



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #534

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

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

CURRENT LAW

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

GOVERNOR

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

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

DISCUSSION POINTS

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

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

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

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

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

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

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

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

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

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

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

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

ALTERNATIVES

A. Authority and Position

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

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

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

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

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

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

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

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

B. Program Funding

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

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

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

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

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

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

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

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