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Joint Committee on Finance

Paper #576

Transfer PECFA Program from DSPS to DNR (DSPS -- Buildings and Environmental Regulation and DNR -- Environmental Quality)

[LFB 2013-15 Budget Summary: Page 348, #7 (part), and Page 419, #1 (part)]

CURRENT LAW

The petroleum environmental cleanup fund award (PECFA) program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil systems. The PECFA program was created in response to the costs of federal requirements enacted to prevent the release of petroleum and other regulated substances from underground storage tanks into the environment. The state paid the first PECFA awards in 1988-89, and has paid over \$1.52 billion for partial or full cleanup of 13,184 PECFA occurrences. (A site can potentially have more than one occurrence.) PECFA awards are funded from the segregated petroleum inspection fund, which receives revenue from a 2¢ per gallon petroleum inspection fee assessed on all petroleum products that enter the state, including gasoline, diesel, and heating oil.

The Department of Natural Resources (DNR) administers cleanup of high-risk petroleum sites, sites with both petroleum and non-petroleum contamination, and unranked sites until sufficient information is available to classify the site as high-, medium-, or low-risk. DNR also establishes state environmental standards for cleanup of all contaminated sites in the state. In general, a high-risk site has groundwater contamination, concentrations of contaminants in a drinking water well, or meets certain other high-risk criteria. The Department of Safety and Professional Services (DSPS) administers the financial reimbursement portion of the program and cleanup of medium- and low-risk petroleum sites (PECFA-eligible and non-PECFA eligible).

In 2012-13, DNR allocates \$1,275,900 and 11.5 positions to administer its responsibilities related to cleanup at high-risk sites. This includes: (a) \$870,000 and 7.0 hydrogeologist and engineer positions from federal leaking underground storage tank (LUST)

funding received from the U.S. Environmental Protection Agency (EPA); and (b) \$405,900 in segregated revenues with 4.5 positions from the petroleum inspection fund. In 2012-13, DSPS is authorized \$3,346,900 and 31.5 positions to administer its responsibilities related to claim processing and payment and cleanup of medium- and low-risk sites. DSPS funding includes: (a) \$2,549,600 SEG with 20.8 SEG positions from the petroleum inspection fund; and (b) \$797,300 FED with 10.7 FED positions from the federal LUST program.

DSPS administers an abandoned tank removal program, with \$100,000 SEG annually, to pay for eligible costs of removing abandoned underground petroleum product storage tank systems.

DNR is authorized to assess and collect fees to offset the costs for DNR activities related to approving requests for activities such as issuance of a case closure letter after a contaminated site has been cleaned up. DNR deposits the fees in a program revenue appropriation that funds DNR staff who perform these activities.

GOVERNOR

Transfer all DSPS responsibilities related to processing and payment of PECFA claims, administration of cleanup of low- and medium-risk petroleum sites, and administration of the abandoned tank removal program, to DNR. The following table shows the funding deleted in DSPS and the amount provided to DNR under the bill.

Transfer the assets, liabilities, tangible personal property, records, pending matters, contracts, administrative rules, and orders related to the PECFA program, as determined by the Secretary of the Department of Administration (DOA), from DSPS to DNR. Transfer positions and incumbent employees, with their current rights and status.

Transfer from DSPS to DNR the current authority to promulgate rules for the assessment and collection of fees to recover the costs for providing approval of the completion of remedial action activities at low- to medium-risk PECFA sites. Transfer the PR appropriation for receipt of any such fees from DSPS to DNR. (DSPS has not promulgated rules or collected fees under this provision.)

PECFA Administrative Funding Under the Bill *

<u>Appropriation</u>	<u>Funding 2013-14</u>	<u>Funding 2014-15</u>	<u>Positions 2014-15</u>
Federal Funds:			
General program operations			
DSPS	-\$797,300	-\$797,300	-10.70
DNR	<u>811,600</u>	<u>811,600</u>	<u>10.70</u>
Subtotal FED	\$14,300	\$14,300	0.00
Segregated Revenues:			
PECFA administration			
DSPS	-\$2,570,500	-\$2,572,600	-20.80
DNR	<u>2,070,500</u>	<u>2,072,600</u>	<u>17.80</u>
Net Change PECFA administration	-\$500,000	-\$500,000	-3.00
Removal of abandoned tanks			
DSPS	-\$100,000	-\$100,000	
DNR	<u>100,000</u>	<u>100,000</u>	
Net Change Removal of tanks	\$0	\$0	
Subtotal SEG			
DSPS	-\$2,670,500	-\$2,672,600	-20.80
DNR	<u>2,170,500</u>	<u>2,172,600</u>	<u>17.80</u>
Net Change	-\$500,000	-\$500,000	-3.00
Total:			
DSPS	-\$3,467,800	-\$3,469,900	-31.50
DNR	<u>2,982,100</u>	<u>2,984,200</u>	<u>28.50</u>
Net Change	-\$485,700	-\$485,700	-3.00

*The amount recommended for PECFA awards is discussed in a separate budget paper.

DISCUSSION POINTS

1. While many states administer, within one agency, the federal leaking underground storage tank (LUST) cleanup program and federal underground storage tank (UST) program for installation, inspection, and upgrading of tanks that contain flammable and combustible liquids, Wisconsin has chosen to divide the responsibilities between DNR and the current DSPS for over 20 years. Under the bill, the LUST cleanup program responsibilities would be consolidated within DNR. The UST program responsibilities would be transferred to the Department of Agriculture, Trade and Consumer Protection (DATCP) to be consolidated with weights and measures responsibilities related to petroleum tanks. That transfer is discussed in a separate budget paper.

2. The Governor's Executive Budget Book indicates the transfer is recommended to create efficiencies in the PECFA program by combining responsibility for all petroleum site cleanups in DNR and consolidating similar functions.

3. Prior to 1995, DNR administered the cleanup of all PECFA-eligible and non-PECFA-eligible sites, and the former Department of Industry, Labor and Human Relations (DILHR) administered PECFA claim payment and regulation of storage tank standards. In the 1995-97 biennial budget act, the DILHR responsibilities were transferred to the Department of Commerce, effective July 1, 1996. At the same time, the DNR responsibilities related to medium- and low-risk petroleum tank sites were transferred to Commerce. The Commerce PECFA and petroleum tank regulation functions were moved to DSPS in the 2011-13 biennial budget act.

4. DNR officials indicate the Department plans to consolidate the PECFA functions within the current Remediation and Redevelopment program within the Division of Air, Waste, and Remediation and Redevelopment. The transferred positions would primarily be hydrogeologists who review and approve site cleanup activities and program specialists who review and audit PECFA claims. DNR currently assigns hydrogeologist staff to regional offices to manage cleanup of all types of contaminated sites on a geographical basis. DNR officials indicate the transferred DSPS hydrogeologists would be assigned to regional offices, generally nearest their current DSPS work location. For example, DSPS hydrogeologists currently working in the Madison, Waukesha, Stevens Point, Oshkosh, or Janesville offices of DSPS would likely be moved to the DNR regional or service center location near their current work location.

5. DNR has a workload balancing plan under which existing DNR and transferred DSPS staff would be assigned to the regional offices in the numbers needed to balance numbers of sites as evenly as possible among the regions. The filling of vacant positions is prioritized in a way that fills the next vacancy in the region with the greatest workload of cases or sites per number of filled positions.

6. DNR officials indicate that the transferred DSPS hydrogeologists would be trained to manage cleanup of additional types of contaminated sites besides low- and medium-risk PECFA sites. DNR staff charge their time to appropriations based on the type of site. An individual hydrogeologist might manage the cleanup of high-risk PECFA sites with groundwater contamination or concerns with vapor intrusion (such as the threat of explosive vapors reaching the basement of a building), and might also manage sites with contamination from dry cleaning products and other non-petroleum hazardous substances.

7. Currently, DNR and DSPS each receive a separate federal LUST grant from US EPA. DNR officials anticipate the Department would be able to readily amend and consolidate the federal grant into one grant. DNR anticipates the portion of the federal grant currently allocated to the 7.0 authorized DNR FED staff will continue to be sufficient to fund the positions.

8. The portion of the federal grant currently allocated to DSPS staff is insufficient to fund the 10.7 authorized FED positions. As of March 27, 2013, 6.5 of the FED positions are filled, and the remaining 4.2 DSPS FED positions are vacant. While the bill transfers all of the 10.7 FED positions from DSPS to DNR, it is uncertain whether the anticipated amount of federal funding would allow more than the currently-filled 6.5 FED positions to be filled. The Committee could consider deleting \$282,300 FED annually and the 4.2 FED vacant positions to more accurately reflect the amount of federally-funded positions that could be filled (Alternative 3a). If federal funding for the program increases in the future, DNR could request FED position authorization

from DOA under the s. 16.54 statutory process.

9. DOA officials indicate a decrease of \$500,000 SEG and 3.0 SEG positions annually was identified as possible through the deletion of an unclassified division administrator, a classified PECFA bureau director, and a section chief that were part of the DSPS program but would not be needed in DNR, plus staff savings from vacant positions.

10. DSPS has been able to generate savings of approximately \$600,000 SEG annually during 2011-13. This is primarily because, when positions became vacant, DSPS did not fill them due to decreased workload for review of medium- and low-risk sites, and decreased claim submittals during several months when the program was under a moratorium on accepting new sites or work activities, or was out of money. Additional savings could be generated by deleting an additional \$67,200 SEG annually and 1.0 vacant SEG position (Alternative 3b). However, DNR anticipates the main staff efficiencies gained from the transfer would be the deletion of the three management positions, and anticipates the DNR workload balancing plan would speed work at high-risk PECFA sites if there is less work at medium- and low-risk sites.

11. The abandoned tank removal program was created in 2009 Act 28, the 2009-11 biennial budget act, to pay for the removal of certain abandoned underground petroleum storage tank systems. The program has paid a cumulative total, through March 27, 2013, of \$293,200 to remove 103 tanks at 35 sites, including at 29 former gas station and six former commercial sites. DSPS tank regulatory staff (who are moved to DATCP under the bill) determine site eligibility, solicit and award bids for tank removal, supervise contractor performance during tank removal, process and pay the removal costs, and document proper completion of the tank removal. DSPS PECFA site review staff review PECFA eligibility, and PECFA claim review staff review the required placement of the lien on the property for the costs of removal of the tank.

12. DOA officials indicate the tank removal program would be moved to DNR instead of DATCP because the Governor believed DNR has better existing capacity, tools, and expertise to manage the program than DATCP, and that the program would be a better fit with DNR programs.

13. DNR officials indicate the Department plans to focus its efforts with the tank removal program funds on working with municipalities at sites where an abandoned tank may be impeding economic redevelopment efforts undertaken by the local government. The Department would use its existing procurement authority to contract directly for tank removals.

14. DNR currently assesses a fee, generally \$750, for all requests for approval of closure of a contaminated site, including PECFA sites, under its jurisdiction. This is performed under the Department's general authority to assess fees related to certain requests for DNR approval of actions taken at contaminated sites. The fees are deposited in a PR appropriation for administration of remediation activities at contaminated properties. The statutes specify that the PECFA program may not reimburse the costs of case closure fees. Under the bill, low- and medium-risk PECFA sites that become subject to DNR approval of case closure would become subject to the current DNR case closure fees. It is anticipated that roughly 100 low- and medium-risk sites may be closed in each of 2013-14 and 2014-15, which would generate approximately \$75,000 in PR case closure fees annually. The fee revenue would be used for administration of case closure activities. DNR

officials indicate that site closure requests submitted to DSPS before the effective date of the bill would be considered "pending matters" and would not be subject to the DNR case closure fee.

15. A number of corrections to the bill could be made (Alternative 2). The bill would transfer the DSPS PR appropriation for receipt of closure fees, and authority to assess fees, to DNR. The transfer of this authority would be redundant to the existing DNR authority to assess and collect fees for case closure approval at contaminated sites and should be deleted. Second, a correction to the bill is needed to move some of the transferred appropriations to the correct DNR programs. The appropriations for PECFA awards and abandoned tank removal should be placed with other environmental aids appropriations. The appropriations for PECFA revenue obligation debt service costs (with no funding amounts shown in the statutory appropriations schedule) should be placed with other debt service appropriations. Finally, a correction should be made to specify that any unexpended federal LUST funds in the DSPS appropriation would be transferred to the DNR federal administrative appropriation on the effective date of the bill.

ALTERNATIVES

1. Approve the Governor's recommendation to transfer all DSPS responsibilities related to administration of PECFA claim payments and cleanup of contamination at low- to medium-risk petroleum sites to DNR.

2. Approve the Governor's recommendation with the following corrections: (a) delete, instead of transferring to DNR, the duplicative DSPS authority to assess and collect fees for PECFA case closure, and the associated PR appropriation; (b) place the DNR appropriations in the proper programs, including to create the: (1) DNR PECFA awards and abandoned tank appropriations in environmental aids; and (2) PECFA revenue obligation debt service with other debt service appropriations; and (c) transfer any unexpended balance in the DSPS federal LUST appropriation to DNR on the effective date of the bill.

3. Approve the Governor's recommendation, as corrected under Alternative 2. In addition, modify the Governor's recommendation in one or both of the following ways:

a. Delete \$282,300 FED annually and 4.2 vacant FED positions in DNR.

ALT 3a	Change to Bill	
	Funding	Positions
FED	- \$564,600	- 4.20

b. Delete \$67,200 SEG annually and 1.0 vacant SEG position in DNR.

ALT 3b	Change to Bill	
	Funding	Positions
SEG	- \$134,400	- 1.00

4. Maintain current law.

ALT 4		Change to Bill	
DNR	Revenue	Funding	Positions
FED		- \$1,623,200	- 10.70
SEG		<u>- 4,343,100</u>	<u>-17.80</u>
Total		- \$5,966,300	-28.50
PR-REV	-\$150,000		

ALT 4		Change to Bill	
DSPS		Funding	Positions
FED	\$1,594,600	10.70	
SEG	<u>5,343,100</u>	<u>20.80</u>	
Total	\$6,937,700	31.50	

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