



## Legislative Fiscal Bureau

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August 16, 2022

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Natural Resources: Section 13.10 Request for Funding for the Cleanup of Electronics Waste -- Agenda Item V

### REQUEST

Provide \$2,500,000 segregated revenue (SEG) on a one-time basis to the Department of Natural Resources (DNR) in the appropriation under s. 20.370 (4)(hs) for the remediation of electronics waste. The request would reauthorize funding under 2021 Wisconsin Act 234, which intended to provide the funding in a new, continuing appropriation. The appropriation was instead created as an annual appropriation, resulting in the funds lapsing on July 1, 2022.

### BACKGROUND

#### Act 234

2021 Act 234 provided \$2.5 million SEG from the environmental management account of the segregated environmental fund in 2021-22 for DNR to contract with third parties to conduct the assessment, collection, transportation, and disposal of cathode ray tube glass and related electronics waste in Price, Rusk, and Washington Counties. The new Act 234 appropriation under s. 20.370 (4)(hs) was to appear in the appropriations schedule as a continuing appropriation. Monies in continuing appropriations do not lapse to the balance of the source fund, and Act 234 therefore was intended to allow DNR to expend all monies appropriated for the cleanup purposes until exhausted.

However, Act 234 as enacted did not include terms specifically designating the appropriation "as a continuing appropriation," as is required under s. 20.001 (3)(c) of the statutes to distinguish a continuing appropriation and an annual appropriation. Unencumbered funds in annual appropriations revert to the balance of the source fund at the close of each fiscal year. Because the authorizing language of s. 20.370 (4)(hs) creates an annual appropriation, any amounts for the cathode ray tube glass cleanup not encumbered as of June 30, 2022, lapsed to the environmental management account

balance on July 1, 2022. No funds were spent or encumbered prior to June 30, 2022.

## **5R Processors**

5R Processors operated as an electronics and appliance recycling firm with several sites in Wisconsin, including Ladysmith (Rusk County), Glen Flora (Rusk County), Catawba (Price County) and West Bend (Washington County). The company also maintained operations in Tennessee. According to the U.S Attorney's Office for the Western District of Wisconsin, several former 5R Processors executives have since late 2019 been found guilty in U.S. District Court on charges that include concealing the illegal storage and transport of glass from cathode ray tubes recovered from recycled devices but that contained hazardous amounts of lead. The court proceedings followed investigations by DNR and other state and federal entities, which led to additional tax-related and other charges. DNR indicates that up to 1.3 million pounds of leaded glass from cathode ray tubes had been abandoned at 5R Processors facilities in Wisconsin. One site has been partially restored to use by a lessee who used private financing to dispose of the leaded glass.

## **ANALYSIS**

The requested funding would be available to DNR through June 30, 2023. (Funding would not continue in the agency base, which has already been established for purposes of developing the 2023-25 biennial budget.) If DNR were not able to expend or encumber all funds necessary for cleanup prior to that date, additional funding could be provided in budget legislation in the 2023-25 biennium or under additional supplements under s. 13.10 of the statutes. The Legislature could also consider legislation in the 2023-24 session to convert the cleanup appropriation to continuing. This would allow DNR to carryover unencumbered funds to future fiscal years to be used consistent with Act 234 requirements.

The following table lists the locations and estimated cost of cleanup for electronics waste contamination caused by 5R Processors, according to documents filed in January 2021, in U.S. District Court. DNR reports that several factors could contribute to increased costs, including the weather and on-site conditions at the time of cleanup, potential fluctuations in the price of disposal, and whether recovered material has any salvage value. DNR reports that the additional \$544,400 in contingency funding would enable accommodation of potential increases, for a total estimated cost of \$2.5 million. Under Act 234, DNR costs under the contracts with third parties would remain limited to \$2,500,000.

## Locations and Estimated Cleanup Costs of 5R Processors Electronics Waste

<u>Location</u>	<u>Waste Storage Unit</u>	<u>Estimated Cleanup Cost</u>
1100 Barnett Road, Ladysmith	Five semi-trailers	\$44,700
W. 8th Street, Ladysmith	One semi-trailer	8,940
600 Gates Avenue, Ladysmith	Three semi-trailers	26,820
W3620 Artisans Drive, Glen Flora	Warehouse	829,200
N4421 Main Street, Catawba	Warehouse	506,288
133 Oak Street, West Bend	Multi-use facility	539,618
Contingency Funding		<u>544,434</u>
Total		\$2,500,000

The environmental management account has an available balance in excess of \$30 million as of July 1, 2022; therefore, sufficient funding is expected to be available to support the \$2.5 million requested [Alternative 1]. Approval of the request would be consistent with the intent of 2021 Act 234. DNR reports it began bidding procedures for a waste cleanup contractor in mid-July, and the Department expects to continue the process and encumber the funds within a few months, if requested funding is approved.

If the request were denied [Alternative 2], it is not clear funding would be immediately available to remove hazardous materials and restore the sites to use. State law requires that a person who possesses or controls a hazardous substance that is discharged, or who causes the discharge, must take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the pollution. However, the Department's testimony on Act 234 indicates that there is no realistic possibility of recovering cleanup costs from the responsible parties for the remaining sites, nor are cleanup actions eligible for federal funding.

DNR has funding available to respond to spills or contamination and to conduct cleanup activities in the event a responsible party is not identifiable, or the party is unable or unwilling to finance the cleanup of environmental contamination. State emergency responses are primarily funded by a separate environmental management SEG continuing appropriation. However, DNR has indicated that this funding is not appropriate to be used for the 5R Processors sites due to the sites not meeting applicable statutory requirements as a site of an abandoned container, hazardous substance spill, or other environmental repair.

### ALTERNATIVES

1. Approve the request to provide \$2,500,000 SEG to the Department of Natural Resources under s. 20.370 (4)(hs) for the remediation of electronics waste in Rusk, Price, and Washington Counties. (This would reauthorize funding under 2021 Act 234 that lapsed July 1, 2022, but that had not been intended to do so.)

2. Deny the request.

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