



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #595

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

CURRENT LAW

In 2007 Act 20, a DNR appropriation was created from the segregated recycling and renewable energy fund to reimburse certain responsible parties for the difference between the cost of disposing in Wisconsin and transporting certain PCB (polychlorinated biphenyls) contaminated sediment to an out-of-state hazardous waste disposal facility. It is appropriated \$1,500,000 SEG in 2007-08 and \$3,000,000 SEG in 2008-09.

GOVERNOR

Maintain base funding of \$3,000,000 SEG annually. However, the administration has indicated it intends to transfer this amount to the general fund.

DISCUSSION POINTS

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

2. The applicant may request reimbursement of eligible costs incurred on or after May 1, 2007, including the costs of transportation, permits, and disposal fees for the disposal of PCB contaminated sediment out of state, less the costs for the disposal in state. DNR is required to pay each claim within 60 days of receiving a complete application. Applicants are required to submit a request for reimbursement within two years of the date the costs were incurred.

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

4. DNR is required to promulgate administrative rules for the program, and is authorized to promulgate emergency rules without a finding of emergency. DNR convened a work group of potential claimants and interested parties in 2008 and began to promulgate rules. In the summer of 2008, DNR stopped the rule promulgation process. The 2007-08 appropriation of \$1,500,000 was not spent and was lapsed to the balance of the recycling and renewable energy fund. DNR notified potential claimants that the process was stopped because the 2008-09 appropriation of \$3,000,000 would be transferred to the general fund as part of DNR's allocated share of transfers from SEG and PR appropriations to the general fund under 2007-09 budget provisions.

5. DOA and DNR officials indicate that it is the administration's intent that the base funding of \$3,000,000 SEG annually provided under the bill will not be spent, but will be transferred to the general fund as part of DNR's allocated share of transfers from SEG and PR appropriations to the general fund under 2009-11 budget provisions. This means the program would not be implemented and eligible costs incurred between May, 2007, and June, 2009, would lose eligibility for reimbursement because current law (and the bill) require requests for reimbursement to be submitted within two years of the date incurred.

6. While the administration intends that all of the funding be transferred to the general fund during the biennium, the statutes specify that DNR must pay eligible claims within 60 days of receipt. Therefore, it is unclear what amount will be available to transfer to the general fund.

7. To implement the intent of the Governor, the \$3,000,000 appropriated in each year could be deleted, but the statutory authorization for the program retained (Alternative 2). This alternative would reflect a more accurate budgeting of funding for the program. DNR and the Governor could request funding for the program in the 2011-13 budget or under s. 13.10 when they are ready to begin implementation.

8. While it is uncertain how many potential claimants have incurred eligible costs, and for what amounts, it is probable that companies have incurred eligible costs for transport of PCB contaminated sediments to out-of-state hazardous waste disposal facilities. However, to date, DNR has received no applications under the program.

9. The Committee could choose to repeal the program and delete all funding if it decides the program is not needed in the long-term (Alternative 4).

10. If the Committee wishes to reiterate the intent of the Legislature to implement the program, it could direct DNR to submit proposed administrative rules to the Legislature by a specific date. For example, since DNR already started the rule promulgation process, three months after the effective date of the bill should provide sufficient time for the Department to submit

proposed rules to the Legislative Council Rules Clearinghouse for review, and an additional six months should provide sufficient time for submittal to the Legislature for review (Alternative 5a).

11. If DNR promulgates rules for the program during 2009-10, it is likely rules would not be finalized until late in the year. It is uncertain how much demand there would be until applications for reimbursement are received and processed. The Committee could choose to decrease the amount of the appropriation. For example, if the appropriation would be decreased by half, from \$3,000,000 to \$1,500,000 annually (Alternative 5b), the program would still provide significant resources during the biennium.

12. Currently, reimbursement requests must be submitted within two years of incurring eligible costs. Costs incurred in May, 2007, will lose eligibility in May, 2009. It is likely potential claimants believe that they should retain retroactive eligibility for eligible costs incurred as of May 1, 2007. Further, they might believe that they should not be penalized through the loss of eligibility because of the state's delay of implementation of the program and transfer of appropriated funds to the general fund during tight state budgetary times. DNR indicates that no applications have been received because the rules have not been finalized.

13. If the Committee chooses to retain the program, it could consider whether expenses incurred between May 1, 2007, and June 30, 2009, should remain eligible for reimbursement under the program. For example, the bill could specify that those expenses will no longer be eligible for reimbursement (Alternative 3a).

14. Alternatively, the Committee could provide an exemption to the requirement that requests for reimbursement be made within two years of incurring the costs. For example, the bill could be amended to specify that costs incurred between May 1, 2007, and June 30, 2009, (Alternative 3b) must be submitted to DNR by June 30, 2011. This would provide potential applicants with two years to submit reimbursements for costs incurred during the 2007-09 time period during which implementation of the program was on hold. The current requirement for submittal of reimbursement requests could be retained for costs incurred after June 30, 2009. Costs incurred in July, 2009, would have to be submitted by July, 2011, as required under current law.

15. Any decrease in appropriated funds for the program under Alternative 4 or 5a would remain in the balance of the recycling and renewable energy fund and would be available to address a revenue shortfall, or for appropriation for other uses in the fund.

16. If the Committee chooses to take no action related to the program, base funding of \$3,000,000 SEG annually would continue during the biennium. However, DOA and DNR have indicated their intent to not implement the program and to transfer all available funds to the general fund during the 2009-11 biennium.

ALTERNATIVES

1. Approve the Governor's recommendation. (Base funding of \$3,000,000 SEG and program authorization would be maintained, and DOA and DNR would decide whether to pay any claims received, transfer any of the appropriation to the general fund, or lapse any of the appropriation to the balance of the recycling and renewable energy fund.)

2. Delete \$3,000,000 recycling SEG annually and retain current statutory authority for the PCB contaminated sediment disposal reimbursement program.

ALT 2	Change to Bill
	Funding
SEG	- \$6,000,000

3. Approve Alternative 1 or 2, and, in addition, adopt one of the following:

a. Specify that costs incurred between May 1, 2007, and June 30, 2009, are ineligible under the program.

b. Provide an exception to the current requirement that applicants must submit a request for reimbursement within two years of the date the costs were incurred, to authorize applicants to submit a request for reimbursement for costs incurred between May 1, 2007, and June 30, 2009, no later than June 30, 2011.

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

ALT 4	Change to Bill
	Funding
SEG	- \$6,000,000

5. Approve one or more of the following:

a. Direct DNR to submit draft administrative rules to the Legislative Council staff for review by the first day of the fourth month after the effective date of the budget, and to submit final draft rules to the Legislature for review by the first day of the tenth month after the effective date of the bill.

b. Delete \$1,500,000 SEG annually from the PCB contaminated sediment disposal reimbursement program. (This would retain \$1,500,000 annually for the program.)

ALT 3b	Change to Bill
	Funding
SEG	- \$3,000,000

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