the lake and river protection grants, as discussed in a separate paper. Activities would include program management of the TMDL implementation grant program, policy development, and management of other grant administration staff. Information from DNR and the administration suggests perhaps 75% of the position activities would be associated with TMDL implementation and 25% with lake and river protection grants. Considering the increased workload associated with creating a new grant program and administering funding for additional lake and river protection grants, the Committee could consider approving the position (Alternative B1), or providing 0.75 position to reflect work associated with the TMDL implementation grant program (Alternative B2). The Committee could also take no action (Alternative B3).

ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

A. Total Maximum Daily Load Implementation Grant Program

1. Adopt the Governor's proposal to provide \$4,000,000 in general obligation bonding for water pollution control infrastructure grants. Specify that bonding revenues (BR) would support grants to municipalities and counties for infrastructure projects that control water pollution in watersheds with a federally approved TMDL. Require DNR to promulgate rules for the administration of these grants.

ALT A1	Change to	
	Base	Bill
BR	\$4,000,000	\$0

2. Modify the Governor's proposal by providing \$2,000,000 in general obligation bonding for water pollution control infrastructure grants.

ALT A2	Change to	
	Base	Bill
BR	\$2,000,000	- \$2,000,000

3. In addition to Alternative 1 or 2 above, create an appropriation for debt service payments and specify that bonding be supported by:

a. The water resources account of the conservation fund (SEG-CON).

ALT A3a	Change to	
	Base	Bill
SEG-CON	\$41,600	\$0

b. The nonpoint account of the environmental fund (SEG-ENV).

ALT A3b	Change to	
	Base	Bill
SEG-ENV	\$41,600	\$41,600
SEG-CON	<u>0</u>	<u>- 41,600</u>
Total	\$41,600	\$0

c. GPR.

ALT A3c	Change to	
	Base	Bill
GPR	\$41,600	\$41,600
SEG-CON	<u>0</u>	<u>- 41,600</u>
Total	\$41,600	\$0

4. Specify that TMDL implementation grants require the grantee provide a non-state match of 30% for state funding that supports agricultural best management practices, and 50% for state funding that supports urban best management practices. (This alternative could be moved in addition to any of the other alternatives.)

5. Specify that recipients of TMDL implementation grants must be WPDES permitted wastewater treatment facilities. (This alternative could be moved in addition to any of the other alternatives.)

6. Take no action.

ALT A6	Change to	
	Base	Bill
BR	\$0	\$4,000,000
SEG-CON	\$0	- \$41,600

B. Grant Administration Position

1. Adopt the Governor's proposal to provide 1.0 position with \$76,600 annually in a conservation fund (split-funded) operations appropriation for implementation and grant management activities associated with the TMDL implementation grant program, and the lake and river protection grant programs.

ALT B1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$153,200	1.00	\$0	0.00

2. Provide 0.75 position with \$57,500 in a conservation fund (split-funded) operations appropriation for implementation and grant management activities associated with the TMDL implementation grant program.

ALT B2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$115,000	0.75	- \$38,200	- 0.25

3. Take no action.

ALT B3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
SEG	\$0	0.00	-\$153,200	- 1.00

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May, 2019

Joint Committee on Finance

Paper #529

Concentrated Animal Feeding Operation Fees and Regulatory Positions (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 304, #6 and Page 305, #7]

CURRENT LAW

The federal Clean Water Act requires the Environmental Protection Agency (EPA) to regulate point source dischargers of pollutants into waters of the United States. Under a 1974 memorandum of understanding with EPA, the Department of Natural Resources (DNR) is delegated regulatory authority to enforce national water pollution standards in Wisconsin. Under this authority, DNR regulates concentrated animal feeding operations (CAFOs) as point sources of discharges with Wisconsin Pollutant Discharge Elimination System (WPDES) permits issued under s. 283.31 of the statutes. CAFOs are defined as large-scale animal feeding operations of 1,000 animal units or more and some smaller operations with certain discharges of pollutants into state waters. Measurement in animal units adjusts for the relative size and manure production of different animals, with 700 dairy cows, 1,000 beef cattle, and 125,000 broiler chickens each approximating 1,000 animal units.

CAFO permittees currently pay a fee of \$345 annually. Of this amount, \$250 is deposited into the general fund as general purpose revenue (GPR) and \$95 is deposited into a program revenue (PR) appropriation for management of the state's water resources. DNR is required to report annually to the Joint Committee on Finance and the Legislature's agricultural and environmental standing committees on how these PR funds are used. Permits are issued with five-year terms, and DNR reports 305 permitted CAFOs as of April 1, 2019.

In 2018-19, CAFO permitting oversight is budgeted 22.0 positions and \$2,168,700, consisting of 8.5 GPR, 9.5 segregated (SEG) environmental fund (nonpoint account), 2.0 environmental improvement fund (EIF) SEG, and 2.0 federal (FED) positions, with associated funding of \$861,300 GPR, \$913,800 nonpoint SEG, \$174,800 EIF SEG, and \$218,800 FED.

GOVERNOR

Increase the fee paid by WPDES permit holders that operate CAFOs from \$345 annually to \$660 annually, and establish a fee of \$3,270 upon initial issuance of a permit and every five years thereafter. Create a PR continuing appropriation within the Division of External Services to receive the five-year \$3,270 fee and \$315 of the annual \$660 fee. Provide 5.0 positions within this continuing appropriation, and estimate its expenditures at \$425,000 each year during the biennium.

Modify the current requirement that \$95 of the annual CAFO permit fee be deposited into a PR appropriation within the Division of Environmental Management, and instead require its deposit into a Division of External Services PR appropriation separate from the PR appropriation created under the bill.

DISCUSSION POINTS

A. Regulatory Positions

1. DNR reports that on January 1, 2019, there were 304 permitted CAFOs in Wisconsin. Since 2000, the Department reports that each year an average of 15 new CAFO permits were issued, and one was discontinued, and it expects this trend to continue. Thus, it is anticipated there will be approximately 318 active permits at the end of 2019, and 332 at the end of 2020.

2. Table 1 shows permitted CAFOs and the resulting staff ratio since 2005. Permit data in the table reflects active permits as of January 1 each year. Historically, DNR has not comprehensively tracked positions dedicated to CAFO regulation. The data provided in the table reflects approximate allocations of staff based on available internal DNR tracking of staffing assignments, generally reflecting calendar year totals. Staff levels since 2016 reflect officially designated staff by fiscal year.

3. Regulatory staffing dedicated to CAFOs was last increased under 2017 Wisconsin Act 59, which provided an additional 2.0 EIF SEG positions. The Governor's proposal provides an additional 5.0 PR positions for CAFO regulation. DNR reports it would allocate the positions as follows: (a) 0.5 hydrogeologist and 0.5 compliance enforcement coordinator as central office staff, expanding existing 0.5 hydrogeologist and 0.5 compliance enforcement coordinator to full-time; (b) 1.0 central intake position in the central office; (c) 1.0 spills response coordinator split into four 0.25 positions associated with field staff in each of the regional offices; and (d) 2.0 field staff.

4. In response to the Legislative Audit Bureau's 2016 audit of wastewater permitting and enforcement at the DNR, the Department reported that in order to accomplish required work related to CAFO regulation, it would require a permit-to-field-staff ratio of 20:1. The Department reports this number continues to be its goal for CAFO regulatory staff levels. The proposed allocation of three field staff would result in a permit-to-staff ratio of approximately 20:1 during the 2019-21 biennium. The administration indicates the proposed amount of 5.0 staff was chosen to accomplish this goal. DNR reports that additional field staff would allow it to more frequently inspect operations, increase interactions with permittees, proactively address issues, and avoid permit noncompliance and resulting enforcement actions. DNR also notes that hiring additional staff would allow for workloads

that are more manageable and improve staff retention, allowing it to reduce costs associated with recruitment, training, and managing new staff. DNR expects greater staff retention would improve program consistency.

TABLE 1
CAFO Positions and Permits by Year

<u>Year</u>	<u>Active Permits^a</u>	<u>Regulatory Staff</u>			<u>Ratio of Permits to Field Staff</u>
		<u>Central Office</u>	<u>Field</u>	<u>Total</u>	
2005	135	3.0	8.0	11.0	16.9
2006	147	3.0	8.0	11.0	18.4
2007	159	3.0	9.0	12.0	17.7
2008	169	5.0	10.0	15.0	16.9
2009	180	5.0	10.5	15.5	17.1
2010	189	5.0	10.5	15.5	18.0
2011	212	5.0	10.5	15.5	20.2
2012	248	5.0	10.5	15.0	23.6
2013	251	6.0	10.0	16.0	25.1
2014	262	6.5	10.5	17.0	25.0
2015	267	6.5	10.5	17.0	25.4
2016	279	7.5	12.5	20.0 ^b	22.3
2017	289	7.5	12.5	20.0 ^b	23.1
2018	298	8.5	13.5	22.0 ^b	22.1
2019	304	8.5	13.5	22.0 ^b	22.5
2020	318 ^c	10.5 ^d	16.5 ^d	27.0 ^b	19.3
2021	332 ^c	10.5 ^d	16.5 ^d	27.0 ^b	20.1

^a Permits totals are as of January 1.

^b Fiscal year actual and proposed staffing. Staff totals prior to 2016 approximately reflect calendar years.

^c Estimated permitted CAFOs.

^d DNR anticipated allocation.

5. The Department reports that increasing its hydrogeologist from half-time to full-time would allow it to increase its efforts to evaluate and avoid potential groundwater impacts associated with CAFOs. Similarly, expanding the compliance enforcement coordinator to full-time would increase the Department's capacity to standardize and improve CAFO compliance efforts across regions.

6. DNR intends for the 1.0 spills response coordinator to be split into four 0.25 positions housed in each field office. DNR reports this would give each office the technical skills and expertise to lead manure spill response within each district, including outside regular business hours. Housing staff in each field office would allow faster and more robust responses to manure spill events, and reduce the impact of spills on water quality and public health. Further, additional staff would address increased need to respond to spills, which have occurred more frequently in recent years, as shown in

Table 2. DNR tracks data related to spill volume as it is available. Thus, the third column of the table represents known spill volume measured in gallons, but is not intended to be comprehensive.

TABLE 2

Reported Manure Spills

<u>Year</u>	<u>Spills</u>	<u>Gallons*</u>
2007	38	302,900
2008	49	895,500
2009	41	550,400
2010	54	329,800
2011	52	383,900
2012	37	204,500
2013	60	1,378,300
2014	85	2,175,800
2015	49	83,100
2016	68	2,447,600
2017	92	869,300
2018	<u>101</u>	<u>380,000</u>
Total	726	10,001,100

*Reflects known spill volumes and is not intended to be comprehensive.

7. The 1.0 central intake position would facilitate and improve DNR review of permit applications, including ensuring that required materials are submitted and properly completed, collaborating with permittees and their consultants, and assisting technical staff in reviewing applications to limit delays in the permitting process. DNR reports that central intake efforts are currently split among four positions that experience frequent turnover, which requires continued training of staff on these duties. Consolidating these duties and centralizing them could allow DNR more continuity in permit review, reduce its permit backlog by providing faster review of permits, and provide permittees with more consistency in their interactions with DNR.

8. EPA staff have noted that the size of a state's permit backlog is one indicator of how well its wastewater permit program is administered. In its audit, LAB reported that DNR has established a goal of a permit backlog of no more than 15% of CAFO permits, and EPA staff believe that the 15% goal is reasonable. Table 3 shows the Department's CAFO permit backlog since 2005. The permit backlog has grown in recent years to 20.3% as of May, 2019. DNR reports that the following factors affect the variation in the permit backlog: (a) number of permits expiring in a year; (b) availability of staff to review permits; (c) the number of existing facilities not in substantial compliance, meaning they do not meet current permit conditions, which prevents DNR from reissuing their permit. Additional office staff dedicated to permit review would be expected to reduce the permit backlog.

TABLE 3

CAFO Permit Backlog

<u>Year*</u>	<u>Backlog</u>
2005	13.6%
2006	13.2
2007	10.4
2008	13.6
2009	11.9
2010	13.5
2011	13.7
2012	15.1
2013	15.4
2014	9.9
2015	9.9
2016	17.2
2017	24.9
2018	21.8
2019	20.3

*As of July, except 2019, which is as of May.

9. DNR argues that investment in spills coordination, hydrogeology, permit compliance and intake, and field staff are necessary for its CAFO program and its efforts to protect water quality. By increasing staffing for water impacts evaluation, spills mitigation, and permit noncompliance, the Department argues it would be able to provide adequate oversight of CAFOs. Additionally, it argues that additional permit intake and field staff would improve its ability to meet the regulated community's need for responsiveness to permit applications and compliance issues.

10. As the number of permitted CAFOs in Wisconsin increases, DNR regulatory staff become responsible for increased volume of inspections, permit reviews, and enforcement actions. DNR reports that this results in: (a) reduced frequency of compliance inspections, and a reduction or elimination of manure hauling compliance checks; (b) reduced maintenance-of-compliance efforts, which allow permittees to proactively address issues and reduce the need to impose enforcement actions; (c) reduced review of annual reports submitted by permitted operations; (d) reduced information and education efforts, such as DNR staff involvement in annual CAFO workshops; and (e) increased permit backlogs. Thus, DNR argues, continued supplementation of field and central office staff allows the Department to proactively address compliance issues, reduce the need for enforcement actions, and reduce its backlog of permits.

11. The 2016 LAB audit provided DNR a number of recommendations relating to CAFO regulation and permitting. Among other recommendations, LAB recommended that the Department: (a) reduce its permit review backlog; (b) improve the frequency of its inspections; and (c) assess regional variation in CAFO enforcement and train staff to increase enforcement consistency. The expected duties of proposed staff, as outlined by DNR, would intend to address these

recommendations.

12. Currently, the Department of Agriculture, Trade, and Consumer Protection (DATCP) is charged with providing farmers assistance in implementing soil and water conservation standards. As part of this duty, it provides county land and water conservation departments annual grants to cover costs associated with county conservation staff. During the 2017-19 biennium, DATCP was provided \$8,964,100 annually, consisting of \$5,936,900 nonpoint SEG and \$3,027,200 GPR, for these purposes. DATCP reports that in 2018, county conservation staff totaled 364. Of these 364, 112 were funded by DATCP, 211 were funded by counties, and 41 were funded by other sources. The Governor's proposal increases funding for county conservation staffing grants, as discussed in a separate issue paper entitled "County Conservation Staffing."

13. One of the eligible activities for county conservation staff funding is conservation practice engineering, design, and installation. County conservation staff provide technical support to farmers seeking to construct conservation projects, such as manure storage facilities, barnyard runoff control systems, and other agricultural best management practices. At the statewide level, DATCP's Bureau of Land and Water Resources supports these staff. DATCP employs 10 engineers and specialists to: (a) help local staff design and install structures; (b) train local staff to review plans; (c) develop and maintain best management practice standards; (d) develop standard designs for structures; and (e) train and certify local staff to be conservation engineering practitioners.

14. DNR reports that it regularly collaborates with county conservation staff on issues related to CAFOs. DNR staff tasked with review of engineering plans and permits work with county staff during permit review, although DNR notes the extent and type of interaction varies depending on the expertise and capacity of local staff. Further, county staff are involved in on-site oversight of construction projects at CAFOs. DNR also works with county staff in event of emergencies, like manure spills. DNR reports it has seen a significant decrease in recent years in assistance provided by county conservation staff to CAFOs, noting that most CAFOs rely on private consultants for engineering, design, and planning related to CAFO permitting requirements.

15. While DATCP and local conservation staff provide support related to engineering of agricultural best management practices and implementation of nonpoint standards, DNR's federally delegated regulatory authority require it to lead enforcement activities related to CAFOs. Activities related to review of permit applications, facility inspection, and enforcement actions are based on DNR administrative rules and statutory authority developed to meet federal standards and approved by EPA for that purpose.

16. Considering the growing number of permitted CAFOs in Wisconsin, the increasing rate and volumes of manure spills, a permit backlog above EPA accepted levels, and deficiencies in CAFO permitting activities identified by LAB, the Committee could consider adopting the Governor's proposal to provide an additional 5.0 CAFO regulatory staff supported by PR (Alternative A1), or a variety of other fund sources (Alternative A2). Given that the Governor's proposal provides funding sufficient to support only 4.0 positions, as discussed in a subsequent section, the Committee could consider providing 4.0 CAFO regulatory staff from PR (Alternative A3), or a variety of other fund sources (Alternative A4). Given concerns about availability of funding, as discussed in the next section, the Committee could also consider taking no action (Alternative A5).

B. Fees and Funding Structure

17. The Governor's proposal would increase the annual CAFO permit fee from \$345 to \$660, and establish a five-year fee of \$3,270 paid upon issuance and renewal of permits (Alternative B1a). The administration indicates that the proposed fee levels for annual and five-year fees were chosen to generally reflect an equal balance in revenues between total annual fees (\$660) and the five-year fee (an average of \$654 annually). Further, the administration indicates it proposed a five-year initial issuance and renewal fee to reflect the additional work associated with (re)issuing a permit, which can include review of permits for completeness, compliance with design specifications, environmental analysis, and administration of public notice and comment. The Committee could consider a five-year and annual fee (Alternative B1a or B2a).

18. Although a five-year fee captures initial costs of issuing permits, periodic permit fees could result in additional complexity for permittees, with payments varying year to year. If the Committee wished to assess a consistent annual fee, it could consider establishing an annual fee that smooths these fee amounts (Alternative B1b or B2b).

19. As part of their permit, CAFOs are required to report the number of animal units they keep. As of May, 2019, DNR reports CAFO facilities kept approximately 900,000 animal units, with the average CAFO keeping approximately 2,900 units, and the median CAFO keeping approximately 2,000 units. Due to their size and complexity, CAFOs with more animal units would be expected to require more staff time associated with both permit application review, and inspection and enforcement activities. Establishing a fee based on animal units would result in fees that are more proportional to the cost of regulating each entity. Further, as CAFOs increase in size, the amount of manure and wastewater produced also increases. Because measurement in animal units reflects the relative size and manure production of different animals, a fee per animal unit would allow DNR to link fees to the expected manure production and wastewater discharge of an operation, and thus the expected environmental impact of the operation. As a result, operations with larger potential environmental impacts would contribute more towards DNR regulatory efforts intended to prevent and reduce any environmental impacts of CAFOs. Given the relatively increased regulatory cost and potential environmental impact of CAFOs with more animal units, the Committee could consider assessing CAFO fees based on animal unit size on the date of (re)issuance of a permit (Alternatives under B1c or B2c).

20. It is estimated the Governor's proposed fee increases would produce an additional \$315,000 annually during the biennium (Alternatives under B1). Thus, revenues under the Governor's proposal would not cover the proposed 5.0 PR positions and \$425,000 PR annually, although they could support 4.0 positions. If the Committee wished to cover the cost of the proposed 5.0 positions, it could consider establishing revenues of \$425,000 annually (Alternatives under B2).

21. Regulatory fees are often assessed on regulated entities to cover the state's costs associated with their oversight and regulation. For example, the Department of Safety and Professional Services, Department of Financial Institutions, and Public Service Commission are all largely funded by program revenue assessments on the entities that they are charged with regulating. While the Governor's proposal intends to fund additional CAFO staff entirely with increased fees, CAFOs are not currently charged fees that cover their cost of regulation. As noted previously, staff

costs associated with directly with CAFO regulation, excluding administrative and other Departmental supplies and services costs associated with staff, totaled \$2,168,700 in 2018-19 from GPR, PR, SEG, and FED sources. A fee structure sufficient to raise the approximately \$2,600,000 annually necessary to fully fund current and proposed CAFO staff would require an annual fee of \$8,000 or \$2.90 annually per animal unit.

22. Conversely, given that CAFOs do not currently cover their cost of regulation, the Committee could consider providing an alternative source of funding for proposed increases to regulatory staff. Most CAFO regulatory staff are supported by either GPR (8.5 positions) or nonpoint SEG (9.5 positions). The Committee could consider providing proposed staff as GPR (Alternative B3a or B4a), nonpoint SEG (Alternative B3b or B4b), or half of each (Alternative B3c or B4c).

23. While the Committee could consider using nonpoint account SEG to cover some or all of proposed costs associated with the proposed positions, without other action by the Committee, the nonpoint account balance would not be sufficient to support such expenditures. Under the bill, it is expected the nonpoint account of the environmental fund would have authorized expenditures that exceed anticipated revenues by approximately \$7.7 million annually during the 2019-21 biennium. Further, on June 30, 2018, the account had a closing cash balance of \$11.1 million and an available (unencumbered) balance of \$5.9 million. Thus, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021.

24. In addition to other fee changes, the Committee could consider incorporating 2019 Assembly Bill 69/Senate Bill 31, which would specify that the current \$250 from each annual CAFO permit fee deposited into the general fund be deposited into a separate PR account dedicated to CAFO regulation. The bill is intended to allow fees paid by CAFOs to support regulatory efforts associated with CAFOs. Proponents argue the bill would support additional staff and regulatory activities at DNR related to CAFOs, in order to reduce permit backlogs and improve inspection efforts. If the Committee wished to specify that existing CAFO fee revenue be directed for use in regulating CAFOs, it could convert the GPR portion of the fee to PR (Alternatives under B5).

25. As written, the bill does not specify the initial applicability of the five-year fee for CAFOs. The administration reports that for existing CAFOs, it intended that DNR assess the fee upon reissuance of their permit. However, bill language could be construed to allow DNR to assess the fee on all CAFOs upon the effective date of the bill, and every five years thereafter. The Committee could consider specifying that the five-year fee apply upon renewal of a CAFO's permit for existing operations, which would avoid unanticipated costs for existing operations. (This language is incorporated as part of alternatives offering a five-year fee.)

C. Appropriation Structure and Reporting Requirements

26. Current law specifies that of the \$345 annual CAFO fee, \$250 be deposited into the general fund and \$95 be deposited into a program revenue appropriation [s. 20.370 (4)(mi)] under the Division of Environmental Management dedicated to environmental quality and management of the state's water resources. Further, current law requires DNR report annually to the Joint Committee on Finance and the Legislature's agricultural and environmental standing committees on how these PR

funds are used.

27. The bill would create a new PR continuing appropriation [s. 20.370(9)(ag)] within the Division of External Services for receipt of the newly proposed and increased fees. At the same time, it would transfer deposit of the existing \$95 PR fee from its appropriation in the Division of Environmental Management [(4)(mi)] to the equivalent appropriation in the Division of External Services [s. 20.370(9)(mi)]. DNR transferred CAFO regulatory duties to the Division of External Services under its 2017 reorganization, and transfer of this \$95 fee to the Division of External Services is considered a technical fix related to this transfer. However, the bill omits transfer of reporting requirements related to the \$95 fee to the Division of External Services appropriation [(9)(mi)]. The administration reports it intended to transfer this reporting requirement as well.

28. Under the bill, the appropriation receiving the \$95 annual CAFO fee in the Division of External Services [(9)(mi)] receives other miscellaneous PR funding, and has broad authorization for expenditure of moneys received. While not expected, it is possible that DNR could expend CAFO fees from this appropriation on other Division of External Services activities.

29. The bill would result in deposits of CAFO fees into two separate PR appropriations [(9)(mi) and (9)(ag)], and it would delete requirements related to reporting of expenditures on PR CAFO fees [assigned to (4)(mi)]. If the Committee wished to simplify administration of CAFO PR fees and restrict use of CAFO PR solely to regulation of CAFOs, it could create a new PR continuing appropriation within the Division of External Services, and specify that all program revenue received from CAFO fees be deposited into the appropriation (Alternative C2). The Committee could also consider adopting the Governor's proposed appropriation structure for PR fees (Alternative C1). Further, if the Committee wished to retain the reporting requirement associated with use of these fees, it could require DNR to report annually to the Committee, and other standing committees concerned with agriculture and the environment, on the use of PR fees received from CAFO permittees (Alternatives under C4).

30. The bill transfers 9.5 nonpoint SEG positions and \$864,300 annually associated with CAFO regulation within the Division of External Services from its nonpoint source general program operations appropriation [s. 20.370(9)(mr)] to its environmental fund general program operations appropriation [s. 20.370(9)(mv)]. Funding was provided in the current appropriation as part of the 2017 reorganization, but subsequent review identified the appropriation does not have authorizing language sufficient to allow expenditure of funds for CAFO regulation. Thus, DNR reports it requested the transfer of funding to an appropriation [(9)(mv)] with language sufficiently broad to support the intended use of these funds. The environmental fund general program operations appropriation [(9)(mv)] generally supports administrative and management staff associated with environmental fund programs, and is not intended to support program staff. Further, increased activities, and resulting staff and funding, associated with CAFO regulation in recent years arguably justifies delineating CAFO regulation from other nonpoint general operations activities currently housed in the existing appropriation [(9)(mr)].

31. If the Committee wished to better align appropriation of the 9.5 nonpoint SEG positions and \$864,300 annually with their existing duties, and increase transparency related to CAFO regulatory funding, it could create a new nonpoint SEG appropriation, and transfer the funding and

positions to that appropriation (Alternative C3). The Committee could also consider adopting the Governor's proposal to transfer staff and funding to environmental fund general operations [(9)(mv)], and house CAFO staff with administrative and managerial staff (Alternative C1). In addition to either alternative, the Committee could also consider requiring DNR to report annually to the Committee, and other standing committees concerned with agriculture and the environment, on the expenditure of nonpoint SEG funds from the appropriation (Alternative C4c or C4d).

ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

A. Regulatory Positions

1. Provide 5.0 positions for CAFO regulatory staff, supported by PR. (This would adopt the Governor's proposal.)

ALT A1	Positions Change to Base Bill	
PR	5.00	0.00

2. Modify the Governor's proposal to instead support positions with:

ALT A2	Positions Change to Base Bill	
Specify Below	5.00	5.00
PR	<u>0.00</u>	<u>- 5.00</u>
Total	5.00	0.00

- a. GPR.
- b. Nonpoint SEG.
- c. 50% GPR and 50% nonpoint SEG.

3. Provide 4.0 positions for CAFO regulatory staff, supported by PR. (This amount would be supported by increased fee revenue proposed under the bill.)

ALT A3	Positions Change to Base Bill	
PR	4.00	- 1.00

4. Modify Alternative A3 above to instead support positions with:

ALT A4	Positions Change to Base Bill	
Specify Below	4.00	4.00
PR	<u>0.00</u>	<u>- 5.00</u>
Total	4.00	- 1.00

- a. GPR.
- b. Nonpoint SEG.
- c. 50% GPR and 50% nonpoint SEG.

5. Take no action.

ALT A5	Positions Change to Base Bill	
PR	0.00	- 5.00

B. Fees and Funding Structure

1. Authorize expenditures of \$315,000 PR annually, and establish revenues to generate the same amount, structured as one of the following. (This would produce the same revenue as proposed by the Governor and be sufficient to fund 4.0 positions.)

ALT B1	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
PR		\$630,000		- \$220,000
PR-REV	\$630,000		\$0	

- a. \$315 annually, and \$3,270 upon issuance of a permit and every five years thereafter. (This would adopt the Governor's proposal.) Further, specify that the five-year fee apply upon the next renewal of existing CAFO permits.
- b. \$970 annually.
- c. 35¢ per animal unit, based on the number of animal units authorized upon (re)issuance of the permit.

2. Authorize expenditures of \$425,000 PR annually, and establish revenues to generate the same amount, structured as one of the following. (This would produce revenue sufficient to

support the proposed 5.0 positions.)

ALT B2	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
PR		\$850,000		\$0
PR-REV	\$850,000		\$220,000	

a. \$480 annually, and \$4,130 upon issuance of a permit and every five years thereafter. Further, specify that the five-year fee apply upon the next renewal of existing CAFO permits.

b. \$1,305 annually.

c. 47¢ per animal unit, based on the number of animal units authorized upon (re)issuance of the permit.

3. Do not increase fees. Provide funding of \$425,000 annually consisting of:

ALT B3	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
Specify Below		\$850,000		\$0
PR		<u>0</u>		<u>- 850,000</u>
Total		\$850,000		\$0
PR-REV	\$0		- \$630,000	

a. GPR.

b. Nonpoint SEG.

c. \$212,500 GPR and \$212,500 nonpoint SEG, with positions split equally between GPR and nonpoint SEG.

4. Do not increase fees. Provide funding of \$315,000 annually consisting of:

ALT B4	Change to Base		Change to Bill	
	Revenue	Funding	Revenue	Funding
Specify Below		\$630,000		\$630,000
PR		<u>0</u>		<u>- 850,000</u>
Total		\$630,000		- \$220,000
PR-REV	\$0		- \$630,000	

- a. GPR.
- b. Nonpoint SEG.
- c. \$157,500 GPR and \$157,500 nonpoint SEG.

5. In addition to any of the above alternatives:

a. Delete the current law \$250 annual GPR fee. (When paired with alternatives under B1 or B2, this would have the effect of converting the fee to PR.)

ALT B5a	Change to	
	Base	Bill
GPR-REV	-\$81,300	-\$81,300

b. Convert the current law \$250 GPR fee to PR. (This could be moved in addition to alternatives B3 or B4.)

ALT B5b	Change to	
	Base	Bill
GPR-REV	-\$81,300	-\$81,300
PR-REV	<u>81,300</u>	<u>81,300</u>
Total	0	0

6. Take no action. Fees would remain at \$345 annually, consisting of \$250 GPR and \$95 PR.

ALT B6	Change to	
	Base	Bill
PR-REV	\$0	-\$630,000

C. Appropriation Structure and Reporting Requirements

1. Adopt the Governor's proposal to create a PR continuing appropriation [s. 20.370(9)(ag)] within the Division of External Services to receive newly proposed fees and increased fees under the bill, and transfer current law PR fees to the Division of External Services miscellaneous program revenue appropriation [s. 20.370(9)(mi)]. (This would not transfer reporting requirements on current law PR fees.)

2. Create a program revenue continuing appropriation within the Division of External Services for the purposes of regulating animal feeding operations under Chapters 281 and 283 of the statutes, and to receive PR fees paid by animal feeding operations under Chapter 283 of the

statutes. Specify that current law PR fees and any fee increase adopted in alternatives above be deposited into this appropriation.

3. Create a nonpoint SEG annual appropriation within the Division of External Services for the purposes of regulating animal feeding operations under Chapters 281 and 283 of the statutes.

4. Require the Department of Natural Resources to report annually to the Joint Committee on Finance, and other standing committees concerned with agriculture and the environment, on the expenditure of funds from any of the following appropriations. (This alternative could be moved into any other alternatives.)

a. The appropriation [s. 20.370(9)(ag)] created under Alternative C1, and the appropriation [s. 20.370(9)(mi)] proposed under the bill to receive existing CAFO PR fees.

b. The PR appropriation created under Alternative C2.

c. The nonpoint SEG appropriation created under Alternative C3.

d. The PR and nonpoint SEG appropriations created under Alternatives C2 and C3.

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May, 2019

Joint Committee on Finance

Paper #530

Nonpoint Source Water Pollution Funding (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 307, #10]

CURRENT LAW

The Department of Natural Resources (DNR) administers several grant programs to reduce or prevent nonpoint source water pollution. The targeted runoff management (TRM) program provides financial assistance to projects addressing water quality concerns or impairments, primarily in rural or agricultural settings. TRM projects are funded mostly through general obligation bonding revenues (BR), with debt service supported by the nonpoint account of the segregated (SEG) environmental fund. Additional program funds also come from nonpoint SEG and federal (FED) funds under Section 319 of the Clean Water Act. These fund sources also support grants under a companion program to TRM, which makes grants to animal feeding operations that have received a notice of discharge (NOD) or notice of intent (NOI) to issue a notice of discharge for animal waste runoff that has entered state waters.

GOVERNOR

Provide \$400,000 nonpoint SEG each year for nonpoint source water pollution abatement grants.

DISCUSSION POINTS

1. DNR reports that applications for TRM funding have declined during the 2017-19 biennium. The Department attributes this decrease with the current economic hardship faced by agricultural producers, noting that applicants and grantees are increasingly unable to pay the 30% cost share associated with state grants. It should be noted that a cost-share rate of 90% is available in

instances of economic hardship, and DNR reports it continues to encourage eligible applicants to utilize this option. However, it is possible that otherwise eligible grantees would still not pursue funding at a 90% rate, as other expenses were prioritized.

2. Effective January 1, 2020, small-scale TRM projects will be eligible for grants up to \$225,000 per project, up from \$150,000 currently. In the 2017-19 biennium, small-scale projects represented approximately 50% of TRM awards. DNR expects that the increase in the maximum grant award will increase demand for TRM funding. Further, DNR argues that recent nonpoint abatement efforts have increasingly focused on soil health practices, including cover crops and nutrient management planning, which cannot be supported by bond funding, and thus are supported by SEG.

3. The Wisconsin Constitution requires bonds be used for permanent improvements that benefit the state's waters. Therefore, practices such as cover crops, nutrient management planning, and strip cropping cannot be supported by bonding. Thus, the Department primarily uses nonpoint SEG for nonpoint source grants to encourage implementation of these "soft" practices. DNR funding provided for NOD/NOI grants is primarily used for regulatory action for more significant discharges or violations of performance standards. Since the state must offer 70% cost sharing to require implementation of most agricultural conservation practices, SEG, GPR, or FED has been a necessary component of the NOD/NOI grant program. Nonpoint SEG funding under current law and the bill allows DNR to offer cost sharing required for implementation of nonstructural practices as part of TRM and NOD/NOI grants. If the Committee chooses to take no action on nonpoint SEG funding for nonpoint source grants, it is unclear to what extent DNR would be able to meet minimum state cost-share requirements with other sources, such as federal Section 319 funding. Insufficient funding may limit corrective actions and the installation of certain practices necessary to abate nonpoint source water pollution.

4. It should be noted that increased SEG funding for nonpoint source grants would contribute to an anticipated shortfall in the nonpoint account during the next biennium. Under the bill, it is expected the nonpoint account of the environmental fund would have authorized expenditures that exceed anticipated revenues by approximately \$7.7 million annually during the 2019-21 biennium. Further, on June 30, 2018, the account had a closing cash balance of \$11.1 million and an available (unencumbered) balance of \$5.9 million. Thus, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021.

5. 2015 Wisconsin Act 55 converted nonpoint source grants from GPR-funded to nonpoint SEG funding and provided \$100,000 each year of the biennium on a one-time basis, and 2017 Wisconsin Act 59 subsequently restored nonpoint SEG funding of \$100,000 on a one-time basis. The Governor's proposal would provide funding on an ongoing basis, and at four times the amount of the previous two biennia. Given that previous allocations of nonpoint source grants were on a one-time basis, the Committee could consider continuing the practice (Alternative 5). Conversely, given that any provision of funding would represent a second extension of one-time funding, the Committee could consider providing funding on an ongoing basis.

6. Given the anticipated increased demand associated with a higher maximum grant and

increased focus on non-structural nonpoint practices, the Committee could consider the Governor's proposal (Alternative 1). Given concerns about limiting regulatory action and inability to fund non-structural practices, the Committee could also consider providing funding consistent with recent allocations of \$100,000 each year (Alternative 2). Given insufficient balances in the nonpoint account, the Committee could consider providing funding as GPR (Alternatives 3 or 4), or taking no action (Alternative 6).

ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

1. Adopt the Governor's proposal to provide \$400,000 nonpoint SEG each year for nonpoint source water pollution abatement grants.

ALT 1	Change to	
	Base	Bill
SEG	\$800,000	\$0

2. Provide \$100,000 nonpoint SEG each year for nonpoint source water pollution abatement grants.

ALT 2	Change to	
	Base	Bill
SEG	\$200,000	- \$600,000

3. Create a biennial GPR appropriation for nonpoint source water pollution abatement grants and provide \$400,000 GPR each year.

ALT 3	Change to	
	Base	Bill
GPR	\$800,000	\$800,000
SEG	<u>0</u>	<u>- 800,000</u>
Total	\$800,000	\$0

4. Create a biennial GPR appropriation for nonpoint source water pollution abatement grants and provide \$100,000 GPR each year.

ALT 4	Change to	
	Base	Bill
GPR	\$200,000	\$200,000
SEG	<u>0</u>	<u>- 800,000</u>
Total	\$200,000	- \$600,000

5. In addition to any of the above alternatives, specify that funding would be provided on a one-time basis during the 2019-21 biennium.

6. Take no action.

ALT 6	Change to	
	Base	Bill
SEG	\$0	- \$800,000

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May, 2019

Joint Committee on Finance

Paper #531

Nonpoint Source Contracts (Natural Resources--Environmental Quality)

[LFB 2019-21 Budget Summary: Page 307, #11]

CURRENT LAW

The Department of Natural Resources (DNR) is appropriated funds for contracts with entities providing research, education, and outreach related to nonpoint source water pollution abatement programs. DNR is appropriated \$767,600 each year in the 2017-19 biennium for these purposes, which includes \$267,600 in base funding and \$500,000 in one-time funding. Contracts are funded by the nonpoint account of the segregated (SEG) environmental fund.

GOVERNOR

Provide an additional \$730,000 nonpoint SEG each year in base funding for nonpoint source contracts. Funding would be budgeted at \$997,600 each year.

DISCUSSION POINTS

1. 2015 Wisconsin Act 55 reduced base funding for nonpoint source contracts from \$997,600 to \$227,600 each year. However, Act 55 provided one-time funding of \$770,000 each year in the 2015-17 biennium, and 2017 Wisconsin Act 59 provided \$40,000 each year in base funding plus \$500,000 in one-time funding for the 2017-19 biennium. The provision would restore funding to the level provided on an ongoing basis between 2003-04 and 2014-15, and on a one-time basis during the 2015-17 biennium.

2. Nonpoint source contracts have typically funded projects at the UW-Extension and UW System institutions. Prior to Act 59, DNR was required to allocate \$500,000 in each fiscal year for educational and technical assistance provided by UW-Extension, which supported the UW-Extension

Natural Resources Educator (NRE) program. Although Act 59 repealed the UW-Extension required allocation, DNR continued funding the program in the 2017-19 biennium. Other projects receiving funding in recent biennia include groundwater studies focusing on Kewaunee County and farmer-led conservation initiatives. The following table shows DNR allocations for nonpoint source contracts in the 2017-19 biennium.

2017-19 Nonpoint Source Contracts

<u>Project Name</u>	<u>Project Sponsor</u>	<u>2017-18</u>	<u>2018-19</u>
Natural Resources Educators (NRE)	UW-Extension	\$300,000	\$300,000
SnapPlus Nutrient Management Software Development and Update	UW-Madison	180,000	180,000
Nonpoint Source BMP Effectiveness Evaluations	U.S. Geological Survey	130,000	130,000
Nonpoint Source Best Management Practices (BMP) Tracking Tool	Dragon Technology	30,000	75,000
Standards Oversight Council	Wisconsin Land and Water Conservation Association	42,000	42,000
"Nine Key Elements" Water Quality Plan Development	County Land Conservation Departments	65,600	20,600
Center for Land Use Education (CLUE)	UW-Stevens Point	<u>20,000</u>	<u>20,000</u>
Total		\$767,600	\$767,600

3. DNR has not made final decisions as to which research topics or other nonpoint-related projects would be funded in the 2019-21 biennium. The Department reports allocation decisions are subject to final appropriations by the Legislature, program need, and proposals received by contractors.

4. DNR indicates groundwater and bedrock mapping projects may be priority areas of research, should funding be available. Specifically, DNR has suggested additional efforts to map the depth to bedrock in northeastern Wisconsin, which the Department expects would aid implementation of new standards regulating manure application on Silurian bedrock promulgated in 2018 under administrative code Chapter NR 151. DNR expects more detailed mapping will assist with implementing standards in appropriate locations. Additionally, DNR expects research may focus on whether the NR 151 standards warrant extension to other areas of the state with sandy soils, which may be susceptible to groundwater contamination.

5. Nonpoint contracts provide the basis for nonpoint grant allocations and regulatory standards. Funding provided for technical assistance and best management practices development allows for consistent implementation of nonpoint standards and helps to ensure the effectiveness of

the approximately \$24 million in annual nonpoint grants. Further, research and monitoring activities allow DNR to respond to emerging nonpoint source water pollution issues and develop targeted regulatory standards that prevent and reduce nonpoint pollution and improve water quality. Given the impact nonpoint contracts have on nonpoint standards implementation and development of regulatory standards, the Committee could consider approving the Governor's recommendation (Alternative 1).

6. Under the bill, it is expected the nonpoint account of the environmental fund would have authorized expenditures that exceed anticipated revenues by approximately \$7.7 million annually during the 2019-21 biennium. Further, on June 30, 2018, the account had a closing cash balance of \$11.1 million and an available (unencumbered) balance of \$5.9 million. Thus, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021.

7. Given insufficient balances in the nonpoint account, the Committee could consider providing an additional \$500,000 each year, which would continue total funding at the amount provided in the 2017-19 biennium (Alternative 2), or taking no action (Alternative 4). The Committee could also consider providing funding on a one-time basis in the 2019-21 biennium (Alternative 3). This would limit the commitment of nonpoint account funding in the biennium, and subsequent appropriations could be considered in 2021-23 budget deliberations.

ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

1. Adopt the Governor's recommendation to provide an additional \$730,000 nonpoint SEG each year, for a total of \$997,600 each year.

ALT 1	Change to	
	Base	Bill
SEG	\$1,460,000	\$0

2. Provide an additional \$500,000 nonpoint SEG each year, for a total of \$767,600 each year.

ALT 2	Change to	
	Base	Bill
SEG	\$1,000,000	-\$460,000

3. Specify that additional funding be provided on a one-time basis during the 2019-21 biennium. (This alternative could be moved in addition to Alternatives 1 or 2.)

4. Take no action. Nonpoint contracts would be provided \$267,600 each year during the 2019-21 biennium.

ALT 4	Change to	
	Base	Bill
SEG	\$0	- \$1,460,000

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May, 2019

Joint Committee on Finance

Paper #532

Well Compensation Grant Program (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 307, #12]

CURRENT LAW

The well compensation grant program was created in 1984 to provide financial assistance for replacing, reconstructing, or treating contaminated wells that serve certain private residences or are used for watering livestock. Grants can also pay costs of well abandonment. The Department of Natural Resources (DNR) determines that the well meets certain eligibility criteria related to contamination from substances such as chemicals, heavy metals, volatile organic compounds, industrial solvents, gasoline, fuel oil, paint, and pesticides. Under certain circumstances, eligibility includes contamination from arsenic, livestock fecal bacteria, or nitrates. Grant recipients must have family income that does not exceed \$65,000. The maximum for eligible costs is \$16,000 and the grant is 75% of eligible costs, equaling a maximum grant of \$12,000. Grant recipients must pay a \$250 copayment, unless the grant is for well abandonment.

The program is funded from a continuing appropriation in the segregated (SEG) environmental management account of the environmental fund, which means appropriated unexpended funds are carried forward for expenditure in subsequent years. The program is appropriated \$200,000 SEG in 2018-19, and in addition had an available carry-in balance of \$653,500 from 2017-18. Any funds not spent in 2018-19 will carry forward and be available for expenditure in 2019-20.

GOVERNOR

Make the following changes in the well compensation grant program:

- a. Increase the maximum annual family income of the landowner or lessee of the

property on which the contaminated well is located from \$65,000 to \$100,000.

b. Delete the requirement that the grant is reduced by 30% of the amount by which the claimant's family income exceeds \$45,000. Maintain the requirement that a project's maximum eligible costs is \$16,000. Maintain the requirement that the maximum award would be 75% of eligible costs, which is \$12,000. Under the bill, any eligible applicants with income up to \$100,000 who have the maximum eligible costs of \$16,000 would receive the maximum grant of \$12,000.

c. As an exception to providing an award of 75% of eligible costs, authorize (but do not require) DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median family income for the state, as determined by the U.S. Bureau of the Census. Maintain the current requirement that the claimant pay a \$250 copayment unless the claim is solely for well abandonment. (According to the U.S. Census Bureau American FactFinder, the estimated 2017 Wisconsin median family income was \$72,542.)

d. Delete the current requirement that if a claim is based on contamination by nitrates and not by any other substance, DNR may make a well compensation award only if the well: (1) is used as a source of drinking water for livestock or for both livestock and a residence; (2) is used at least three months of each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock; and (3) produces water containing nitrates exceeding 40 parts per million (ppm) nitrate nitrogen. This would make residential wells that are not also used to water livestock, and that have nitrate contamination, eligible for the program.

e. Add to the definition of contaminated well or contaminated private water supply a well or private water supply that produces water with a concentration of at least 10 parts per billion of arsenic or 10 parts per million of nitrate nitrogen.

f. Create an exception to the current requirement that DNR must allocate money for the payment of claims according to the order in which completed claims are received. The exception would specify that if the well compensation grant appropriation has insufficient funds to pay claims, DNR would be authorized (but not required), for claims based on nitrate contamination, to allocate money for the payment of claims in the following order of priority: (1) claims based on water containing more than 40 ppm nitrate nitrogen; (2) claims based on water containing more than 30 but not more than 40 ppm nitrate nitrogen; (3) claims based on water containing more than 25 but not more than 30 ppm nitrate nitrogen; (4) claims based on water containing more than 20 but not more than 25 ppm nitrate nitrogen; and (5) claims based on water containing more than 10 but not more than 20 ppm nitrate nitrogen.

g. The Governor's Budget in Brief states that the appropriation would be increased by \$800,000 SEG in each of 2019-20 and 2020-21, but the bill does not do this. On May 1, 2019, the Secretary of the Department of Administration (DOA) submitted a request to the Co-Chairs of the Joint Committee on Finance to amend the bill to provide an increase of \$800,000 SEG annually to correct an error.

DISCUSSION POINTS

Current Program

1. The well compensation grant program includes two types of grants. First, it provides financial assistance for replacing, reconstructing, or treating contaminated wells that serve certain private residences or are used for watering livestock. Second, grants can also pay costs of well abandonment. An owner or lessee of the property on which the contaminated well is located may submit a claim. Eligible wells include private water supplies used for potable water and that are: (a) a residential water supply, which is a well used for humans or humans and livestock and is connected to 14 or fewer dwelling units; or (b) a livestock water supply well used only for livestock. To be considered contaminated, the water supply must have been tested twice, at least two weeks apart, according to specified procedures, and the results exceed state or federal water standards for contaminants. In the past 15 years, well compensation grants have addressed contamination from livestock fecal bacteria, arsenic, metals, benzene, gasoline additives, nitrates, and pesticides.

2. Under certain circumstances, current eligibility includes contamination from nitrates. The statutes specify that if a claim is based on contamination by nitrates and not by any other substance, DNR may make a well compensation award only if the well: (a) is used as a source of drinking water for livestock or for both livestock and a residence; (b) is used at least three months of each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock; and (c) produces water containing nitrates exceeding 40 parts per million expressed as nitrate-nitrogen. Residential wells contaminated by nitrates and not by any other substance are not eligible unless they are also used for livestock as described above.

3. Bacterial contamination is eligible if it is from livestock fecal contamination and in an area DNR has declared to be an area of special eligibility. DNR has declared 30 areas of special eligibility since 2006, seven of which were in Kewaunee County. Of this total, DNR declared six areas in 2016 through 2018, including four in Kewaunee County, one in Fond du Lac County, and one in Washington County. The statutes specify that a claim is ineligible if the contaminated private water supply is a residential water supply, is contaminated by bacteria or nitrates or both, and is not contaminated by any other substance, except if it is in an area of special eligibility.

4. The statutes specify that a claim is ineligible if all of the contaminants upon which the claim is based are naturally occurring substances and the concentration of the contaminants in water produced by the well does not significantly exceed the background concentration of the contaminants in groundwater at that location. Contamination from arsenic is currently eligible under the program only if it is equal to or exceeds a concentration of 50 parts per billion (ppb), also described as 50 micrograms per liter, which DNR has determined is the background concentration statewide.

5. Under administrative code Chapter NR 738, funds from a separate state-funded spills response appropriation from the environmental management account of the environmental fund are used to provide a permanent replacement water supply if the owner of the contaminated well is otherwise eligible for a well compensation grant and demonstrates financial hardship beyond the amount of financial assistance available through a well compensation grant. This appropriation is primarily used for DNR-led cleanups of contaminated sites where the responsible party is unknown

or cannot or will not clean up the site. In cases where the owner of the contaminated well meets financial hardship criteria, the grant recipient first receives a grant under the well compensation grant appropriation. Supplemental expenditures are made through the state-funded spills response appropriation rather than the well compensation grant appropriation. When supplemental financial hardship assistance is provided, the sum of assistance provided to a recipient sometimes exceeds the maximum eligible costs of \$16,000 and maximum grant of \$12,000 under the well compensation grant program.

6. When DNR makes a financial hardship payment from the state-funded spills response appropriation for a permanent replacement private water supply, the Department bases the payment on the annual family income of the well owner as follows: (a) if the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, DNR may pay 100% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; (b) if the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, DNR may pay 50% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; and (c) if a well owner has received a well compensation grant, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, DNR may pay the remaining eligible costs not covered by a well compensation grant, less a deductible amount of 5% of the annual family income.

7. Table 1 shows expenditures under the well compensation grant program appropriation for the prior 10 fiscal years, and for 2018-19 to date. Expenditures can occur in the same or subsequent year as the year of the grant award. The number of well compensation awards for replacement, reconstruction, or treating the contaminated well ranged from six to 22 per year during the 10 years. The number of well abandonment awards ranged from 54 to 115 per year during the same time period. Table 1 also shows expenditures for supplemental financial hardship assistance for well compensation under the separate state-funded response appropriation. Annual expenditures have averaged almost \$180,000 for the prior 10 fiscal years for the combined well compensation and supplemental financial assistance programs. DNR indicates it is unable to estimate how many wells are eligible for well compensation grants under current program eligibility requirements.

8. The well compensation grant appropriation has \$976,800 available during the 2017-19 biennium for expenditures, including \$200,000 in 2017-18 and \$200,000 in 2018-19, and an unencumbered carry-in balance of \$576,800. As shown in Table 1, expenditures were \$123,300 in 2017-18. Thus, \$853,500 remains available for expenditure in 2018-19. Any funds not expended during 2018-19 will carry forward to be available for expenditure during the 2019-21 biennium.

TABLE 1**Well Compensation Expenditures
2008-09 Through 2018-19**

<u>Fiscal Year</u>	<u>Well Compensation Grant Appropriation Expenditures</u>	<u>Supplemental Financial Hardship Expenditures*</u>	<u>Total</u>
2008-09	\$171,301	\$60,128	\$231,429
2009-10	197,172	33,539	230,711
2010-11	154,050	50,398	204,448
2011-12	113,274	41,843	155,117
2012-13	130,772	81,348	212,120
2013-14	88,579	25,584	114,163
2014-15	153,260	41,979	195,239
2015-16	115,585	35,910	151,495
2016-17	97,692	4,854	102,546
2017-18	123,288	61,350	184,638
2018-19**	97,903	12,876	110,779

* Expenditures made from SEG state-funded spills response appropriation.

** As of May 6, 2019.

Arsenic and Nitrate Contamination

9. Arsenic is an element that occurs naturally in soil and bedrock formations, and can be released into the groundwater and drawn into wells. The federal and state drinking water standards are 10 parts per billion (ppb). High levels of arsenic can increase the risk of some types of cancer, and may increase the negative health effects of blood vessel damage, high blood pressure, nerve damage, anemia, stomach upsets, and skin changes. DNR and the Department of Health Services (DHS) recommend that no one drink water that exceeds the drinking water standard of 10 ppb.

10. Nitrate is a compound made up of nitrogen and oxygen. Typical sources of nitrate include nitrogen fertilizers, animal manure, and human waste from septic systems or wastewater treatment facilities. The state and federal nitrate drinking water standards are 10 parts per million (ppm). High levels of nitrates can negatively impact the ability of blood in a person's body to carry oxygen, which, in infants can cause a harmful health condition known as "blue baby syndrome." Studies suggest that high levels of nitrates may also increase the risk of certain other health problems, such as thyroid disease, diabetes, and some types of cancer. DNR and DHS recommend that no infant or any female who is or may become pregnant should consume any water that exceeds the nitrate standard, either by drinking or eating foods prepared with the water (such as formula, juices, and coffee). In addition, DHS recommends that all people avoid long-term consumption of water that has a nitrate level greater than 10 ppm.

11. DNR believes arsenic is being released into groundwater at elevated levels in the areas of Outagamie, Winnebago and Brown Counties, at least partly because people are using more water than many years ago. This has lowered the water table, drawing more arsenic into groundwater. High levels of arsenic have been found in wells in most areas of the state. Recent studies of private wells have identified high levels of nitrates in wells in the northeastern, western, and southwestern areas of Wisconsin. It is uncertain how many wells have water exceeding both the arsenic and nitrate standard.

12. The well compensation grant program was created in 1983 Wisconsin Act 410, the groundwater act, after a 1982 Legislative Council study committee made several recommendations related to groundwater. There was discussion during the development of the legislation about which contaminants were of great enough concern to be eligible for compensation. The original authorizing language created the limitation on eligibility for residential wells contaminated by nitrates and not used for livestock, and this provision has existed since then. The state nitrate standard went into effect prior to creation of the program, and the federal standard went into effect several years after the program was created.

13. In the 1980s, it was sometimes considered acceptable to address nitrate contamination by providing bottled drinking water for infants and pregnant women. DNR currently considers provision of bottled water a temporary solution to drinking water quality issues and not a viable long-term solution because it is cumbersome and expensive. NR 738 authorizes provision of temporary emergency water supplies for up to six months when a water supply is adversely affected by environmental pollution or a hazardous substances discharge. However, this code provision specifically excludes contamination by nitrates.

14. DNR recommends, but does not require, that private well owners test their water annually. The state does not require private well owners to take any specific action if their well produces water with arsenic concentrations above 10 ppb or nitrate concentrations above 10 ppm. If a well owner wants to reduce the consumption of water containing arsenic or nitrate, the owner generally has the following options: (a) replace the well by constructing a new deeper well; (b) install a treatment system designed to remove nitrates; (c) connect to a community water supply (a public water system that serves at least 15 service connections used by year-round residents) instead of continuing to use the well; (d) reconstruct the well by deepening it, adding a liner, replacing the pump or making other physical modifications; or (e) temporarily use bottled drinking water. There is no specific nitrate or arsenic concentration threshold that determines which of these options a well owner should take. The well owner's decision on how to respond to arsenic or nitrate contamination is based on factors such as the owner's level of concern about the health risks of nitrates or arsenic, whether infants or pregnant women are consuming the water, the cost and affordability of options, the expected timeframe for a residence to be using the well, nearby land uses that may produce nitrates affecting the well, the well depth necessary to obtain water that does not exceed the drinking water threshold, the ability of a treatment system to treat the specific arsenic or nitrate level at the well, and the availability and proximity of a nearby community water supply.

15. The administration's rationale for expanding grant eligibility to residential well contamination from nitrates that exceeds 10 ppm and arsenic that exceeds 10 ppb is that these are the federal and state standards, and arsenic and nitrates can contribute to the health problems described

earlier.

16. DNR does not track how many residential wells have nitrate contamination above 10 ppm, but the Department estimates approximately 42,000 wells (6% of approximately 700,000 private wells in the state) produce water with nitrate contamination above the 10 ppm standard. DNR does not track how many wells have arsenic contamination above 10 ppb, but the Department estimates approximately 40,000 wells (5.7% of approximately 700,000 private wells in the state) produce water with arsenic contamination above the 10 ppb standard and below the currently eligible 50 ppb background concentration threshold.

17. The income amount of households with contaminated wells is unknown, but DNR estimates that owners of approximately half of the wells with nitrate contamination exceeding 10 ppm (21,000) and half of the wells with arsenic contamination between 10 ppb and 50 ppb (20,000) would meet the proposed maximum income threshold of \$100,000. These estimates mean that the recommended program expansions for nitrate contamination, arsenic contamination, and household income between \$65,000 and \$100,000 could result in roughly 41,000 additional private wells becoming eligible under the program. However, since the median family income in 2017 was an estimated \$72,542 and the median household income was \$56,759, it is possible that more than half of households with wells contaminated with nitrates or arsenic, and income up to \$100,000, would become eligible under the bill. Table 2 shows the potential number of wells that might become eligible under the bill. As mentioned earlier, it is uncertain how many wells have water exceeding both the nitrate and arsenic standards. A later section of the paper discusses the potential eligibility of currently eligible wells where owners have income between \$65,000 and \$100,000, and would become eligible under the bill.

TABLE 2

Proposed Well Compensation Program Expansions

<u>Well Type</u>	<u>Number of Wells</u>
Residential wells with nitrate contamination exceeding 10 ppm, that do not also water livestock	42,000
Wells with arsenic contamination exceeding 10 ppb and less than 50 ppb	40,000
Households with income between \$65,000 and \$100,000	<u>uncertain</u>
Subtotal	82,000
Subset of Well Type with income up to \$100,000	
Nitrate Contamination	21,000
Arsenic Contamination	20,000
Currently eligible contamination with income between \$65,000 and \$100,000	<u>uncertain</u>
Total potential additional wells	> 41,000

18. Under 2019 Assembly Bill 21, introduced on February 11, 2019, the well compensation grant program would be expanded to cover residential well nitrate contamination (but not arsenic) in

the same way as the Governor's recommendation, and would increase the maximum household income to \$100,000. In DNR's fiscal estimate for AB 21, the Department estimated that: (a) there are 700,000 private wells in the state; (b) of those, 6%, or 42,000, are estimated to produce drinking water with nitrates above 10 ppm; (c) half of them, or 21,000, would meet the new income eligibility threshold of \$100,000; (d) the average cost to replace a nitrate contaminated well is \$10,600; and (e) the statewide cost to address 21,000 contaminated wells would be \$223,000,000.

19. If approximately half of the wells contaminated with nitrates or arsenic have income up to \$100,000, the estimated total cost to address the contamination at the estimated 41,000 additional potentially eligible wells would be \$435 million, based on a DNR estimate of \$10,600 for the average replacement cost for a well. This cumulative total cost would include: (a) \$223 million to address the contamination at the estimated 21,000 wells with nitrate contamination; and (b) \$212 million to address the contamination at the estimated 20,000 wells with arsenic contamination. The cost to replace a specific well can vary widely, based on the local geology and depth that nitrate penetrates into the groundwater.

20. Table 3 shows the cumulative state well compensation grant expenditures under the bill could approach \$318 million, including: (a) \$163 million for wells with nitrate contamination; and (b) \$155 million for wells with arsenic contamination. This estimate assumes: (a) DNR would make all grants for 75% of the replacement cost, rather than the optional 100% of costs recommended under the bill; and (b) a well replacement grant would average \$7,763, after applying the \$250 copayment. However, this estimate does not account for the unknown number of wells that would meet eligibility requirements under the bill for both nitrate and arsenic. Any such wells would lower the estimated effect of the bill expansion provisions. DNR indicates that if a household has income up to the median family income (\$72,542 in 2017), DNR would award a grant for 100% of eligible costs as authorized under the bill. Thus, the cumulative state grant expenditures would likely exceed \$318 million because DNR would probably make a significant percentage of grant awards for 100% of eligible costs rather than 75% of costs.

TABLE 3

Potential Funding Need for Program Expansions

<u>Type</u>	<u>Demand (\$ Millions)</u>
Wells with nitrate contamination	\$163
Wells with arsenic contamination	155
Currently eligible wells with household income between \$65,000 and \$100,000	<u>unknown</u>
Total Potential Demand Exceeds	\$318

21. It is uncertain how many households would become eligible under the bill because they have income between \$65,000 and \$100,000 and wells that have contamination eligible under current law, as compared with households that have income up to \$100,000 and have a residential well

contaminated by nitrates or arsenic that is not currently eligible but would become eligible under the bill. Further, it is likely that if expansion for arsenic or nitrate contamination would be approved, but no increase would be approved in the income limits, a significant number of households with income up to \$65,000 would become eligible.

22. It is uncertain how many owners of the estimated 41,000 newly eligible additional wells would submit well compensation grant applications during the 2019-21 biennium or in subsequent biennia if the recommended program expansions were approved. DNR indicates it is not able to estimate the number of applications that might be submitted during the next few years. If a significant portion of the anticipated \$318 million in additional costs would be submitted to DNR for reimbursement during the coming two to six years, it would create a significant workload and potential backlog of eligible claims waiting for funding to become available. On the other hand, it is likely some owners of contaminated wells would seek other means of replacing their well rather than wait an indefinitely long period of time to address their contaminated drinking water supply with limited grant funding.

23. Some may argue that the recommended expansion of eligibility for arsenic contamination [Alternative A1] and nitrate contamination [Alternative B1] should be approved in recognition of the public health concerns about drinking water with nitrate or arsenic concentrations exceeding the federal and state standards included in the bill. While the bill would expand eligibility to nitrate and arsenic contamination, the eligibility expansion would conflict with two provisions in current law. The bill would not exempt arsenic or nitrate contamination from the requirement that DNR must deny claims that exceed the background level of contamination. Currently, DNR uses this statutory provision to deny claims with arsenic concentration less than 50 ppb. In addition, the bill does not exempt arsenic or nitrate contamination from the requirement that DNR must deny claims if the contaminated private water supply is a residential water supply contaminated by bacteria or nitrates or both, and is not contaminated by any other substance. If the Committee chooses to expand eligibility for arsenic [Alternative A1] or nitrates [Alternative B1], it would be appropriate to include these exemptions from the current provisions for denial of claims to make it clear that arsenic and nitrate contamination are eligible.

24. Each household that discovers it has a well contaminated with arsenic or nitrates has to make an individual decision about what to do to provide drinking water for the household. As mentioned earlier, DNR and DHS recommend that when nitrate contamination is found to exceed the drinking water standard, household members who are infants or pregnant women should not drink the contaminated water, and that when arsenic contamination is found to exceed the drinking water standard, no one in the household should drink the contaminated water. The household makes a decision about whether or which members of the household will drink the contaminated water, how high the concentration will be before they stop drinking the well water, or how high the concentrations of contaminants will reach before the well needs to be replaced.

25. Under 2017 Wisconsin Act 69, the statutes authorize a city, village, town, or county to remediate a private water supply as defined in the well contamination statute, with the agreement of the owner of the well. The local government may make a loan at or below the market interest rate, including an interest-free loan, and may recover its costs or collect the loan repayment as a special

charge or special assessment. The authority under Act 69 does not currently include the arsenic or nitrate contamination levels recommended to become eligible for a well compensation grant under the bill. If the Governor's recommendation to expand well compensation to arsenic or nitrate contamination were enacted, local governments could also provide loans to owners of wells contaminated with these substances.

26. The Committee could choose to expand eligibility to include arsenic contamination or nitrate contamination, or both. Some might argue that if contamination from one of the substances becomes eligible for state financial assistance, both of them should. Others might argue that there is a higher health priority to provide eligibility for one or the other of the two contaminants. However, others might suggest that the recommended expansion of eligibility for arsenic and nitrate contamination should not be approved because: (a) contaminated wells should be replaced by the owner as a normal part of the responsibility of owning a property; and (b) households that do not have sufficient funds on hand to pay for the cost of replacing a contaminated well have the option of seeking a loan from a financial institution. Further, it could be argued the state should not use financial resources from current program funding to pay for what could be a large program expansion of over \$318 million [Alternatives A2 and B3].

27. The bill would allow, but not require, DNR to prioritize claims for wells with nitrate contamination to give priority to claims with higher levels of nitrate contamination. It would not provide a higher priority for claims with nitrate contamination than for claims with contamination from arsenic that would become eligible under the bill, or with contamination from other substances that are currently eligible. The Committee could choose to approve this approach of providing DNR with the flexibility of prioritizing claims with higher levels of nitrate contamination [Alternative B1].

28. DNR anticipates it would not prioritize claims by contaminant, and would continue the Department's current practice of making awards as it receives and processes applications, regardless of which contaminant caused the contamination of the well or the level of nitrate contamination. The optional prioritization could be removed from the bill, to recognize that DNR would continue the practice of processing all claims as they are received, regardless of the level of nitrate contamination or the type of contamination [Alternative B2b]. Alternatively, it could be argued that DNR should be required to prioritize claims with nitrate contamination according to the level of contamination [Alternative B2a]. Under this alternative, DNR could be directed to annually determine how much of the available funding would be allocated to claims with nitrate contamination, in order to ensure that there would continue to be sufficient funds for wells contaminated with substances other than nitrates.

Income Limit and Grant Formula Changes

29. The administration's rationale for increasing the maximum household income from \$65,000 to \$100,000 is that the maximum income had not been increased since 1995 and the increase would make more households eligible for the program. According to the administration, providing grants of up to 75% of costs instead of phasing the grant down by 30% of the amount by which income exceeds a threshold (such as the \$45,000 current law threshold) as income increases is preferable because calculating the grant phase out at higher income levels is an administrative burden to DNR program staff. DNR indicates that it is difficult to explain to currently eligible households that have income between \$45,000 and \$65,000 that their grant would be reduced by 30% of the amount by

which their income exceeds \$45,000. Further, DNR indicates the grant reduction formula often results in no, or a minimal, well abandonment award, because the average well abandonment cost is approximately \$900.

30. Under 2019 Assembly Bill 21, the well compensation grant program would be expanded to increase the maximum household income to \$100,000, the same as recommended under the bill. However, it would reduce the grant for households with family income between \$65,000 and \$100,000 by 30% of the amount by which the income exceeds \$65,000. AB 21 would not make any changes in supplemental financial hardship assistance.

31. Table 4 shows the maximum grant amount for various income levels under current law, AB 21, and the Governor's recommendation to provide assistance of 75% of costs and optional 100% of costs.

TABLE 4

Maximum Well Compensation Grant - Current Law, AB 21, and the Budget Bill *

<u>Household Income</u>	<u>Current Law Maximum Grant</u>	<u>2019 AB 21 Maximum Grant</u>	<u>Budget Bill Maximum Regular Grant</u>	<u>Budget Bill Potential Hardship Grant</u>
\$45,000	\$12,000	\$12,000	\$12,000	\$16,000
55,000	9,000	12,000	12,000	16,000
65,000	6,000	12,000	12,000	16,000
72,542**	0	9,737	12,000	16,000
75,000	0	9,000	12,000	12,000
85,000	0	6,000	12,000	12,000
95,000	0	3,000	12,000	12,000
100,000	0	1,500	12,000	12,000
Above 100,000	0	0	0	0

* Current law, AB 21, and the budget bill require the claimant to pay a \$250 copayment.

** According to the U.S. Census Bureau American Community Survey 2013-17 average estimates, the estimated Wisconsin median family income was \$72,542 in 2017.

32. It is uncertain how many wells have contamination that is eligible under current law, but the owners have income between \$65,000 and \$100,000, which exceeds current income limits, but would become eligible under the increased income limits recommended under the bill. DNR indicates that the Department sometimes learns of households who have eligible wells, but their income exceeds \$65,000 so they are not able to receive funding under the program. A decision on whether to increase the maximum income limit could be made separately from the decision on whether to change the eligibility for arsenic and nitrate contamination. Some might argue that the maximum eligible income should be increased to \$100,000 to benefit additional households with moderate incomes [Alternative C1]. This would also recognize the financial difficulty that a household with income between \$65,000 and \$100,000 might experience in paying for the \$10,600 average well replacement

cost estimated by DNR. A \$100,000 maximum eligibility income may also be appropriate given \$65,000, when adjusted for inflation by either the national or Midwest Consumer Price Index since July, 1995, would equate to \$108,900 or \$103,800 respectively.

33. Alternatively, some might argue that households with income between \$65,000 and \$100,000 should be able to save or borrow funds to pay for the costs of a well replacement as a normal part of the responsibility of owning a property. Under this argument, the current maximum income of \$65,000 could be considered sufficient to fund households most in need of state assistance to replace their contaminated well [Alternative C2].

34. Table 4 shows that under the bill's provision of a grant of 75% of costs to all eligible applicants, there would be a large increase in the grant amount for households with income between \$45,000 and \$100,000. While an applicant with income of \$100,000 would receive a maximum grant of \$12,000, an applicant with income of \$100,000 would not be eligible for a grant. Some may argue that all applicants should receive grants of at least 75% of costs. The Committee could choose to approve the Governor's recommendation to delete the phasing down of grant awards for higher incomes [Alternative D1].

35. Some might suggest that households with incomes at higher levels of eligibility should pay a higher portion of the costs of the well replacement, and should receive a lower grant as a percentage of well replacement costs than households with a lower income. In addition, it could be argued that retaining a formula that phases down the grant by 30% of income above a threshold would allow limited program financial resources to assist a greater number of households than the bill's recommendation to fund all grants at 75% of costs. The Committee could choose to continue use of a grant formula that phases down the grant by 30% of income above a threshold. For example, Table 4 shows the grant at various incomes under the 2019 AB 21 proposal to phase down the grant by 30% of income above \$65,000. Approval of this grant formula would continue to provide some grant eligibility for households at higher income levels, but at a reduced portion of costs [Alternative D2].

36. If the maximum income is increased above the current \$65,000 maximum, and no action is taken to increase or delete the income threshold above which the grant amount is phased down by 30%, the grant for a household eligible for the maximum grant before applying the 30% reduction would phase out to a \$0 grant if income equals or exceeds \$85,000 [Alternative D3]. If current law is maintained with regard to maximum eligible income, the \$45,000 threshold for grant phase out, and the current 30% phase down of the grant amount, a household with the current maximum income of \$65,000 would continue to receive a maximum grant of \$6,000 [Alternative D3].

37. The administration's rationale for authorizing DNR to provide a grant of up to 100% of costs for households with up to the statewide median family income (estimated at \$72,542 in 2017), and for using the statewide median family income rather than the median household income (estimated at \$56,759 in 2017), is that the proposed funding would provide additional financial support to families. It could be argued that contaminated wells are a health problem that justifies state financial resources to pay for up to 100% of the costs of households with income up to the statewide family median [Alternative E1].

38. The administration indicates that the bill would allow, but not require, DNR to provide

grants of up to 100% of costs instead of 75% of costs, so DNR may coordinate grants made under the well compensation grant program with the requirements of the financial hardship assistance provided by the NR 738 provision under the separate state-funded spills response appropriation. DNR also indicates that if this recommendation were adopted, DNR would be able to pay these costs from the well compensation grant appropriation, rather than using the supplemental financial assistance currently available under the NR 738 provision.

39. The median family income is often larger than median household income because the median family income considers only households occupied by two or more people related by birth, marriage or adoption. In comparison, household income considers the incomes of all people ages 15 years or older occupying the same housing unit. Other DNR grant programs, such as the clean water fund program and safe drinking water loan program, use a measurement of the median household income (\$56,759 in 2017) to calculate the threshold of providing financial assistance for lower-income households. DNR indicates it may be administratively easier to use a grant reduction threshold with the same income measurement used by other DNR programs. In addition, some may argue that if the maximum well compensation grant is increased to 100% of costs for some portion of lower-income households, it would be more appropriate to establish a threshold of median household income (\$56,759) rather than the bill's higher threshold of median family income [Alternative E2].

40. Almost 70% of the 26 well compensation grants awarded in 2014-15 through 2017-18 qualified for supplemental financial hardship and received additional funding under the state-funded spills responses appropriation because their income was less than \$45,000. Table 1 shows the expenditures under the well compensation grant program and the supplemental financial assistance provisions. Another potential way to provide financial hardship assistance under the well compensation grant appropriation would be to put the formula currently in the NR 738 provision into the well compensation statute. This would pay all of the financial hardship expenditures from the well compensation appropriation instead of from the state-funded spills response appropriation [Alternative E3]. This could more accurately make all well compensation expenditures from the well compensation appropriation, rather than make some of them from the state-funded spills response appropriation.

41. If no action is taken to provide more than 75% of costs for some households with income below a specified threshold, DNR could continue to make financial hardship expenditures for eligible well compensation grant recipients under the spills response appropriation [Alternative E4].

Total Funding

42. The administration intended to add \$800,000 SEG annually to the current \$200,000 funding for the grant appropriation, but it was not included in the bill. The Secretary of DOA submitted a request to the Committee to add the recommended funding. The administration believes that adding \$800,000 annually to provide total funding of \$1,000,000 annually would properly fund the program. The Committee could choose to provide an additional \$800,000 SEG annually to provide a total of \$1,000,000 annually, equaling \$2,000,000 for the biennium, as intended by the Governor [Alternative F1].

43. A separate budget paper describes environmental fund revenues and expenditures. The

environmental management account of the environmental fund is expected to have a closing balance on June 30, 2021, of approximately \$26.6 million, based on Committee action to date and the inclusion of the Governor's recommended \$800,000 annual increase in well compensation grant funding. This is expected to provide a sufficient account balance under the bill to fund the Governor's recommended increase in the well compensation grant appropriation.

44. The current law expenditures summarized under Table 1 have funded a range of six to 22 grants per year. DNR estimates that \$1 million per year could provide up to approximately 126 well compensation grant awards per year. This assumes approximately \$20,000 of the \$1 million would be reserved for well abandonment grants, and the remaining \$980,000 would be awarded as a grant of 75% of eligible costs, rather than the optional 100% of costs under the bill. However, DNR intends to award grants at the optional 100% of costs when applicants meet the median family income threshold. If most grants would be awarded for 100% of costs, to households with income less than the state median family income (\$72,542), it is likely fewer than 100 grants would be awarded per year. If the program would fund an estimated 100 to 126 grants per year, this would mean that less than 0.3% of the potential \$318 million in state grant costs for 41,000 newly-eligible wells under the bill could be funded annually.

45. If some or all of the recommended program expansions are approved, it is uncertain how many applications would be submitted during the 2019-21 biennium. However, it would likely result in a significant increase in demand for funding under the program. The Committee could choose to provide more funding than recommended by the Governor. For example, the appropriation could be increased by \$1,200,000 rather than \$800,000, for a total of \$1,400,000 in annual funding (\$2,800,000 for the biennium). However, this would be expected to fund up to perhaps 0.4% of the potential \$318 million for 41,000 newly eligible wells under the bill [Alternative F2].

46. If the Committee approves any program expansions, but wishes to provide lower levels of program funding than the Governor intended, it could choose to increase grant appropriation funding by a more modest amount than recommended under the bill. For example, the appropriation could be increased by \$400,000 annually, to provide \$600,000 per year, or \$1,200,000 for the biennium [Alternative F3]. Another option would be to increase the well compensation appropriation by \$200,000 annually, to provide \$400,000 per year, or \$800,000 for the biennium [Alternative F4].

47. As noted earlier, the well compensation grant appropriation has \$853,500 in available funding for 2018-19, including the carryforward balance from the end of 2017-18. As of May 6, 2019, the appropriation had expended \$97,900 for well compensation grants in 2018-19. Thus, it is likely the appropriation will carry a significant balance forward for expenditure in 2019-20.

48. If no additional funding is provided, the program can use any funding carried forward from 2018-19, and the \$200,000 in annual base funding included in the bill [Alternative F5]. In addition, under current law and the bill, if grant applications exceed available funding, DNR is authorized to request additional funds from the Joint Committee on Finance under s. 13.10 of the statutes.

49. DNR estimates that the recommended increase of \$800,000 in annual funding would increase the number of well compensation grants anticipated to be funded under the bill from an

average of 12 to 126 per year. DNR indicates that workload to process these claims would increase by an additional 1.6 full-time equivalent of staff time. The Department anticipates if no additional staff is provided to process the additional anticipated applications, it would take longer to process applications, or the Department would need to reallocate staff from other grant programs, which would result in longer grant processing times for those programs. The administration has not estimated from what activities it would expect DNR to reallocate in order to accomplish processing the additional well compensation grant applications received under the bill.

50. If the Committee chooses to approve expansions of income eligibility, or for arsenic or nitrate contamination under the program, the Committee could choose to provide additional staff for the additional workload under the program. For example, the Committee could provide \$74,200 SEG in 2019-20 and \$98,800 SEG in 2020-21 with 1.0 SEG position beginning in 2019-20 to process well compensation grants [Alternative G1]. If the Committee approves program expansions and takes no action to provide additional staff, DNR would choose how to allocate current staff resources to process additional applications under the well compensation grant program and applications received under other current grant programs administered by the Department [Alternative G2].

ALTERNATIVES

A. Eligibility for Arsenic Contamination

1. Approve the Governor's recommendation to add to the definition of eligible contaminated well or private water supply a well that produces water containing arsenic of at least 10 parts per billion. In addition, exempt wells with arsenic contamination of at least 10 parts per billion from the current requirements that: (a) a claim shall be denied if the concentration exceeds the background concentration of the contaminant; and (b) the contaminated private water supply is a residential water supply contaminated by bacteria or nitrates or both, and is not contaminated by any other substance.

2. Take no action. (Wells with contamination from arsenic of at least 10 ppb and less than 50 ppb would continue to be ineligible for the program.)

B. Eligibility for Nitrate Contamination

1. Approve the Governor's recommendation to: (a) add to the definition of eligible contaminated well or private water supply a well that produces water containing nitrates of at least 10 parts per million; (b) delete the current limitations on claims for contamination by nitrates, making residential wells with nitrate contamination eligible; and (c) authorize DNR to prioritize claims for nitrate contamination based on five categories of concentration of parts per million nitrate nitrogen, with higher priority provided to higher concentrations. In addition, exempt wells with nitrate contamination of at least 10 parts per million from the current requirements that a claim be denied if: (a) the concentration exceeds the background concentration of the contaminant; and (b) the contaminated private water supply is a residential water supply contaminated by bacteria or nitrates or both, and is not contaminated by any other substance.

2. Approve Alternative B1 as modified in one of the following ways:
 - a. Require (rather than authorize) DNR to prioritize eligibility for higher concentrations of nitrates. In addition, direct DNR to annually determine how much of the available funding would be allocated to claims with nitrate contamination.
 - b. Delete the bill's authorization for DNR to prioritize eligibility for higher concentrations of nitrates. (DNR would continue the current practice of processing eligible claims as they are received.)
3. Take no action. (Residential wells with nitrate contamination that do not also provide water to livestock would continue to be ineligible for the program.)

C. Maximum Income

1. Approve the Governor's recommendation to increase the maximum annual family income to \$100,000.
2. Take no action. (This would maintain the current \$65,000 maximum annual family income.)

D. Grant Formula

1. Approve the Governor's recommendation to delete the current requirement that the grant is reduced by 30% of the amount by which the claimant's family income exceeds \$45,000.
2. Modify the Governor's recommendation by reducing the grant by 30% of the amount by which the claimant's family income exceeds \$65,000 (instead of \$45,000 under current law).
3. Take no action. (This would maintain the current law reduction of the grant by 30% of the amount by which the claimant's family income exceeds \$45,000.)

E. Eligibility for 100% Grant

1. Approve the Governor's recommendation to authorize DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median family income of the state (\$72,542 in 2017).
2. Modify the Governor's recommendation by authorizing DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median household income of the state (\$56,759 in 2017) instead of the proposed median family income of the state (\$72,542 in 2017).
3. Instead of approving the Governor's recommendation to authorize DNR to award a grant of up to 100% of eligible costs if the annual family income of the claimant is below the median household income of the state, authorize DNR to award a grant from the well compensation grant appropriation for more than 75% of costs under the same formula in administrative rule NR 738 that

the Department currently uses to fund supplemental financial assistance from the state-funded spills response appropriation. Include the following formula provisions: (a) if the annual family income of the well owner is 50% or less of the county median income for the county in which the residence is located, DNR may pay 100% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; (b) if the annual family income of the well owner is more than 50% but not more than 75% of the county median income for the county in which the residence is located, DNR may pay 50% of the remaining eligible costs not covered by a well compensation award, less a deductible amount of \$250; and (c) if a well owner has received a well compensation grant, and if the well owner's share of eligible costs for the permanent replacement water supply exceeds 25% of the annual family income of the well owner, DNR may pay the remaining eligible costs not covered by a well compensation grant, less a deductible amount of 5% of the annual family income.

4. Take no action. (DNR could continue to utilize the current administrative code provisions of NR 738 for supplemental financial assistance beyond the amounts provided from the well compensation grant appropriation.)

F. Funding for Grants

1. Provide \$800,000 SEG annually for the well compensation grant program from the environmental management account of the environmental fund. (This would provide a total of \$1,000,000 annually, and is the amount intended by the Governor, but not included in the bill.)

ALT F1	Change to	
	Base	Bill
SEG	\$1,600,000	\$1,600,000

2. Provide \$1,200,000 SEG annually for the program. (This would provide \$1,400,000 annually.)

ALT F2	Change to	
	Base	Bill
SEG	\$2,400,000	\$2,400,000

3. Provide \$400,000 SEG annually for the program. (This would provide \$600,000 annually.)

ALT F3	Change to	
	Base	Bill
SEG	\$800,000	\$800,000

4. Provide \$200,000 SEG annually for the program. (This would provide \$400,000

annually.)

ALT F4	Change to Base Bill	
SEG	\$400,000	\$400,000

5. Take no action. (This maintains current funding of \$200,000 SEG annually and any carry forward balance from 2018-19.)

G. Funding for Staff

1. Provide \$74,200 SEG in 2019-20 and \$98,800 SEG in 2020-21 with 1.0 SEG position beginning in 2019-20 from the environmental management account of the environmental fund to administer the program expansions.

ALT G1	Change to Base Funding Positions		Change to Bill Funding Positions	
SEG	\$173,000	1.00	\$173,000	1.00

2. Take no action.

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May, 2019

Joint Committee on Finance

Paper #533

PFAS Model and Study (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 308, #13]

CURRENT LAW

The Department of Natural Resources (DNR) remediation and redevelopment program oversees the investigation and cleanup of contaminated properties. DNR is responsible for establishing environmental cleanup standards for the allowable amounts of contaminants in groundwater and soil.

GOVERNOR

Provide \$200,000 GPR in 2019-20 to the remediation and redevelopment program in the Division of Environmental Management for the following activities related to per- and polyfluoroalkyl substances (PFAS): (a) \$150,000 to develop a departmentwide model to identify and prioritize sites with likely PFAS; and (b) \$50,000 to conduct a survey of local and state emergency responders to determine the level of use of PFAS-containing firefighting foam.

DISCUSSION POINTS

1. PFAS are a large group of human-made chemicals that have been used to manufacture firefighting foam and various consumer products. They do not break down easily in the environment. The potential adverse health effects from PFAS in humans are not well understood but some studies suggest that exposure to PFAS may harm human health in several ways. The U.S. Environmental Protection Agency (EPA) has established cumulative-lifetime health advisories for two types of PFAS: (a) perfluorooctanoic acid (PFOA), which was often used in nonstick cookware; and (b) perfluorooctane sulfonate (PFOS), which was often used in fabric protector and stain repellents. EPA is studying the development of other regulatory actions related to PFAS. The Department of Health

Services (DHS) is studying whether to recommend a groundwater quality standard for PFOA and PFOS, which could potentially be used in future state regulatory actions related to cleanup of concentrations of PFAS that exceed those standards.

2. The administration's rationale for including the requested funding is that the model is needed to help DNR identify areas with likely PFAS contamination, and the survey is needed to help DNR identify fire departments that are using, or have stockpiles of, PFAS-containing firefighting foam. The rationale for the requested amounts is that these were the estimates of the amounts needed for the model and survey. The administration indicates that it is appropriate to use GPR to study the issue because the exact sources of PFAS contamination are not known and PFAS contamination is potentially a statewide concern.

3. DNR indicates that Department staff would develop a model that would include several types of information about known or probable sources of PFAS. The Environmental Management Division would be responsible for developing the model, including the waste and materials management, water quality, remediation and redevelopment, air management, and drinking water and groundwater programs. DNR would spend approximately \$25,000 of the recommended \$150,000 to hire a consultant to advise on the accuracy of the model and conduct sampling at sites identified by the model as having been impacted by PFAS. DNR anticipates the initial version of the model could be completed within six months after the budget is signed. DNR would spend the remaining \$125,000 to sample conditions at approximately six sites with PFAS.

4. DNR convened a PFAS technical advisory group that began to meet in February, 2019, to discuss PFAS-related concerns specific to the assessment and cleanup of environmental contamination. The Department intends to brief the advisory group and offer members the opportunity to provide feedback on the development of the model.

5. DNR indicates it would use the recommended \$50,000 to contract with an outside vendor to survey some or all of over 800 fire departments in the state to learn whether they use or possess PFAS-containing firefighting foam. In addition, the Department might try to sample and perform lab analysis at sites with known PFAS-containing firefighting foam, such as a site that manufactures it, a testing site, military sites, and landfills. DNR anticipates it would likely contract with a vendor that has implemented a similar survey in other states.

6. DNR anticipates that if none of the recommended \$150,000 is provided for development of the PFAS model, the Department would have to compare the priority of this work with other work being performed by DNR and paid from a state-funded spills and toxics response appropriation in the environmental management account of the segregated (SEG) environmental fund. Other work could include DNR-paid costs of investigation and cleanup at sites where there is no responsible party able to perform the cleanup or the state is the responsible party. Examples of these other sites are contaminated landfills, dry cleaner sites, and contaminated sediment sites where there may be long-term costs such as pumping contaminated groundwater, excavating sediment, or extracting methane gas from landfills.

7. DNR anticipates that if none of the recommended \$50,000 is provided for a survey of users of firefighting foam, it would likely reallocate funds from other activities, likely paid from the

state-funded spills response appropriation, to perform the survey, but it would probably take more than a year to complete. In addition, it might not sample sites with known PFAS-containing firefighting foam.

8. Funding could be approved from the recommended GPR funding source because the study of PFAS could be considered to have statewide concern. The full recommendation of \$200,000 GPR could be approved to fund both the model and survey [Alternative 1], or \$150,000 GPR could be provided for the model but not the survey [Alternative 3a], and DNR could reallocate funds from other activities to pay for the survey. Alternatively, the Committee could choose to provide funding as SEG from the environmental management account of the environmental fund because the SEG account provides funding for several other activities related to cleanup of contaminated land and groundwater. A separate budget paper provides an overview of the environmental management account of the environmental fund. The account is expected to have a sufficient balance to fund the PFAS model and survey. The Committee could provide \$200,000 SEG to fund both the model and survey [Alternative 2] or \$150,000 SEG to fund the model but not the survey [Alternative 3b].

9. If no action is taken to provide funding [Alternative 4], DNR would likely not develop the model until a future uncertain date. The Department would potentially accomplish the survey by reallocating funding from other activities.

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$200,000 GPR in 2019-20, including \$150,000 for a departmentwide PFAS model and \$50,000 for a survey to determine the level of use of PFAS-containing firefighting foam.

ALT 1	Change to	
	Base	Bill
GPR	\$200,000	\$0

2. Modify the Governor's recommendation to provide SEG funding from the environmental management account of the environmental fund, instead of GPR.

ALT 2	Change to	
	Base	Bill
GPR	\$0	- \$200,000
SEG	<u>200,000</u>	<u>200,000</u>
Total	\$200,000	\$0

3. Provide \$150,000 instead of \$200,000, from one of the following funding sources:

a. GPR

ALT 3a	Change to	
	Base	Bill
GPR	\$150,000	- \$50,000

b. SEG

ALT 3b	Change to	
	Base	Bill
GPR	\$0	- \$200,000
SEG	<u>150,000</u>	<u>150,000</u>
Total	\$150,000	- \$50,000

4. Take no action.

ALT 4	Change to	
	Base	Bill
GPR	\$0	- \$200,000

Prepared by: Kendra Bonderud



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May, 2019

Joint Committee on Finance

Paper #534

Transfer Abandoned Tank Removal Program from DNR to DATCP (Natural Resources -- Environmental Quality and Agriculture, Trade and Consumer Protection)

[LFB 2019-21 Budget Summary: Page 309, #14; and Page 43, #14]

CURRENT LAW

The abandoned tank removal program was created in 2009 Wisconsin Act 28 to pay for the removal of underground petroleum storage tank systems if the tank is abandoned and the owner of the system is unable to pay for the removal. The Department of Natural Resources (DNR) contracts with a contractor certified by the Department of Agriculture, Trade and Consumer Protection (DATCP) under the tank registration program to remove identified tanks. The program is provided \$100,000 annually from the segregated (SEG) petroleum inspection fund, in a separate appropriation. The program pays for costs to: (a) empty, clean, remove, and dispose of an underground petroleum product storage tank system; (b) assess the tank site to determine whether there is petroleum contamination at the site; and (c) backfill the excavation. When DNR incurs costs at a site, the Department records a lien for the costs with the Register of Deeds in the county where the site is located, which remains on the property until the amount is repaid to DNR. Payments received by DNR to satisfy the lien are deposited into the petroleum inspection fund. The program has spent \$573,500 between 2009-10 and 2017-18 to remove 200 underground petroleum tanks at 59 sites. Removal costs have averaged \$2,900 per tank. Gas stations have an average of three tanks per site.

GOVERNOR

Transfer the abandoned tank removal program from DNR to DATCP. Delete \$172,100 SEG petroleum inspection fund annually in DNR, including: (a) \$100,000 SEG annually from the separate appropriation (the DNR appropriation would not be deleted or transferred to DATCP);

and (b) \$72,100 SEG annually with 1.0 SEG position. Provide \$172,100 SEG annually with 1.0 SEG position in DATCP, and place all of the transferred funding and position in the DATCP petroleum inspection regulation administrative appropriation. Transfer any incumbent employee holding the DNR position, as well as assets, liabilities, personal property, contracts and pending matters primarily related to the program, as determined by the Secretary of the Department of Administration, to DATCP.

DISCUSSION POINTS

1. When the abandoned tank removal program was created in 2009 Act 28, it was located in the former Department of Commerce, which also administered petroleum inspection and tank regulation, along with financial administration of the petroleum environmental cleanup fund award (PECFA) program. Act 28 did not create positions to administer the program, and the act authorized Commerce to use staff under both the PECFA and petroleum inspection appropriations to administer the program. In 2011 Wisconsin Act 32, Commerce was eliminated and its responsibilities related to PECFA, petroleum inspection, tank regulation, and abandoned tank removal were transferred to the Department of Safety and Professional Services (DSPS). Under 2013 Wisconsin Act 20, the DSPS responsibilities related to PECFA and abandoned tank removal were transferred to DNR, and the DSPS responsibilities related to petroleum inspection and tank regulation were transferred to DATCP.

2. The PECFA program does not pay for removal of tanks. Abandoned tank removal funds pay for removal of tanks at sites for which a settlement has been reached with the Department of Justice (DOJ) or a party volunteers to remove tanks as part of a DATCP enforcement action. This includes the following types of sites: (a) the owner has abandoned property with leaking tanks; (b) the owner refused to remove abandoned tanks, died, and left the site for the heirs to address; (c) the owner has tank inspection violations and/or is under enforcement action from DATCP but does not have the financial means to address the violations; and (d) the courts authorized DNR to remove tanks on properties where owners refuse to comply with court orders to remove the tanks.

3. The administration indicates the rationale for transferring the program is that splitting operation of the program between two departments is inefficient and unnecessary. DATCP administers the registration and inspection of tank systems, enforces operational requirements, issues citations for violations, refers violations to DOJ, licenses tank removal professionals, and develops tank assessment requirements. DNR administers the cleanup of properties with contamination from tank systems, contracts for removal of a tank under the abandoned tank program, and pays the contractor.

4. DNR works with DATCP and DOJ in the spring to develop a list of prioritized tank removal projects for the year. DATCP writes administrative orders to remove tanks, investigates abandoned tanks, refers cases to DOJ, accepts voluntary applications for tank removals, provides DNR with information regarding the site and tanks, and answers site-specific questions from contractors bidding on the tank removal. DNR prepares a request for bids for the tank removal, awards the bid, pays the vendor, places a lien on the property for the cost of the work, and provides any follow-up contacts needed with the property owner.

5. It could be argued that the program should be transferred because it fits better with the tank regulatory programs of DATCP than with the contaminated land cleanup programs of DNR. The program could be transferred to DATCP [Alternative A1, A2, or A3, and B1 or B2], where much of the work related to identification of sites is currently being performed. Alternatively, it could be maintained in DNR, where any contamination found during the tank removal and assessment would be handled by the remediation and redevelopment staff in DNR [Alternative A4 and B3].

6. The bill would not transfer the DNR separate appropriation for abandoned tank removal to DATCP. Instead, the bill would place the funding in the petroleum inspection administrative appropriation, in a separate budgetary line for aids to individuals and organizations. The language in the DATCP administrative appropriation is broad enough for expenditures for the abandoned tank program, and the bill would therefore allow abandoned tank removal expenditures to be made without adding a DATCP appropriation. However, it might be argued that it would be administratively preferable to budget aids to individuals and organizations separately from the staff of the petroleum inspection regulatory program. The Committee could consider transferring the DNR abandoned tank removal appropriation to DATCP, and placing the \$100,000 annual funding in the separate appropriation under DATCP [Alternative B2]. If the program is transferred to DATCP, and the DNR appropriation is not transferred to DATCP, the DNR appropriation will not be needed and should be repealed [Alternative B1].

7. The DNR position identified for transfer to DATCP to handle the increased workload in DATCP is currently vacant. DNR indicates its current workload for the abandoned tank removal program is approximately 0.9 rather than 1.0 full-time equivalent, and that additional duties for the position have included work related to the PECFA program and contracting related to other contaminated land cleanup activities. DATCP indicates its current workload related to the program is 1.25 full-time equivalent position, and it anticipates the increase in workload after the transfer would increase by approximately 1.0 full-time equivalent.

8. When 2013 Act 20 transferred petroleum inspection responsibilities from DSPS to DATCP, the Governor recommended deletion of 6.5 positions. During consideration of the transfer proposal, DATCP sought time to gain experience with the combined program and assess program needs before adjusting position levels further. However, 2013 Act 20 deleted an additional 4.0 vacant positions, for a total deletion of 10.5 of 46.5 program positions authorized in DSPS, instead of being transferred to DATCP. At the time, the rationale of the administration and Legislature was that the combination of the petroleum inspection and tank regulation programs with the DATCP weights and measures program would consolidate similar functions and result in program efficiencies.

9. DATCP indicates that it has recently hired two staff to fill vacant petroleum inspector positions, and they will start work in May of 2019. At that time, all positions in the petroleum inspection administrative appropriation will be filled. DATCP indicates that it does not have a vacant position to reallocate to the program activities and does not have the capacity to take on the additional workload without the position proposed to be transferred. Approval of the recommended transfer of the position would recognize the anticipated workload increase in DATCP after the program transfer [Alternative A1]. However, as no positions were provided when the program was created, and DNR has been accomplishing the activities related to the program with 0.9 rather than 1.0 position, the

Committee could consider providing DATCP with \$36,100 annually with 0.5 position, instead of the \$72,100 and 1.0 position provided under the bill [Alternative A2]. Alternatively, the Committee could delete the position to require DATCP to absorb the workload with existing staff by reallocating from other petroleum inspection and tank regulatory activities [Alternative A3].

10. In 2017-18, in addition to spending \$89,500 from the abandoned tank removal appropriation, DNR spent \$50,200 from the DNR state-funded spills response appropriation from the segregated environmental management account of the environmental fund to remove six tanks at three sites. This appropriation is used for: (a) DNR expenditures related to DNR-led cleanups of contaminated sites where the responsible party is unknown or is unable or unwilling to clean up the site; (b) for certain state shares of federally-funded Superfund site cleanups; and (c) emergency spill responses and cleanups. Under the bill, if DATCP encounters a need for more than the appropriated \$100,000 for abandoned tank removal in a year, it could reallocate funds from its administrative appropriation. Alternatively, DATCP could request DNR to pay for the removal under the DNR state-funded spills response appropriation if DNR determines cleanup of contamination at the site is a high environmental priority in comparison with other cleanup projects.

11. If no action is taken to transfer the program, DNR would continue to administer the current tank removal program. DNR would continue to work with DATCP and DOJ to identify sites for which DNR would pay [Alternative A4 and B3].

ALTERNATIVES

A. Authority and Position

1. Approve the Governor's recommendation to transfer the abandoned tank removal program from DNR to DATCP, delete \$72,100 SEG petroleum inspection fund and 1.0 position annually from DNR, and provide \$72,100 SEG petroleum inspection fund and 1.0 position annually to DATCP. Transfer any DNR incumbent employee in the position to DATCP, and transfer all statutory authority and program matters from DNR to DATCP.

ALT A1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	- \$144,200	- 1.00	\$0	0.00
DATCP				
SEG	<u>\$144,200</u>	<u>1.00</u>	<u>\$0</u>	<u>0.00</u>
Total	\$0	0.00	\$0	0.00

2. Modify the Governor's recommendation by transferring \$36,100 annually and 0.5 position (instead of 1.0) to DATCP.

ALT A2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	- \$144,200	- 1.00	\$0	0.00
DATCP				
SEG	<u>\$72,200</u>	<u>0.50</u>	<u>- \$72,000</u>	<u>- 0.50</u>
Total	- \$72,000	- 0.50	- \$72,000	- 0.50

3. Modify the Governor's recommendation by deleting the position instead of transferring it to DATCP.

ALT A3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	- \$144,200	- 1.00	\$0	0.00
DATCP				
SEG	<u>\$0</u>	<u>0.00</u>	<u>- \$144,200</u>	<u>- 1.00</u>
Total	- \$144,200	- 1.00	- \$144,200	- 1.00

4. Take no action. (The program and position would remain in DNR.)

ALT A4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
DNR				
SEG	\$0	0.00	\$144,200	1.00
DATCP				
SEG	<u>\$0</u>	<u>0.00</u>	<u>- \$144,200</u>	<u>- 1.00</u>
Total	\$0	0.00	\$0	0.00

B. Program Funding

1. Approve the Governor's recommendation to transfer funding of \$100,000 annually for the abandoned tank removal program from DNR to the DATCP administrative appropriation. In addition, repeal the separate DNR abandoned tank program appropriation.

ALT B1	Change to	
	Base	Bill
DNR		
SEG	- \$200,000	\$0
DATCP		
SEG	<u>\$200,000</u>	<u>\$0</u>
Total	\$0	\$0

2. Modify the Governor's recommendation by transferring the separate DNR abandoned

tank program appropriation to DATCP, and place the \$100,000 annual funding in the separate appropriation instead of in the DATCP administrative appropriation.

ALT B2	Change to	
	Base	Bill
DNR		
SEG	- \$200,000	\$0
DATCP		
SEG	<u>\$200,000</u>	<u>\$0</u>
Total	\$0	\$0

3. Take no action. (The program would remain in DNR.)

ALT B3	Change to	
	Base	Bill
DNR		
SEG	\$0	\$200,000
DATCP		
SEG	<u>\$0</u>	<u>-\$200,000</u>
Total	\$0	\$0

Prepared by: Kendra Bonderud



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May, 2019

Joint Committee on Finance

Paper #535

PECFA Program Sunset (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 309, #15]

CURRENT LAW

The Department of Natural Resources (DNR) administers the petroleum environmental cleanup fund award (PECFA) program, which reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil systems. The amount of reimbursement varies from 75% to over 99% of eligible cleanup costs. Owners of certain underground and aboveground tanks may receive up to \$1,000,000 for the costs of investigation, cleanup and monitoring of environmental contamination. The PECFA awards appropriation is one of several appropriations funded from the segregated (SEG) petroleum inspection fund, which receives revenue from a 2¢ per gallon petroleum inspection fee. The Department of Agriculture, Trade and Consumer Protection (DATCP) inspects all petroleum products brought into the state, including gasoline, diesel, and heating oil. The Department of Revenue (DOR) collects the fee. The fund also receives revenues from inspection and plan review fees for bulk petroleum tanks, and interest income on the fund balance.

The state paid the first PECFA awards in 1988-89. Claim levels increased during the 1990s as owners replaced or upgraded petroleum tank systems in compliance with federal and state requirements. In the 1990s, the program experienced a backlog of over \$200 million in claims that had been received and not paid. Issuance of \$387 million in petroleum inspection fee revenue obligations first authorized in 1999 Wisconsin Act 9 allowed the PECFA program to pay the backlog of claims in 2000 through 2003.

Under 2015 Wisconsin Act 55, PECFA eligibility is not available for any site if a person: (a) did not notify DNR of the petroleum discharge and the potential for submitting a claim before July 20, 2015; and (b) does not submit a claim for the reimbursement of eligible costs before July 1, 2020.

Under 2017 Wisconsin Act 59, beginning on June 30, 2020, the Secretary of the Department

of Administration is required to annually transfer the unencumbered balance of the petroleum inspection fund to the transportation fund, except for an amount equal to not less than 5% of the gross revenues received by the petroleum inspection fund during the fiscal year in which the transfer is made.

During the 2017-19 biennium, the PECFA awards appropriation was provided \$7,500,000 SEG from the petroleum inspection fund in each of 2017-18 and 2018-19, in a biennial appropriation. DNR expended \$5,855,500 on PECFA awards in 2017-18, making \$9,144,500 available for expenditures in 2018-19.

GOVERNOR

Change the deadline for submittal of a claim for the reimbursement of eligible costs under the PECFA program from June 30, 2020, to June 30, 2021. Maintain base funding of \$7,500,000 SEG for PECFA awards in each of 2019-20 and 2020-21.

DISCUSSION POINTS

1. The administration indicates the rationale for extending the deadline for submittal of PECFA claims by one year is to give some current claimants sufficient time to complete work and submit claims.

2. Currently, site owners and consultants will need to accomplish as much PECFA-eligible cleanup work as possible during the construction season of 2019. This would provide time for them to complete site cleanup, obtain DNR approval of site closure, and assemble and submit final PECFA claims before the June 30, 2020, claim submittal deadline. It is possible that, depending on weather conditions in the winter of 2019-20, and the type of work remaining at individual sites undergoing cleanup, some investigation and remediation work could be completed in the winter of 2019-20 and spring of 2020.

3. As of April 30, 2019, the PECFA program has paid a cumulative total of \$1.56 billion for partial or full cleanup at 13,512 occurrences. Of the total payments, \$1.49 billion (96% of payments) had paid for completion of cleanup at 13,111 occurrences (97% of occurrences with at least one payment). The remaining 401 occurrences (3% of total occurrences) are open and have received payments totaling \$67.6 million. For calculation of payment maximums, an occurrence is a contiguous contaminated area resulting from one or more petroleum products discharge. A site potentially has more than one occurrence. Currently, there are only a few sites with more than one occurrence. DNR issues approval of final cleanup work for sites rather than occurrences. The remainder of this paper refers to sites that are still in the process of being cleaned up.

4. In January, 2019, DNR received semi-annual site status reports for 341 of the remaining 413 open PECFA sites. These reports included estimates of approximately \$15.7 million in additional cleanup costs for the 314 sites. DNR indicates the cost estimates provided by site owners or consultants might be higher than actual costs will be. In addition, no cost estimates were submitted for 72 open sites. The attachment shows the location of the 341 sites by county. They are located in

65 of the 72 counties in the state, including the following numbers per DNR region: (a) 36 in the northeast; (b) 71 in the northern; (c) 98 in the south central; (d) 92 in the southeast; and (e) 44 in the west central region.

5. DNR has approved final cleanup action and closed approximately 80 PECFA sites per year for the last three years. The Department indicates that many of the opened remaining sites are complex or stalled, where cleanup is happening slowly. Some cleanups might not be completed in time to submit final PECFA claims by the June 30, 2020, deadline. DNR estimates it will close 100 to 120 sites between January, 2019, and June, 2020, and there will be approximately 350 remaining open sites on June 30, 2020.

6. DNR estimates the proposed one-year extension of the deadline to submit PECFA claims might allow cleanup work at 60 additional sites to be completed during the construction season of 2020, winter of 2020-21, and spring of 2021, and to be reimbursed under the program. It is not possible to determine at which 60 individual sites cleanup would not be completed before July 1, 2020, but could be completed by June 30, 2021. It is uncertain how long the cleanup would take at an individual site, because site conditions differ. In addition, the one-year extension of the deadline might help bring cleanup work at additional sites closer to completion. Approximately 60 of the sites listed in the attachment may complete cleanup between July 1, 2020, and June 30, 2021, and would receive PECFA reimbursement under the bill but not under current law. This might result in approximately 290 remaining open PECFA sites on June 30, 2021.

7. It is likely that cleanup at some sites would not be completed by the extended June 30, 2021, claim submittal deadline. It is possible that some sites at which cleanup began in 2015, the deadline for notifying DNR of the discharge, may require more than five years to complete cleanup due to the complexity of conditions at the site or other factors. It is possible that extending the claim submittal deadline could provide an environmental benefit by encouraging cleanup of complex sites that might otherwise stall or remain contaminated with no further cleanup work accomplished without state resources.

8. Under current law and the bill, any cleanup costs not submitted by the deadline would be the financial responsibility of the claimant. Approval of the Governor's recommendation would allow approximately 60 additional currently eligible sites to complete cleanup, or to move closer to completion [Alternative 1].

9. The Committee could choose to extend the deadline for currently eligible claimants to submit PECFA claims by two years, until June 30, 2022 [Alternative 2], instead of one year under the bill. This would allow an estimated 60 additional sites to complete cleanup between July 1, 2021, and June 30, 2022, in addition to the estimated 60 sites expected to complete cleanup between July 1, 2020, and June 30, 2021, and receive PECFA reimbursement. It is possible this would provide some complex sites, or sites that are difficult to address, additional time during 2021 and 2022 to finish cleanup. This might result in approximately 230 remaining open PECFA sites on June 30, 2022.

10. DNR estimates it will spend the full \$9,144,500 available for expenditure in 2018-19, including carryover funds from 2017-18, and the base funding amount of \$7,500,000 in each of 2019-20 and 2020-21. Under current law, an unknown amount of claims submitted late in 2019-20 would

be paid in 2020-21 because it would take a few months for DNR to process a claim, depending on the complexity of the claim and the number of claims submitted shortly before the deadline. Under the bill, it is anticipated that claims submitted late in 2020-21 might be paid in 2021-22.

11. Under both current law and the bill, any balance in the PECFA awards appropriation at the end of 2019-20 would carry forward for expenditure in 2020-21, and would not affect the amount transferred from the petroleum inspection fund to the transportation fund at the end of 2019-20. Under the current PECFA claim submittal deadline, an indeterminate portion of the \$7.5 million provided in 2020-21 would be spent on PECFA claims submitted late in 2019-20, and any appropriation balance at the end of 2020-21 would lapse to the petroleum inspection fund for transfer to the transportation fund. Under the bill's one-year extension of the PECFA claim submittal deadline, it is likely that closer to the full \$7.5 million appropriated in 2020-21 would be spent on PECFA claims and would not be available for transfer to the transportation fund at the end of 2020-21.

12. Under current law, an indeterminate portion of the \$7.5 million appropriated in 2020-21 for PECFA awards would likely lapse to the petroleum inspection fund for transfer to the transportation fund at the end of 2020-21. Owners of approximately 60 PECFA sites would have to pay for contamination cleanup costs they incur during 2020-21. Under the bill, those funds would be spent on cleanup at approximately 60 sites, and would not be transferred to the transportation fund at the end of 2020-21.

13. PECFA sites commonly use consultants as agents for purposes of filing PECFA claims. Under the consultant-agent process, the consultant completes site work, submits a PECFA claim on the owner's behalf, and receives reimbursement from DNR. If program funding is insufficient to pay claims, some consultants may stop active work at PECFA sites until reimbursements are available to provide funding for agents' operations costs. It could be argued that sufficient funds should be provided for PECFA claims during the 2019-21 biennium to ensure continuity of payment of claims. Under current law, PECFA site owners and consultants could complete cleanup work during the 2019 construction season or spring of 2020, and submit final claims during 2019-20. Under the bill's one-year extension of the claim submittal deadline [Alternative 1], PECFA site owners and consultants could complete cleanup work in 2020 and the spring of 2021 and submit final claims for reimbursement of cleanup costs during 2020-21. Under a two-year extension [Alternative 2], PECFA site owners and consultants could complete cleanup work in 2021 and the spring of 2022 and submit final claims during 2021-22.

14. If the appropriation were to run out of funds late in the 2019-21 biennium, it is possible that site cleanup work could slow during 2021 until additional funds were provided for PECFA awards. If the appropriated funds were not sufficient, DNR could submit a s.13.10 request for additional funds in 2020-21.

15. The first use of petroleum inspection fees is required to be payment on the \$387 million in PECFA revenue obligations issued to pay the 1990s PECFA claim backlog. As of December 1, 2018, the total amount of outstanding revenue obligations was \$27.2 million. The final fixed-rate obligations will be retired on July 1, 2019. The petroleum inspection fund will not incur debt service costs in the 2019-21 biennium.

16. Under the bill as introduced, the petroleum inspection fund will have a June 30, 2021, balance of approximately \$3.9 million. This is shown in the following table. Revenue deposited in the petroleum inspection fund will total approximately \$157.1 million during the 2019-21 biennium. Expenditures from the fund will total approximately \$163.0 million during the 2019-21 biennium, including the required year-end transfer to the transportation fund, with 91.45 authorized positions. Of this total, approximately 18% (\$29.1 million) of the expenditures, plus 55.72 positions, will be for PECFA awards, DNR administration of the PECFA program, and DATCP petroleum inspection and tank regulation programs. In addition, approximately 69% (\$112.3 million) will be for the Department of Transportation appropriations and the transfer to the transportation fund. The remaining 13% includes \$21.6 million for other programs.

Petroleum Inspection Fund Condition

	2017-18 <u>Actual</u>	2018-19 <u>Estimated</u>	2019-20 <u>Budget Bill</u>	2020-21 <u>Budget Bill</u>	2020-21 <u>Staff</u>
Opening Balance	\$17,158,300	\$15,790,300	\$9,771,100	\$3,945,500	
Revenues:					
Petroleum Inspection Fee	\$79,706,300	\$77,500,000	\$77,800,000	\$77,900,000	
Revenue Obligation Debt Service	-28,633,000	-25,925,900	0	0	
Petroleum Bulk Tank Fees and Other	<u>1,053,900</u>	<u>1,110,000</u>	<u>1,110,000</u>	<u>310,000</u>	
Total Revenues	\$52,127,200	\$52,684,100	\$78,910,000	\$78,210,000	
Total Revenue Available	\$69,285,500	\$68,474,400	\$88,681,100	\$82,155,500	
Expenditures:					
PECFA Awards	\$5,855,500	\$9,144,500	\$7,500,000	\$7,500,000	
PECFA Administration	2,164,900	2,180,000	2,152,300	2,152,300	18.57
Petroleum Inspection	4,491,000	4,593,900	4,883,700	4,898,800	37.15
Transportation Fund	6,650,300	6,661,800	6,648,400	6,648,400	4.00
Other Programs *	10,333,600	11,904,000	10,758,600	10,792,400	31.73
Expenditure of Prior Year Encumbrances	<u>0</u>	<u>219,100</u>	<u>0</u>	<u>0</u>	<u>0.00</u>
Total Expenditures	\$29,495,300	\$34,703,300	\$31,943,000	\$31,991,900	91.45
Less Transfer to Transportation Fund	\$24,000,000	\$24,000,000	\$52,792,600	\$46,253,100	
Cash Balance	\$15,790,200	\$9,771,100	\$3,945,500	\$3,910,500	
Encumbrances, Continuing Balances	-\$1,863,600	\$0	\$0	\$0	
Available Balance	\$13,926,600	\$9,771,100	\$3,945,500	\$3,910,500	

*Other programs include appropriations for transfer to the segregated environmental management account, DNR contaminated land cleanup administration and air management, Department of Administration (DOA) diesel truck idling reduction grants, Department of Agriculture, Trade and Consumer Protection weights and measures regulation and Unfair Sales Act enforcement, Department of Military Affairs emergency response board and major disaster assistance, Department of Revenue administration of petroleum inspection fee collections, and a reimbursement of the petroleum inspection fee paid on certain purchases of aviation fuel.

17. Sites that entered the PECFA program by the July 20, 2015, deadline created in 2015 Act 55 have almost five years, until June 30, 2020, to submit a PECFA claim and be eligible for

reimbursement under the program. Some may argue that five years should be a sufficient amount of time to complete work at a site. Further, some may argue that if the site owner has not been able to complete the cleanup before the current deadline, the site owner should pay for the remainder of cleanup themselves instead of being reimbursed by the state for cleanup costs incurred by the owner. In addition, it could be argued that eligible sites should have been identified in the 1990s, 2000s, and 2010s, and had sufficient time to complete work. The Committee could take no action, which would maintain the current deadline of June 30, 2020, for PECFA claim submittal [Alternative 3].

18. If the Committee chooses to maintain the current deadline of June 30, 2020, for PECFA claim submittal, it could also consider providing all of the \$15 million in base funding for the biennium in 2019-20 instead of maintaining \$7.5 million in each of 2019-20 and 2020-21. This would provide the same amount of funding for claims, but would provide no base funding going forward to the 2021-23 biennium [Alternative 4]. This alternative would not affect the amount transferred from the petroleum inspection fund to the transportation fund at the end of 2019-20 or 2020-21.

ALTERNATIVES

1. Approve the Governor's recommendation to change the deadline for submittal of a claim for the reimbursement of eligible costs under the PECFA program from June 30, 2020, to June 30, 2021.

2. Change the deadline for submittal of a claim for the reimbursement of eligible costs under the PECFA program from June 30, 2020, to June 30, 2022.

3. Take no action. (The deadline for submittal of PECFA claims would remain June 30, 2020.)

4. Maintain the current PECFA claim submittal deadline of June 30, 2020. In addition, transfer \$7.5 million from 2020-21 to 2019-20 for claims. (This would maintain \$15 million for claims in 2019-21, and all of it would be provided in 2019-20, in the current biennial appropriation.)

Prepared by: Kendra Bonderud
Attachment

ATTACHMENT

Open PECFA Sites by County, For Which Cleanup Cost Information Was Submitted in January, 2019 *

<u>County</u>	<u>Number of Open Sites</u>	<u>County</u>	<u>Number of Open Sites</u>
Adams	1	Milwaukee	55
Ashland	2	Monroe	3
Barron	4	Oconto	1
Bayfield	4	Oneida	2
Brown	7	Outagamie	3
Buffalo	1	Ozaukee	4
Burnett	4	Pierce	1
Calumet	4	Polk	6
Chippewa	5	Portage	1
Clark	8	Price	3
Columbia	11	Racine	7
Dane	27	Richland	6
Dodge	9	Rock	7
Door	2	Rusk	5
Douglas	13	Sauk	3
Dunn	4	Sawyer	1
Florence	1	Shawano	3
Fond du Lac	2	Sheboygan	4
Forest	1	St. Croix	2
Grant	13	Taylor	8
Green	4	Trempealeau	2
Iowa	1	Vilas	1
Iron	4	Walworth	5
Jackson	4	Washburn	1
Jefferson	10	Washington	7
Juneau	1	Waukesha	11
Kenosha	8	Waupaca	2
Lafayette	5	Winnebago	2
Langlade	2	Wood	<u>7</u>
Lincoln	2		
Manitowoc	2	Total	341
Marathon	6		
Marinette	3		
Marquette	2		
Menominee	1		

*Approximately 72 additional sites are open but did not submit estimates of cleanup cost.



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May, 2019

Joint Committee on Finance

Paper #536

Soil and Water Resource Management Funding (Agriculture, Trade and Consumer Protection and Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 39, #3 and #4]

CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection (DATCP) soil and water resource management (SWRM) program, in coordination with the Department of Natural Resources (DNR), develops a joint allocation plan annually for grants to counties for projects that address or prevent nonpoint source water pollution. Joint allocation plan funding supports landowner cost-share grants, county land conservation staff, primarily rural targeted runoff management grants, notice of discharge grants and nutrient management planning and education. In 2019, total DATCP and DNR grants allocated to counties under the plan are \$20.9 million from a variety of state and federal fund sources. Additional amounts awarded under DNR urban nonpoint programs to other local units of government, which are not listed in the joint allocation plan, totaled approximately \$3.9 million in 2018-19.

Funding for DATCP landowner cost-share activities comes from both segregated (SEG) revenue from the nonpoint account of the environmental fund and general obligation bonding authority. This paper discusses changes to funding to both SEG and bond-funded programs. In the 2017-19 biennium, SEG funding for conservation practices, educational programs and other non-county pollution abatement grants totaled \$3,825,000 annually. An additional \$7 million in bonding was provided for structural practices. Debt service associated with SWRM bonding is supported by the nonpoint account and is budgeted at \$4.7 million in 2018-19.

The Wisconsin Constitution generally requires bonds be used for permanent improvements that benefit the state's waters. Therefore, practices supported by bonding are structural in nature, such as streambank stabilization, manure storage facilities, feed storage runoff control systems, and drainage basins. Non-structural "soft" practices, such as nutrient management planning, cover

crops, and other cropping practices, are not eligible for bonding and are instead funded by nonpoint SEG. In general, state law requires that landowners must receive an offer of cost sharing of at least 70% of the cost of installing an agricultural practice if the landowner is to be required to modify an existing practice.

The SWRM grants SEG appropriation also supports up to \$250,000 annually for producer-led watershed protection grants, which are provided directly to producer-led groups for nonpoint source pollution abatement activities. Producer-led groups are eligible for up to \$40,000 per year as long as they have at least five members meeting certain minimum thresholds for farm income, are in one watershed, and collaborate with a state, county, or nonprofit conservation organization. Activities by producer-led groups include education and outreach, development and sharing of best management practices, and water quality monitoring and soil testing. The statutes require producer-led groups to contribute matching funds equal to at least 50% of eligible costs. 2017 Wisconsin Act 196 increased producer-led watershed protection grants to \$750,000 annually on a one-time basis during the 2017-19 biennium. Of the \$3,825,000 SEG appropriated each year in the 2017-19 biennium for SWRM grants, \$500,000 each year was provided on a one-time basis under Act 196 to fund the grant increases.

GOVERNOR

Provide an additional \$1,500,000 nonpoint SEG annually for SWRM grants and contracts, for a total of \$4,825,000 annually in the 2019-21 biennium. Further, provide \$10,000,000 in general obligation bonding authority to support cost-sharing grants to landowners for installation of structural practices.

DISCUSSION POINTS

A. Soil and Water Resource Management Grants

TABLE 1

Soil and Water Resource Management SEG Grant Funding

	<u>Actual 2018-19</u>	<u>Estimated 2019-21</u>
Nutrient Management Planning	\$2,234,500	\$3,082,100
Nutrient Management Farmer Education	182,500	350,100
Cooperators and Other Projects	<u>658,000</u>	<u>658,000</u>
Total	\$3,075,000	\$4,090,200
Appropriation	\$3,075,000*	\$4,075,000*

*Excludes \$750,000 annually for producer-led watershed protection grants, discussed in section B.

1. Table 1 shows nonpoint SEG allocations for SWRM grants and contracts under the 2019 joint allocation in its first column, and an estimate of annual allocations in the 2019-21 biennium based on the most recently available grant requests in the second column. While future requests for funding are not yet known, the most recently available request for funding provides an estimate of current demand for each grant. The table excludes producer-led watershed protection grants, which are discussed in section B of this paper.

2. In 2019, DATCP allocated SWRM grant funding to the following: (a) \$2,234,500 for nutrient management planning cost sharing for 55,900 acres of farmland; (b) \$750,000 for producer-led watershed protection grants to 24 groups; (c) \$182,500 to 16 recipient counties or technical colleges for nutrient management farmer education (NMFE) grants, to provide funding for workshops and training to farmers related to nutrient management planning; and (d) \$658,000 for project cooperators and supporting projects. Project cooperators include: (a) the UW College of Agriculture and Life Sciences (CALs), which develops and maintains SnapPlus nutrient management planning software, and provides outreach, education and training; (b) the Wisconsin Land and Water Conservation Association, which coordinates and trains local conservation staff on nutrient management practices; and (c) the Standards Oversight Council, which supports the development and maintenance of technical standards for soil and water conservation practices in Wisconsin.

3. Nutrient management planning is required for fields to which nutrients such as manure or fertilizer are applied, subject to certain cost-sharing requirements and funding availability. Planning is intended to allow for efficient application of nutrients in a manner that will avoid later runoff to ground or surface waters. DATCP reports approximately 3.35 million acres in Wisconsin were under nutrient management planning in 2018, representing approximately 36% of Wisconsin's 9.2 million acres of harvested cropland. This includes 1,491,000 acres under cost sharing from DATCP, DNR or state or federal programs. Landowners are eligible to receive cost-share rates of \$10 per acre per year for four years to implement a nutrient management plan. A plurality of the acres under nutrient management plans are attributable to the landowner accepting an offer of cost-share funding.

4. It is expected that increased funding for nutrient management planning will increase the proportion of farmland under nutrient management plans in Wisconsin, which would be expected to improve water quality. Given the opportunity to increase the proportion of acres under nutrient management plans in Wisconsin and potential benefits to water quality, the Committee could consider adopting the Governor's proposal to provide an additional \$1,000,000 annually (Alternative A1).

5. As part of the annual joint allocation plan, county land conservation departments request cost-share funding for nutrient management planning they intend to pursue during the year. In the 2019 allocation plan, counties requested funding of \$3,082,100 for approximately 77,100 acres, and received funding of \$2,234,500 for approximately 55,900 acres. While it is not possible to anticipate future requests, DATCP would have required an additional \$847,600 to fully fund counties' 2019 requests. To provide funding sufficient to fully meet the level of requested funding for nutrient management planning under the 2019 joint allocation, the Committee could provide an additional \$850,000 annually (Alternative A2).

6. SEG funding for SWRM grants was increased under 2017 Wisconsin Act 59, the biennial budget act, primarily to cover increased cost-share rates for nutrient management planning

that became effective in February, 2018. Under revisions to ATCP 50, more stringent nutrient management planning standards were imposed, and the state cost-share rate increased from \$7 per acre to \$10 per acre. Under the 2017 joint allocation plan, the last plan with a cost-share rate of \$7 per acre, DATCP funded cost-sharing for 62,000 acres. While increased funding partially offset the increased cost of grants for nutrient management planning, the number of acres cost-shared per year has declined from 62,000 in 2017 to 54,400 in 2018 and 55,900 in 2019. In order to have provided 62,000 acres of cost-sharing in 2019, DATCP would have required an additional \$244,000. To provide funding sufficient to cost-share the same number of acres as prior to the increased rate, the Committee could provide an additional \$250,000 annually (Alternative A3).

7. DATCP provides NMFE grants to counties and technical colleges to conduct workshops and other training to provide education to farmers on nutrient management principles. Grants educate and encourage farmers to write their own nutrient management plans, which increases the total acreage under nutrient management plans. In 2018, 24% of nutrient management plans were written by farmers, while 76% were written with assistance from agronomists. In the 2019 allocation, DATCP fully funded all 16 NMFE grant requests for \$182,500. DATCP reports that for the 2020 allocation, it has received 24 requests for funding totaling \$350,100. In order to fully fund NMFE grant requests in 2020, DATCP would require an additional \$167,600. To provide funding sufficient to fully meet the level of requested funding for NMFE grants, the Committee could provide \$175,000 annually in addition to other alternatives (Alternative A4).

8. It should be noted that increased funding for SWRM grants would contribute to an anticipated deficit in the nonpoint account during the next biennium. Under the bill, it is expected the nonpoint account of the environmental fund would have authorized expenditures that exceed anticipated revenues by approximately \$7.7 million annually during the 2019-21 biennium. Further, on June 30, 2018, the account had a closing cash balance of \$11.1 million and an available (unencumbered) balance of \$5.9 million. Thus, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and an available balance of -\$10.8 million on June 30, 2021. Given insufficient balances in the nonpoint account under the bill as introduced, the Committee could consider taking no action (Alternative A5).

B. Producer-Led Watershed Protection Grants

9. Under current law, DATCP is allowed to expend up to \$250,000 annually for producer-led watershed protection grants beginning in 2019-20 from its SWRM grants appropriation. This amount was increased to \$750,000 on a one-time basis during the 2017-19 biennium. The bill makes no changes to the \$250,000 limit that will resume in 2019-20. However, in an errata item, the administration indicates it intended to include a provision permanently increasing the statutory cap on producer-led grants to \$750,000. Under the bill, additional funding provided to SWRM grants totals \$1,500,000 annually. Of this amount, \$500,000 is intended to fund the increased cap on producer-led grants.

10. In 2018, 19 producer-led groups were awarded a total of \$558,200 in two rounds, and in 2019, 24 groups were awarded a total of \$750,000. Spending below the \$750,000 limit in 2018 was primarily associated with the short time between passage of Act 196 and the end of the fiscal year. In 2019, DATCP received requests for \$869,800 from producer-led groups, and DATCP anticipates that

demand will continue to exceed available funding.

11. Funding was first provided for producer-led grants under 2015 Wisconsin Act 55. At the time, authorization for grants was provided under existing SWRM grant funding to give DATCP flexibility to create a program and provide grants as demand and program design dictated. Given that grants have been provided over five rounds of awards, and DATCP has consistently met the cap for grant allocations and expects to continue to do so, the program could be considered established and ongoing. A separate appropriation would direct funds for a specific purpose and provide more consistency and transparency for grantees of both producer-led watershed protection grants and other SWRM grants. The Committee could consider creating a separate appropriation for producer-led grants (Alternative B3).

12. Producer-led watershed protection grants provide an alternative method to encourage compliance with nonpoint performance standards as compared to traditional cost-share programs. Producer-led groups are formed on a voluntary basis, and consist of farmers interested in improving water quality within a watershed. Because they are producer-led, groups are able to pursue implementation of water quality improvements in a manner consistent with their interest and local needs. Further, grants require groups to collaborate with nonprofit or governmental groups dedicated to water quality. As a result, producer-led groups drive local interest in improving water quality, foster collaboration across organizations, and present locally sourced solutions to water quality problems. Considering the demand for grants and the potential benefits to water quality, the Committee could approve the Governor's proposal, as modified by the errata letter, to provide an additional \$500,000 nonpoint SEG annually and increase the cap on producer-led protection grants to \$750,000 annually (Alternative B1). The Committee could also consider providing an additional \$250,000 annually and increasing the cap to \$500,000 annually (Alternative B2). Considering the limited available funding from the nonpoint account, as discussed previously, the Committee could consider taking no action (Alternative B4).

C. Soil and Water Resource Management Bonding

13. Bonding authority for soil and water resource management has been increased by \$7 million each biennium from 2007-09 to 2017-19. The administration reports that it increased new bonding above levels in previous budgets to address unmet funding requests from previous years. DATCP reports that demand for bond-supported practices is increasing over time, due both to increasing materials and construction costs, and to more stringent nonpoint performance standards. Table 2 shows requested and allocated amounts for SWRM bonding since 2007-09. Over the period, requests exceeded funding by an average of \$4.4 million. DATCP reports that it has exhausted current bonding authority for SWRM grants. DATCP reports 651 practices received cost sharing totaling approximately \$3.6 million in 2018. Practices with the largest cost-share totals included: (a) streambank and shoreline protection (\$510,900); (b) waterway systems (\$470,300); (c) construction of manure storage systems (\$443,700); (d) grade stabilization structures (\$287,300); and (e) closure of manure storage systems (\$264,300).

TABLE 2**Soil and Water Resource Management Grants -- Bond Funding**

<u>Year</u>	<u>Requested</u>	<u>Allocated</u>	<u>Difference</u>
2008	\$8,866,000	\$3,708,400	\$5,157,600
2009	8,418,300	3,663,000	4,755,300
2010	8,176,300	3,703,900	4,472,400
2011	8,119,600	3,596,300	4,523,300
2012	8,091,800	3,566,800	4,525,000
2013	7,654,900	3,718,500	3,936,400
2014	7,282,000	3,747,700	3,534,300
2015	8,059,000	3,388,000	4,671,000
2016	7,146,000	3,675,000	3,471,000
2017	7,806,000	3,315,000	4,491,000
2018	8,102,000	3,555,000	4,547,000
2019	<u>7,631,800</u>	<u>3,455,000</u>	<u>4,176,800</u>
Total	\$95,353,700	\$43,092,600	\$52,261,100

14. Principal and interest payments on SWRM bonds are supported by the nonpoint account of the segregated environmental fund. The bill budgets nonpoint SEG of \$5.0 million in 2019-20 and \$5.1 million in 2020-21 for these purposes. Bonding of \$10 million, when fully issued, would be expected to result in debt service of approximately \$800,000 annually. This assumes a 20-year term on bonds issued at a 5% interest rate.

Since the conversion of debt service associated with nonpoint programs from GPR-supported to nonpoint SEG-supported beginning 2009-10, debt service has represented a considerable portion of nonpoint account expenditures. Table 3 shows nonpoint SEG debt service as a percentage of other account expenditures since 2007-08, with budgeted amounts shown for 2018-19 and later. Declines in debt service as a share of expenditures in the 2019-21 biennium under the bill would result mostly from increased expenditures on other nonpoint programs.

15. DATCP provides bond-supported cost-sharing on a competitive basis for voluntary installation of practices, and on a noncompetitive basis in response to regulatory actions for discharges from animal feeding operations. Under current law, landowners are not required to implement a conservation practice unless the state offers 70% cost sharing on installation of that practice. Thus, a portion of bond-supported funding is set aside in reserve to compel landowners to install practices in response to a regulatory action.

TABLE 3

Nonpoint Account Debt Service as a Percentage of Expenditures

<u>Year</u>	<u>Debt Service</u>	<u>Total Expenditures</u>	<u>Percent</u>
2007-08	\$929,000	\$12,451,600	7%
2008-09	942,800	13,038,400	7
2009-10	5,309,800	16,622,100	32
2010-11	10,810,700	20,920,500	52
2011-12	13,365,500	23,855,800	56
2012-13	14,486,300	27,681,100	52
2013-14	15,637,900	26,833,400	58
2014-15	14,953,400	29,100,300	51
2015-16	15,826,700	30,684,400	52
2016-17	15,409,100	30,498,800	51
2017-18	15,686,700	29,155,600	54
2018-19 (Budgeted)	16,023,600	31,510,400	51
2019-20 (Budgeted)	16,297,200	34,502,900	47
2020-21 (Budgeted)	15,805,800	34,038,100	46

16. Considering the use of bond-supported funds for implementation of agricultural practices that improve water quality and the need for funding to compel regulatory compliance, the Committee could consider providing bonding authority for these purposes. Bonding authority could be increased by \$10 million to reflect consistently unmet demand for the program (Alternative C1), or \$7 million to reflect historical funding (Alternative C2). Conversely, given concerns about the availability of funding in the nonpoint account, and proportion of nonpoint account expenditures associated with debt service payments, the Committee could consider taking no action (Alternative C3).

ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

A. Soil and Water Resource Management Grants

1. Adopt the Governor's proposal to provide an additional \$1,000,000 nonpoint SEG annually for SWRM grants, primarily associated with nutrient management planning.

ALT A1	Change to	
	Base	Bill
SEG	\$2,000,000	\$0

2. Provide an additional \$850,000 nonpoint SEG annually for SWRM grants, primarily associated with nutrient management planning. (This would fully fund the number of acres requested under the 2019 joint allocation plan.)

ALT A2	Change to	
	Base	Bill
SEG	\$1,700,000	- \$300,000

3. Provide an additional \$250,000 nonpoint SEG annually for SWRM grants, primarily associated with nutrient management planning. (This would provide funding sufficient to cost-share the same number of acres as in 2017, prior to the increase in cost-share rates.)

ALT A3	Change to	
	Base	Bill
SEG	\$500,000	- \$1,500,000

4. Provide an additional \$175,000 nonpoint SEG annually for SWRM grants, to reflect increased demand for nutrient management farmer education. (This alternative could be moved in addition to any other alternatives).

ALT A4	Change to	
	Base	Bill
SEG	\$350,000	\$350,000

5. Take no action.

B. Producer-Led Watershed Protection Grants

1. Adopt the Governor's proposal, as modified by the errata letter, to provide an additional \$500,000 nonpoint SEG annually for producer-led watershed protection grants and increase DATCP's authorization to award SWRM grants for producer-led watershed protection grants to \$750,000 annually.

ALT B1	Change to	
	Base	Bill
SEG	\$1,000,000	\$0

2. Provide an additional \$250,000 nonpoint SEG annually for producer-led watershed protection grants, and increase DATCP's authorization to award SWRM grants for producer-led watershed protection grants to \$500,000 annually.

ALT B2	Change to	
	Base	Bill
SEG	\$500,000	- \$500,000

3. Create an appropriation for producer-led watershed protection grants, and reallocate nonpoint SEG funding equal to the statutorily established cap under the SWRM grants appropriation to the new appropriation from the SWRM grants appropriation. Further, delete language in the SWRM grants appropriation authorizing expenditure of producer-led watershed protection grants in that appropriation. (This alternative could be moved in addition to any other alternatives under A or B.)

4. Take no action. DATCP would be authorized to spend up to \$250,000 annually on producer-led watershed protection grants.

ALT B4	Change to	
	Base	Bill
SEG	\$0	- \$1,000,000

C. Soil and Water Resource Management Bonding

1. Adopt the Governor's proposal to provide \$10,000,000 in general obligation bonding authority supported by the nonpoint account of the environmental fund to support cost-sharing grants to landowners for installation of structural practices.

ALT C1	Change to	
	Base	Bill
BR	\$10,000,000	\$0

2. Provide \$7,000,000 in general obligation bonding authority supported by the nonpoint account of the environmental fund to support cost-sharing grants to landowners for installation of structural practices.

ALT C2	Change to	
	Base	Bill
BR	\$7,000,000	- \$3,000,000

3. Take no action.

ALT C3	Change to	
	Base	Bill
BR	\$0	- \$10,000,000

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May, 2019

Joint Committee on Finance

Paper #537

County Conservation Staffing (Agriculture, Trade and Consumer Protection and Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 40, #5]

CURRENT LAW

Since 1987, the Department of Agriculture, Trade and Consumer Protection (DATCP) has disbursed state funds to county land conservation committees to support activities that prevent soil erosion and runoff of nutrients and pollutants into waters of the state. County conservation staff activities eligible for funding include: (a) land and water resource management plan implementation; (b) conservation practice engineering, design, and installation; (c) cost-share grant administration; (d) farmland preservation program administration; and (e) livestock regulation. Grants to counties for conservation staff are provided on a reimbursement basis.

Grants are awarded in a tiered process, providing each county a base allocation of \$75,000. As available, remaining funding is allocated to provide for 100% funding of a county's first position, 70% of a second position, and 50% for each thereafter, with counties providing the difference. Conservation staffing grants are funded by DATCP with general purpose revenue (GPR) and segregated (SEG) revenue from the nonpoint account of the environmental fund.

GOVERNOR

Provide \$476,000 GPR and \$924,000 nonpoint SEG annually to increase grants for county land and water conservation staff. Under the bill, county staffing grants would be provided \$10,364,100 each year, consisting of \$3,503,200 GPR and \$6,860,900 nonpoint SEG. The administration indicates it intends increased funding to fully cover 100% of first position costs and 70% of second position costs. The funding provided would be consistent with the ratio of GPR to nonpoint SEG in the base.

DISCUSSION POINTS

1. During the 2019 allocation, DATCP fully funded the base allocation of \$75,000 per county and first positions in every county, and approximately 45% of second positions (64% of its 70% cost-share amount). No funding for third positions has been allocated since 2010. In 2018, the most recent year for which counties have reported staffing levels and use of grant awards, DATCP allocated \$9.0 million in awards to support 112 full-time equivalent positions, of a total 364 positions reported by counties. Other funding for positions typically comes from county governments (211 positions) or other private or governmental grants (41 positions).

2. The table shows recent DATCP conservation staffing grant funding by fund source. GPR funding has generally declined over time, being partially replaced by nonpoint SEG. The following nonpoint SEG amounts have been provided on a one-time basis: (a) \$998,600 in 2013-14; (b) \$815,900 in 2014-15; and (c) \$675,000 annually in the 2015-17 biennium. Additional nonpoint SEG expenditures for staffing grants and other purposes has been offset by occasional transfers to the account. The transfers are discussed in greater detail in a separate issue paper entitled "Environmental Fund Overview."

DATCP County Conservation Staffing Grant Funding

<u>Fiscal Year</u>	<u>GPR</u>	<u>SEG</u>	<u>Total</u>
2007-08	5,081,900	4,225,100	9,307,000
2008-09	5,081,900	4,225,100	9,307,000
2009-10	4,270,100	5,036,900	9,307,000
2010-11	4,270,100	5,036,900	9,307,000
2011-12	3,843,100*	5,036,900	8,880,000
2012-13	3,843,100*	5,036,900	8,880,000
2013-14	2,844,500	6,035,500	8,880,000
2014-15	3,027,200	5,852,800	8,880,000
2015-16	3,027,200	5,711,900	8,739,100
2016-17	3,027,200	5,711,900	8,739,100
2017-18	3,027,200	5,936,900	8,964,100
2018-19	3,027,200	5,936,900	8,964,100
2019-20 (Bill)	3,503,200	6,860,900	10,364,100
2020-21 (Bill)	3,503,200	6,860,900	10,364,100

*Amounts were further reduced by \$1,100,400 GPR in 2011-12 and \$280,400 GPR in 2012-13 to meet lapse requirements of the agency under 2011 Wisconsin Act 32.

3. County conservation staff are the first point of contact for landowners seeking to implement conservation practices to limit soil erosion and nonpoint source water pollution. DATCP and counties have argued preserving funding for county staffing grants retains continuity in personnel that provide landowners with expertise and technical assistance necessary to meet soil and water conservation standards. In the event a landowner is not in compliance with state soil and water conservation standards, the landowner may be more willing to contact county staff with whom the

person has a long-term working relationship.

4. The administration indicates that the proposed funding level for county staffing grants is intended to reflect the cost of fully funding the state's 70% share of second positions at county conservation departments, which were last fully funded under the 2010 allocation. While the proposed allocation meets this intent for the 2019 allocation, recently received applications for 2020 funding from counties show additional funding of \$255,900 each year would be required to fully fund second positions in 2020. For the 2020 allocation, \$6,842,200 would be required to fully fund counties' 2020 \$75,000 annual base plus additional necessary costs for first positions, \$10,620,000 would be required to fully fund 70% of second positions, and \$12,855,300 would be required to fully fund 50% of third positions.

5. Under the bill, it is expected the nonpoint account of the environmental fund would have authorized expenditures that exceed anticipated revenues by approximately \$7.7 million annually during the 2019-21 biennium. Further, on June 30, 2018, the account had a closing cash balance of \$11.1 million and an available (unencumbered) balance of \$5.9 million. Thus, under the Governor's proposal it is expected the nonpoint account would have an estimated closing cash balance of -\$5.3 million and available balance of -\$10.8 million on June 30, 2021. Given insufficient balances in the nonpoint account, the Committee could consider providing GPR or other funding for county staffing grants, in lieu of SEG.

6. Effective December 1, 2010, the state promulgated new, stricter phosphorus standards for municipal and industrial wastewater treatment facilities. The Department of Natural Resources (DNR) reports that under these new standards, almost 80% of facilities must meet standards more stringent than those previously in effect. Federal law provides regulatory flexibility to states for implementing water quality standards in the form of variances. A variance is a short-term deviation from pollution abatement standards that allows incremental step-ups over a period of time to enable a more feasible and cost-effective implementation of pollution abatement technology. Typically, variances are provided on an individual basis, with each application requiring DNR and Environmental Protection Agency (EPA) approval. However, in February, 2017, DNR received approval from EPA for a statewide multi-discharger phosphorus variance (MDV), which allows eligible municipal and industrial wastewater treatment plants to participate without the need for an individualized permit.

7. The MDV allows qualifying municipal and industrial wastewater treatment facilities to incrementally reduce their discharges over a period of 20 years, while also undertaking one of three options to reduce phosphorus discharges within their watershed. The first two options consist of either a permit holder or a third-party contractor implementing practices to reduce phosphorus discharges within the geographic drainage basin of the point source. For 2018, DNR reports three permittees selected this option, all of which were self-directed.

8. The third option is for the permit holder to make payments to counties in support of county nonpoint source pollution abatement activities. The payment is calculated as an amount per pound of phosphorus by which the point source in the previous year exceeded the level of phosphorus discharge it would be expected to reach to meet water quality standards. The amount was originally set at \$50 per pound, and is annually adjusted by DNR for inflation. For 2019, payments are set at

\$53.01 per pound of phosphorus. In 2017, two permittees selected this option, with payments totaling \$2,600 to one county. In 2018, 37 permittees selected this option, with payments of \$619,400 to 25 counties, as seen in Attachment 1. Payments are distributed to counties electing to participate in the MDV program in proportion to the territory each county has in the watershed of the discharge. Attachment 2 shows payments by watershed. Funds received by counties may support: (a) cost-sharing projects to reduce phosphorus at agricultural facilities; (b) staff to implement such projects; or (c) modeling or monitoring of waters for planning purposes for future efforts to reduce phosphorus entry into state waters. However, at least 65% of funds must be used for cost-share projects. Thus, of the \$619,400 received by counties in March, 2019, up to approximately \$216,800 would be available for additional conservation staffing.

9. DATCP argues that because MDV payments are dependent upon point source participation, they should not be considered a replacement for state county staffing grant awards to counties. The primary determinant of point source participation is the cost of improvements in wastewater treatment technology used to reduce discharges. As a condition of MDV participation, point sources are required to incrementally reduce their discharges. Long-term payments are expected to decline as permit conditions become stricter, and as technology improves to allow phosphorus reductions at a cost below the \$53.01 per pound paid to counties. However, DNR reports that permittee participation and resulting payments are expected to increase in 2019, with 50 permitted entities already authorized under the MDV through May 7, 2019. DNR anticipates that approximately twice as many permitted entities will participate in the MDV as compared to 2018, although it does not expect payments to double because permit limits on phosphorus continue to become stricter.

10. Depending on county allocation of MDV payments, up to \$216,800 (35%) of the 2019 payment of \$619,400 could be spent on county conservation staff. Further, considering that MDV payments are expected to grow during the 2019-21 biennium, more non-state funding would become available for county conservation staff. The Committee could consider reducing the Governor's proposal to reflect increased MDV funding for county staffing during the biennium, and requiring DATCP to reduce staffing grant awards for each county by 35% of the amount they received from the most recent payment by DNR. Thus, funding received in March, 2019, for 2018 discharges of phosphorus by point sources would be removed from a county's county staffing grant award announced in fall 2019 to fund activities in 2020. Conversely, additional funding associated with cost-share grants would require additional staff time associated with project engineering and construction, and grant administration. Thus, while funding for county staff would increase under MDV payments, associated workload would also increase to reflect additional phosphorus mitigation projects necessary under the MDV.

11. If the Committee wished to fully fund the 2020 state cost-share portion of second positions, it could consider modifying the Governor's proposal to provide an additional \$255,900 each year. Maintaining the same ratio of GPR and nonpoint SEG, this would increase county staffing grants by \$563,000 GPR and \$1,092,900 nonpoint SEG annually (Alternative 2). The Committee could also consider adopting the Governor's proposal to increase county staffing grants by \$476,000 GPR and \$924,000 nonpoint SEG annually (Alternative 1).

12. Given concern about availability of nonpoint account funding, the Committee could

modify the Governor's request to provide the entire proposed amount of \$1,400,000 annually as GPR (Alternative 3). The Committee could also consider providing only the GPR increase of \$476,000 annually (Alternative 4).

13. Given the potential funding available to counties from payments under the multi-discharger variance, the Committee could consider decreasing the Governor's proposal by \$216,800, split equally between GPR and nonpoint SEG, to reflect the additional funding available to counties for conservation staff from MDV payments, and reduce awards to counties according to payments they receive under the MDV (Alternative 5). The Committee could also consider maintaining current funding of \$3,027,200 GPR and \$5,936,900 nonpoint SEG annually (Alternative 6).

ALTERNATIVES

(Funding of alternatives below related to nonpoint SEG are dependent upon Committee action under paper #525 entitled "Environmental Fund Overview." The paper provides a number of alternatives related to revenue that would address the condition of the nonpoint account.)

1. Adopt the Governor's proposal to provide an additional \$476,000 GPR and \$924,000 nonpoint SEG annually to increase grants for county land and water conservation staff. Grants would be budgeted at \$10,364,100 annually, consisting of \$3,503,200 GPR and \$6,860,900 nonpoint SEG.

ALT 1	Change to	
	Base	Bill
GPR	\$952,000	\$0
SEG	<u>1,848,000</u>	<u>0</u>
Total	\$2,800,000	\$0

2. Provide an additional \$563,000 GPR and \$1,092,900 nonpoint SEG annually to reflect the 2020 cost of fully funding the 70% state share for second positions. Grants would be budgeted at \$10,620,000 annually, consisting of \$3,590,200 GPR and \$7,029,800 nonpoint SEG.

ALT 2	Change to	
	Base	Bill
GPR	\$1,126,000	\$174,000
SEG	<u>2,185,800</u>	<u>337,800</u>
Total	\$3,311,800	\$511,800

3. Modify the Governor's proposal by providing all additional funding as GPR, for an increase of \$1,400,000 GPR annually. Grants would be budgeted at \$10,364,100 annually, consisting of \$4,427,200 GPR and \$5,936,900 nonpoint SEG.

ALT 3	Change to	
	Base	Bill
GPR	\$2,800,000	\$1,848,000
SEG	<u>0</u>	<u>- 1,848,000</u>
Total	\$2,800,000	\$0

4. Provide additional funding of \$476,000 GPR annually. Grants would be budgeted at \$9,412,100 annually, consisting of \$3,475,200 GPR and \$5,936,900 nonpoint SEG.

ALT 4	Change to	
	Base	Bill
GPR	\$952,000	\$0
SEG	<u>0</u>	<u>- 1,848,000</u>
Total	\$952,000	-\$1,848,000

5. Provide \$367,600 GPR and \$815,600 nonpoint SEG annually, which would reduce the Governor's proposal to offset payments made to counties under the multi-discharger variance. Require DATCP, when preparing its allocation for county staffing grants, to reduce staffing grant awards to each county by 35% of the payment received by the county in the most recent distribution of MDV payments by DNR. Grants would be budgeted at \$10,147,300 annually, consisting of \$3,394,800 GPR and \$6,752,500 nonpoint SEG.

ALT 5	Change to	
	Base	Bill
GPR	\$735,200	- \$216,800
SEG	<u>1,631,200</u>	<u>- 216,800</u>
Total	\$2,583,200	\$433,600

6. Take no action. Grants would be budgeted at \$8,964,100 annually, consisting of \$3,027,200 GPR and \$5,936,900 nonpoint SEG.

ALT 6	Change to	
	Base	Bill
GPR	\$0	- \$952,000
SEG	<u>0</u>	<u>- 1,848,000</u>
Total	\$0	-\$2,800,000

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Attachments

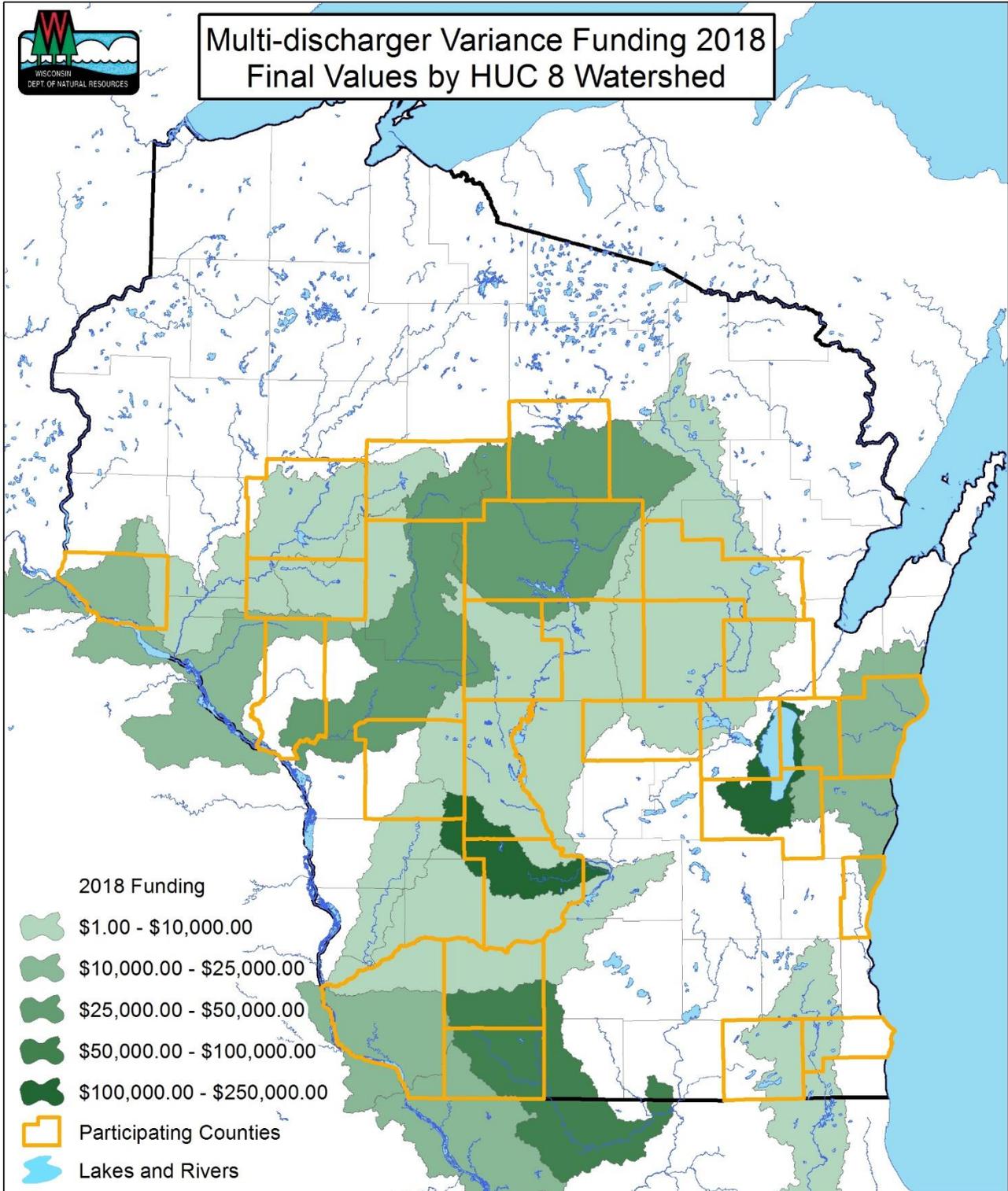
ATTACHMENT 1

2018 Multi-Discharger Variance Payments to Counties

<u>County</u>	<u>Amount</u>
Calumet	\$51,039
Chippewa	3,532
Eau Claire	8,325
Fond du Lac	115,545
Grant	14,100
Iowa	30,295
Juneau	25,801
Lafayette	62,349
Lincoln	13,962
Manitowoc	10,252
Marathon	29,836
Monroe	27,462
Outagamie	617
Ozaukee	1,132
Pierce	19,712
Racine	1,765
Sauk	89,582
Shawano	1,252
Taylor	23,390
Trempealeau	19,366
Walworth	3,567
Waupaca	1,196
Waushara	462
Winnebago	53,857
Wood	<u>10,968</u>
Total	\$619,364

ATTACHMENT 2

Multi-Discharger Variance Payments by Watershed



NATURAL RESOURCES

Environmental Quality

LFB Summary Items for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
2	Dam Safety Bonding
5	Total Maximum Daily Load Implementation Positions
8	Rural Nonpoint Source Bonding
9	Urban Nonpoint Source Bonding