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Contaminated Land Cleanup Programs

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Contaminated Land Cleanup Programs

The cleanup of hazardous substance discharges and environmentally contaminated land in Wisconsin is regulated through a combination of federal and state laws. Chapter 292 of the Wisconsin statutes regulates remedial action at sites with discharges of hazardous substances and environmental pollution. This generally includes any substance which may cause, or significantly contribute to, an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial threat to human health or the environment.

The Department of Natural Resources (DNR) is responsible for implementation of the state's direct-response hazardous substances cleanup programs, and for establishment and administration of cleanup standards for contaminated media, such as groundwater, soil, surface water, sediments, other materials, and indoor air. DNR also implements federal programs in cooperation with the U.S. Environmental Protection Agency (EPA). DNR's Remediation and Redevelopment program integrates all aspects of the cleanup process.

This paper describes the contaminated land cleanup programs administered by DNR, including program requirements, funding sources and state program expenditures. These federal and state programs are intended to clean up sites with spills, leaks, abandonment, and discharge of hazardous substances. DNR or the responsible person, company, or governmental entity legally liable for cleaning up the contamination makes an initial assessment of the site, which may be in cooperation with local emergency management or EPA staff, to determine if emergency response is needed. DNR then works with site owners, communities and other governmental entities to attempt to ensure that contaminated soils, groundwater, surface water, sediment, material, and indoor air are restored to a safe condition.

The majority of hazardous substance cleanups underway in Wisconsin are being financed by the owner of a contaminated property or the party who caused the contamination. When the responsible party finances a cleanup, DNR provides technical review, management and oversight and, if necessary, enforcement. When responsible parties do not finance the cleanup, DNR can allocate state and federal funds to do so, initiating cost recovery later, if the site is a priority for use of those funds. There are also financial assistance programs available to persons to assist with the investigation and cleanup of contaminated properties.

Several state programs also promote the cleanup and redevelopment of brownfields sites, which are abandoned, idle, or underused properties, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

For information about other contaminated land cleanup programs, see the Legislative Fiscal Bureau's informational papers entitled, "Environmental Management Account" (for a description of a major funding source of the programs), "Environmental Improvement Fund" (for a description of the land recycling loan program), "Wisconsin Economic Development Corporation" (for a description of brownfields grant programs), and "Agricultural Chemical Fees and Programs" (for a description of the agrichemical cleanup program administered by the Department of Agriculture, Trade and Consumer Protection).

CHAPTER 1

FEDERAL CLEANUP INITIATIVES ADMINISTERED BY DNR

The four key federal contaminated land cleanup programs utilized in Wisconsin are: (a) the Superfund program; (b) the Resource Conservation and Recovery Act (RCRA) leaking underground storage tank (LUST) program; (c) federal brownfields programs; and (d) the RCRA program to clean up hazardous waste sites. The programs are administered by DNR's Remediation and Redevelopment program.

The Environmental Protection Agency (EPA) and DNR implement the federal One Cleanup Program through a memorandum of agreement covering cleanup of contamination from hazardous wastes and polychlorinated biphenyls (PCBs). DNR and EPA coordinate which agency takes the lead in cleanup at specific sites, how cleanup rules will apply, and how DNR will take the lead in reviewing requests for approval of the cleanup. The agreement does not apply to Superfund cleanups, which are regulated by federal and state laws, and described in the following section.

Superfund Cleanup Program

The federal Superfund program was established in 1980 by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. The 1980 chemical tax, originally established by CERCLA to support the Superfund program, imposed excise taxes on domestic crude oil, imported petroleum products and identified chemicals, as well as imported substances comprised of such chemicals. The crude oil and chemical feedstock tax provisions for funding the Superfund program were up for consideration of reauthorization in 1995. Congress did not reauthorize the excise tax, but rather continued to fund the program primarily from general purpose revenues and cost recoveries until 2021, when the Infrastructure Investment and Jobs Act (IIJA) reinstated the excise tax through 2031. This tax is effective July 1, 2022, and is applicable to the sale or use of approximately 150 identified chemicals as well as certain substances manufactured or produced from the listed chemicals. The applicable rates of tax and related provisions were also modified under IIJA.

Superfund includes three cleanup components: (a) an emergency response program for sites posing an immediate and substantial danger; (b) a site assessment program to evaluate potential Superfund sites; and (c) a remedial action program for longer-term cleanup remedies.

Emergency Response Program

Immediate actions to remove hazardous substances can be carried out by EPA under its emergency response program. Immediate removals are triggered by significant emergencies involving hazardous substances, such as fires, explosions, spills or direct human contact. Immediate removals are intended to minimize unacceptable exposures at the site to protect life and human health by stopping the hazardous release and minimizing the damage or threat. Specific responses may include: (a) collecting and analyzing samples; (b) controlling the release; (c) removing hazardous substances from the site and storing the substances; (d) treating or destroying the substances; (e) providing alternate water supplies; (f) deterring

the spread of the pollutants; and (g) evacuating threatened citizens.

EPA emergency response actions generally include three types of situations: (a) classic emergencies are situations where the release of a hazardous substance requires action at the site within minutes or hours of the incident; (b) time-critical actions are situations where, after an evaluation of the site is completed, EPA determines that removal of the hazardous substance must begin within six months; and (c) non-time-critical actions are infrequent situations where, after an evaluation of the site, EPA determines that work can be postponed for at least six months after the incident due to the low risk.

EPA provided emergency response assistance totaling approximately $1.6 million at seven sites in Wisconsin between July 1, 2020, and June 30, 2022. In addition, potential responsible parties spent an unknown amount during that time on emergency response actions overseen or required by EPA in the state.

Site Assessment Program

Any site where the release of hazardous substances poses a risk can be considered for remedial action by responsible parties under federal Superfund authority. However, a site must be listed on the national priority list (NPL) in order to be considered for federal Superfund funding to conduct the remedial action where the response will not be conducted by the responsible party. The site assessment process involves gathering historical and field data to determine if the site poses a great enough risk for nonemergency Superfund response. The information gathered during the site assessment is used to assign a score, based on EPA criteria related to actual contamination and health and environmental effects. If a site scores above a designated cutoff, it is eligible for the NPL and may be nominated by DNR.

After the site has been nominated, EPA considers the priority of the site and decides whether it should be proposed for inclusion on the NPL. If proposed, following a public comment process, a site is listed on the NPL as a Superfund site. As of July, 2022, 1,329 sites nationwide are on the NPL. Thirty-six (3%) of these sites are in Wisconsin. Nine Wisconsin sites have been deleted from the NPL, and since 2010, one site has been added. The Scrap Processing Co. site (Taylor County) is the most recent Superfund site to be removed from the list, in 2020, and Unity Auto Mart (Marathon County) was added in 2022. Appendix I lists the 36 Wisconsin sites and their locations.

EPA may also propose that a site be listed on the NPL. In the summer of 1998, EPA proposed listing a 39-mile stretch of the Fox River from Lake Winnebago to Green Bay on the NPL because of contamination from PCBs. EPA postponed a decision to list the site on the NPL while the responsible parties (primarily several paper companies) implemented a remedial action. Dredging, removal, and capping of PCB-contaminated sediments was conducted in several areas of Little Lake Butte des Morts and the Lower Fox River from Appleton to Green Bay since 2004, and remediation work was completed in mid-2020. Dewatered sediments from dredging were disposed of in a Wisconsin landfill. Sediments with high levels of PCBs were hauled out of state to a federally regulated hazardous waste landfill. Water, sediment, and fish monitoring will continue many years into the future.

Before a site is listed, DNR attempts to identify the responsible party or parties to undertake the cleanup process. If these efforts are successful, the case is managed by DNR under the state's environmental repair program and the site is generally not placed on the NPL. If these efforts are unsuccessful or the responsible party is not known, the Superfund listing process for that site may continue. After a site is listed, EPA contracts with a firm to conduct a search for potentially responsible parties to fund the remedial action. If a responsible party is found after listing on the NPL, the responsibility

for funding the cleanup is transferred from Superfund to the responsible party.

Under the Superfund law, EPA may establish liability of a responsible party if it can prove that the party disposed of hazardous substances at a particular site and that those substances are now being released from the site. At sites with multiple responsible parties, Superfund can require all identified responsible parties to fund the remedial action. If some responsible parties cannot be identified, or are identified and cannot pay (for example, due to bankruptcy), the remaining responsible parties may be held liable for all of the cleanup costs. For example, if a responsible party caused 50% of the contamination, and no other responsible parties are identified who can pay, that party may be held liable for 100% of the cleanup costs. This is known as joint and several liability.

EPA has also implemented a Superfund Alternatives Program, under which one or more of the responsible parties for a site may undertake a cleanup under Superfund remedial action authority, and pursue recovery of cleanup costs from other responsible parties. As long as the responsible parties working on the site continue to do so, EPA does not add the site to the NPL. Under this program, EPA, rather than DNR, takes the lead role in administering the cleanup. As of July, 2022, 10 Wisconsin sites are participating in this program. EPA was in the process of transferring one of the sites (Solvay Coke in Milwaukee) to DNR for administration of completion of the remedial action.

Remedial Action Program

EPA and DNR will negotiate with potentially responsible parties to fund the investigation and cleanup before spending any federal or state dollars on the site. Of Wisconsin's 36 Superfund sites, responsible parties are currently partially or fully financing investigations and cleanup at 27 sites. Superfund revenues are financing work solely at nine Wisconsin sites, and the potentially responsible party and Superfund are jointly funding work at one site. Appendix I lists these sites.

The remedial investigation, design and action activities have been completed at 34 of the 36 Wisconsin sites. These 34 sites are in the operation and maintenance (O&M) phase of actions, which means the actions needed to continue to operate and maintain the cleanup remedy have already been constructed. Examples of O&M activities are: (a) operating pumps to extract contaminated groundwater as part of a groundwater treatment system; (b) pumping leachate and operating a methane extraction flare at a landfill where a cap has been installed over contamination; (c) operating water treatment systems; or (d) analyzing samples from groundwater monitoring wells.

If a site cleanup is financed with Superfund dollars, EPA has generally taken the lead role, although DNR has assumed the lead cleanup role at three of the 10 sites funded with federal Superfund dollars, and the operation and maintenance of work at one other site. In cases where the responsible parties agree to pay for the necessary work, those parties may request that DNR take the lead role. If DNR takes the lead role in a case financed by a responsible party who fails to provide for appropriate cleanup, the lead may need to be renegotiated after EPA commits funding for that site.

After the site is listed and the preliminary negotiations are completed, a private consultant conducts a remedial investigation and feasibility study to determine the nature and extent of the problem and methods of dealing with the contamination. The study considers engineering, environmental, and economic factors to determine the cleanup methods that will protect public health and the environment, meet cleanup requirements and be the most cost-effective method for a particular site.

After review and approval of the remedial investigation and feasibility study, the site enters the remedial design and action phase. EPA or DNR, depending on which agency has assumed

the lead role, approves the cleanup alternative. EPA and the state must select remedial actions that meet federal and state environmental standards and that result in permanent cleanup. Alternative treatment technologies, such as alternatives to excavating contaminated soil and hauling it to a landfill, must be used where technically feasible. If any hazardous substances remain on the site after cleanup, the site must be reviewed every five years.

Specific actions may include: (a) the removal of containers containing wastes from a site; (b) the installation of a clay or synthetic cap over the site; (c) removal of contaminated soil; (d) the construction of ditches and dikes to control surface water; and (e) the construction of drains and liners or extraction wells to treat groundwater. Private contractors perform the bulk of the work under federal or state supervision.

Under Superfund, remedial actions must meet the substantive requirements of all other federal and state environmental laws and state facility siting laws, if applicable. EPA may waive certain standards under specified circumstances.

In addition to the long-term remedial actions, EPA may choose to implement interim measures to minimize damages or risks and preclude future emergency response actions. For example, construction of a new water supply system needed because of groundwater contamination would be an initial remedial measure, and finding and stopping the source of the groundwater contamination would be the long-term cleanup solution.

State and Federal Funding Shares

Federal funding for the Superfund program has come from: (a) various taxes on crude oil and chemical feedstock; (b) cost recoveries from site operators, generators and current and past owners; (c) interest; and (d) general revenues. Superfund taxing authority on chemicals and chemical feedstock was restored under IIJA. Superfund pays 90% of the cost of treatment and other measures until completion of the cleanup or until 10 years after operation of those measures begins for groundwater restoration. The state pays the remaining 10%. In most cases, after the first year of post-cleanup maintenance, the state pays 100% of all operation and maintenance costs. At waste sites owned by a state or its political subdivisions, Superfund pays 50% and the state pays 50%.

In Wisconsin, the state share for Superfund cleanup actions is paid from the spills cleanup appropriation from the environmental management account of the segregated environmental fund, or from general obligation bonds authorized for this purpose, with debt service payments from the environmental management account. DNR is authorized, under the state environmental repair program, to take actions to implement the Superfund program in the state. The Department commits the required state share after it agrees with EPA's assessment of the effectiveness of the proposed repair action. Federal and state expenditures for Superfund cleanup projects in Wisconsin are shown in Table 1.

State law requires DNR to promulgate rules that will determine whether a municipality will be required to pay a portion of the state share at a Superfund cleanup site. Administrative code Chapter NR 730 includes criteria for DNR's expenditure of moneys for Superfund state cost-share purposes and to determine a municipality's responsibility to pay a share of the state's Superfund cost share in cases where a municipality will benefit from the proposed remedial action.

NR 730 states that DNR may require a municipality to pay up to 50% of the amount expended by DNR for the state's Superfund cost share, but not more than $3 per capita in any year.

Table 1: State and Federal Expenditures for Wisconsin Superfund Cleanup Projects through June 30, 2022

	State Share	Federal Share
Projects		
Penta Wood Products (Burnett County)	$4,245,142	$17,371,659
Schmalz Landfill (Calumet County)	336,800	3,031,512
Stoughton City Landfill (Dane County)	1,365,528	1,299,286
Oconomowoc Electroplating Co. (Dodge County)	2,471,338	21,003,700
Eau Claire Municipal Well Field *	175,700	5,868,000
Onalaska Municipal Landfill (La Crosse County)	4,330,520	4,620,000
Mid-State Disposal Landfill (Marathon County) **	992,000	4,437
Moss American (Milwaukee County)	287,200	5,366,203
N.W. Mauthe Co. (Outagamie County)	734,883	4,742,128
Scrap Processing Inc. (Taylor County)	162,700	1,469,148
Better Brite (Brown County)	60,343	83
Total	$15,162,154	$64,776,156
Committed but not yet Expended		
Penta Wood Products		$397,198

* Removed from the Superfund NPL in 2014.
** A special agreement was reached with potential responsible party, and federal expense is not required.

Leaking Underground Storage Tank Program

The federal leaking underground storage tank (LUST) trust fund was established in 1986 to provide funding for states to manage the cleanup of leaks from underground petroleum storage tanks. EPA provides federal funding to states to manage the cleanup at LUST petroleum sites. EPA can also choose to take the lead in cleanup of a LUST site.

DNR acts as the lead state agency in all cleanup actions and is the state recipient of the EPA LUST grant. DNR is authorized to enforce owner-financed cleanups at LUST petroleum spills and at any non-petroleum spills and to manage cleanups in cases where the owner is unknown or cannot or will not finance the necessary action. As with the Superfund program, actual cleanups are carried out by private contractors. Similar to the Superfund program, federal LUST program dollars may be used for emergency action, investigation, and cleanup work in cases where the responsible party is unknown or cannot or will not finance appropriate actions.

Major exclusions from the federal LUST program include: (a) home and farm tanks with 1,100 gallons or less capacity; (b) heating oil tanks where the oil is consumed on the premises; and (c) all tanks with capacity less than 110 gallons. Other spills are covered by the state's hazardous spills program, which is discussed under a later section on state-funded cleanup programs. The state hazardous substances spills law (s. 292.11 of the statutes) and the NR 700 administrative code series are used to implement federal LUST requirements and respond to both federally-regulated and non-federally regulated leaking tanks.

The LUST program complements the federal underground storage tank program (UST), which is intended to prevent contamination of

groundwater and vapor migration caused by leaks from underground storage tanks. These regulations require certain tank owners to provide evidence that they can finance cleanups necessitated by any possible future leaks and to upgrade or abandon tanks on an age-based schedule.

The Department of Agriculture, Trade and Consumer Protection (DATCP) has responsibility for regulation and enforcement of storage tank standards and financial responsibility requirements in the UST program. The UST regulations are established in administrative code Chapter ATCP 93 to regulate flammable and combustible liquids. State law also requires DATCP to regulate tanks not under federal regulations, including aboveground tanks over 5,000 gallons, farm and residential motor fuel underground storage tanks with less than 1,100 gallons and heating oil underground storage tank systems.

DNR also has administered the petroleum environmental cleanup fund award (PECFA) program. This program would reimburse eligible owners and operators of petroleum storage tanks for certain costs incurred due to tank leakage. However, the program closed to new claims June 30, 2020. In general, PECFA would reimburse certain cleanup costs for all federally-regulated tanks plus aboveground tanks, some farm tanks with 1,100 gallons or less and home, public school district and technical college heating oil tanks. [For more information, see Appendix IV.]

LUST Sites

DATCP indicates that approximately 230,000 former and existing petroleum product underground storage tanks have registered under federal and state requirements as of June 30, 2022. Of this total, approximately 56,600 are active in-use tanks, including: (a) 50,800 underground tank systems, of which 12,600 are regulated under federal underground storage tank requirements and the LUST program; and (b) 5,800 are aboveground tanks over 5,000 gallons in capacity. (The other tank systems are closed, abandoned, temporarily out-of-service, or are above-ground storage tanks under 5,000 gallons in capacity.) It is believed that all of the active, in-use federally regulated tanks have been upgraded to meet 1998 federal requirements for spill, overfill, and corrosion prevention measures in their design and installation.

Cleanup standards for LUST sites are established by DNR under the state hazardous substances spills law and under the NR 700 series and Chapter NR 140 in the Wisconsin Administrative Code. All LUST sites are regulated under the state hazardous substances spills law. DATCP also regulates approximately 23,400 aboveground tank systems under state requirements.

DNR administers the cleanup at all LUST sites. As of June 30, 2022, there were 21,900 petroleum-contaminated sites in the DNR database, of which 13,600 were PECFA-eligible. In total, 700 sites are open, of which 200 were PECFA-eligible.

Funding

Federal funding provides 90% of the cost of implementing the LUST program and the state must pay the remaining 10%. Federal funding comes from a 0.1¢ per gallon excise tax on motor fuels. Table 2 shows the amount of federal LUST program funding received by Wisconsin from state fiscal year 2013-14 through 2022-23.

In 2022-23, federal LUST funding is sufficient to support 13.79 DNR program staff. The majority of site cleanups under the LUST program are funded by responsible parties.

Federal Brownfields Grant Program

The 2002 federal Small Business Liability Relief and Brownfields Revitalization Act included provisions to: (a) codify and expand EPA's brownfields program by authorizing funding for

Table 2: Federal Leaking Underground Storage Tank Funding for Wisconsin, 2013-14 Through 2022-23

State Fiscal Year	Federal Funding
2013-14	$1,681,400
2014-15	1,269,600
2015-16	1,452,000
2016-17	1,452,000
2017-18	1,442,300
2018-19	1,442,300
2019-20	1,442,300
2020-21	1,442,300
2021-22	1,410,000
2022-23*	1,410,000
Total	$14,444,200

*Estimated.

assessment and cleanup of brownfields properties; (b) exempt certain contiguous property owners and prospective purchasers from Superfund liability; (c) authorize funding for state response programs; and (d) provide limited Superfund liability for certain properties cleaned up under state programs.

The federal brownfields legislation authorizes up to $200 million per year nationwide for grants for brownfields assessment and cleanup, of which up to $50 million per year (or 25% of the appropriated amount) would be set aside for brownfields with petroleum contamination. The IIJA provides additional funding of $1.2 billion for brownfields assessment and cleanup grants through September 30, 2026, and waives a general 20% cost-share requirement for grant recipients. Additionally, IIJA provides $300 million over five years for grants for state and tribal environmental contamination response programs.

In the 20 federal fiscal years 2003 through 2022, EPA awarded a total of $1.69 billion in grants nationwide in the following categories: (a) brownfields assessment grants to inventory, assess and plan at brownfields sites; (b) brownfields revolving loan fund grants to grantees that would capitalize a revolving loan fund and provide subgrants to carry out cleanup activities at brownfields sites owned by the subgrant recipient; and (c) brownfields cleanup grants to carry out cleanup activities at brownfields sites owned by the grant recipient. Multipurpose grants also may be awarded for multiple assessment, cleanup, and planning activities in a targeted area.

Under the federal brownfields grant program, and planning in grant cycles 2003 through 2022, the federal grants have included $76.5 million to 45 grantees in Wisconsin, with the grants equaling 4.5% of the funds awarded nationwide. Federal grants to Wisconsin recipients included $1.4 million in 2021 and $4.2 million in 2022, including $3 million in 2022 identified by EPA as funding under the IIJA. Appendix II shows all Wisconsin grant recipients and amounts. The amounts shown include grants awarded with regular program funding, ARRA or IIJA funds.

DNR Ready for Reuse Program

Under 2003 Wisconsin Act 314, DNR was authorized to enter into an agreement with EPA to establish and administer a federally-funded brownfields revolving loan program under which DNR would make loans or grants for the cleanup of brownfields. DNR is authorized, at the request of another governmental entity, to administer funds received from EPA by the other governmental entity for the establishment of a brownfields revolving loan program. DNR can receive funds from the federal government or another governmental entity, make loans or grants, receive repayments from local governments of loans made with federal funds, and make loans or grants from the loan repayments.

Local governments that borrow under the DNR brownfields revolving loan program are authorized to issue municipal obligations or promissory notes in anticipation of receiving funding under the program. The obligations must be repaid within 10 years, or, if refinanced, within 20 years.

Table 3: DNR Ready for Reuse Program Subset of Federal Brownfields Grant Program, Awards as of June 30, 2022

	Number of Awards	Award Amount
Loan Recipient		
Appleton, City	1	$300,000
Fond du Lac, City	1	352,477
Kenosha, City	2	2,370,273
La Crosse, City	2	435,000
Madison, City	1	1,500,000
West Milwaukee, City	1	500,000
Subtotal	8	$5,457,750
Grant Recipient		
Ashland Housing Authority	2	$400,000
Bishop's Creek Community Development Corporation (Milwaukee)	1	305,766
Cudahy, City	1	264,800
Delafield, City	1	100,711
Elkhorn, City	1	146,965
Family Services of Northeast Wisconsin (Green Bay)	1	51,250
Kaukauna, City	1	30,000
Kenosha, City	3	2,770,273
Kiel, City	1	150,000
La Crosse, City	1	325,000
La Crosse Industrial Park Corporation	1	250,000
Madison, City	1	279,125
Marinette, City	1	59,000
Mauston, City RA	1	200,000
Merrill, RA	1	173,553
Milwaukee, City RA	3	670,000
Neenah Community Development Authority	2	429,469
Oak Creek, City	1	375,000
Oshkosh RA	2	497,241
Prairie du Chien, City	3	188,948
Prairie du Chien, RA	3	477,727
Stevens Point, City	1	200,000
Sussex, Village	1	200,000
Superior, City	1	290,000
Waunakee, Village	2	136,814
Wausau, City	1	151,171
West Allis, City RA	1	41,647
Subtotal	39	$9,164,460
Total	47	$14,622,210

RA = Redevelopment Authority

The promissory notes must be repaid within 20 years.

DNR oversees the Ready for Reuse Loan and Grant Program with $12,545,000 EPA awarded to DNR in 2004 and subsequent years for a revolving loan fund. Local governments submit applications for funds to DNR. Local governments may use the Ready for Reuse grants or loans for cleanup of petroleum contamination or contamination from hazardous substances, including hazardous substances commingled with petroleum. Funds may not be used for site assessment or investigation.

The maximum program grant under federal guidelines is $350,000 per property, an increase from the previous maximum of $200,000. However, as of December, 2022, DNR had yet to award any grants above $200,000. Grants are available for projects that can be completed in two years. Loan applicants must be a municipality. Grant applicants may be any unit of local government, tribe, or nonprofit organization. The applicant cannot have caused the contamination and must not have liability for environmental contamination under federal CERCLA provisions. The program gives preference to projects that have a DNR-approved site investigation report and a complete remedial action plan.

DNR makes decisions on funding Ready for Reuse projects as applications are received. As of June 30, 2022, DNR had awarded $14.6 million in financial assistance, including 39 grants for a total of $9,164,460 and eight loans for a total of $5,457,750, and had received $3,735,000 in loan repayments. Funding recipients and amounts are shown in Table 3. As of July, 2022, DNR was not reviewing any grant or loan applications.

Wisconsin Assessment Monies

DNR oversees distribution of $5.3 million in federal assessment money received since 2009 as a program called Wisconsin Assessment Monies.

This is a subset of the $6.1 million shown in Appendix II under "Wisconsin DNR." (The other $0.8 million in assessment monies received by DNR was used to assess contamination at several properties in the City of Milwaukee.) DNR administers the grant, and provides awards to local governments, private prospective purchasers of property, and private/public partnerships. Funds are used for contractor services to complete environmental site assessments and limited site investigations. DNR contracts directly with private consulting firms to complete this work under DNR's direction.

Applicants must ensure that the owner of the site has signed an agreement to authorize DNR and contractors access to the site. Eligible sites include closed or closing manufacturing and industrial sites, such as foundries, electroplaters, assembly lines, and other industrial facilities. Beginning in 2018-19, for funds received for federal fiscal year 2018, the program is also used to assess sites that may not have a history of manufacturing, but are high priorities to fulfill local redevelopment objectives, and are located in rural areas, racially diverse communities and/or economically disadvantaged areas. DNR reports WAM grants typically assess single-property sites smaller than 10 acres and assessable for not more than $35,000.

As of June 30, 2022, DNR made 106 project awards in 72 communities for $2,991,400. The largest amounts of funding were awarded to the City of Milwaukee ($465,676), City of Kenosha ($238,487), City of New Holstein ($99,979), City of Racine ($97,867), and City of Merrill ($89,000). The five local governments received a combined total of $991,009, or 33.1% of the awarded funds. Most of the other municipalities that have had grant recipients have received less than $50,000 in total.

Beginning in 2020, the program is also used to assess petroleum sites that are no longer eligible for PECFA due to the PECFA program's sunset in 2020.

Hazardous Waste Cleanup Program

The federal Resource Conservation and Recovery Act (RCRA) regulates facilities that transport, store, treat, dispose of, or generate hazardous waste. These facilities are typically businesses that use hazardous substances as part of their manufacturing process or other activities, and generate quantities of hazardous wastes as a result. RCRA is intended to: (a) prevent hazardous waste problems; and (b) require facilities and generators to clean up contamination resulting from intentional or accidental release of hazardous waste at their sites.

DNR incorporated RCRA provisions into Wisconsin's hazardous waste regulations. DNR was authorized by EPA in 1992 to take the lead in administering most aspects of the RCRA corrective action program, which applies to facilities that currently, or in the past, treated, stored, or disposed of hazardous waste. DNR implemented the RCRA corrective action program consistent with EPA rules and the NR 700 rule series.

There are 128 facilities in Wisconsin subject to RCRA corrective action provisions. Most of the facilities are being addressed under the NR 700 administrative rule series, if a release of a hazardous substance has occurred. As of July, 2022, corrective action had been completed at 93 (73%) of the 128 facilities. Human health exposure was under control at 121 (95%) of the sites, and contaminated groundwater migration was under control at 116 (91%) of the sites.

As of the fall of 2020, EPA developed new goals for the RCRA 2030 hazardous waste facility corrective action program to attempt to achieve: (a) efficient and expeditious cleanups that ensure continued use of properties and limit or eliminate adverse effects to areas in proximity; (b) identification of key elements of long-term property

maintenance to be implemented by overseeing states or other parties; and (c) program procedures to identify facilities for priority cleanup. No new sites from Wisconsin have been added to the RCRA 2030 baseline list.

CHAPTER 2

STATE-FUNDED CLEANUP PROGRAMS ADMINISTERED BY DNR

The Legislature has enacted several state initiatives that complement the federal programs and provide additional remedies and state funds to clean up contamination. The state-funded programs provide both emergency response and long-term environmental repair at contaminated sites. All programs require that cleanups be conducted in accordance with state environmental cleanup requirements set by statute and administrative rule. DNR holds primary responsibility for administering contaminated land cleanup programs. These programs are administered by DNR's Remediation and Redevelopment program and are discussed in the following sections.

Remediation and Redevelopment Organizational Structure

The DNR responsibilities for cleanup of contaminated land are accomplished through the Remediation and Redevelopment program in the Environmental Management Division, including staff in the five DNR regions. The program administers remediation and cleanup activities at contaminated land sites, contaminated sediment sites, and closed landfill and wastewater facilities. These activities are described in the following sections.

The Remediation and Redevelopment program director supervises both field staff and staff in DNR's central offices in Madison. DNR assigns regional staff to work within geographic boundaries and provide assistance for all contamination incidents within that area, including LUST sites, spills, emergency responses, abandoned containers, brownfields sites, state-funded cleanup or emergency response contracts and hazardous waste corrective actions. Staff may also specialize in oversight of specific types of sites across regional boundaries, including Superfund sites and landfills. Regional staff perform oversight of site investigations, technical assistance, project management and plan review. A field operations director supervises all regional team supervisors, who supervise regional staff. The field operations director reports to the Remediation and Redevelopment program director.

DNR Remediation and Redevelopment central office staff are assigned to one of three sections: (a) the State and Federal Programs Section oversees the fiscal management of state and federal funding sources, coordinates with EPA on federally-funded cleanup programs, and manages the environmental repair state-funded response program; (b) the Complex Projects and Technical Resources Section supports the development of policy and rules, develops guidance documents, provides technical expertise to support program implementation, oversees complex projects, and serves as the technical contact with EPA on federally-funded cleanup programs; and (c) the Brownfields, Outreach and Policy Section develops policy to encourage the cleanup and reuse of contaminated property, manages brownfields grants and loans, develops administrative rules, coordinates the Remediation and Redevelopment External Advisory Group, and coordinates brownfields programs with other agencies. A policy and program operations director supervises all central office section chiefs, who supervise all central office staff. The policy and program operations director

also supervises program support staff and reports to the Remediation and Redevelopment program director.

As part of the 2016 DNR internal realignment process, responsibility for cleanup of contaminated sediment sites was moved from the Department's Office of Great Waters to the Remediation and Redevelopment program. The sediment staff work on sediment contamination projects throughout the state.

The Remediation and Redevelopment program utilizes nine statewide standing teams to promote integration, assure program continuity, involve DNR staff throughout the state, involve customers, and support increased decentralization to regional operations. The standing teams include: (a) team leaders; (b) integrated sediments; (c) land recycling; (d) program support; (e) remediation and redevelopment management; (f) training, safety and engagement; (g) site assessment; (h) spills; and (i) dry cleaner and vapor intrusion.

Environmental Cleanup Requirements

Section 292.11 of the statutes, the hazardous substances spills law, requires that persons who possess or control a hazardous substance that is discharged or who cause the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state. DNR is responsible for establishing environmental cleanup standards for groundwater, soil, and other affected media. DNR promulgated the NR 700 administrative rule series to cover responses to discharges of hazardous substances and environmental pollution at contaminated sites. NR 700 allows responsible parties to choose an appropriate cleanup method for their properties. DNR provides rules and technical guidance on a variety of methods.

The NR 700 administrative rule series is a comprehensive framework to govern environmental cleanups conducted by DNR, persons who caused or possess environmental contamination, or other parties conducting a cleanup. The rules govern cleanups conducted under the spills, environmental repair and abandoned containers laws administered by DNR. The rules also govern cleanups under the dry cleaner environmental response program administered by DNR, brownfields grant programs administered by the Wisconsin Economic Development Corporation and the agricultural chemical cleanup program administered by the Department of Agriculture, Trade and Consumer Protection (DATCP).

The NR 700 rules address specific steps in the cleanup process, including hazardous substance discharge notification, site investigation, remedial action selection, design, construction and operation, notification of affected parties, and case closure.

The rules contain criteria DNR will use to prioritize sites, especially sites that need state funds for cleanup. The rules also contain criteria to be used when DNR cost-shares with the federal government at Superfund sites.

Responsible parties and environmental consultants generally follow the provisions of the administrative rule NR 700 series without detailed review and approval from the Department. However, the rule series identifies several documents responsible parties must submit to DNR throughout the cleanup process. In addition, the DNR provides a number of technical guidance documents and training to consultants and responsible parties. DNR performs detailed review of the work at a site when a request for case closeout is submitted to DNR.

Contaminated groundwater can affect human health by adversely impacting drinking water

supplies, surface water, and the migration of explosive or toxic vapors into basements. Cleanup standards for groundwater contamination at contaminated sites are established under Chapter 160 of the statutes and Chapter NR 140 of the administrative code. Groundwater enforcement standards are established as a numerical value for the concentration of a contaminant in groundwater.

DNR administrative rules allow the development of site-specific soil standards and the option of using natural attenuation for remedial action. Natural attenuation means allowing the contamination to naturally break down over time. The NR 700 rule series includes: (a) soil remediation standards for concentrations of contaminants that can remain in soil at a site without exceeding groundwater quality standards; (b) procedures for developing site-specific soil cleanup standards; and (c) procedures for determining when contaminated soil can remain in place to degrade naturally over time.

DNR administrative rules provide for a database that includes information about contaminated sites that have continuing obligations for a groundwater enforcement standard exceedance, residual soil contamination, or both. As of June 30, 2022, 11,116 closed sites with a groundwater enforcement standard exceedance, residual soil contamination, or both were placed on the Bureau for Remediation and Redevelopment Tracking System, or BRRTS. Of the 11,116 sites: (a) 2,160 had a groundwater enforcement standard exceedance; (b) 3,603 had soil contamination only; and (c) 5,353 had both groundwater and soil contamination.

In October, 2021, two new chapters of the Wisconsin Administrative Code took effect to implement statutory requirements created under 2015 Wisconsin Act 204 regarding contaminated sediment sites. Chapter NR 756 specifies required financial responsibility, planning, and compliance at contaminated sediment sites with engineering controls, which generally are measures such as caps using synthetic lining or other substances installed to isolate the contaminated material without fully removing it. Chapter NR 758 provides procedures and clarifies policies for voluntary party liability exemption (VPLE) program, which discussed in a separate section in greater detail. Both chapters went into effect as permanent rules on October 1, 2021.

Hazardous Substance Spills Program

Under s. 292.11 of the statutes, DNR must be notified immediately of any discharge of hazardous substances. "Discharge" includes spilling, leaking, pumping, pouring, emitting, emptying and dumping. The first report of a spill is typically made to a DNR regional office, the local DNR warden, or a 24-hour telephone hotline.

The DNR administrative code NR 700 series establishes notification requirements for reporting a discharge of hazardous substances. The rule includes petroleum compounds, agrichemicals and substances for which there are federally-established reportable quantities.

Responsible Party

The hazardous substances spills law requires the responsible party to take necessary action to restore the air, land, or water to the condition it was in before the discharge occurred, to the extent practicable. Responsible parties take the appropriate action in response to a discharge in approximately 98% of all reported spills. DNR can take direct response action if the responsible party is not known or does not take appropriate action. The Department uses private contractors to respond to approximately 2% of spills per year. The NR 700 administrative code chapters establish which actions are necessary to respond to the discharge.

If the responsible party is identified, the party is required to reimburse DNR for any expenses the Department incurs in the response. Reimbursements are credited to the environmental management account of the environmental fund. When responding under this program, DNR has the authority to enter any property with permission of the owner or with a special inspection warrant if necessary to prevent increased damage to the air, land or water or risk to human health. DNR employees or contractors may enter private property without prior permission if the delay involved in obtaining permission will result in an imminent risk to public health or safety or the environment. DNR may require that preventive measures, such as the installation or testing of equipment or a designated way of performing an operation, be taken by anyone possessing or controlling a hazardous substance if the Department finds that existing control measures are inadequate.

DNR Response Options

DNR makes two types of responses at spills sites. First, DNR provides oversight support for cleanups by responsible parties, which can include evaluating the effectiveness of the response effort by a responsible party and offering technical assistance to the responsible party or their contractor. Second, if there is no responsible party or other local or federal governmental resources available to manage the cleanup, DNR uses the environmental fund to pay a contractor to provide emergency response services throughout the state or, in non-emergency responses, to cleanup a spill. On significant spills, DNR may request EPA assistance under the Superfund emergency removal program.

Number and Type of Reported Spills

A total of 1,013 spill incidents were reported to DNR in 2020, 1,067 in 2021, and 709 through September of 2022. Of those spill incidents, DNR estimates approximately 47% are of hazardous substances that are petroleum products, 5% involve manure, 6% are wastewater, 2% involve industrial chemicals such as acids, bases, paint and bleach, 3% are agricultural chemicals such as fertilizers, pesticides, herbicides, and insecticides, 1% are gases, and the remaining 36% are antifreeze and other substances. The largest percentage of spills during the period occurred on roadways (29%), small business, commercial or retail properties (6%), private property (10%), farms or rural locations (9%), gas stations and auto repair properties (9%), and industrial facilities (3%), with the remaining 34% occurring on other types of sites.

In 2020-21, DNR responded to eight spills, for a total cost of $40,000. In 2021-2022, DNR responded to one spill, spending approximately $3,500 from the environmental management account of the environmental fund. When DNR is able to identify the responsible party for the spill, the Department recovers all or a part of its costs. The cost recovery process can take a few years, depending on the timing and results of legal actions related to the spill.

Abandoned Containers Actions

DNR may contain, remove, or dispose of abandoned containers and their contents or take any other necessary related emergency action. An "abandoned container" is defined by section 292.41 of the statutes as any container that holds a hazardous substance and is not being monitored and maintained. The definition does not apply to buried containers or containers located in a waste disposal facility. DNR has the authority to enter any property with either permission of the owner or a special inspection warrant, if necessary to prevent increased damage to the air, land or water.

In most cases, DNR becomes aware of abandoned containers from public tips that containers of unknown material have been abandoned without the consent of the property owner, on

public property, or into or adjacent to surface water. Except in emergency situations, requests to DNR to deal with abandoned containers are not approved if a responsible party is known and has the financial resources to respond to the problem. If the responsible parties are identified after a state-funded response has occurred, the Department may recover its costs.

DNR responded to seven abandoned container sites holding hazardous substances from January 1, 2020, through June 30, 2022, with a total DNR response cost of approximately $21,600 from the environmental fund. Approximately 54% of the costs of removing abandoned containers were in the west central region, 26% were in the southeast region, 17% were in the northeastern region, and 3% were in the northern region. No containers were removed in the south central region.

State-Funded Response Actions

DNR administers a program of state-funded response actions that can be considered the state equivalent to the Superfund program. The program has authority for all types of hazardous substances sites, including approved and unapproved solid and hazardous waste disposal facilities and waste sites, under s. 292.31 of the statutes, the environmental repair statute. Typically, these are: (a) sites that were designed as a component of a specific waste management process and became contaminated, such as old landfills; (b) industrial sites; and (c) contaminated private and municipal water supplies. Typical sites cleaned up are contaminated water supplies, emergency spills, abandoned dry cleaner sites, and spills of hazardous substances at industrial sites.

Responsible Party

DNR tries to determine what parties are responsible for contamination at hazardous substance sites. Under the environmental repair statute, a person is a responsible party if that person: (a) knew or should have known at the time the discharge occurred that the discharge would cause or contribute to a substantial danger to public health or the environment; (b) violated any applicable law, plan approval or administrative order and the violation caused or contributed to the condition at the site; or (c) took actions that caused or contributed to the condition at the site and would result in liability under common law in effect at the time the discharge occurred.

DNR requires the responsible party to fund the costs of the site investigation and cleanup if the responsible party is able to do so. In the majority of contamination cases, the responsible party works cooperatively with DNR, and completes and pays for the cleanup.

Under the spills law and environmental repair law, a person who contributes to contamination may be held liable for the entire cost of cleanup. The joint-and-several liability provisions of Superfund, s. 292.11 (spills statute) and s. 292.31 (the environmental repair statute) require the responsible party to pay all of the cleanup costs if no other responsible parties are identified, and if the responsible party is unable to differentiate between the contamination caused by the responsible party and the contamination caused by other parties.

If DNR cannot identify the responsible party or if the responsible party cannot or will not pay cleanup costs (for example, if the company is insolvent), the state may fund cleanup. If DNR identifies responsible parties at a later date, it can seek recovery of its cleanup costs from the responsible parties.

Generally, sites that do not score high enough on EPA's hazard ranking system to become a Superfund site, but are considered a significant risk to human health, safety or the environment, are

considered for state-funded response. Because of delays in the Superfund process, the Department also identifies some potential Superfund sites for state-funded response action when it determines that postponing action at these sites could significantly increase the magnitude of an existing problem.

Inventory of Contaminated Sites

Under the environmental repair statute, DNR is required to compile, maintain and make available to the public a database of sites or facilities and other properties at which the discharge of a hazardous substance or other environmental pollution has been reported to the Department. DNR is required to update the database regularly.

DNR has gathered information about sites with contamination and sites with a history of activity related to solid waste disposal or contamination. In addition, the Department developed and maintains a comprehensive online database called "BRRTS on the Web" (Bureau for Remediation and Redevelopment Tracking System) that allows people to search for information about known sites that may have contamination.

Investigation and Remedial Action

DNR evaluates contaminated sites, using environmental and risk criteria, to determine whether sites are high-, medium-, or low-priority for purposes of selecting sites to be funded under state-funded response.

If a site or facility presents a substantial danger to public health, welfare or the environment, DNR is authorized to take specific remedial action. This authority includes: (a) taking direct action to remedy the pollution; (b) repairing or restoring the environment; (c) establishing a long-term monitoring and maintenance program for the facility; (d) providing temporary or permanent replacement of private water supplies damaged by the facility; (e) assessing the potential health effects of the occurrence; or (f) taking any other action necessary to protect public health, safety or the environment.

If warranted, DNR may undertake a preliminary site investigation. If the site is considered an imminent hazard based on this investigation, emergency action may be undertaken. If the site does not present an imminent danger, but is determined to be a significant environmental hazard, the site is recommended for long-term cleanup.

When DNR is ready to proceed with the cleanup process at the site, it contracts to complete a site investigation. DNR then contracts to have a remedial options plan developed, which details the possible cleanup alternatives. After the appropriate option is selected, including a public hearing process, the remediation is initiated. Costs associated with these activities are funded from the environmental management account of the state segregated environmental fund and from general obligation bonding.

DNR has initiated response actions at hundreds of contaminated sites. The level of DNR investigation and response depends on the extent of contamination and risk. If there is a relatively low level of contamination, DNR may conduct initial sampling of private water supplies, groundwater, or soil to verify that no significant threat exists. If there is a moderate to high level of contamination and risk, DNR will fund or oversee a larger investigation to determine the degree and extent of contamination. After the investigation is completed, an appropriate remedial action plan is developed. The response can vary from monitoring the contamination level, to a larger active cleanup, with long-term operation and maintenance of a remedy, and a case closure. Sometimes emergency actions are necessary to remove the contamination. An alternative to a DNR-led cleanup is a partnership with a municipality through an intergovernmental agreement, under which DNR and the

municipality agree to undertake specific components and costs of the cleanup.

In addition, there are several hundred sites where remedial action currently underway is being financed by responsible parties. DNR is overseeing a portion of that work, in part based on the overall priority of the case.

Appendix III lists the state sites that had been, or were being, investigated or cleaned up under the state-funded response program through June 30, 2022. The list does not contain the sites where responsible parties are financing cleanup and DNR is overseeing the work. DNR makes expenditures for these sites from the state-funded response environmental management account segregated (SEG) appropriation and general obligation bonding authority described in subsequent sections.

State-Funded Response Appropriation

DNR administers a state-funded response appropriation through the environmental management account of the environmental fund. The appropriation had $9,860,400 available for expenditures in the 2021-23 biennium. This included expenditure authority of $2,292,700 in 2021-22 and $2,292,700 in 2022-23, encumbrances at the beginning of 2021-22 totaling $2,962,800, and an unencumbered carry-in balance of $2,312,200. Expenditures from the appropriation totaled $4,567,900 in 2020-21 and $2,920,100 in 2021-22. Expenditures averaged $2.52 million annually for the five years from 2017-18 through 2021-22.

The appropriation is used for DNR expenditures related to: (a) DNR-led cleanups of contaminated sites where the responsible party is unknown or cannot or will not clean up the site [Appendix III lists sites with cleanup funded from the appropriation]; (b) the state share at certain Superfund site cleanups; (c) the state match to federal LUST expenditures; (d) emergency spill response and cleanups; (e) response and cleanup of abandoned containers of hazardous substances where the responsible party cannot be identified; (f) provision of temporary emergency water supplies; (g) replacement of contaminated private wells if the household meets certain income and eligibility criteria; (h) DNR-led remedial actions at abandoned privately-owned landfills; (i) DNR-led cleanups resulting from responsible party payment of court settlements; (j) special area-wide investigation projects to evaluate wide-spread contamination; (k) limited-term employee costs related to DNR-led cleanups; and (L) contractor costs related to development and maintenance of the BRRTS on the Web database.

Provision of Temporary Emergency and Permanent Water Replacement Supplies

Under administrative code Chapter NR 738, DNR provides temporary emergency water supplies to persons with water supplies that have been adversely affected by contamination from a site or facility subject to cleanup requirements under the hazardous substance spills statute or environmental repair statute. Temporary emergency supplies include potable water obtained in bottles, by tank truck or by other similar means, or a temporary connection to an existing water supply, supplied at a capacity sufficient to satisfy water use functions impaired by the contaminated supply.

The environmental fund pays for temporary emergency water supplies if the following criteria are met: (a) the source of potable water is from a contaminated well or contaminated water supply; (b) the contamination is known or is suspected by DNR to be from environmental pollution or a hazardous substance discharge subject to the spills or environmental repair statutes; (c) water sampling is conducted in accordance with specific requirements; and (d) DNR or the Department of Health Services has issued a drinking water advisory notice for the water supply. DNR paid a cumulative total of approximately $813,300 as of June 30, 2022, for temporary emergency water supplies, including $526,600 in 2021-22.

The environmental management account also pays for permanent replacement water supplies instead of temporary emergency water supplies under certain circumstances. DNR may allow payment of a portion of the costs of a permanent replacement water supply if: (a) the owner of the contaminated well demonstrates financial hardship; and (b) DNR determines that the cost of the permanent replacement water supply would create an unreasonable financial hardship for the well owner. These expenditures are made as supplements to a separate well compensation grant awarded by the Department for income-eligible households with contaminated wells. DNR paid approximately $1,195,000 from 1984 through June 30, 2022, for 262 permanent replacement water supplies where there was a demonstrated financial hardship for the well owner. This included expenditures of $21,700 for six wells in 2020-21. There were no expenditures in 2021-22.

General Obligation Bonds for Remediation of Contaminated Land and Sediments

DNR is authorized $50 million in general obligation bonding to fund the state's cost-share for cleanup of federal Superfund and LUST sites and state-funded cleanups under the environmental repair statute (s. 292.31) and hazardous substances spills statute (s. 292.11). Bonding authority can be used for public-purpose projects such as cleanup of contaminated groundwater, soils and sediments, and activities such as investigation, remedial design and cleanup of a specific site when the responsible party is unknown, unable or unwilling to fund the cleanup. Bonding authority cannot be used for general preliminary investigations or cleanups funded by responsible parties.

DNR has expended or encumbered $46.6 million of the available $50 million in bonding authority as of June 30, 2022. The total remains the same as was reported two years ago because DNR expended bonding authority that had been encumbered within the $46.6 million total already. DNR expects to add to the total once projects have been decided.

DNR is authorized $7 million in general obligation bonding for contaminated sediment cleanup in Lake Michigan or Lake Superior or a tributary of one of the two lakes. DNR expended or encumbered all of the available $7 million before June 30, 2012.

The debt service for the two purposes is paid from the same appropriation from the segregated environmental management account of the environmental fund. In 2021-22, $1.7 million SEG was expended on general obligation bond debt service for remedial action and contaminated sediment cleanup.

DNR is also authorized a separate $40 million in general obligation bonding authority, with debt service costs paid from the environmental management account, for 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 and the source of the impairment is contaminated sediment. As of September 1, 2022, DNR has expended or encumbered $30.1 million of the available $40 million, and has committed the remaining $9.9 million toward a share of more than $47 million in potential project costs in Superior and Milwaukee. In 2021-22, $2.2 million SEG was expended on debt service costs for this purpose.

Abandoned Tank Removal Program

Under 2009 Wisconsin Act 28, DNR pays for the removal of abandoned underground petroleum storage tank systems under certain circumstances. DNR is provided $100,000 annually from the petroleum inspection fund for the program. DNR contracts with a contractor certified by DATCP under the tank registration program to remove

underground petroleum product storage tank systems if the tank is abandoned and the owner of the system is unable to pay for the removal.

DNR is authorized to pay 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. Backfill does not include landscaping or replacing sidewalk, asphalt, fence, or sod or other vegetation. For any site where DNR incurs costs under the program, 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 paid to the Department. DNR deposits payments received to satisfy the lien into the petroleum inspection fund.

The program has spent $893,900 between 2009-10 and 2021-22 to remove 246 underground petroleum tanks at 80 sites. Expenditures totaled $54,700 in 2020-21 and $88,400 in 2021-22. Removal costs averaged $5,500 per tank in 2020-21 and $8,400 in 2021-22. Gas stations have an average of three tanks per site.

DNR identifies potentially eligible abandoned tanks in coordination with DATCP and the Department of Justice (DOJ). As of July, 2017, DNR is only using abandoned tank removal funds to remove tanks at sites for which a settlement has been reached with DOJ, DOJ obtains a default judgement in circuit court for a non-voluntary removal, 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 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.

Liability Exemptions and Assurances

Several limitations on liability for cleanup of contamination under the hazardous substances spills law encourage persons to voluntarily clean up contamination and restore properties to productive use. These provisions are generally intended to encourage the cleanup and redevelopment of brownfields. Brownfields are abandoned, idle or underused properties, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

DNR is authorized to charge fees to offset its costs for providing various types of technical assistance and assurance letters related to the environmental liability of owning a property. For example, persons seeking a written assurance letter by which DNR clarifies an exemption from future liability for cleanup of a property under certain circumstances must pay a fee to DNR for the cost of providing the review and assurance.

Voluntary Party Limited Liability Provisions

Parties who conduct voluntary cleanups of contaminated property are able to limit their environmental liability if they enter DNR's voluntary party liability exemption (VPLE) program under s. 292.15 of the statutes, and meet certain conditions. Voluntary parties may obtain an exemption from further remedial action on the property. A "voluntary party" is defined as any person who submits an application to obtain an exemption from liability and who pays the required fees to offset DNR costs for providing the voluntary party exemption certification.

A voluntary party is exempt from certain hazardous substance discharge and solid and hazardous waste statutory requirements for

eligible properties if the party takes certain actions to investigate and clean up contamination, obtains a certificate of completion from DNR that the property has been satisfactorily cleaned up, obtains site cleanup insurance for sites using natural attenuation as a remedy for groundwater contamination, and maintains and monitors the property as required by DNR. DNR is authorized to approve a partial cleanup by a voluntary party and issue a partial certificate of completion.

The exemption or partial exemption from liability for a voluntary party does not apply to: (a) certain hazardous waste treatment, storage or disposal facilities; (b) most modern landfills; (c) solid waste facilities or waste sites at which active remediation is required; (d) sites on or proposed to be added to the National Priorities List; and (e) sites where an engineering control is used to clean up contaminated sediment. The exemption or partial exemption does not exempt the property from any lien for recovery of costs filed by DNR prior to the date DNR issues a certificate of exemption or partial exemption.

As of June 30, 2022, DNR had received 416 applications for participation in the voluntary party liability program. Of this total, 203 properties have received a certificate of completion and received an exemption from DNR from future liability for the site. Eleven were denied because the site or applicant was not eligible for the voluntary party liability exemption, and 151 applications were withdrawn. Fifty-one properties are in the process of completing the investigation and cleanup needed to receive a certificate of completion.

DNR administrative code Chapter NR 754 includes requirements for insurance at sites where voluntary parties are using natural attenuation in cases of groundwater contamination and a liability exemption is sought. As of June 30, 2022, DNR has received insurance premiums and fees totaling $1,047,400 for 69 sites, and has issued certificates of completion for all sites.

Local Government and Economic Development Corporation Liability

Local governments and economic development corporations that meet certain Internal Revenue Code tax-exempt criteria are not liable for cleanup under the hazardous substances spills and solid waste management statutes for discharges of hazardous substances on or originating from property they acquired in certain ways, or if the contamination resulted from an unlicensed solid waste site or facility. They are also exempt from the requirement to reimburse DNR for any cleanup expenses incurred by DNR at these sites under certain circumstances.

Local governmental units include a city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewage district, redevelopment authority, public body designated by a municipality, community development authority and housing authority.

The local government exemption from liability would apply if the local government acquired the property through tax delinquency proceedings, condemnation or other specified methods. The economic development corporation exemption would apply if the corporation acquired the property to further the economic development purposes that qualify the corporation as exempt from federal taxation.

A local government or economic development corporation is not eligible for the exemption from liability if it caused the discharge of the hazardous substance, or failed to take certain actions related to the contamination on the property.

If the local government or corporation intends to use or develop the property, it must take actions that DNR determines are necessary to reduce threats to public health or safety related to the reuse of the property.

Local governments that meet the specified

conditions are exempt from environmental liability and do not have to receive approval from DNR. Thus, DNR does not have data about how many sites are eligible for the exemption. DNR estimates that, as of June 30, 2022, 109 local governments have requested that DNR provide a letter of general liability clarification, which is a written determination by DNR on the local government's eligibility for the exemption.

Lender Limited Liability Provisions

A lender that acquires title to, or possession or control of, property when enforcing a security interest is exempt, under s. 292.21 of the statutes, from environmental liability under the hazardous substances spills law if the lender: (a) does not intentionally or negligently cause a new discharge of a hazardous substance or exacerbate an existing discharge; (b) conducts an environmental assessment of the property; and (c) allows DNR to respond to the discharge and take other actions that DNR determines are reasonable and necessary to ensure that DNR or other persons can adequately respond to the discharge.

The lender is required to reimburse DNR for the costs of reviewing materials if the lender requests a written clarification of their liability status. As of June 30, 2022, DNR has issued 171 lender assessment review letters.

Liability Exemption for Off-Site Discharges

A person is exempt, under s. 292.13 of the statutes, from liability for remedial action under the hazardous substances spills law for a hazardous substance in the groundwater or soil, including sediments, or in vapor emitted from the soil or groundwater, on property possessed or controlled by the person if: (a) the discharge of the hazardous substance originated from a source on property that is possessed or controlled by another; (b) the person conducts an investigation or submits other information that DNR requires; (c) the person agrees to allow DNR and other specified parties to enter the property and take action to respond to the discharge; and (d) the person agrees to other specified conditions that DNR determines are reasonable and necessary to ensure DNR or other specified persons can adequately respond to the discharge.

The person must also agree to take other actions directed by DNR, if, after DNR has made a reasonable attempt to notify the party who caused the discharge about the party's responsibilities under the spills law, DNR determines that the action or actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment.

Property owners who qualify for the off-site exemption do not have to request or receive approval from DNR to be exempt. However, DNR may, upon request, issue a written determination that the person is not required to respond to the discharge or reimburse DNR for the costs of responding to the discharge if DNR determines that the person qualifies for the liability exemption. DNR may assess and collect fees from a person to offset the costs of issuing determinations to persons who request them. As of June 30, 2022, DNR has issued 516 off-site liability exemption letters.

DNR Technical Assistance

DNR is authorized, under s. 292.55 of the statutes, to provide various types of technical assistance and to assess and collect fees from the requester of services to offset the costs of providing assistance. Examples of types of technical assistance include: (a) clarifying who is liable for environmental pollution of a property; (b) providing comments on the planning and implementation of an environmental investigation or cleanup of a property; (c) determining whether further action is necessary to remedy environmental pollution of a property; and (d) issuing a letter to a person concerning the environmental liability of owning or leasing the property, the type and extent of contamination on the property or the adequacy of an environmental

investigation of the site. As of June 30, 2022, DNR has issued 1,261 general liability clarification letters, 112 letters concerning the environmental liability of leasing a property, and 7,006 letters regarding other types of technical assistance.

Cancellation of Delinquent Taxes

Wisconsin counties and the City of Milwaukee are authorized to cancel part or all of delinquent property taxes, interest and penalties on a contaminated property. In order to be eligible, an environmental assessment would have to show that contamination exists on a property, and the property owner or potential owner must enter into an agreement with DNR to investigate and clean up the property. As of June 30, 2022, DNR has entered into 37 cleanup agreements for tax-delinquent contaminated sites. The agreement is submitted to the county or City of Milwaukee taxing authority, and that taxing authority determines whether all or a portion of the delinquent taxes will be canceled.

Local Government Negotiation and Cost Recovery

Local governments (counties, cities, villages or towns) are authorized, under s. 292.35 of the statutes, to negotiate with parties responsible for environmental pollution to share the costs of remedial action at the site of a facility where either: (a) the environmentally contaminated land is owned by the local government; or (b) a local government owns a portion of the site and commits itself to paying more than 50% of the amount equal to the costs of the investigation and remedial action costs, less any financial assistance received for the site or facility.

Under the negotiation process, DNR selects a disinterested umpire to facilitate the negotiation. The local government and responsible parties may make an agreement regarding the contribution of funds. If they do not reach an agreement, the umpire makes a recommendation and the local government and responsible parties choose whether to accept the recommendation.

Two sites in recent years have used the negotiation process. In May, 2016, the Village of Ashwaubenon submitted a request to DNR for appointment of an umpire to assist with the municipal cost recovery process for the Ashwaubenon High School and Klipstine Park PCB site. With the assistance of the appointed umpire, the Village and responsible parties negotiated an agreement regarding the allocation of costs. Cleanup activity completed in 2019, and as of the fall of 2022, DNR reports that the site continues to undergo investigation and remedial activities as it aims for closure approval.

In September, 2017, the City of Manitowoc requested that DNR appoint an umpire for negotiations related to allocation of cleanup costs at the Newton Gravel Pit site. Most responsible parties agreed to an allocation. In July, 2018, DNR approved a modification of the umpire's recommendation for allocation of costs for non-settling parties. As of the fall of 2022, investigation and remedial activities continue.

Closed Plant Cleanup Initiatives

Under the Wisconsin Plant Recovery Initiative, DNR staff provide resources and technical assistance to industrial plants that are closing and to the communities in which they are located. DNR learns about plant closings when a company submits the required notification of closing to the Department of Workforce Development (DWD), or from sources such as news media and bankruptcy filings.

DNR staff from the remediation, waste, water and air programs offer to work with the company

and the community to determine potential environmental issues at the property, identify any potential need for environmental cleanup, and expedite reuse of the property. DNR informs the company of its responsibilities to clean up any contamination, and informs both the company and the community of brownfields resources available to both parties to assess the site for any potential contamination, clean up contamination, and redevelop the property.

DNR also provides: (a) technical assistance on regulatory and environmental issues; (b) emergency assistance for any spills or contamination that present an immediate threat to public health or the environment; (c) information about, and coordination of receipt of, other available state and federal environmental assessment and site cleanup funds; (d) issuance of liability exemption and liability clarification letters for local governments and private parties; and (e) technical oversight to ensure any contamination at the property is cleaned up in accordance with state cleanup requirements.

As of June 30, 2022, DNR had identified 361 closing or closed plants with environmental impacts and sent 276 notification letters. DNR has also identified bankrupt companies that own sites with environmental liabilities. DNR has filed claims in 11 bankruptcy cases and secured $14.9 million in settlements to pay for continuing remediation work at sites with bankrupt owners. DNR has also worked with the Department of Justice to ask courts to include environmental requirements in bankruptcy reorganization plans to make sure that companies are not released from their environmental cleanup obligations.

Dry Cleaner Environmental Response Program

The dry cleaner environmental response program (DERP) was created in 1997 Wisconsin Act 27 to provide financial assistance awards for reimbursement of certain eligible costs of investigation and remedial action of contamination from dry cleaning solvents at current and certain former dry cleaning facilities. DNR administers the financial assistance and remediation components of the program. The Department of Revenue (DOR) collects the fees created to support the program.

Statutes related to reimbursement of claims under the program are contained in s. 292.65. The program is also administered through Chapter NR 169 of the Wisconsin Administrative Code. DNR began paying awards in 2000.

The program and fees have a statutory sunset of June 30, 2032 (35 years after creation).

Revenue

The segregated dry cleaner environmental response fund (DERF) provides revenues for the dry cleaner environmental response program. Revenues received under the program totaled $21,662,300 in 1997-98 through 2021-22, including $323,100 in 2020-21 and $393,200 in 2021-22. Fees are anticipated to generate approximately $325,000 in 2022-23.

DOR is required to issue a dry cleaning facility license to each person who submits the required application form. Suppliers of dry cleaning solvent are prohibited from selling and delivering dry cleaning solvent to a dry cleaning facility that does not hold a valid dry cleaner facility license.

DOR collects the following revenues from operators of dry cleaning facilities and sellers of dry cleaning products, and deposits the revenues into the dry cleaner environmental response fund: (a) a dry cleaning fee paid by every operator of a dry cleaning facility equal to 2.8% of the gross receipts from the previous three months from dry cleaning; (b) a dry cleaning products fee imposed on persons who sell a dry cleaning solvent to a dry cleaning

facility equal to $5.00 per gallon of perchloroethylene sold and $0.75 per gallon of any dry cleaning product other than perchlorethylene sold, paid quarterly; (c) a late filing fee, interest, and negligency penalty after the due date of the dry cleaning facility license fee; and (d) any recovery of fraudulent awards.

For purposes of the fees under the program, "dry cleaning facility" is defined as a facility that dry cleans apparel or household fabrics for the general public using a dry cleaning product, other than specified facilities.

Loan from Environmental Improvement Fund

Under 2009 Wisconsin Act 28, the Department of Administration (DOA) and DNR were authorized to enter into an agreement to transfer up to $6.2 million from the land recycling loan program (LRLP) within the environmental improvement fund (EIF) to the dry cleaner environmental response program to pay awards under the dry cleaner environmental response program. [Further information can be found in the Legislative Fiscal Bureau's informational paper entitled, "Environmental Improvement Fund."]

DNR and DOA entered into a memorandum of understanding and transferred the maximum amount of $6.2 million from the LRLP to the segregated dry cleaner environmental response fund between 2009-10 and 2013-14. DOA assesses interest on the transferred funds at a rate no less than 0% and no greater than the EIF market interest rate. As of July, 2022, the interest rate on the transferred funds was 0.98%, based on the rate earned for state investment fund earnings. Under the term of the loan, as approved by EPA, a loan repayment is required from the DERF to the EIF of at least $1,000 per year. The entire loan must be repaid, and cannot be forgiven. As of June 30, 2022, $418,000 in interest cost has been accrued, and $13,000 in principal and $5,900 in interest has been repaid, for a total of $6,599,100 owed by the DERF to the EIF.

Eligible Applicants

Owners or operators of dry cleaning facilities can apply for financial assistance to clean up contamination from dry cleaning products associated with their facility. DNR received 230 notifications of potential claims from owners or operators by the August 30, 2008, deadline to submit a notification to DNR of the potential for submitting a claim under the program.

Owners or operators of dry cleaning facilities who participate in the program are required to do the following: (a) comply with cost, contracting, and bidding requirements; (b) conduct an investigation to determine the extent of environmental impact of the dry cleaning solvent discharge; (c) prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted; and (d) conduct remedial action activities, including recover any recoverable dry cleaning product, manage any residual solid or hazardous waste in accordance with law, and restore groundwater in accordance with DNR administrative rules.

An owner or operator may enter into a written agreement with another person under which the person acts as an agent for the owner or operator to conduct the cleanup activities.

Eligible and Ineligible Costs

Eligible reimbursable costs under the program include reasonable and necessary costs paid for the following items only: (a) removal of dry cleaning products from surface waters, groundwater or soil; (b) investigation and assessment of contamination caused by a dry cleaning product discharge from a dry cleaning facility; (c) preparation of remedial action plans; (d) removal of contaminated soils; (e) soil and groundwater treatment and disposal; (f) environmental monitoring; (g) laboratory services; (h) maintenance of equipment for dry cleaning product recovery performed as part of remedial action activities; (i) restoration or

replacement of a private or public potable water supply; (j) restoration of environmental quality; (k) contractor costs for remedial action activities; (l) inspection and supervision; (m) costs up to $15,000 for removal or replacement of building components that had to be removed or destroyed in order to investigate, treat or remove contaminated soil or water; and (n) other costs that DNR determines to be reasonable and necessary. Applicants were allowed to request reimbursement of "past costs" incurred between January 1, 1991, and October 13, 1997, with applications for past costs due to DNR by April 30, 2000.

The main ineligible costs include: (a) costs incurred before October 14, 1997 (unless eligible as "past costs"); (b) costs of retrofitting or replacing dry cleaning equipment; (c) other costs that DNR determines to be associated with, but not integral to, the investigation and remediation of a dry cleaning products discharge from a dry cleaning facility; (d) unreasonable or unnecessary costs; (e) costs for investigations or remedial action activities conducted outside Wisconsin; (f) costs for discharges from hazardous substances other than dry cleaning products; and (g) costs of financing eligible activities. DNR is required to subtract an amount equal to one-half of ineligible costs claimed by an owner from the eligible costs of the claim, after removing the ineligible costs from the claim.

DNR utilizes a bidding process for work at all sites, and directly oversees approval of work at every site. Administrative code Chapter NR 169 includes requirements for soliciting bids for completing a site investigation and remedial action. In addition, claimants must obtain DNR approval of all actions for which a claimant will seek reimbursement, including: (a) immediate and interim actions, which do not require bidding; (b) site investigation and remedial action bid selection; and (c) any change orders exceeding $3,000.

Award and Deductible Provisions

The Department pays an award to reimburse an applicant for eligible costs paid after DNR finds that the applicant meets the requirements of the program and rules promulgated under the program. DNR is required to approve the completed site investigation and remedial action activities before paying an award.

DNR is required to first allocate 9.7% of the financial assistance funds appropriated in each year for awards for immediate action activities and applications that exceed the amount anticipated. An immediate action is a remedial action that is taken within a short time after a discharge of dry cleaning product occurs, to halt the discharge, contain or remove discharged dry cleaning product, and to eliminate any imminent threat to public health, safety, or welfare. As of June 30, 2022, the program has reimbursed $150,100 for five sites for immediate action activities.

DNR uses the remaining funds for reimbursement of site investigations and remedial actions. Under Chapter NR 169, DNR assigns applications to one of three site hazard categories after reviewing an interim action options report or remedial action options report. DNR reimburses applications within the three categories in the order in which they are received. The categories and allocation of funds are:

1. High-priority sites are allocated 25% of available funds and consist of sites that DNR determines pose an imminent risk to human health or the environment. Examples include sites where the dry cleaning product has contaminated public or private drinking water supplies in concentrations that exceed the health-based standard for the contaminant, where contamination of the drinking water supply is imminent, or where dry cleaning solvent vapors above specified vapor action levels are confirmed within occupied buildings other than dry cleaning facilities.

2. Medium-priority sites are allocated 60% of available funds and consist of sites that DNR determines pose a significant risk to human health or the environment, or both. Examples include sites where there is contamination of a water supply below health standards, impacts above an environmental standard to surface water or wetlands, or vapor concentrations in buildings above specified risk screening levels but not high enough to be classified as high-priority.

3. Low-priority sites are allocated 15% of available funds and consist of sites that pose a risk to human health or the environment, or both. Examples include sites with soil contamination that is not migrating to groundwater or surface water or where contamination levels are below health-based standards and are not expected to increase over time.

The maximum award is $500,000 for reimbursement for costs incurred at a single dry cleaning facility. The owner or operator must pay a deductible equal to the following: (a) if eligible costs are $200,000 or less, $10,000; (b) if eligible costs are $200,001 to $400,000, $10,000 plus 8% of the amount by which eligible costs exceed $200,000; and (c) if eligible costs exceed $400,000, $26,000 plus 10% of the amount by which eligible costs exceed $400,000.

DNR may waive collection of the deductible if the owner or operator is unable to pay. If the deductible is waived, DNR records a lien on the property until the deductible amount is paid. DNR waived the deductible and filed a lien for two properties as of July, 2022.

If an owner or operator receives payment from another person for any eligible cleanup costs before submitting a claim for reimbursement under the program, DNR is required to reduce the award by that amount. If an owner or operator receives payment for eligible costs from another person after receiving an award under the program, the owner or operator must pay to DNR that amount. DNR is required to deposit any amounts collected under these provisions in the dry cleaner environmental response fund.

Appropriations

In 2022-23, DNR is authorized funding of $215,300 with 2.0 positions in the Remediation and Redevelopment program to administer cleanup requirements. DNR is appropriated $763,600 in each of 2021-22 and 2022-23 in a biennial appropriation for financial assistance awards under the program. In 2022-23, DOR is provided with $18,900 in administrative funds to collect the revenues under the program, and allocates it among several positions.

The two agencies need to reduce expenditures from authorized amounts in each year to remain within available revenues. DNR uses available revenues to first pay administrative expenses, then to pay claims on a quarterly basis, as revenues are received.

The condition of the segregated dry cleaner environmental response fund is shown in Table 4. Revenues totaled $393,200 in 2021-22. Revenues are expected to total approximately $325,000 in 2022-23. Expenditures totaled $336,900 in 2021-22, including $124,500 for dry cleaner environmental response awards, $198,100 for DNR and DOR administration, and $14,300 for repayment of principal ($1,000) and accrual of interest due on the loan from the environmental improvement fund ($13,300). Table 4 shows estimated expenditures in 2022-23 of $10,000 for dry cleaner awards and $160,000 for administration, to stay within available revenue, and $55,000 for repayment of the EIF loan. Actual expenditures will depend on the timing and amount of revenue received during 2022-23. The fund is anticipated to have a minimal balance on June 30, 2023.

Table 5 shows the cumulative amount of program costs for financial assistance awards and administration by fiscal year.

Table 4: Dry Cleaner Environmental Response Fund Condition
2019-20 through 2022-23

	2019-20 Actual	2020-21 Actual	2021-22 Actual	2022-23 Estimated
Opening Balance, July 1	- $62,600	- $49,700	- $154,000	- $97,700
Revenue - Program Fees	461,000	323,100	393,200	325,000
Total Funds Available	$398,400	$273,400	$239,200	$227,300
Expenditures				
Awards	$195,500	$205,000	$124,500	$10,000
Administration	162,200	215,600	198,100	160,000
Repay Environmental Improvement Fund loan*	90,400	6,800	14,300	55,000
Total Expenditures	$448,100	$427,400	$336,900	$225,000
Closing Balance	- $49,700	- $154,000	- $97,700	$2,300

*Includes repayment of $1,000 in principal annually, and accrual of interest due on the loan.

Table 5: Dry Cleaner Environmental Response Program Costs Paid by Fiscal Year

	Dry Cleaner Awards	DNR & DOR Administration	Transfer to General Fund	Repay EIF Loan*	Total
1997-98	$0	$51,900			$51,900
1998-99	0	136,100			136,100
1999-00	0	154,600			154,600
2000-01	1,102,500	180,600			1,283,100
2001-02	592,500	201,700			794,200
2002-03	1,218,700	245,100			1,463,800
2003-04	508,000	256,100			764,100
2004-05	1,592,000	245,600	$3,200		1,840,800
2005-06	1,715,100	249,900			1,965,000
2006-07	1,934,900	281,900			2,216,800
2007-08	488,700	284,900			773,600
2008-09	850,500	259,300			1,109,800
2009-10	3,132,300	235,800	3,700	$5,200	3,377,000
2010-11	1,786,300	245,700	3,700	7,200	2,042,900
2011-12	1,326,100	264,200		6,500	1,596,800
2012-13	1,272,300	265,100		7,800	1,545,200
2013-14	1,667,200	238,800		5,900	1,911,900
2014-15	533,200	229,800		7,600	770,600
2015-16	512,000	305,400		18,100	835,500
2016-17	407,700	150,300		34,300	592,300
2017-18	358,600	142,600		83,500	584,700
2018-19	619,800	173,600		143,500	936,900
2019-20	195,500	162,200		90,400	448,100
2020-21	205,000	215,600		6,800	427,400
2021-22	124,500	198,100		14,300	336,900
2022-23 (est.)	10,000	160,000		55,000	225,000
Total	$22,153,400	$5,534,900	$10,600	$486,100	$28,185,000
Percent	78.6%	19.6%	<0.1%	1.7%	100.0%

*Includes repayment of principal, and either repayment or accrual of interest expense.

Table 6: Dry Cleaner Environmental Response Program Claims Paid by Category, as of June 30, 2022

	Claims*	Amount
Past Costs	11	$549,340
High Priority	291	10,192,314
Medium Priority	245	7,663,021
Low Priority	135	3,589,633
Immediate Action	8	150,109
Total	690	$22,144,417

*The 690 claims were paid for 171 sites. Cleanup work and reimbursement has been completed at 86 of these sites.

Participation

As of June 30, 2022, DNR has paid $22,144,400 for 690 claims for 171 eligible dry cleaner facility sites. The distribution of the category of claims is shown in Table 6. Of the 690 claims paid, $10.2 million (46%) and 291 claims (42%) were for high-priority sites.

Claims are generally processed within about three months of receipt of a complete claim, on a first-in, first-out basis. In April, 2014, the amount of claims received began to exceed the amount of revenue available to pay claims. DNR began to place approved claims in line to be paid in the order they are approved, on a quarterly basis, as quarterly revenues are received under the program. In addition to claims paid as shown in Table 6, 53 claims totaling $3,184,200 were approved for payment as of June 30, 2022, and would be paid when funds are available, and four claims totaling $202,800 were waiting to be reviewed. DNR anticipates that, under typical current revenues, claims submitted through the summer of 2022 will not be paid in full before the program sunset date of June 30, 2032.

Reimbursement has been requested for 175 of the 230 sites that filed notices of potential claims, of which 86 sites have received final payment, and 85 have received partial payment. Four of the sites that have requested reimbursement have not received any payment due to funding insufficiencies. Of the 230 potential sites, 55 have not filed an initial claim, at least 24 of which are closed. As of the fall of 2022, DNR estimates total claims costs may approach $53.2 million through 2032.

Use of Environmental Fund

If DNR uses the state-funded response appropriation from the segregated environmental fund to pay for a cleanup of a discharge of dry cleaning solvent at a dry cleaning facility and there is a person who would be an eligible owner or operator for the dry cleaning facility, DNR is required to transfer an equal amount of money from the dry cleaner environmental response financial assistance appropriation to the environmental fund when sufficient funds are available. The environmental fund has incurred $698,467 in investigation and cleanup costs for five dry cleaner sites. DNR anticipates it is unlikely the dry cleaner environmental response appropriation will ever have funds to reimburse the environmental fund for these costs. DNR anticipates an additional unknown amount may be spent from the environmental fund for other dry cleaner sites, such as to assess and mitigate the health risks of vapor intrusion to nearby homes and businesses, particularly where there is no responsible party, or the responsible party is unable or unwilling to take remedial action.

Liability

Under the program, conducting a cleanup or applying for an award under the program is not an admission of liability for environmental pollution. The program does not supersede common law or statutory liability for damages from a dry cleaning facility. An award under the program would be the exclusive method for the recovery of eligible costs.

Dry Cleaner Environmental Response Council

The Dry Cleaner Environmental Response

Council was a six-member group that advised DNR concerning the program. The Council last met in 2015 and has largely ceased activity. The Council consisted of the following members appointed by the Governor for three-year terms: (a) three representatives of dry cleaning operations; (b) one representative of wholesale distributors of dry cleaning solvent; (c) one engineer, professional geologist, hydrogeologist, or soil scientist with knowledge, experience or education concerning remediation of environmental contamination; and (d) one representative of manufacturers and sellers of dry cleaning equipment.

The Council was required to evaluate the program at least every five years, based on criteria developed by the Council. The Council submitted reports to the Governor and Legislature in December of 2001, 2006, 2011, and 2016. The December, 2016, report included recommendations for the following statutory changes: (a) direct DOR to publish a quarterly list of all licensed dry cleaners, along with whether their license is current or delinquent; (b) forgive the environmental improvement fund loan to the dry cleaner environmental response fund (although it is unknown whether EPA would approve this permanent diversion of wastewater project funds to dry cleaner cleanups); (c) authorize DNR to directly spend DERP funds for immediate and emergency actions at eligible dry cleaner properties; and (d) request the Legislature to undertake a study of alternative funding mechanisms for the dry cleaner environmental response program.

Funding for DNR Administration

Staff Levels

Funding for DNR administration for state and federal contaminated land and brownfields cleanup programs comes from general purpose revenues, program revenues from fees for certain requests for DNR actions related to contaminated properties, payments from responsible parties, segregated revenues from the environmental management account of the environmental fund, petroleum inspection fund, and dry cleaner environmental response fund, federal funds, and payments from the Wisconsin Department of Transportation.

In 2022-23, DNR has 113.24 staff and appropriations of $13.6 million in the Remediation and Redevelopment program for administration of contaminated land and brownfields cleanup programs. Table 7 shows the number of staff and funding by funding source.

In addition, administrative or support functions are performed by division wide staff in the Environmental Management Division, and by staff in the Internal Services Division and External Services Division.

Funding Sources

General Fund. The Remediation and Redevelopment program is authorized 9.6 positions from general purpose revenues (GPR) in 2022-23.

Federal Funds. DNR receives grants from the U.S. Environmental Protection Agency for costs associated with administering Superfund, leaking underground storage tanks (LUST), brownfields, and hazardous waste programs. Federal funds support 38.0 positions in the program in 2022-23.

Segregated Funds. The segregated environmental management account of the environmental fund receives revenues primarily from several state solid waste tipping fees paid by Wisconsin landfills for each ton of solid waste disposed in the landfill. Several other environmental fees and revenues are deposited in the account. [For more information, see the Legislative Fiscal Bureau's informational paper entitled, "Environmental Management Account."] The account supports 21.5

Table 7: Authorized Staff and Administrative Appropriations for DNR's Bureau for Remediation and Redevelopment and Regional Remediation and Redevelopment Staff -- 2022-23

Funding Source	Permanent Positions	Appropriation
General Fund		
Bureau for Remediation and Redevelopment - administration	9.60	$1,093,800
Federal Funds		
Superfund administration	10.00	1,536,900
Leaking underground storage tank administration	12.50	1,294,100
Brownfields administration	9.50	930,000
Hazardous waste administration	2.50	243,100
Other	3.50	353,200
Segregated Funds		
Environmental Management Account – remediation and redevelopment and brownfields administration	21.50	2,647,400
Petroleum Inspection Fund - Petroleum and brownfields cleanup admin.	30.64	3,812,600
Dry Cleaner Environmental Response Fund – administration	2.00	215,300
Program Revenue		
Purchaser liability and remediated property fees	9.00	1,034,700
Solid and hazardous waste administration	2.50	243,100
Department of Transportation contract	0.00	235,000
Total	113.24	$13,639,200

positions in the Remediation and Redevelopment program in 2022-23. In addition to contaminated land cleanup programs, the account supports recycling programs and programs in other agencies.

The petroleum inspection fund receives revenues from a petroleum inspection fee of 2¢ per gallon assessed on all petroleum products brought into the state. [For more information, see the Legislative Fiscal Bureau's informational paper entitled, "Petroleum Inspection Fund (PIF)."] The petroleum inspection fund supports 30.64 positions in the Remediation and Redevelopment program.

The dry cleaner environmental response fund is described in the earlier section related to the dry cleaner environmental response program.

Program Revenue Remediated Property Fees. DNR is authorized to assess and collect fees to offset the costs for DNR activities related to approving requests for certain exemptions from future liability for cleanup of contaminated property.

Administrative code Chapter NR 750 includes a system of hourly fees to be paid by a voluntary party who seeks an exemption from liability or limit on future remediation costs. The initial fees include a non-refundable application fee of $250 and an advance deposit to cover DNR oversight and review, which is $2,000 if the property is less than one acre or $4,000 if the property is one acre or greater. DNR must return any amount in excess of DNR's oversight costs when the Department's review activities are completed. If the advance deposit is depleted and additional DNR review is needed, DNR is authorized to bill applicants quarterly according to an hourly rate based on the average hourly wages of program staff, fringe benefits and associated costs.

The hourly billing rate has been $105 per hour since July, 2014 ($100 per hour prior to that). The hourly rate can be recalculated annually. After

DNR approves a final remedial design, an applicant can choose to cover remaining DNR review costs, including DNR issuance of a certificate of completion, by either continuing quarterly billing or paying a final fee that equals 40% of the total DNR oversight costs incurred up to and including the approved final remedial design.

Administrative code Chapter NR 749 contains a fee schedule of fixed amounts for a number of services provided by DNR to persons who request certain departmental assistance. Examples of types of requests for which a fee is charged are shown in Table 8.

Persons who request the voluntary party exemption pay the NR 750 hourly fees instead of the NR 749 fixed fees. When a person requests that DNR review certain documents, the person must pay the applicable flat fee. Parties may, as part of a negotiated agreement with DNR, agree to pay the hourly fees for project oversight. When the NR 700 rules require that a document be submitted to DNR, but the person does not specifically request review of the document, then no fee is required.

DNR is authorized funding of $1,034,700 PR and 9.0 PR positions funded from the fees in 2022-23. DNR collected estimated cumulative revenues of $19.0 million through June 30, 2022, for deposit in a program revenue account that funds DNR staff who administer the liability exemption provisions. DNR has also transferred a cumulative total of $857,900 of revenue to the general fund

Table 8: Examples of DNR Fees for Providing Remediation Assistance

Type of Assistance	Fee
Case closure letter - DNR's determination that, based on information available at the time of the Department's review, no further action is necessary after a site investigation and cleanup has been completed.	$1,050
Database fee - adds a site to an online database of sites approved for closure where a groundwater enforcement standard is exceeded.	350
Database fee - adds a site to the online database of sites approved for closure with residual soil contamination.	300
Off-site exemption letter - DNR's determination of who is not responsible when contamination is migrating on to a property from an off-site source.	700
Review and approval of the use of site-specific soil cleanup standards.	1,050
No-further-action letter - DNR's determination that no further action is necessary for a spill site where an immediate action was undertaken.	350
General liability clarification - DNR's letter to clarify liability for site-specific matters related to the environmental pollution and remediation of a property.	700
Lender liability letter - DNR's letter to a lender explaining the potential liability associated with acquiring a contaminated property.	700
Negotiated agreement - a schedule for conducting non-emergency actions that DNR negotiated with a person who possesses or controls a hazardous substance that was discharged or who caused the discharge.	1,400
Other technical assistance.	700

through June 30, 2022, as part of requirements in several biennial budgets for state agencies to transfer funds from program revenue accounts to the general fund. Table 9 shows revenues, expenditures and transfers to the general fund from the program revenue account in 2012-13 through 2021-22.

In 2020-21 and 2021-22, most of the fees collected were from a $1,050 fee for issuance of case closure letters and for adding sites to the online database of sites closed with a groundwater enforcement standard exceedance or with residual soil contamination.

Table 9: Remediated Property Program Revenues and Expenditures

Year	Revenue	Expenditures	Transfer to General Fund
2012-13	$829,300	$736,900	$46,100
2013-14	755,100	717,200	46,100
2014-15	893,700	610,300	46,100
2015-16	915,800	109,800	0
2016-17	869,200	1,153,500	384,100
2017-18	866,300	1,145,300	0
2018-19	885,900	995,600	0
2019-20	778,500	864,800	0
2020-21	872,000	926,000	0
2021-22	756,200	456,800	0

Waste Management Program Revenues. The Remediation and Redevelopment program receives program revenues to support 2.5 positions from fees collected by the Waste and Materials Management program. The fees come from license, plan review, and solid waste tipping fees related to landfill administration. The Remediation and Redevelopment program activities relate to contaminated land cleanup activities at former or active landfills.

Department of Transportation (DOT) Program Revenues. The Remediation and Redevelopment program receives revenues from DOT related to DNR costs of review of contaminated land cleanup issues at DOT highway construction projects through an interagency agreement.

APPENDIX I

Superfund Site Status in Wisconsin (June, 2022)

Wisconsin Sites on EPA's National Priority List (NPL)	Municipality	County	Funding	Status
Ashland Northern States Power	Ashland	Ashland	PRP	O&M
Better Brite Chrome & Zinc [a]	De Pere	Brown	State [b]	O&M
Penta Wood Products [a]	Daniels, Town	Burnett	State [b]	O&M
Schmalz Landfill [a]	Harrison	Calumet	State [b]	O&M
Hagen Farm	Stoughton	Dane	PRP	O&M
City Disposal Corp Landfill	Dunn, Town	Dane	PRP	O&M
Stoughton City Landfill [a]	Stoughton	Dane	State [b]	O&M
Madison Metro Sludge Lagoons	Madison	Dane	PRP	O&M
Refuse Hideaway	Middleton	Dane	PRP	O&M
Oconomowoc Electroplating Co. [a]	Ashippun	Dodge	State [b]	O&M
Hechimovich Landfill [a]	Williamston	Dodge	PRP	O&M
National Presto Industries	Eau Claire	Eau Claire	PRP	O&M
City of Ripon Landfill [a]	Ripon	Fond du Lac	PRP	O&M
City of Algoma Landfill	Algoma	Kewaunee	PRP	O&M
Onalaska Municipal Landfill [a]	Onalaska	La Crosse	State [b]	O&M
Lemberger Fly Ash Landfill	Whitelaw	Manitowoc	PRP	O&M
Lemberger Transport/Recycling	Whitelaw	Manitowoc	PRP	O&M
Mid-State Disposal Inc. Landfill	Cleveland	Marathon	PRP	O&M
City of Wausau Water Supply	Wausau	Marathon	PRP	O&M
Spickler Landfill	Spencer	Marathon	PRP	O&M
Unity Auto Mart	Unity	Marathon	SUPERFUND	RI/FS
Moss-American (Kerr McGee Oil)	Milwaukee	Milwaukee	PRP/SUPERFUND	O&M
Tomah Sanitary Landfill	Tomah	Monroe	PRP	O&M
N.W. Mauthe Co. [a]	Appleton	Outagamie	State [b]	O&M
Amcast	Cedarburg	Ozaukee	SUPERFUND	RI/FS
Hunts Disposal/Caledonia Landfill	Caledonia	Racine	PRP	O&M
Janesville Ash Beds	Janesville	Rock	PRP	O&M
Janesville Old Landfill	Janesville	Rock	PRP	O&M
Sauk County Landfill [a]	Excelsior	Sauk	PRP	O&M
Kohler Co. Landfill [a]	Kohler	Sheboygan	PRP	O&M
Sheboygan River & Harbor	Sheboygan	Sheboygan	PRP	O&M
Delavan Municipal Well No. 4 [a]	Delavan	Walworth	PRP	O&M
Waste Management of WI-Brookfield [a]	Brookfield	Waukesha	PRP	O&M
Lauer I Sanitary Landfill (Boundary Road) [a]	Menomonee Falls	Waukesha	PRP	O&M
Master Disposal Service Landfill	Brookfield	Waukesha	PRP	O&M
Muskego Sanitary Landfill	Muskego	Waukesha	PRP	O&M

PRP—Potential Responsible Party; RI/FS--Remedial Investigation/Feasibility Study; RD--Remedial Design; RA—Remedial Action; O&M—Operation and Maintenance.

[a] Designates DNR lead; all others, EPA lead.

[b] Cleanup previously funded by the federal Superfund program. The state has assumed responsibility for payment of operation and maintenance costs, under Superfund program requirements.

APPENDIX II

Federal Brownfields Grants, Federal Fiscal Years 2003 Through 2022

Recipient	Assessment	Revolving Loan Fund	Cleanup	Multipurpose	Total
Wisconsin DNR	$6,100,000	$12,545,000			$18,645,000
Ashland, City	200,000		$400,000		600,000
Ashwaubenon, Village	400,000				400,000
Baraboo, City	600,000		600,000		1,200,000
Bay-Lake Regional Planning Commission, Northeastern Wisconsin	800,000				800,000
Blugold Real Estate Foundation, Inc., Eau Claire			400,000		400,000
Brillion, City			500,000		500,000
Brown County Planning Commission	400,000				400,000
Calumet County	300,000				300,000
Delavan, City			1,400,000		1,400,000
Delavan Redevelopment Authority		1,000,000			1,000,000
Green Bay, City	1,400,000	800,000			2,200,000
Green Bay, City Redevelopment Authority			500,000		500,000
Janesville, City	600,000	700,000			1,300,000
Jefferson County	200,000				200,000
Kenosha, City	400,000				400,000
Madison, City	700,000		400,000		1,100,000
Madison, Town	200,000	1,000,000			1,200,000
Manitowoc, City	1,700,000	1,000,000			2,700,000
Manitowoc Community Development Authority	300,000		500,000		800,000
Marathon County	400,000				400,000
Marinette, City	200,000				200,000
Marinette County	400,000				400,000
Menasha, City	500,000				500,000
Milwaukee, City		250,000	890,000		1,140,000
Milwaukee, City Redevelopment Authority	3,100,000	8,150,000	6,780,000	$800,000	18,830,000
Neenah, City	400,000				400,000
Oneida Tribe			65,325		65,325
Oshkosh, City	1,100,000		1,000,000		2,100,000
Prairie du Chien, City	200,000				200,000
Racine, City	1,300,000	1,873,170	200,000		3,373,170
Racine Redevelopment Authority			900,000		900,000
Red Cliff Band of Lake Superior Chippewa			151,900		151,900
Ripon, City	200,000				200,000
St. Ann Center for Intergenerational Care, Milwaukee			400,000		400,000
St. Croix Band of Lake Superior Chippewa	200,000		200,000		400,000
Stevens Point, City	600,000				600,000
Sheboygan County	1,000,000				1,000,000
Washington County	1,200,000	800,000			2,000,000
Wausau, City			400,000		400,000
Wauwatosa, City	1,000,000				1,000,000
West Allis, City	400,000	4,500,000	400,000		5,300,000
West Allis Community Development Authority	500,000		600,000		1,100,000
Wisconsin Rapids, City	400,000				400,000
Total	$27,400,000	$31,618,170	$16,687,225	$800,000	$76,505,395

APPENDIX III

State-Funded Response Actions Funded by the Wisconsin Environmental Fund as of June 30, 2022

Adams
Easton Store (Former)
Monroe Center Store

Ashland
Ashland City / Kreher Park
Fort James Mill
NSP Coal Gas Waste
Quearm Oil Company

Barron
Lemler Landfill
Rice Lake Landfill

Bayfield
Barksdale Dump

Brown
Ambrosius Property
Ashwaubenon Boardwalk
Better Brite – Chrome Shop
Better Brite – Zinc Shop
Brad's Service
H&R Paper & Refuse Service
R L O'Keefe & Sons
Scray's Hill

Burnett
Penta Wood Products
Piotrowski Property
Webster Volatile Organic Compounds (VOC) Contamination

Calumet
Chilton/East Main
Chilton Well #5
Hayton Area Remediation Project
Schmalz Dump
Schneider Property

Chippewa
Better Brite Plating
Boyd Municipal Well #3
Mix Property
Perrenoud, Inc.
Rihn Oil Company
Turenne Residence

Clark
Arlene's Inn
Chili Service & Strey Property
Granton Investigation
Harmony Cooperative Equity
Neillsville Foundry
Unity Auto Mart

Columbia
Glacier Oil
LaGrange Property
Matthews Estate Property
Nemitz Laundry
New Pinery Road
Portage Canal
Rockwell of Randolph

Crawford
Bell Center Landfill

Dane
Erfurth's Citgo
Hagen Farm
Madison First Street Garage
Madison Kipp
Madison Municipal Well #3
Madison Watts / Seybold Rd.
McFarland Terminal Drive
Monona One Hour Cleaners
Refuse Hideaway Landfill
Rimrock Road VOCs
Rimrock Road Well
STA-Rite Industries
Stoughton Landfill
Terminal Drive
Town of Madison – Fish Hatchery Rd.
Willy Wash

Dodge
Davy Creek
Gardner Manufacturing (Former)
Hechimovich Landfill
Lake Street Landfill
Mayville Iron & Coke
Oconomowoc Electroplating
Watertown Tire Fire

Door
Door County Cooperative
Yost Fur Dressing

Douglas
Hog Island Inlet
Howard's Bay
Newton Creek
Solon Springs
Superior Woods Systems

Dunn
Lentz Fertilizer Pesticide

Eau Claire
City of Augusta
Eastenson Salvage Yard
Eau Claire Battery Site
Eau Claire Municipal Well Field

Fond du Lac
Abhold's Garage
Fond du Lac #12
Old Dutchmill
Quicfrez
Ripon Wells #6 & #9
Rueping Leather
Smedema Property
Stiedaman Property Lamartine

Grant
Ellenboro Store
McGlynn Property

Green
Leck Property

Iowa
Dodgeville Waterworks
Mineral Point Roaster Piles

Jackson
Home Oil
Melrose Well #3
Merrillan Water Supply

Jefferson
Else Property
Keck Farm
Sanitary Transfer & Landfill
Fmr. Wisconsin Furniture

Juneau
Hustler Hardware

Kenosha
Chrysler Kenosha Engine
Frost Manufacturing
Kenosha Iron & Metals
Mankowski Property
Zizzo

Kewaunee
Kewaunee Marsh

La Crosse
Holmen I and Holmen II
La Crosse Municipal Well 10H
National Auto Wrecking
Onalaska Landfill
Tarco South

Lafayette
Champion Mine – New Diggings

Langlade
Langlade Oil

APPENDIX III (continued)

State-Funded Response Actions Funded by the Wisconsin Environmental Fund as of June 30, 2022

Lincoln
Tomahawk Tissue/Georgia Pacific Landfill
Koch Dry Cleaners
Kwaterski Millwork
Merrill – IGA
Quality Dry Cleaners

Manitowoc
Kasson Cheese Company
Lemberger Transport & Recycling
Manitowoc-Two Rivers Trichloroethylene
Mirro Plant
Susie's Restaurant
Town of Newton Gravel Pit
Two Rivers Petroleum
White Property

Marathon
Abbotsford PCE Investigation
Bungalow Tavern
Elderon Water Supply
Gorski Landfill
Halder Wells
Holtz & Krause
Kraus Property
Midstate Disposal Landfill
Modern Sewer Service
Murray Machinery Lagoon
Standard Container
Town of Stettin
Unity Auto Mart
Village of Halder
Wausau/Marathon Electric Landfill
Weisenberger Tie & Lumber
Weston Mesker #2 Well

Marinette
American Graphics
Dunbar Service Center
Fairground Rd. / Cedar St.
Leo Tucker Auto Salvage
Miron Property (Formerly Boehm)
Wausaukee Well #2

Marquette
Montello Lodge
Westfield Equipment

Milwaukee
A-1 Bumper
Babcock & Wilcox
BOC Property
Betz Trust
Bridge Wood Lane
Century City
Clare Central
Cleansoils Wis Inc Soil Storage Facility
Custom Plating
Doyne Park Landfill
Glendale Tech Center East #3
Jay's Fuel Oil

Milwaukee (continued)
Lincoln Park – Estabrook Impoundment
Lubricants Inc.
Mobile Blasting Off-Site Investigation
Mobile Blasting Remediation
Moss American / Kerr McGee
P&G School Bus Service
Phillips 66 / Grace Church
Plating Engineering
Presidio
West Walnut St/Hydroplaters

Monroe
Aschwander Residence
South Side Lumber
Tomah Well #5
Tomah Well #8
Wittig Oil Motel

Oconto
Econo Wash
D&G Mobil
Knoll Service Station
Lakewood Dx
Midstate Oil – Giese
New Lindwood

Oneida
Baker Property
Citgo Quick Mart (Former Home Oil)
Herrick Well
Minocqua Cleaners
Minocqua Water Supply
Rhinelander Landfill
Three Lakes - Trichloroethylene Detection

Outagamie
Ahlgrimm Explosives
American Toy & Furniture
Fox Valley Steel & Wire
Freedom Sanitary District - IGA
Kaphingst Property
Malchow Property
Midwest Plating
N. W. Mauthe
Porter Well
Sandie's Dry Cleaner & Laundry
So's Drycleaners
Wanglin Barrel
Waugamie Feed Mill
Wisconsin Chrome

Ozaukee
Cedar Creek
Cedarburg Water Supply
Lime Kiln Park – Grafton Village
Quality Cleaners
Roth Property

Polk
Amery Landfill
Electrocraft/Thompson Machine
Osceola Dam

Portage
Amherst Super Service

Price
Dragovich & Boho Sites
Flambeau Garage

Racine
Golden Books Publishing
Racine Brownfields Pilot
Rowe Oil Service
Tappa Property

Richland
Anderson Property/Hub Pub
Richland Center - IGA
Weber's Dry Cleaners

Rock
Bedrock Grinding
Borgerding Property
Dwyer Property
Edgerton Sand & Gravel
Riverside Plating
Rock Paint & Chemical

Saint Croix
Junkers Landfill
Lee Farm Landfill
Troutbrook Parkview Estates
Warren TCE Investigation

Sauk
Circus City Cleaners

Sawyer
Ackley Amoco
Price Rite Liquor

Shawano
5th & Ellis St

Sheboygan
Oostburg - IGA
Sheboygan River & Harbor

Taylor
Doberstein Lumber & Fence
Donald Store
Scrap Processing
Webster Pig Farm

Trempealeau
Arcadia Water Supply

Vernon
Viroqua Well
Westby Dry Cleaners

APPENDIX III (continued)

State-Funded Response Actions Funded by the Wisconsin Environmental Fund as of June 30, 2022

Vilas
Bitinas Phillips 66 Station
C.M. Christiansen
Winchester Conoco

Walworth
Delavan Municipal Well #4
Elkhorn Metal Finishers
Getzen Company
Hawthorne Property
Trent Tube
City of Whitewater

Washburn
Beaver Brook/Fairgrounds
Blue Bonnet Trust Site Springbrook
Dennis Salvage
Mortensen Enterprises
Norm's Mobil Sarona

Washington
Town of Jackson Garage
West Bend Water Supply

Waukesha
Barrett Landfill
Delafield Landfill
Super Excavators
Waukesha West Ave. Landfill

Waupaca
J & J Cleaners – Waupaca Well #4
Peterson Petroleum

Waushara
Union State Bank

Winnebago
American Quality Fibers
Avalone - Sisters Dump
Barth Property
Donaldson's 1 Hour Cleaners
Fox Valley Laundries
Fox River Risk Assessment
Moder Well
Nonweiler Property
Oshkosh Industries (Buckstaff)
Oshkosh Northwestern
Panzen Transfer
Shilobrit Dry Cleaners, Neenah
Shilobrit Dry Cleaners, Oshkosh

Wood
Food Tree
Gary's 1 Hour Cleaner
Luchterhand Dump
Pittsville Well #6
Rudolph Case Tosch Motors
Saratoga Gas & Grocery

DNR Northern Region
Clandestine Methcathinone (CAT) Labs

Statewide
Statewide Pesticide Study
Statewide Soil Standard Criteria Modeling
Statewide Natural Attenuation Study
Statewide Clean Soils Sites
Statewide Closure Protocol

IGA = Intergovernmental Agreement

APPENDIX IV

History of the Petroleum Environmental Cleanup Fund Award Program (PECFA)

The petroleum environmental cleanup fund award (PECFA) program was created to reimburse owners for a portion of the cleanup costs of discharges from petroleum product storage systems and home heating oil systems. The amount of reimbursement varies from a minimum of 75% to over 99% of eligible cleanup costs. Owners of certain underground and aboveground tanks could receive up to $1,000,000 for the costs of investigation, cleanup and monitoring of environmental contamination.

The PECFA program was created in response to the costs of federal requirements enacted in the 1980s to prevent the release of petroleum and other regulated substances into the environment from commercial underground storage tanks, and farm and residential tanks larger than 1,100 gallons. The state administers the federal requirements and also applies state regulations to certain smaller tanks.

Under 2015 Wisconsin Act 55, the 2015-17 biennial budget act, the program closed to new claims as of June 30, 2020, and payments on claims submitted as of that date were the last payments under the program. Act 55 also eliminated eligibility for new sites as of July 20, 2015. Act 55 also specified that no claims for reimbursement of eligible costs could be submitted after June 30, 2020.

DNR administered the financial reimbursement component of the program and continues to administer contaminated land cleanup provisions, as described in this paper. Prior to 2013-14, the Department of Safety and Professional Services (DSPS) administered the financial reimbursement portion of the program and cleanup of low- and medium-risk petroleum sites. PECFA was funded from a portion of a 2¢ per gallon petroleum inspection fee, of which 1¢ is deposited in the segregated petroleum inspection fund. The program during part of the 2000s used revenue obligation bond proceeds for payment of PECFA claims. The revenue obligation debt service was paid from petroleum inspection fee revenues.

Annual PECFA awards grew from $0.3 million in 1988-89 to a high of $296.6 million in 1999-00, and totaled $9.3 million in the 2019-21 biennium, when the program closed. A total of $1.57 billion in PECFA awards had been made for partial or full cleanup at 13,520 occurrences. Of the total payments, $1.51 billion (96% of payments) had paid for completion of cleanup of 13,197 occurrences (98% of occurrences with at least one payment). An occurrence is a contiguous contaminated area resulting from one or more petroleum products discharge. A site potentially has more than one occurrence.

Although no new claims are allowed after June 30, 2020, this appendix describes the following aspects of the PECFA program, including: (a) program eligibility criteria and claim requirements; (b) award guidelines; (c) the number of PECFA sites; and (d) program costs and administration. For additional information on the petroleum inspection fee and other programs funded from the petroleum inspection fund, see the Legislative Fiscal Bureau informational paper entitled "Petroleum Inspection Fund." Additional information on the PECFA program can be found in earlier versions of the Legislative Fiscal Bureau informational paper entitled "Petroleum Environmental Cleanup Fund Award (PECFA) Program" available on the Bureau's website.

Eligibility Criteria and Deadlines

Background on Tank Regulation

Federal regulations required federally-regulated tanks to be removed, replaced or upgraded by December 22, 1998. Federally-regulated tanks include commercial underground petroleum product storage tanks larger than 110 gallons (primarily commercial gas stations), and certain commercial underground hazardous chemical storage tanks and large underground farm and residential vehicle fuel tanks. New tank systems must meet design and installation standards.

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers federal and state regulations concerning petroleum product storage tanks. Federal and state regulations require owners or operators of petroleum underground storage tanks to provide proof of financial responsibility for cleanup of contamination at the sites and for compensation of third parties for bodily injury and property damage caused by accidental releases from the sites. Underground systems that are owned or operated by marketers are required to provide proof of financial responsibility of $1,000,000 per occurrence. Before sites were cleaned up or upgraded, the PECFA program provided a method for owners or operators to meet the financial responsibility requirements.

PECFA Eligibility

Owners or operators of certain petroleum product storage tanks were eligible under s. 292.63 of the statutes for reimbursement of a portion of costs of cleanup from petroleum contamination. Petroleum products are defined as gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil. Eligible tanks include: (a) commercial underground and aboveground tanks of 110 gallons or more in capacity; (b) farm and residential vehicle fuel tanks storing more than 1,100 gallons of petroleum products that are not for resale; (c) home heating oil systems; (d) farm vehicle fuel tanks storing 1,100 or fewer gallons, if the system is on a parcel of 35 or more acres of contiguous land devoted primarily to agricultural use, and producing certain minimum farm income, provided the fuel is not for resale; (e) public school district and technical college district heating oil tanks used to store heating oil for consumptive use on the premises where stored; and (f) tanks located on trust lands of an American Indian tribe if the owner or operator otherwise complies with state tank regulations.

Further, to be eligible for a PECFA award, the owner must have:

1. Registered the petroleum product storage system or home heating oil system must have been previously with DATCP.

2. Notified DNR of the discharge and of the possibility of submitting a PECFA claim by July 20, 2015, and prior to conducting a site investigation or remedial action;

3. Completed an investigation to determine the degree and extent of environmental damage caused by the petroleum discharge;

4. Prepared a remedial action plan to identify the specific activities proposed;

5. Conducted all remedial action activities at the site to restore the environment to the extent practicable and minimize the harmful effects of the discharge, which may include monitoring to ensure the effectiveness of the natural process of degradation of petroleum product contamination if approved by DNR; and

6. Received approval from DNR that the remedial activities meet cleanup standards.

7. Not met federal and state standards for new and upgraded tanks.

Owners of an eligible site who were not the owners when the discharge occurred were also eligible to submit a PECFA claim unless they should have known that a discharge occurred. Further, DNR could approve an owner of an eligible system or person owning a home heating oil system to enter into a written agreement with another person, including insurance companies, banks and consulting firms, to serve as their agent for submitting a PECFA claim. Agents receive payments jointly with the owner. The state Department of Transportation (DOT) could also serve as an agent if the PECFA site affects a transportation project and DOT's participation were approved by DNR.

PECFA Award Payments

Eligible and Ineligible Costs

DNR issued PECFA awards on a first-in first-out basis after eligible costs were incurred and DNR approved all remedial action. Eligible costs include the costs of investigating, cleaning and remediating discharges from petroleum product storage tanks, monitoring costs, compensation of third parties for damages caused by underground tank discharges, and other costs determined to be necessary by DNR. Ineligible costs include any cost incurred before August 1, 1987 (the date PECFA began), or after June 30, 2020 (the last day to submit a claim for eligible costs), costs for activities conducted outside Wisconsin, and costs determined by DNR administrative rules to be unreasonable or unnecessary.

Administrative code Chapter NR 747 includes a schedule of usual and customary costs for all work performed. In general, owners of all PECFA occurrences were to use the schedule, except for home heating oil tanks and certain DNR-approved emergency actions. The schedule instructed owners and consultants in calculating reimbursable costs for various investigation and remediation activities. Reimbursement was limited to the maximum amount for the task in the usual and customary cost schedule, but not to exceed the activity's actual cost if less than the schedule. DNR typically updated the schedule of usual and customary costs in January and July of every year.

Award Limits and Deductibles

The law establishes maximum awards per occurrence and deductibles that vary depending on the type of petroleum storage tank, the number of tanks and when the costs were incurred. The law also establishes deductibles the owner must contribute toward cleanup.

The maximum award for commercial underground tanks, which constituted almost 80% of the occurrences under the program, was set at $190,000 per occurrence for aboveground and underground tanks ($1,000,000 per occurrence for investigations and remedial activities started before December 22, 2001). Owners paid a deductible of $10,000 per occurrence.

The maximum award for eligible farm tanks of 1,100 gallons or less was $100,000, with a maximum deductible is $2,500 plus 5% of eligible costs, but not more than $7,500 per occurrence.

The maximum award for tanks owned by public school districts and technical college districts that store heating oil for consumptive use on the premises was $190,000, with a maximum deductible of 25% of eligible costs.

The maximum award for home heating oil tanks was $7,500, with a maximum deductible of 25% of eligible costs.

In addition to the overall maximum award, the maximum award for individual claims is limited to the amount determined by DNR to be necessary to implement the least costly method of completing remedial action and complying with groundwater enforcement standards.

PECFA Program Costs

Table 10 presents a summary, by fiscal year, of PECFA program expenditures from 1988-89 through 2020-21. The PECFA program has paid cumulative awards totaling $1.57 billion for partial or final cleanups at 13,520 occurrences. (There can be more than one occurrence at a site.) For several years beginning in 1999, PECFA utilized revenue obligation authority to pay claims to eliminate a program backlog. The state's final payments to the bond trustee account were $25.9 million in 2018-19, which, when combined with other program assets held by the trustee, retired the remaining fixed-rate obligations on July 1, 2019.

It should be noted the total payments shown in Tables 11 through 13 differ slightly from the totals shown in Table 10 for PECFA awards and revenue bond awards through the same period mostly because of variations between accounting and program records.

Type of Tank System

Table 11 shows the distribution of PECFA occurrences and awards by the type of petroleum tank system. Commercial underground petroleum product storage tanks, such as those found at gasoline stations, represented 78% of the PECFA occurrences for which at least one payment has been made and 87% of PECFA payments made. Home heating oil tanks were the second largest number of occurrences, representing 11% of PECFA occurrences, but less than 1% of PECFA payments. Aboveground tanks represented the second largest group of payment, with 10% of payments, and 7% of the number of occurrences.

Payments Per Occurrence and by County

Table 12 shows the distribution of PECFA occurrences and awards by the amount paid per occurrence. While almost 50% of the occurrences had received less than $50,000 each, this category of occurrences constituted 8% of the total payments. Conversely, 4.5% of the occurrences had received more than $500,000 each, and this category of occurrences constituted 27% of the total payments. The average PECFA payment per occurrence, including closed occurrences and occurrences with cleanups in process, was $116,119.

Table 13 summarizes PECFA payments made by county. PECFA payments were made in all 72 counties. Milwaukee County sites received the largest amount of PECFA payments, including 2,385 occurrences and $224.6 million, representing 17.6% of total occurrences and 14.3% of total payments. Dane County occurrences received the second-highest level of total payments (8.2% of payments) and Waukesha County was third with 4.7% of payments.

Table 10: PECFA Program Costs Paid from the Petroleum Inspection Fund by Fiscal Year

	PECFA Awards	Rev. Bond Awards	Rev. Bond Debt Payment	DSPS Admin.*	DNR Admin.*	Total
1988-89	$312,000	$0	$0	$40,300	$33,800	$386,100
1989-90	7,249,100	0	0	80,000	81,500	7,410,600
1990-91	22,802,900	0	0	193,900	94,300	23,091,100
1991-92	24,621,500	0	0	209,600	99,900	24,931,000
1992-93	43,531,700	0	0	419,900	544,200	44,495,800
1993-94	64,871,900	0	0	585,200	428,100	68,885,200
1994-95	80,891,500	0	0	943,000	441,800	82,276,300
1995-96	106,960,700	0	0	1,073,900	796,500	108,831,100
1996-97	95,902,700	0	0	1,645,300	680,600	98,228,600
1997-98	94,131,700	0	0	2,222,800	235,900	96,590,400
1998-99	94,131,700	0	0	2,139,100	255,200	96,526,000
1999-00	89,219,100	207,394,400	6,879,300	2,246,900	233,000	305,972,700
2000-01	80,680,400	43,711,500	13,790,300	2,701,200	250,900	141,134,300
2001-02	74,999,900	30,008,300	22,536,300	2,971,000	287,800	130,803,300
2002-03	67,995,700	62,272,500	23,713,700	2,757,000	303,800	157,042,700
2003-04	49,795,300	43,136,100	24,540,300	2,848,000	301,900	120,621,600
2004-05	42,707,000	1,835,900	29,575,500	2,648,200	313,000	77,079,600
2005-06	21,311,100	0	70,471,700	2,269,300	328,400	94,380,500
2006-07	22,514,100	0	31,152,700	2,609,300	344,300	56,620,400
2007-08	14,591,100	0	29,561,300	2,459,100	183,700	46,795,200
2008-09	10,408,500	0	28,341,300	2,574,100	207,900	41,531,800
2009-10	9,521,200	0	11,196,100	2,445,300	185,500	23,348,100
2010-11	8,828,300	0	5,868,200	2,157,200	192,800	17,046,500
2011-12	6,970,000	0	7,833,500	1,886,000	352,200	17,041,700
2012-13	4,070,500	0	29,977,500	1,745,100	373,700	36,166,800
2013-14	4,795,800	0	29,969,500	0	1,660,500	36,425,800
2014-15	3,807,700	0	29,824,200	0	1,815,500	35,447,400
2015-16	5,525,600	0	28,744,200	0	2,281,900	36,551,700
2016-17	5,362,300	0	31,262,900	0	1,796,000	38,421,200
2017-18	5,855,500	0	28,633,000	0	2,164,900	36,653,400
2018-19	7,933,700	0	25,925,900	0	2,180,000	36,039,600
2019-20	5,179,200	0	0	0	548,900	5,728,100
2020-21	4,115,600	0	0	0	36,600	4,152,200
Total	$1,181,595,000	$388,358,700	$509,797,400	$43,870,700	$20,035,000	$2,143,656,800

*Excludes federally funded staff paid through the leaking underground storage tank program and staff funded from program revenue.

Table 11: Distribution of PECFA Payments by Type of Tank

Tank Type	Number of Occurrences	% of Occurrences	Total Payments	% of Payments	Average Payment Per Occurrence
Commercial Underground	10,554	78.1%	$1,370,678,698	87.3%	$129,873
Aboveground	975	7.3	157,632,433	10.0	161,674
Terminal	33	0.2	16,641,124	1.1	504,276
Farm under 1,100 gallons	265	2.0	11,315,494	0.7	42,700
Home Heating Oil	1,461	10.8	8,046,477	0.5	5,508
School District	222	1.6	5,201,645	0.3	23,431
Technical College	5	0.0	159,168	< 0.1	31,834
Tribal Trust	5	0.0	247,087	< 0.1	49,417
Total	13,520	100.0%	$1,569,922,126	100.0%	$116,119

Table 12: Distribution of PECFA Payments – Occurrences at All Sites (as of June 30, 2022)

Amount Per Occurrence	Number of Occurrences	% of Occurrences	Total Payments	% of Payments	Average Payment Per Occurrence
$50,000 and less	6,603	48.8%	$125,415,325	8.0%	$18,994
$50,001 to $100,000	2,648	19.6	191,166,635	12.2	72,193
$100,001 to $150,000	1,197	8.9	146,522,661	9.3	122,408
$150,001 to $200,000	764	5.7	132,225,652	8.4	173,070
$200,001 to $250,000	506	3.7	113,406,093	7.2	224,123
$250,001 to $300,000	334	2.5	91,927,251	5.9	275,231
$300,001 to $350,000	269	2.0	87,331,245	5.6	324,651
$350,001 to $400,000	207	1.5	77,462,931	4.9	374,217
$400,001 to $450,000	178	1.3	75,522,699	4.8	424,285
$450,001 to $500,000	218	1.6	104,781,991	6.7	480,651
$500,001 to $550,000	108	0.8	56,605,814	3.6	524,128
$550,001 to $600,000	76	0.6	43,675,225	2.8	574,674
$600,001 to $650,000	82	0.6	51,405,322	3.3	626,894
$650,001 to $700,000	70	0.5	47,233,648	3.0	674,766
$700,001 to $750,000	49	0.4	35,623,254	2.3	727,005
$750,001 to $800,000	46	0.3	35,624,556	2.3	774,447
$800,001 to $850,000	25	0.2	20,620,351	1.3	824,814
$850,001 to $900,000	35	0.3	30,661,320	2.0	876,038
$900,001 to $950,000	22	0.2	20,270,298	1.3	921,377
$950,001 to $1,000,000	83	0.6	82,439,854	5.3	993,251
Total	13,520	100.0%	$1,569,922,126	100.0%	$116,119

Table 13: PECFA Payments by County

County	Number of Sites	Total Payments
Adams	43	$6,133,166
Ashland	74	8,992,669
Barron	92	8,640,904
Bayfield	91	10,272,427
Brown	472	58,935,468
Buffalo	46	4,482,981
Burnett	44	6,168,705
Calumet	105	12,107,200
Chippewa	171	12,541,923
Clark	125	15,947,073
Columbia	191	23,269,842
Crawford	46	4,597,480
Dane	882	129,366,713
Dodge	234	31,618,716
Door	94	9,135,840
Douglas	190	24,679,419
Dunn	61	6,144,739
Eau Claire	172	12,617,706
Florence	19	2,539,492
Fond du Lac	298	38,186,362
Forest	37	4,037,871
Grant	132	15,922,131
Green	71	9,342,093
Green Lake	93	11,331,382
Iowa	37	4,902,166
Iron	47	5,690,572
Jackson	77	9,422,148
Jefferson	207	26,084,731
Juneau	102	12,050,815
Kenosha	258	36,244,314
Kewaunee	68	7,499,186
La Crosse	184	20,095,526
Lafayette	51	7,931,011
Langlade	67	9,682,807
Lincoln	75	7,946,933
Manitowoc	204	26,202,158
Marathon	280	33,124,300
Marinette	126	11,206,476
Marquette	56	5,771,480
Menominee	5	1,157,678
Milwaukee	2,385	$224,633,439
Monroe	136	19,362,554
Oconto	97	13,367,719
Oneida	163	29,495,393
Outagamie	391	47,169,803
Ozaukee	224	23,050,261
Pepin	15	745,565
Pierce	73	5,502,880
Polk	108	9,756,769
Portage	144	13,604,867
Price	80	13,602,343
Racine	406	43,182,578
Richland	91	8,965,102
Rock	234	26,411,757
Rusk	59	9,525,277
Saint Croix	120	10,013,046
Sauk	205	24,440,491
Sawyer	96	9,173,091
Shawano	136	15,848,596
Sheboygan	298	38,026,862
Taylor	91	15,214,980
Trempealeau	78	9,935,926
Vernon	107	10,872,987
Vilas	116	17,551,856
Walworth	213	26,009,302
Washburn	31	2,217,403
Washington	231	35,129,616
Waukesha	741	73,412,789
Waupaca	138	15,755,826
Waushara	65	8,826,613
Winnebago	391	46,936,441
Wood	230	30,155,393
TOTAL	13,520	$1,569,922,126