

(see paragraph 3 to support our recommendation) ((Bartlett & Badeau support alt 2))

**Paper No. 270:** Alternative 3 *3 Durada Jensen*

Comments: The gov's cost-savings idea is ok, but alt 3 seems to be the better way to implement it. (see paragraph 7 for support of our recommendation) ((Bartlett & Badeau support alt 3))

**Paper No. 271:** Alternative 1 & 4

Comments: The gov's idea seems good to us, but also need to make some technical changes to his proposal (i.e. alt 4). However, alternatives 2 & 4 would also be acceptable. (see paragraphs 2, 6, 7 & 9 for support of our recommendations) ((Bartlett & Badeau support alt 5))

**Paper No. 272:** Alternative 3 *2 Durada (2) Jensen*

Comments: The gov's proposal is ok, but needs some technical corrections. (see paragraph 8 for support of our recommendation) ((Bartlett & Badeau support alt 4))

**Paper No. 273:** Alternative 1 (no action needed) *2 Durada Jensen*

Comments: The gov's proposal sounds fine to us, but it's no big deal if it doesn't pass. It will cost some more money, but it helps ensure environmental contamination will be cleaned up. It sounds like Commerce just opens a new case anyway when they can't tell if the contamination is new or old. (see paragraphs 5 & 6 for support of our recommendation) ((Bartlett & Badeau support alt 1))

**Paper No. 274:** Alternative 1 (no action needed) & 5 *6 Durada Jensen*

Comments: Going with the governor here could be part of your brownfields issue protection initiative, but this one is not really that important - so, if your colleagues don't like this you could probably go with alt 6 (maintaining current law). Milw County supports alt 1. (see paragraphs 5 & 9 for support of our recommendations) ((Bartlett & Badeau support alt 6))

**Paper No. 275:** Alternative 1 (no action needed)

Comments: Sure, why not give Midwest Express a break. They already pay their fare share of the petroleum inspection fee, plus it will help them stay competitive. Also, you could reduce the break to just 1 cent per gallon on monthly sales over a million gallons (i.e. half of the governor's proposed rebate). (see paragraph 9 for support of our recommendation) ((Bartlett & Badeau support alt 4))

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Special Note: Under Items for which no FB papers have been prepared. You may want to ask that Item #27 (\$135,000 PR for a private sewage system training center) not be approved at this time. It could be introduced as a separate bill, to see if this is really needed.

Also, Bartlett & Badeau are pushing 2 additional amendments to PECFA. The most important thing to them is extending the \$1 million maximum coverage until 2001. Secondly, they want to extend PECFA coverage for contamination found "before" 1/1/96. Both of these sound ok to me, and I said you would probably support the motions - but, I didn't think you would offer/authorize the motions (i.e. do you want to carry water for them, or not?)

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### PECFA Awards (Commerce -- Building and Environmental Regulation)

[LFB Summary: Page 150, #2]

## 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 tank systems. The program is funded from a portion of a 3¢ per gallon petroleum inspection fee. In 1995-97, \$84,031,700 was appropriated each year in a biennial appropriation for PECFA awards. In September, 1996, the Joint Committee on Finance approved, under s. 13.10, additional one-time expenditure authority of \$34,800,000 in 1996-97.

## GOVERNOR

Provide \$7,100,000 annually from the petroleum inspection fund to increase funding for PECFA awards to \$91,131,700 per year in a biennial appropriation.

## DISCUSSION POINTS

### Funding and Backlog

1. Under the bill, \$182.3 million would be provided for PECFA awards during 1997-99. In 1995-97, \$202.9 million was provided.

2. As of April 1, 1997, Commerce had received 2,003 PECFA award applications totaling \$180.4 million that had not been paid. This included two backlogs: (a) 1,583 claims for \$145.5 million that were waiting to be assigned to staff for review; and (b) 520 claims for \$34.9 million that had been reviewed and will be paid when sufficient petroleum inspection revenues have been received to pay the claims. Claims received in April, 1997, will be reviewed approximately nine months later and will be paid approximately 22 months after they were received.

3. Currently, Commerce is receiving approximately \$15 million in PECFA claims per month and is paying approximately \$8 million in PECFA awards in order to limit expenditures to available revenues. At the current rate, the backlog of claims received and waiting for payment will be approximately \$200 million by June 30, 1997.

4. If PECFA demand continues at current rates, new PECFA claims would exceed \$380 million during 1997-99, the monthly backlog of claims will grow by \$7 to \$8 million per month. The backlog will likely exceed \$385 million by the end of 1997-99.

5. Under the bill, owners and operators who submit a PECFA claim in July, 1997, would not receive payment for at least two years. Owners who submit a PECFA claim in June, 1999, might wait over four years for PECFA reimbursement.

6. Commerce is currently auditing approximately \$15.5 million of claims per month but estimates that the monthly amount will increase soon to an average of \$21 million per month as it allocates three additional staff to claims review by filling a vacancy and transferring responsibility for reviewing investigations from two claims reviewers to two hydrogeologists. At the higher level of claim review, by the end of 1998-99, almost all of the potential \$385 million claim backlog would be in claims that have been reviewed and are waiting to be paid.

7. It is probable that PECFA demand will grow during 1997-99, rather than continue at current rates, as owners and operators upgrade federally-regulated underground petroleum storage tanks before the December 22, 1998, federal deadline for upgrading tanks. It is possible that demand could plateau sometime during 1999 or 2000, then decline as federally-regulated tanks are upgraded and contamination identified during the upgrading is cleaned up.

8. Approximately 3.5 billion gallons of petroleum are inspected annually. Each one cent of petroleum inspection fees generates revenues of approximately \$35 million annually. Therefore, the current 3¢ per gallon fee generates approximately \$105 million annually.

9. The balance of the petroleum inspection fund will be approximately \$4.8 million on June 30, 1999, as shown in Table 1.

**TABLE 1**

**Petroleum Inspection Fund Estimated Condition -- SB 77  
(\$ Millions)**

|  | <u>1996-97</u> | <u>1997-98</u> | <u>1998-99</u> |
|--|----------------|----------------|----------------|
| Opening Balance*                       | \$17.5         | \$7.7          | \$5.4          |
| <b>Revenue:</b>                        |                |                |                |
| Petroleum Inspection Fee               | 104.0          | 105.0          | 106.1          |
| Interest and Other                     | <u>0.4</u>     | <u>0.3</u>     | <u>0.3</u>     |
| Total Revenue                          | 104.4          | 105.3          | 106.4          |
| Total Revenue Available                | \$121.9        | \$113.0        | \$111.7        |
| <b>Expenditures and Reserves:</b>      |                |                |                |
| PECFA Awards and Administration        | \$98.5         | \$93.9         | \$93.9         |
| Commerce Petroleum Inspection          | 7.5            | 8.1            | 7.5            |
| Other Programs                         | 5.1            | 5.6            | 5.5            |
| Expenditure of Prior Year Encumbrances | <u>3.1</u>     | <u>---</u>     | <u>---</u>     |
| Total Expenditures                     | \$114.2        | \$107.6        | \$106.9        |
| Closing Unencumbered Balance           | \$7.7          | \$5.4          | \$4.8          |

\* Opening cash balance in 1996-97, unencumbered fund balance in 1997-98 and 1998-99

10. Under the bill, approximately 87% of 1997-99 petroleum inspection fund appropriations will be for PECFA awards and Commerce PECFA administration. An additional 7% of appropriations will be for Commerce petroleum inspection programs. The remaining 6% will fund the collection of the petroleum inspection fee by the Department of Revenue and brownfields, clean air and other environmental programs in Commerce, the Department of Natural Resources, the Department of Transportation, the Department of Agriculture, Trade and Consumer Protection and the Department of Military Affairs. The Attachment shows 1997-99 appropriations under the bill.

11. PECFA claimants who obtain bank loans for site remediation are eligible for reimbursement of loan origination fees, loan renewal fees and other interest expenses. From January 1, 1994 through June 30, 1996, 7.1% of PECFA award payments were for loan interest. For the 600 PECFA claims processed from November 1, 1996, through February 28, 1997, 10.7% (\$4.9 million) of the \$45.8 million in PECFA claims processed was for interest costs. During 1997-99, this would equal approximately \$9.1 million per year on interest costs. However, the amount and percentage of PECFA payments for interest expenses could be expected to increase as the backlog increases.

## **Current Activities to Reduce Future Costs**

12. Commerce established an administrative code advisory committee in February, 1997, to discuss changes that would control PECFA costs and improve program administration. It is possible that the Commerce code advisory committee might recommend changes to administrative rules and state statutes that could reduce future PECFA claim costs and close sites more quickly.

13. DNR promulgated administrative rules, effective November 1, 1996, that allow flexible closure of contaminated sites. Flexible closure means that cleanup activities can be stopped and the site closed when groundwater contamination levels exceed enforcement standards if certain conditions are met. DNR is developing administrative rules for landspreading of contaminated soils that would allow application of excavated petroleum contaminated soil at certain suitable locations, with natural attenuation of the contaminants by soil microorganisms. Natural attenuation means allowing naturally-occurring physical, chemical or biological processes to decrease contamination over a period of time. DNR is also working on a pilot project to evaluate the effectiveness of all PECFA sites with operating engineered remedial systems. Engineered systems are mechanical systems that can be operated continuously without on-site personnel to pump petroleum products and other contamination out of the groundwater or to extract petroleum vapors or other contamination from the soil.

14. While the recent and current Commerce and DNR efforts related to program and administrative rule changes could reduce future PECFA costs, they will not reduce the existing backlog of claims.

15. If owners, operators and the banks who lend money for PECFA-eligible cleanup are willing and able to wait two to four years for state reimbursement of PECFA costs, the bill could be considered to provide sufficient funding for cleanup activities that are currently underway.

16. Some believe that two to four years is an unacceptably long wait for PECFA reimbursement and that program funding should be increased to address the existing backlog and the 1997-99 demand that exceeds the funding provided under the bill.

17. Commerce officials argue that if funding is significantly increased without first implementing other cost controls, demand would increase beyond current levels and the program would not achieve a decrease in the per site cost of cleanup or increase in site closures. Under this argument, PECFA awards could be kept at current levels until the code advisory committee makes recommendations for future implementation of cost controls with the issue of the backlog being addressed at that time.

## Possible Revenues to Reduce Backlog

18. Two main approaches to funding the program have been discussed in recent years: (a) increasing the existing 3¢ per gallon petroleum inspection fee; and (b) authorizing the use of general obligation bonds for PECFA awards and pledging repayment of the bonds by petroleum inspection fee revenues. If funding would be increased beyond that in the bill, it could either be provided in an amount that would eliminate the June 30, 1997, backlog or at an amount that would fund all potential 1997-99 demand.

19. If the existing 3¢ per gallon petroleum inspection fee would be doubled to 6¢ per gallon during 1997-99, an estimated \$198.1 million in additional funds would be provided during the biennium. That is, an additional 3¢ per gallon fee (6¢ total) would reduce the June 30, 1999, backlog from approximately \$385 million to \$187 million. If the petroleum inspection fee would be tripled by increasing the fee from 3¢ per gallon to 9¢ per gallon, \$396.2 million in additional funds would be provided during the biennium to fund the existing backlog (assuming only marginal claims growth over current levels).

20. The current petroleum inspection fee is among the highest such state fees in the country and many are opposed to increasing the current fee. In particular, gasoline retailers located near Wisconsin's borders believe that the combination of the petroleum inspection fee and the state motor vehicle fuel tax places them at a competitive disadvantage with gasoline retailers in adjacent states.

21. Further, many believe that if increases in fuel taxes or fees are warranted, the increase should be made in motor vehicle fuel taxes to support Department of Transportation programs.

22. In October, 1993, the Joint Committee on Finance established the Special PECFA Study Committee to review the PECFA program. The Study Committee reviewed proposed legislation, funding and the use of bonding for the program. At the request of the Study Committee, the Joint Committee on Legislative Organization requested the Attorney General to issue an opinion regarding whether the use of bonding is an acceptable means of financing portions of the PECFA program.

23. On March 14, 1994, the Attorney General issued an opinion that Wisconsin may use the proceeds from general obligation bonds to fund an expansion of the PECFA program. The opinion stated that PECFA is a program to improve land or waters for the public purpose of mitigating environmental threats caused by past practices, and that bonding for PECFA would not violate the constitutional prohibition against contracting debt for works of internal improvements. In the opinion, the Attorney General recommended that if legislation is drafted to use bond financing to support PECFA, it should clearly set out the specific reasons for PECFA and the specific reasons why bond financing is deemed an appropriate method of financing for

the program. To date, the Legislature has not authorized the issuance of any bonds for the PECFA program.

24. Some would argue that general obligation bonding is an appropriate method of financing a portion of PECFA award costs because: (a) using bonds to finance the PECFA program could result in remedying the contamination of soil and groundwater more rapidly and in the prevention of more contamination than if bonds are not used; (b) any potential cost-containment changes in the program will not reduce the existing backlog of claims; and (c) state bonds are currently being issued at below 6% while the program currently reimburses private loans at 10.5%.

25. A general obligation bond program could be authorized for the PECFA program without incurring GPR debt service costs by specifying that the bonds would be repaid with existing petroleum inspection fee revenues. The petroleum inspection fees would have to be dedicated to paying bond debt service before any other appropriations from the fund for the term of the bonds. There are several possible scenarios and assumptions for issuing bonds. In this paper, it is assumed that bonds would be issued with a 6% interest rate and 20-year level debt service payments. Bonds could be issued at an amount sufficient to pay the anticipated \$200 million June 30, 1997, backlog or to pay the existing backlog and all estimated PECFA claims that will be waiting to be paid by June 30, 1999.

26. Table 2 illustrates a scenario for issuing \$200 million of general obligation bonds in 1997-98 to pay the June 30, 1997, backlog. A SEG sum sufficient appropriation from the petroleum inspection fund would pay bond debt service, estimated at \$20.4 million (\$3 million in 1997-98 and \$17.4 million in 1998-99) during 1997-99. The PECFA awards appropriation would have to be reduced by the amount of the estimated debt service costs, but the \$200 million in bond proceeds would allow a total of \$361.8 million in PECFA payments to be made during 1997-99. As shown in Table 2, the estimated June 30, 1999, backlog would be \$208 million instead of the \$385 million under the bill. Total debt service costs (principal and interest) on \$200 million of bonds would be approximately \$349 million over 20 years (\$17.4 million annually).

**TABLE 2**

**PECFA General Obligation Bonding Scenario -  
\$200 Million Issuance in 1997-99  
(\$ Million)**

|   | <u>1997-98</u> | <u>1998-99</u> | <u>Total<br/>1997-99</u> |
|---|----------------|----------------|--------------------------|
| July 1 Estimated Claim Backlog            | \$200.0        | \$91.9         | \$200.0                  |
| Claims Received During Year               | <u>180.0</u>   | <u>190.0</u>   | <u>370.0</u>             |
| Total Demand                              | \$380.0        | \$281.9        | \$570.0                  |
| PECFA Awards Appropriation Under the Bill | 91.1           | \$91.1         | 182.2                    |
| Less Bond Debt Service                    | -3.0           | -17.4          | -20.4                    |
| Plus Bond Proceeds                        | <u>200.0</u>   | <u>0.0</u>     | <u>200.0</u>             |
| Total Available for PECFA Payments        | \$288.1        | \$73.7         | \$361.8                  |
| June 30 Backlog (Demand less Payments)    | \$91.9         | \$208.2        | \$208.2                  |

27. Table 3 illustrates a scenario for issuing \$400 million of general obligation bonds (\$200 million in each year of the biennium) to pay the June 30, 1997, backlog and most of the estimated 1997-99 claim demand (assuming only marginal claims growth over current levels). Debt service would be estimated at \$23.4 million (\$3 million in 1997-98 and \$20.4 million in 1998-99) during 1997-99. The PECFA awards appropriation would have to be reduced by the amount of the estimated debt service costs, but the \$400 million in bond proceeds would allow a total of \$558.8 million in PECFA payments to be made during 1997-99 (compared to \$182.3 million under the bill). As shown in Table 3, the estimated June 30, 1999, backlog would be \$11 million instead of the \$385 million under the bill. Total debt service costs (principal and interest) on \$400 million of bonds would be approximately \$698 million over 20 years (\$34.9 million annually). In 1999-2000, the \$34.9 million in debt service costs would reduce the PECFA awards appropriation to \$56.2 million.

**TABLE 3**

**PECFA General Obligation Bonding Scenario -  
\$400 Million Issuance in 1997-99  
(\$ Million)**

|   | <u>1997-98</u> | <u>1998-99</u> | <u>Total<br/>1997-99</u> |
|---|----------------|----------------|--------------------------|
| July 1 Estimated Claim Backlog            | \$200.0        | \$91.9         | \$200.0                  |
| Claims Received During Year               | <u>180.0</u>   | <u>190.0</u>   | <u>370.0</u>             |
| Total Demand                              | \$380.0        | \$281.9        | \$570.0                  |
| PECFA Awards Appropriation Under the Bill | 91.1           | \$91.1         | 182.2                    |
| Less Bond Debt Service                    | -3.0           | -20.4          | -23.4                    |
| Plus Bond Proceeds                        | <u>200.0</u>   | <u>200.0</u>   | <u>400.0</u>             |
| Total Available for PECFA Payments        | \$288.1        | \$270.7        | \$558.8                  |
| June 30 Backlog (Demand less Payments)    | \$91.9         | \$11.2         | \$11.2                   |

28. If general obligation bonds are authorized for PECFA, the statutes could include legislative findings of why PECFA is an appropriate use of bonding. For example, the Legislature could find that: (a) thousands of petroleum storage tanks throughout the state have discharged petroleum products into the soil of the state that have contaminated the soil and have contaminated or threaten to contaminate the groundwater of the state; (b) discharges of petroleum products from petroleum product storage tanks damage the environment and public health, safety and welfare; (c) the problem of petroleum product discharges arose largely because of actions taken years ago, without knowledge either of the likelihood that discharges would occur as a result of those actions or of the seriousness of the consequences of petroleum product discharges; (d) the damage caused by discharges of petroleum products becomes more serious the longer the petroleum products remain in the environment; (e) remedying the contamination of the soil and groundwater by petroleum product discharges and preventing further contamination will benefit future generations; (f) the current source of funding is inadequate to meet the need under the PECFA program; (g) using bonds to finance the PECFA program will result in remedying the contamination of soil and groundwater more rapidly and in the prevention of more contamination than if bonds are not used; (h) the PECFA program improves land and water for a public purpose; and (i) it is in the public interest to use bonds to finance the PECFA program.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to provide an additional \$7,100,000 annually for PECFA awards.

2. Approve the Governor's recommendation. In addition, establish general obligation bonding authority for PECFA awards and create a SEG sum sufficient appropriation from the petroleum inspection fund for debt service costs. Specify legislative findings of why general obligation bond financing should be used for PECFA as identified in discussion point 28. Further, approve one of the following:

a. Provide \$200,000,000 in PECFA general obligation bonding authority. Transfer \$3,000,000 in 1997-98 and \$17,400,000 in 1998-99 from the PECFA awards appropriation to a SEG sum sufficient debt service appropriation to provide a total of \$361,863,400 for PECFA awards during 1997-99.

|                                  |               |
|----------------------------------|---------------|
| <u>Alternative 2a</u>            | <u>BR</u>     |
| 1997-99 BONDING (Change to Bill) | \$200,000,000 |

b. Provide \$400,000,000 in PECFA general obligation bonding authority. Transfer \$3,000,000 in 1997-98 and \$20,400,000 in 1998-99 from the PECFA awards appropriation to a SEG sum sufficient debt service appropriation to provide a total of \$558,863,400 for PECFA awards during 1997-99.

|                                  |               |
|----------------------------------|---------------|
| <u>Alternative 2b</u>            | <u>BR</u>     |
| 1997-99 BONDING (Change to Bill) | \$400,000,000 |

Alt  
MO# 2a

Prepared by: Kendra Bonderud

|           |                                  |                                  |   |
|-----------|----------------------------------|----------------------------------|---|
| BURKE     | <input checked="" type="radio"/> | N                                | A |
| DECKER    | Y                                | <input checked="" type="radio"/> | A |
| GEORGE    | Y                                | <input checked="" type="radio"/> | A |
| 2 JAUCH   | <input checked="" type="radio"/> | N                                | A |
| WINEKE    | Y                                | <input checked="" type="radio"/> | A |
| SHIBILSKI | <input checked="" type="radio"/> | N                                | A |
| COWLES    | Y                                | <input checked="" type="radio"/> | A |
| PANZER    | Y                                | <input checked="" type="radio"/> | A |
| JENSEN    | Y                                | <input checked="" type="radio"/> | A |
| OURADA    | Y                                | <input checked="" type="radio"/> | A |
| HARSDORF  | Y                                | <input checked="" type="radio"/> | A |
| ALBERS    | Y                                | <input checked="" type="radio"/> | A |
| GARD      | Y                                | <input checked="" type="radio"/> | A |
| KAUFERT   | Y                                | <input checked="" type="radio"/> | A |
| LINTON    | <input checked="" type="radio"/> | N                                | A |
| COGGS     | <input checked="" type="radio"/> | N                                | A |

AYE 5 NO 11 ABS 0

**ATTACHMENT**

**Appropriations From the Petroleum Inspection Fund  
Governor's 1997-99 Biennial Budget Bill Recommendations**

|   |   | 1997-98<br>Appropriated | 1998-99<br>Appropriated | 1998-99<br>Authorized Positions |
|---|---|-------------------------|-------------------------|---------------------------------|
| <b>Petroleum Environmental Cleanup Fund Award Program (PECFA)</b> |   |                         |                         |                                 |
| <i>Commerce</i>   |   |                         |                         |                                 |
| 143   | (3)(v) PECFA Awards                                 | \$91,131,700            | \$91,131,700            |                                 |
|   | (3)(w) PECFA Administration                         | 2,529,300               | 2,484,400               | 29.8                            |
| <i>Natural Resources</i>  |   |                         |                         |                                 |
| 370   | (2)(dw) PECFA Administration                        | <u>244,800</u>          | <u>250,600</u>          | <u>4.0</u>                      |
|   | (Subtotal)  | \$93,905,800            | \$93,866,700            | 33.8                            |
| <b>Other Programs</b>   |   |                         |                         |                                 |
| <i>Agriculture, Trade and Consumer Protection</i>                 |   |                         |                         |                                 |
| 115   | (1)(r) Unfair Sales Act                             | 104,000                 | 104,600                 | 2.0                             |
|   | (1)(s) Weights and Measures                         | 207,200                 | 207,500                 | 1.0                             |
| <i>Commerce</i>   |   |                         |                         |                                 |
| 143   | (1)(qa) Staff for business development center       | 250,400                 | 266,700                 | 2.0                             |
|   | (3)(r) Safety and buildings - petroleum inspection  | 8,138,700               | 7,468,500               | 58.4                            |
| <i>Natural Resources</i>  |   |                         |                         |                                 |
| 370   | (2)(bq) Vapor recovery administration               | 82,500                  | 82,500                  | 1.0                             |
|   | (2)(br) Air management - mobile sources             | 1,267,000               | 1,271,400               | 7.0                             |
|   | (2)(mu) Environmental fund - environmental repair   | 969,400                 | 969,400                 |                                 |
|   | (2)(mu) Environmental fund - Well compensation      | 80,000                  | 80,000                  |                                 |
|   | (2)(mw) Environmental fund - Groundwater management | 764,600                 | 766,900                 |                                 |
|   | (3)(ms) Pollution prevention                        | 55,000                  | 55,100                  | 1.0                             |
|   | (8)(mq) Mobile source air pollution                 | 395,400                 | 395,600                 | 0.5                             |
|   | (9)(mq) Mobile source air pollution                 | 155,300                 | 155,300                 |                                 |
|   | (9)(ms) Cooperative environmental assistance        | 118,700                 | 119,600                 | 2.0                             |
| <i>Transportation</i>   |   |                         |                         |                                 |
| 395   | (4)(dq) Air quality - demand management             | 267,600                 | 267,600                 | 4.0                             |
| <i>Military Affairs</i>   |   |                         |                         |                                 |
| 465   | (3)(r) State emergency response board               | 465,700                 | 465,700                 |                                 |
| <i>Revenue</i>  |   |                         |                         |                                 |
| 566   | (1)(s) Petroleum inspection fee collection          | 114,400                 | 114,400                 | 2.0                             |
| <i>Miscellaneous Appropriations</i>                               |   |                         |                         |                                 |
| 855   | (4)(r) Petroleum allowance                          | <u>400,000</u>          | <u>400,000</u>          |                                 |
|   | (Subtotal)  | \$13,835,900            | \$13,190,800            | 80.9                            |
| <b>Total SEG Petroleum Inspection Fund Appropriations</b>         |   | <b>\$107,741,700</b>    | <b>\$107,057,500</b>    | <b>114.7</b>                    |

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **PECFA -- Expert Witness Costs (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 150, #4]

## CURRENT LAW

Under the Petroleum Environmental Cleanup Fund Award (PECFA) program, the statutes and administrative rules specify eligible and ineligible costs. Commerce is required to deny reimbursement of ineligible costs. PECFA claimants may appeal a Commerce decision to deny part or all of a PECFA claim.

## GOVERNOR

Provide \$150,000 SEG annually from the petroleum inspection fund for expert witness expenses in legal matters under the PECFA program. Place the funds in unallotted reserve to be released upon approval by DOA.

## DISCUSSION POINTS

1. When a PECFA claimant appeals a Commerce PECFA decision, the appeal is heard by a Department of Workforce Development hearing examiner as part of an inter-agency agreement between Commerce and DWD.

2. Commerce would use the funds provided in SB 77 to hire technical or environmental experts to provide information at administrative hearings in support of a Commerce decision to deny a PECFA claim or ineligible costs included in a claim.

3. Commerce hired two experts in one case to prepare information for an administrative hearing. It denied a \$1,000,000 PECFA claim based on owner gross negligence because Commerce claimed the owner continued to use tanks after the tanks failed a tightness test. The Department hired: (a) a technical expert in tank leak detection systems and petroleum inventory control; and (b) an environmental auditing firm (which is currently under contract to do audits of environmental work) to review the environmental work done at the site. The Department spent approximately \$9,000 for preliminary work by the two experts. The case was settled prior to the hearing with cost savings of \$200,000. (If the claim had gone to hearing and the state had lost, PECFA would have had to pay the owner \$1,000,000. If the state would have won a hearing, it still would have had to pay the lender \$1,000,000 under the lender hold harmless provision of the statutes, although Commerce could seek recovery of costs from the owner). Commerce estimates that if the case had gone to hearing, a total of \$25,000 would have been spent (an additional \$16,000) because the two experts would have testified at the hearing; thus, the \$9,000 spent on technical experts saved \$200,000 in PECFA costs.

4. Commerce paid for the technical experts from current PECFA administrative funds. The administrative appropriation does not have base level funding for this purpose, therefore, the Department reallocated funds used for PECFA claim reviewers and supplies.

5. Based on Commerce estimates, the recommended funds would be sufficient to hire experts for approximately six appeals that go to hearing annually, or a greater number of appeals that are settled before the hearing. However, the estimates are based on the Department's "best guess" with only the single case of actual data.

6. Commerce does not have plans to utilize technical experts for current appeals cases and does not know what the program need will be in the future. The Department would like to have funds available in anticipation of potential future appeals. Under the bill, Commerce would have to request DOA release of the funds from unallotted reserve.

7. It could be argued that \$150,000 annually is not warranted for expert witnesses based on actual expenses incurred to date of \$9,000. Provision of a smaller amount would provide a base level of funding which could be adjusted through budget or s. 13.10 requests if future program need warrants it. For example, \$25,000 would provide for a base level of expert witness expenditures for several investigations or at least one case that goes to hearing.

8. Under current funding levels, if Commerce decides to hire technical experts for activities related to appeals, it would have to reallocate funds from PECFA claims review activities such as salary and supplies budgets. Commerce lapsed funding for supplies totalling \$13,100 in 1995-96 and \$42,200 in 1994-95.

9. Under the bill, DOA would have to release the funds from unallotted reserve before Commerce could hire expert witnesses or use the funds for any other purpose. If the funds would not be needed for expert witness costs, DOA states the balance would lapse to the petroleum inspection fund at the end of the fiscal year.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to provide \$150,000 SEG annually in unallotted reserve for expert witness expenses in legal matters under the PECFA program.

2. Provide \$25,000 SEG annually in unallotted reserve for expert witness expenses in legal matters under the PECFA program.

| <u>Alternative 2</u>             | <u>SEG</u>  |
|----------------------------------|-------------|
| 1997-99 FUNDING (Change to Bill) | - \$250,000 |

3. Maintain current law.

| <u>Alternative 3</u>             | <u>SEG</u>  |
|----------------------------------|-------------|
| 1997-99 FUNDING (Change to Bill) | - \$300,000 |

Prepared by: Kendra Bonderud

MO# Alt. 2

|           |                                  |                                  |   |
|-----------|----------------------------------|----------------------------------|---|
| 1 BURKE   | <input checked="" type="radio"/> | N                                | A |
| DECKER    | <input checked="" type="radio"/> | <input checked="" type="radio"/> | A |
| GEORGE    | <input checked="" type="radio"/> | <input checked="" type="radio"/> | A |
| JAUCH     | <input checked="" type="radio"/> | N                                | A |
| WINEKE    | <input checked="" type="radio"/> | <input checked="" type="radio"/> | A |
| SHIBILSKI | <input checked="" type="radio"/> | N                                | A |
| 2 COWLES  | <input checked="" type="radio"/> | N                                | A |
| PANZER    | <input checked="" type="radio"/> | N                                | A |
| JENSEN    | <input checked="" type="radio"/> | N                                | A |
| OURADA    | <input checked="" type="radio"/> | N                                | A |
| HARSDORF  | <input checked="" type="radio"/> | N                                | A |
| ALBERS    | <input checked="" type="radio"/> | N                                | A |
| GARD      | <input checked="" type="radio"/> | N                                | A |
| KAUFERT   | <input checked="" type="radio"/> | N                                | A |
| LINTON    | <input checked="" type="radio"/> | N                                | A |
| COGGS     | <input checked="" type="radio"/> | N                                | A |

AYE 13 NO 3 ABS 0

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **PECFA -- Home Heating Oil Award Set-Aside (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 151, #5]

## CURRENT LAW

Commerce is required to allocate not more than \$500,000 of the Petroleum Environmental Cleanup Fund Award (PECFA) program awards appropriation in each fiscal year from the biennial appropriation for awards for home heating oil tank system discharges. Awards are to be made in the order that the applications are received. Commerce may conditionally approve awards if the \$500,000 in any fiscal year has been reached, and make those awards first in the following fiscal year. The maximum home heating oil award is \$7,500, and the owner is required to pay a deductible equal to 25% of cleanup costs.

Commerce is required to allocate not more than 5% of the PECFA awards appropriation in each fiscal year for awards for public school district tanks that store heating oil for consumptive use on the premises. Any of the 5% set-aside that is not needed during 1995-97 for school district tanks will be available for commercial underground or aboveground tanks.

## GOVERNOR

Eliminate the \$500,000 annual maximum allocation for home heating oil tank awards. Instead, specify that the current set-aside of 5% of the PECFA awards appropriation for public school district heating oil tanks would also include home heating oil tanks.

## DISCUSSION POINTS

1. As of April 1, 1997, Commerce completed review of 321 home heating oil tank claims for \$1,839,000 during 1995-97. In May, 1996, payments for 170 sites reached the \$1,000,000 maximum allocation for home heating oil tank PECFA awards for the 1995-97 biennium. Commerce is holding 151 home heating oil PECFA claims totalling \$839,000 to be paid on or after July 1, 1997, with funds from the 1997-99 biennial appropriation.

2. The Department reviews home heating oil tank claims on a "fast track" basis as soon as they are received. If Commerce continues to receive claims at the current rate, a total of \$1.1 million in home heating oil tank claims could be waiting to be paid on July 1, 1997, and estimated 1997-99 demand of \$2.1 million for home heating oil tank claims would be expected.

3. Commerce has paid a cumulative total of \$3.2 million for 582 home heating oil tank PECFA claims as of March, 1997. Contamination from 733 home heating oil tanks has been cleaned up with a cost of \$4.1 million under the program, including the 582 paid sites and the 151 sites that have been reviewed but not yet paid. As of December, 1996, Commerce was aware of approximately 900 home heating oil tank PECFA sites and estimated that there are an additional 600 potential home heating oil tank PECFA sites, for a cumulative total of 1,500 sites. Thus, almost half of the expected PECFA claims for home heating oil tanks have been reviewed and PECFA claims can be expected for an additional 770 home heating oil tanks with future PECFA costs of approximately \$4.3 million.

4. As of April 1, 1997, Commerce paid \$1.5 million for 67 public school district tank claims during 1995-97. If claims continue to be paid at the current rate, a total of \$1.7 million in school district claims would be expected during 1997-99. Most school district claims are reviewed on a "fast track" priority because the investigation and cleanup is completed with a cost of less than \$50,000. These fast track claims are then put at the end of the line of claims that have been reviewed and are waiting to be paid when funds are available.

5. Five percent of the PECFA awards appropriation would provide up to \$4,556,600 under the bill in each year, or \$9,113,200 during the 1997-99 biennium for both school district tanks and home heating oil tanks. A combined total of \$3.8 million (\$4.9 million with the \$1.1 million awaiting payment on July 1, 1997) for the two categories of claims would be expected during 1997-99, which would not exceed the \$9.1 million that would be available in the 5% set-aside.

6. Under the bill, the additional amounts that would be spent on home heating oil tank claims (approximately \$2.2 million during 1997-99) would reduce the amount that would be available for commercial underground and aboveground tanks.

7. The \$500,000 annual maximum allocation for home heating oil tank claims was established when the PECFA program was enacted in 1989 Act 399. The PECFA awards

appropriation was \$7,393,400 in 1988-89, so the \$500,000 allocation for home heating oil tank claims was 6.8% of the awards appropriation. The PECFA awards appropriation has increased to \$84,031,700 in 1996-97 (and would increase to \$91,131,700 under the bill), but the maximum allocation for home heating oil claims has not changed. The \$500,000 maximum annual allocation is 0.6% of the 1996-97 appropriation.

8. Home heating oil tank claims include a relatively small amount of money (maximum \$7,500 per claim) in comparison to commercial underground and aboveground tank sites. However, the amount may have a larger proportional impact on the finances of some homeowners than on some businesses. While commercial site owners may submit multiple claims during a time period of a few years before cleanup is completed, home heating oil tank claims are generally submitted as one claim for the entire cleanup. Home heating oil tank cleanups are usually completed at the time that a home heating system is converted from oil to another source such as natural gas or when a home is sold.

9. Under the bill, home heating oil and public school district tank claims would continue to receive fast track priority review when the investigation and cleanup is completed for less than \$50,000. Both types of claims would then be put at the end of the line of claims that have been reviewed and are waiting to be paid when funds are available. It is probable that this would result in considerably longer waits for payment of home heating oil tank claims than under current law.

10. It would be possible to fund all anticipated home heating oil tank claim demand during 1997-99 and retain the current priority for payment of the claims in two ways. First, the \$500,000 annual maximum could be increased to \$1,600,000 annually, which would fund the estimated \$1.1 million July 1, 1997, backlog and estimated \$2.1 million 1997-99 demand. Under this method, if home heating oil tank claim demand exceeds \$3.2 million during 1997-99, claims would be held for payment in July, 1999.

11. Alternatively, both the current maximum allocation and proposed percentage set-aside could be deleted and instead, all home heating oil tank claims would be paid as soon as they are received. It could be argued that this alternative would simplify the processing and review of home heating oil tank claims and home heating oil tank claims could be paid more quickly than under the bill. Approximately \$3.2 million would be spent on home heating oil tank claims in 1997-99, which would equal 1.8% of the 1997-99 PECFA awards appropriation.

12. On the other hand, it could be argued that the \$500,000 maximum allocation or 5% set-aside should limit the amount of funds spent for home heating oil and school district tanks in order to ensure that the majority of PECFA funds would be used for commercial, federally-regulated tanks.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to eliminate the \$500,000 annual maximum allocation for home heating oil tank PECFA awards and to include home heating oil tanks within the current set-aside of 5% for public school district tanks.
2. Delete the Governor's recommendation and change the \$500,000 annual maximum allocation for home heating oil tank PECFA awards to \$1,600,000.
3. Delete the Governor's recommendation and the current \$500,000 cap. Rather, specify that home heating oil tank claims shall be reviewed and paid as soon as they are received.
4. Maintain current law.

Prepared by: Kendra Bonderud

MO# AH.3

|           |     |   |   |
|-----------|-----|---|---|
| BURKE     | (Y) | N | A |
| DECKER    | (Y) | N | A |
| GEORGE    | (Y) | N | A |
| JAUCH     | (Y) | N | A |
| WINEKE    | (Y) | N | A |
| SHIBILSKI | (Y) | N | A |
| COWLES    | (Y) | N | A |
| PANZER    | (Y) | N | A |
| JENSEN    | (Y) | N | A |
| 2 OURADA  | (Y) | N | A |
| HARSDORF  | (Y) | N | A |
| ALBERS    | (Y) | N | A |
| GARD      | (Y) | N | A |
| KAUFERT   | (Y) | N | A |
| LINTON    | (Y) | N | A |
| COGGS     | (Y) | N | A |

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **PECFA -- Change in Remediation Activities (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 151, #6]

## CURRENT LAW

No provision.

## GOVERNOR

Authorize Commerce to make additional PECFA payments for costs to enhance the approved remedial action activities or implement new remedial action activities if the originally approved remedial action activities failed to remedy the discharge. The total amount of the original award plus additional PECFA payments would be subject to the current maximum award limits.

## DISCUSSION POINTS

1. The provision of SB 77 is intended to clarify that PECFA can reimburse costs of improvements to remedial systems that have not achieved their initial objectives.
2. Commerce has statutory authority to promulgate administrative rules to determine eligible costs under the program. Currently, the Department approves reimbursement for changes or additions to existing working remedial systems that make the system work better or faster, for example, adding technology to existing systems. However, Commerce believes that the statutory

provision is needed to approve changes to an initial remedial approach which was properly designed and engineered but which failed to reach required cleanup standards. For example, an engineered system may have been properly designed after a thorough investigation, but failed to cleanup the contamination. Therefore, changes to the system or a different remedial approach are needed to cleanup the site. Currently, the costs of these changes cannot be reimbursed, but could be under the bill.

3. There are some 1,300 to 1,400 sites currently undergoing a PECFA cleanup with use of engineered remedial systems. Engineered remedial systems use machines to pump petroleum products and other contamination out of the groundwater, to extract petroleum vapors or other contamination from the soil, or use a combination of mechanical techniques. Some of these remedial systems may not achieve cleanup of the site. A revised remedial action plan could lead to a more cost effective cleanup. For example, an existing engineered remedial system that extracts petroleum vapors from contaminated soil but reaches its limit of effectiveness may be replaced with excavation of remaining pockets of contaminated soil or by natural attenuation, which means allowing naturally-occurring processes to reduce contamination over time.

4. DNR is working on a 14-month project (May 1, 1996, to June 30, 1997) to evaluate the effectiveness of all PECFA sites with operating engineered remedial systems. Commerce and DNR are identifying sites for review (partially based on a Commerce survey of consultants). DNR is evaluating sites to determine whether sites can be closed, modified to reduce operating costs, or converted to natural attenuation of petroleum contamination. As of April 17, 1997, DNR had evaluated 927 sites and made cost savings recommendations for half of them. DNR estimated \$35.5 million in reduced future costs with their recommendations. Among DNR's findings for the 470 sites with cost savings are that: (a) 113 systems should continue to operate, with modifications such as decreased monitoring or reporting; (b) 82 sites should be closed; (c) 71 sites should be changed from an engineered system to natural attenuation; (d) 50 systems were closed between the time they were identified for review and the time DNR reviewed them (consultants had earlier estimated the sites would operate for a longer time); (e) 43 sites were closed as a result of the evaluation; (f) 38 systems should continue operation but with changes to improve the effectiveness; and (g) 73 sites received a variety of other recommendations.

5. DNR indicates that it does not have the authority to require site owners to choose a specific remedy or the lowest cost remedy, but makes recommendations of changes that can be made to complete a cleanup faster or at lower cost. However, Commerce states that it is informing site owners who have received cost efficiency recommendations from DNR that PECFA will only reimburse for the actions recommended by DNR.

6. The effect of the SB 77 provision on PECFA program costs would depend on the extent to which a second or subsequent remediation method increases or decreases overall costs of cleaning the site. Switching to a different remediation methodology after incurring substantial costs using the original method may result in overall savings at some sites, but is likely to

increase overall costs at other sites. Commerce and DNR officials argue that if a more efficient remediation method can be used at the site, close out may be accomplished sooner, resulting in cost savings by eliminating continued expenditures for the original cleanup method.

7. While it is unclear what overall program costs or savings would result from the statutory change, it is possible that the change could result in some cleanups being completed in a shorter period of time with cleanup of greater amounts of contamination than under current law.

8. Commerce indicates that it would determine whether to pay for the enhanced or new remedial activities by comparing the additional cost and the cost of the continued operation of the original design. However, the bill does not require Commerce to make this determination. In addition, the bill does not require Commerce to approve only those enhanced or new remedial activities that do not increase the overall costs of remedying the discharge. The bill only requires that the total amount of the original award and additional costs approved under the bill not exceed the current maximum award.

9. The provision is identical to language included in 1995 AB 1089, which contained several changes to the PECFA program. In May, 1996, the Joint Committee on Finance passed Assembly Substitute Amendment 1 and the Assembly passed Assembly Substitute Amendment 2 which both modified the language in the original AB 1089 to add that Commerce must determine that the enhancements or changes will remedy the discharge without increasing the overall costs of the cleanup. The Senate adjourned without considering the bill.

#### **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to authorize Commerce to make additional PECFA payments for costs to enhance the approved remedial action activities or implement new remedial action activities if the originally approved remedial action activities failed to remedy the discharge, subject to the current maximum award limits.

2. Approve the Governor's recommendation, but authorize Commerce to approve reimbursement for changes in remedial action activities only after the Department determines that the changes will remedy the discharge without increasing the overall costs of the cleanup.

3. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt. 2

|           |     |   |   |
|-----------|-----|---|---|
| BURKE     | (Y) | N | A |
| DECKER    | (Y) | N | A |
| GEORGE    | (Y) | N | A |
| JAUCH     | (Y) | N | A |
| WINEKE    | (Y) | N | A |
| SHIBILSKI | (Y) | N | A |
| COWLES    | (Y) | N | A |
| PANZER    | (Y) | N | A |
|           |     |   |   |
| JENSEN    | (Y) | N | A |
| OURADA    | (Y) | N | A |
| HARSDORF  | (Y) | N | A |
| ALBERS    | (Y) | N | A |
| GARD      | (Y) | N | A |
| KAUFERT   | (Y) | N | A |
| LINTON    | (Y) | N | A |
| COGGS     | (Y) | N | A |

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **PECFA -- Interest Cost Reimbursement (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 151, #7]

## CURRENT LAW

There is no statutory limit on reimbursement under the Petroleum Environmental Cleanup Fund Award (PECFA) program for interest costs incurred by PECFA claimants who obtain loans to complete PECFA-eligible cleanup work. Administrative rule ILHR 47 limits reimbursable interest rates for loans secured after January 31, 1993, to no more than 2% above the prime rate. Rules also allow reimbursement of loan origination fees at no more than two points of the loan principal and reimbursement of loan renewal fees at no more than 1% of the unreimbursed amount and remaining available loan balance.

## GOVERNOR

Require that PECFA reimbursement for interest costs incurred by a claimant may not exceed the prime rate. Direct Commerce to promulgate emergency rules to implement the provision. The provision would first apply to interest costs incurred on the first day of the fifth month after the effective date of the budget act.

## DISCUSSION POINTS

1. The current administrative rule limitations of interest costs, loan origination fees and loan renewal fees were enacted when Chapter ILHR 47 was created as an emergency rule

effective January 1, 1993. The permanent rule was effective March 1, 1994. Commerce established a PECFA administrative code revision advisory committee which began to meet in February, 1997. The advisory committee is planning to discuss changes in interest cost reimbursement as part of the current code revision process.

2. While the bill would limit the interest rate eligible for reimbursement under ILHR 47, it would not affect current administrative rule limitations on loan origination fees and renewal loan fees. Loan renewal fees are sometimes charged on the anniversary of the loan origination, whether or not the loan will be repaid shortly after the anniversary.

3. Since Commerce currently has administrative rules which limit PECFA reimbursement for interest costs, Commerce could promulgate a revision to further limit reimbursement for interest costs, whether or not the provision in the bill is enacted. This rule authority would extend beyond the interest cost limitation included in the bill to also include the limitation on loan origination fees and renewal loan fees included in current administrative rules.

4. Commerce indicates that only a few lenders charge an interest rate lower than the maximum prime plus 2% rate allowed in the current rule.

5. The administrative rules do not specify how Commerce would calculate 2% over the prime rate. The prime rate fluctuates over time. Currently, Commerce bases the prime rate on the rate published in The Wall Street Journal, which is an index representing the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. On May 1, 1997, the prime rate was 8.5% (and had been since March 26, 1997), which would allow PECFA reimbursement for loans at 10.5% currently, or 8.5% under the bill. However, because the bill does not address reimbursement of loan origination fees or loan renewal fees, the effective annual percentage interest rate would likely be higher. Under the bill, it is possible that banks would charge interest at the prime rate, then increase other allowable fees related to the loan.

6. The PECFA program depends on private lenders to provide up-front funds for cleanup work. Typically, lenders establish a line of credit or maximum loan amount for PECFA site owners or operators and pay bills as cleanup work progresses. Because state funds are not sufficient to eliminate the backlog of \$180.4 million of PECFA claims waiting to be paid as of April 1, 1997, the program has increasing dependence on lenders and increasing interest costs. Commerce officials believe that there may currently be over \$400 million in outstanding PECFA loans, including work in the existing backlog and work in progress for which a PECFA claim has not yet been submitted.

7. From January 1, 1994, through June 30, 1996, 7.1% of PECFA award payments were for loan interest costs. In comparison, during the same period, 35.7% of PECFA award payments were for consultants, 17.3% for soil treatment, 12.5% for remedial equipment, 9.3% for laboratory tests, 6.6% for monitoring, 4.6% for excavation, 3.4% for trucking, 2.2% for backfill and 1.3% for other costs. Data is not available to calculate the fiscal impact of the bill's

proposal. A review of the 600 PECFA claims processed from November 1, 1996, through February 28, 1997, shows that interest costs have increased from 7.1% of payments to 10.7% (\$4.9 million of the \$45.8 million in claims processed during the four months). The percentage of total PECFA funds spent for interest costs is expected to continue to increase as the backlog of claims waiting to be paid increases.

8. Statutorily reducing reimbursement for interest costs from the 2% over prime to no more than the prime rate would decrease the amount of funds that the PECFA program spends on interest costs.

9. The bill may increase costs for some PECFA claimants. While the administrative rule limits reimbursement for interest costs associated with loans secured after January 31, 1993, the bill would limit reimbursement for interest costs incurred on the first day of the fifth month after the effective date of the budget act. Therefore, PECFA claimants would likely incur interest costs for loans that were secured prior to the effective date that set interest above the prime rate. Unless these affected claimants could negotiate a loan interest rate reduction with their lenders, they would be responsible for interest costs in excess of the amount eligible for PECFA reimbursement. It is doubtful that lenders would choose to reduce the interest rate for loans that were secured prior to the effective date of the interest cost reimbursement reduction.

10. Interest cost reimbursements could be decreased without increasing costs for PECFA claimants who currently have loans at 2% over the prime rate by changing the effective date to be loans secured instead of costs incurred on the first day of the fifth month after the effective date of the budget act. However, this would result in less PECFA cost savings in the short-term compared to the bill. If this change would be made, a delayed effective date of five months would not be necessary and could result in a rush by lenders to secure loans at the current higher interest rate. Alternatively, the decrease in interest cost reimbursement could be made for loans secured on the effective date of the biennial budget act, which would immediately lower the reimbursable interest rate for loans secured after the effective date.

11. An additional way to reduce PECFA interest cost reimbursement would be to statutorily modify the other interest cost reimbursement limitations established in administrative rule Chapter ILHR 47. For example: (a) loan origination fees could be eliminated or limited to no more than one point of the loan principal instead of the current two points of the loan principal; and (b) loan renewal fees reimbursement could be eliminated. However, limiting or eliminating reimbursement of certain loan origination fees and loan renewal fees might prompt some lenders to limit PECFA lending.

12. It is not known, under the bill, whether lenders will: (a) decrease their interest rate for PECFA loans to the prime rate; (b) continue to lend at 2% over prime with the PECFA claimant being responsible for paying the interest costs not reimbursed by PECFA; or (c) a combination of the two lending practices.

13. Lenders typically lend at the prime rate only to their best customers. It could be argued that the state should pay no more than the interest rate that the best customers pay lenders. Lenders have the assurance that the PECFA program will reimburse eligible costs, even if banks have to wait two years or longer for reimbursement. Therefore, it is possible that when the state reimburses interest costs at 2% over prime, it is encouraging banks to raise interest charges to meet the allowable reimbursement.

14. PECFA claimants, not the state, must obtain bank loans for PECFA work. It is common for PECFA site owners to obtain a loan to upgrade the tanks from the local bank with whom the owner has a day-to-day working relationship. Owners often obtain a loan to complete PECFA remediation work from a bank with whom the claimant does not have a day-to-day working relationship because there are fewer lenders willing to make environmental cleanup loans. Commerce indicates that some lenders currently reduce the interest rate from 2% above prime to prime for costs that exceed the maximum PECFA award limit.

15. The bill has unknown impacts on lending activity for the PECFA program. It is possible that the bill would reduce lending to PECFA claimants because some lenders could refuse to provide PECFA loans at prime. It is also possible that some lenders may continue to provide PECFA loans but at rates higher than the prime rate. On the other hand, lenders who provide PECFA loans at the prime rate may increase their amount of lending if other lenders choose to decrease PECFA lending or continue to lend at a rate higher than prime.

16. If lending decreases under the bill, it may lessen the short-term demand for PECFA funds. However, owners would still have to upgrade their sites and some owners who have not yet upgraded their gas station tanks might have trouble obtaining a loan to do PECFA-eligible work before the December 22, 1998, federal upgrading deadline.

## **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to limit PECFA reimbursement for interest costs incurred by a PECFA claimant to not more than the prime rate for interest costs incurred on or after the first day of the fifth month after the effective date of the budget act.

2. Modify the Governor's recommendation to specify that the interest cost reimbursement limitation would first apply to loans secured on the first day of the fifth month after the effective date of the budget act.

3. Specify that on the effective date of the budget act: (a) the interest cost reimbursement limitation would first apply to loans secured (instead of to interest costs incurred); (b) loan origination fees would be limited to no more than one point of the loan principal; and (c) reimbursement of loan renewal fees would be eliminated.

4. Modify the Governor's recommendation to specify that on the effective date of the budget act: (a) the interest cost reimbursement limitation would first apply to loans secured instead of to interest costs incurred; and (b) reimbursement of loan origination fees and loan renewal fees would be eliminated.

5. Maintain current law. (Commerce could address the issue through the administrative rule process.)

Prepared by: Kendra Bonderud

MO# Att 3

|           |     |     |   |
|-----------|-----|-----|---|
| BURKE     | Y   | (N) | A |
| DECKER    | (Y) | N   | A |
| GEORGE    | Y   | (N) | A |
| JAUCH     | Y   | (N) | A |
| WINEKE    | (Y) | N   | A |
| SHIBILSKI | (Y) | N   | A |
| COWLES    | (Y) | N   | A |
| PANZER    | (Y) | N   | A |
| JENSEN    | (Y) | N   | A |
| OURADA    | (Y) | N   | A |
| HARSDORF  | (Y) | N   | A |
| ALBERS    | (Y) | N   | A |
| GARD      | (Y) | N   | A |
| KAUFERT   | (Y) | N   | A |
| LINTON    | (Y) | N   | A |
| COGGS     | Y   | (N) | A |

AYE 12 NO 4 ABS \_\_\_\_\_

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **PECFA -- Service Providers (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 151, #8]

## CURRENT LAW

Under the current Petroleum Environmental Cleanup Fund Award (PECFA) program administrative rules in ILHR 47, owners or operators with commingled contamination may voluntarily combine sites, or "bundle" them into one project, for purposes of bidding remedial activities or operation and maintenance activities.

## GOVERNOR

Authorize Commerce to promulgate administrative rules to deny reimbursement of costs incurred for a specific service (specified in the rule) if the owner or operator of the PECFA site did not use the same service provider approved by Commerce.

Further, authorize Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas. Allow Commerce to: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved by Commerce for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service.

## DISCUSSION POINTS

1. Examples of possible implementation of the provision denying reimbursement for a specified service if the owner or operator does not obtain the service from the same provider approved by Commerce could include the following: (a) requiring two or more adjacent site owners or operators with commingled contamination to use the same provider (for example for operation and maintenance services); and (b) creating an approved list of services and providers and requiring owners or operators to use one of the providers on the list. Commerce indicates this could allow the Department to exclude providers who are unusually expensive or who provide substandard work.

2. Examples of possible implementation of the provision denying reimbursement for area-wide providers ("bundling") not selected by the Department, or limiting reimbursement to the amount that the selected provider would have charged, could include the following: (a) selecting providers for all investigations and remedial actions done in an area; (b) requiring any sites needing soil or groundwater monitoring in a particular county or geographic region to use a provider selected by Commerce; (c) conducting a bid process to designate the lowest cost provider for investigations, cleanup or operation and maintenance for an area; (d) requiring existing sites to change from their existing provider to one selected by the Department; and (e) refusing to select certain service providers who provide substandard or improper work.

3. While Commerce indicates the two provisions would provide somewhat similar authority, the first provision appears broader in that it does not limit the Department to "specified areas." Further, the first provision only allows Commerce to deny reimbursement if an unapproved provider is used. However, the Department believes that the second provision is broader and provides greater authority because it would allow the Department to: (1) select providers; (2) define the size of "specified areas;" (3) deny or limit the charges of the selected provider; and (4) open a bidding process to seek lower cost alternatives than exist in current contracts. Commerce indicates that both provisions are meant to allow considerable flexibility in developing administrative rules in order to contain program costs. Since the authority provided in the first provision may be largely included in the second provision, the first provision could be deleted.

4. Current administrative rules authorize voluntary bundling of sites. The bill would authorize Commerce to limit PECFA reimbursement to the amount paid to a provider who is selected by Commerce. The Commerce PECFA administrative code revision advisory committee is discussing bidding and bundling of activities.

5. Commerce indicates that the provision is intended to reduce PECFA costs. However, no estimate of the fiscal impact is made. Initially, Commerce intends to implement the provisions for two types of activities: (a) cleanup activities; and (b) operation and maintenance (for example, for engineered remedial systems that extract petroleum vapors from contaminated soil or contaminated groundwater).

6. Implementation of the provisions could require site owners to rebid existing contracts for work done after a specified date (to be determined by rule). The provisions could potentially affect 5,000 or more active PECFA sites. Some consultants and contractors might experience a loss of current contracts while others would experience an increase in work if they are successful low bidders.

7. Site owners might have less flexibility to choose the contractor to work on their site if service providers are selected by Commerce. The Department would have to determine which firms would be qualified to compete for selection as a provider for services specified in the rule.

8. Arguably, the cost savings goals could be met by limiting reimbursement to owners or operators who do not use the service provider selected to the amount charged by the selected provider, but not denying reimbursement if the owner or operator uses another provider. Commerce may limit reimbursement under the second provision but may only deny claims under the first. Requiring Commerce to limit allowable expenditures (but not to deny claims) would retain the flexibility for owners to retain existing contracts and to select their own service provider. However, Commerce argues that the ability to select a provider and deny reimbursement to owners and operators who do not use the selected provider is an important way of lowering program costs by selecting lower cost providers than under existing contracts and denying reimbursement for higher cost providers. Further, the Department argues that allowing only the limitation of costs to that of selected providers could result in administrative difficulties in reviewing claims to determine identical services.

## **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to authorize Commerce to promulgate administrative rules to deny reimbursement of costs incurred for a specific service if the owner or operator of the PECFA site did not use a service provider approved by Commerce. Further, allow Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas and: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved by Commerce for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service.

2. Modify the Governor's recommendation to authorize Commerce to select service providers to provide investigation and remedial action services in specified areas and either deny reimbursement to an owner or operator who uses a provider other than the selected provider or limit reimbursement to no more than the amount charged by service providers selected by Commerce. (This would delete the first provision which would deny reimbursement of costs incurred for a specific service if an owner or operator does not use a provider approved by Commerce.)

3. Modify the Governor's recommendation to only authorize Commerce to limit PECFA reimbursement to an owner or operator who uses a service provider other than the one selected by the Department, to the amount that the selected provider charges. (This would delete the authorization to deny reimbursement of costs incurred: (a) for a specific service if an owner or operator does not use a provider approved by Commerce; or (b) if an owner or operator does not use a provider selected by Commerce for a specified area.)

4. Maintain current law.

Prepared by: Kendra Bonderud

MO# Att. 2

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| GEORGE    | Y | N | A |
| JAUCH     | Y | N | A |
| WINEKE    | Y | N | A |
| SHIBILSKI | Y | N | A |
| COWLES    | Y | N | A |
| PANZER    | Y | N | A |
|           |   |   |   |
| JENSEN    | Y | N | A |
| OURADA    | Y | N | A |
| HARSDORF  | Y | N | A |
| ALBERS    | Y | N | A |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| LINTON    | Y | N | A |
| COGGS     | Y | N | A |

AYE 9 NO 7 ABS 0

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

**ISSUE****PECFA -- Ineligible Costs (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 152, #9]

**CURRENT LAW**

The Petroleum Environmental Cleanup Fund Award (PECFA) program provides reimbursement to owners and operators for the eligible costs incurred to cleanup contamination from certain petroleum product storage tank systems. Commerce is required to reimburse the actual costs incurred but is authorized to establish a schedule of usual and customary costs for specific items and to use that schedule to determine the amount of a claimant's eligible costs. Commerce deducts a statutory deductible from the amount of the eligible costs. For underground tanks the deductible is \$2,500 plus 5% of eligible costs, up to \$7,500 per occurrence, and for aboveground tanks it is generally \$15,000 plus 2% of eligible costs over \$200,000.

Certain costs are determined by statute or administrative rule to be ineligible costs. The major ineligible costs specified in statutes include: (a) costs incurred before August 1, 1987; (b) costs of retrofitting or replacing a petroleum product storage system; (c) costs which Commerce determines are unreasonable or unnecessary to carry out the remedial action activities specified in the remedial action plan; (d) costs for investigations or remedial action activities conducted outside of Wisconsin; and (e) after November 1, 1991, costs of emptying, cleaning and disposing of a tank and other costs normally associated with closing and removing any petroleum product storage system. Some of the ineligible costs specified in Administrative Code Chapter ILHR 47 include: (a) costs related to improper or incompetent remedial activities and services; (b) costs for testing or sampling unrelated to the investigation for the extent of contamination; (c) costs associated with tank upgrades, requirements for complying with other state or federal rules or laws and future business plans; (d) legal costs which Commerce determines to be unreasonable or unnecessary to carry out the remedial action activities; (e) supervisory or management costs

determined to be unreasonable or unnecessary to carry out the remedial action activities; (f) costs determined to be excessive; (g) costs associated with general program support and office operation, since these costs are expected to be included in the hourly staff rates; and (h) costs reimbursed by insurance companies unless performing in an agent role.

## GOVERNOR

Require that if a claimant submits a PECFA claim that includes certain ineligible costs, the amount of the PECFA award paid to the claimant would be reduced by subtracting the ineligible costs from the amount of eligible costs as a penalty. Direct Commerce to promulgate an administrative rule identifying ineligible costs to which the penalty would apply. The provision would first apply to claims submitted on the first day of the third month beginning after the effective date of the bill.

## DISCUSSION POINTS

1. The bill would remove ineligible costs from the submitted claim (as under current law) and add a penalty equal to the amount of ineligible costs by deducting the ineligible costs from the amount of reimbursable eligible costs. That is, for a \$100,000 claim, \$10,000 in ineligible costs would result in a PECFA claim payment of \$80,000 (less the statutory deductible).

2. Commerce officials believe that the current removal of ineligible costs from a claim: (a) does not discourage the continued submittal of ineligible costs or attempts to disguise noneligible items as eligible items; (b) slows the claim review process; and (c) increases the number of appeals. They believe that the penalty in the bill would quickly stop or reduce the submittal of most ineligible costs. An estimate of the cost savings is not included in the bill. However, from January 1, 1994, through June 30, 1996, claimed costs determined to be ineligible for PECFA reimbursement totalled \$10.1 million, or almost 5% of the \$211.0 million in eligible costs.

3. Examples of commonly submitted ineligible costs are the costs of removing a tank and costs associated with tests for nonpetroleum products such as arsenic and lead. Commerce has found that some consultants are more likely than others to submit claims with ineligible costs and that noneligible costs are sometimes resubmitted after costs on prior claims were denied.

4. Commerce indicates it would promulgate a rule that contains a specific a list of ineligible costs, including such items as tank removals, cement and carpet at gas station gas pump islands, lights and backfill.

5. Ineligible costs are currently submitted in a variety of ways. Some PECFA site owners may not be aware that an ineligible cost is included in a PECFA claim submitted by the owner's consultant. Under the bill, the owner would be held responsible for submission of the ineligible costs.

6. The penalty provision could force owners to take a more active role in reviewing a PECFA claim before the owner or consultant submits the claim to Commerce. However, some owners argue that they lack sufficient knowledge of PECFA requirements and depend on their consultant to submit a proper claim.

7. Owners can protect themselves from the penalty provision by signing contracts with their consultants in which the consultants guarantee that no ineligible costs will be submitted with the claim. Consultants might see increased demand for their business if they guarantee the claims they submit for owners as containing no ineligible costs, or that the consultant, not the owner, would bear any penalty charged for submittal of ineligible costs.

8. Some owners might argue that if the ineligible costs are submitted by the owner's consultant, the consultant, rather than the owner, should pay the penalty. However, under the program, the site owner or operator is considered to be responsible for the claim.

9. A lesser penalty provision might serve as a similar deterrent to submittal of ineligible costs as the provision in the bill and would pose less of a financial burden for site owners. For example, an amount equal to half (instead of all) of the submitted ineligible costs could be deducted from the eligible costs.

10. The Department of Agriculture, Trade and Consumer Protection (DATCP) promulgated administrative rules for the Agrichemical Cleanup Program that specify that ineligible costs shall be deducted from the claimed amount. In addition, the rules authorize DATCP to deduct twice the amount of the ineligible claim from the applicant's total claim, the same as the PECFA provision in the bill. However, before DATCP deducts the ineligible costs, it must determine that the owner knew or should have known that the costs were ineligible. DATCP promulgated program rules under its general authority. The statutes do not specify the penalty for ineligible costs. The DATCP program has received over \$5 million in claims and the double-deduct penalty has been applied to approximately \$9,000 out of over \$300,000 in ineligible costs. DATCP is currently reviewing the provision as part of an overall review of the administrative rules for the program. While the industry wants the penalty eliminated from the rule, DATCP indicates that the provision has saved the program significant amounts of time and money.

11. The penalty provision could be modified to include language similar to the Agrichemical Cleanup Program to specify that Commerce could deduct ineligible costs from eligible costs if the Department determines that the PECFA claimant or consultant knew or should have known that the costs were ineligible. This might decrease the financial burden on

owners who are not aware that the claim included ineligible costs. The disadvantage of this approach is that the Department could be engaged in expensive administrative and/or legal proceedings to sustain such a finding.

12. While the provision requires Commerce to promulgate a rule identifying the ineligible costs to which the penalty applies, it also first applies the penalty to claims submitted on the first day of the third month beginning after the effective date of the bill. It is unlikely that Commerce could draft rules and obtain legislative approval of the final rule within two months of the effective date of the bill without being authorized to promulgate emergency rules. The effective date could be delayed, for example, to six months instead of two months. Either delayed effective date would put owners and consultants on notice that they should stop including ineligible costs in claims. Commerce could also be authorized to promulgate emergency rules to implement the provision. However, promulgation of emergency rules reduces legislative review of the administrative rule process.

### **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to reduce the amount of a PECFA award paid to a claimant by subtracting the ineligible costs, as identified in administrative rule, from the amount of eligible costs, for claims submitted on or after the first day of the third month beginning after the effective date of the budget act.

2. Modify the Governor's recommendation to subtract an amount equal to half of the ineligible costs from the eligible costs when paying a PECFA award instead of subtracting an amount equal to all of the ineligible costs.

3. Modify the Governor's recommendation to subtract the ineligible costs from the eligible costs if Commerce determines that the PECFA claimant or consultant knew or should have known, that the costs were ineligible.

4. In addition to Alternative 1, 2 or 3: (a) delay the effective date of the provision to the first day of the seventh month beginning after the effective date of the budget act; and (b) authorize Commerce to promulgate emergency rules to implement the provision.

5. **Maintain current law.**

Prepared by: Kendra Bonderud

MO# 44 4

|           |     |   |   |
|-----------|-----|---|---|
| 1 BURKE   | (Y) | N | A |
| DECKER    | (Y) | N | A |
| GEORGE    | (Y) | N | A |
| JAUCH     | (Y) | N | A |
| WINEKE    | (Y) | N | A |
| SHIBILSKI | (Y) | N | A |
| COWLES    | (Y) | N | A |
| PANZER    | (Y) | N | A |
| JENSEN    | (Y) | N | A |
| 2 DURADA  | (Y) | N | A |
| HARSDORF  | (Y) | N | A |
| ALBERS    | (Y) | N | A |
| GARD      | (Y) | N | A |
| KAUFERT   | (Y) | N | A |
| LINTON    | (Y) | N | A |
| COGGS     | (Y) | N | A |

AYE 16 NO 0 ABS 0



COMMERCE

Building and Environmental Regulation

PECFA -- Ineligible Costs [LFB Paper #271]

Motion:

Move to modify the Governor's recommendation to require that if a consultant prepares a PECFA claim for an owner or operator, that the consultant pay an amount equal to half of the ineligible costs.

Note:

Commerce pays the PECFA claim to the owner or operator. The motion would require Commerce to bill the consultant for the amount of the penalty. The motion would retain the Governor's recommendation to require Commerce to identify ineligible costs in administrative rule and to provide an effective date for claims submitted on or after the first day of the third month beginning after the effective date of the budget act.

MO# \_\_\_\_\_

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| GEORGE    | Y | N | A |
| JAUCH     | Y | N | A |
| WINEKE    | Y | N | A |
| SHIBILSKI | Y | N | A |
| COWLES    | Y | N | A |
| PANZER    | Y | N | A |
|           |   |   |   |
| JENSEN    | Y | N | A |
| OURADA    | Y | N | A |
| HARSDORF  | Y | N | A |
| ALBERS    | Y | N | A |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| LINTON    | Y | N | A |
| COGGS     | Y | N | A |

Motion #1531

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

**ISSUE****PECFA -- Aboveground Tank Eligibility (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 152, #11]

**CURRENT LAW**

The Petroleum Environmental Cleanup Fund Award (PECFA) program provides reimbursement to eligible owners and operators for a portion of the costs of cleanup of contamination from eligible petroleum product storage tank systems. Federally-regulated underground petroleum storage tanks are not eligible for PECFA after they meet federal requirements for upgrading or for new systems. There is no parallel requirement for aboveground petroleum storage tanks.

**GOVERNOR**

Eliminate PECFA eligibility for aboveground petroleum storage tank systems: (a) after they meet state standards for upgrading an existing system; or (b) are new, aboveground systems that meet state performance standards and that are installed after April 30, 1991. Sites with upgraded or new aboveground systems would remain eligible for PECFA, if they are located on a site on which a petroleum product discharge is confirmed before the upgrading requirements are met or a new system is installed. The eligibility would continue until the earlier of May 1, 2001, or until the 91st day after DNR issues a case closure letter approving the cleanup of the discharge that occurred before: (a) the upgrading requirements were met; or (b) the new system was installed. The provision would take effect on the first day of the seventh month beginning after the effective date of the bill.

## DISCUSSION POINTS

1. 1993 Acts 16 and 416 established that PECFA eligibility is generally not available to new or upgraded underground petroleum product storage tank systems that meet Administrative Code Chapter ILHR 10 and federal standards. Tank systems that were upgraded to federal and state standards prior to January 1, 1996, were eligible for PECFA until December 31, 1995, for certain PECFA-eligible contamination identified by that date if cleanup was begun by January 1, 1996. Tank systems that complete upgrading to federal and state standards after December 31, 1993, are eligible for PECFA for 90 days after upgrading is completed, if the site owner or operator applies for private pollution liability insurance within 30 days after upgrading is completed.

2. The current provisions related to moving upgraded and new federally-regulated underground petroleum storage tank systems from PECFA coverage to private insurance do not apply to aboveground systems. Aboveground petroleum storage tank systems are not subject to federal upgrading requirements.

3. The bill provides PECFA eligibility until as late as May 1, 2001, because that is the deadline included in Administrative Code Chapter ILHR 10 for upgrading aboveground petroleum storage tanks over 5,000 gallons. As owners or operators upgrade these larger aboveground tanks before May 1, 2001, they are currently required to cleanup contamination found during the upgrading process.

4. The provision would generally parallel provisions for underground systems and move new and upgraded aboveground systems (mostly bulk plants and terminals) out of PECFA eligibility. Federal regulations require federally-regulated underground systems to provide proof of financial responsibility for cleanup of spills. This means that after the underground systems are no longer eligible for PECFA the owners must obtain private pollution liability insurance. There is no similar federal or state requirement for aboveground tanks to obtain similar insurance.

5. The effective date (the first day of the seventh month beginning after the effective date of the bill) would allow aboveground tank owners who have upgraded their tank systems at least six months to obtain private pollution liability insurance. However, it could be argued that a shorter time, such as three months, would provide sufficient time for owners to obtain private insurance. However, Commerce officials indicate that the private insurance market is less well developed for aboveground tanks than for underground tanks and the delayed effective date may help owners who choose to obtain private insurance.

6. Currently, underground systems retain PECFA eligibility for 90 days after upgrading is completed as long as the owner or operator applies for private pollution liability insurance within 30 days after upgrading is completed. Thus, even if upgrading of an underground system is completed days before the December, 1998, federal upgrading deadline, the site would retain PECFA coverage for 90 days if the owner applies for private insurance

within 30 days. In comparison, under the bill, aboveground systems for which upgrading is completed less than 91 days before May 1, 2001, lose PECFA eligibility on May 1, 2001, not 90 days after upgrading is completed. Provision of 90 days of PECFA eligibility after completion of upgrading for those who apply for insurance within 30 days would more closely parallel the provision for underground tanks.

7. The following types of tanks do not have to meet state upgrading requirements and, under the bill, would continue to be eligible for PECFA indefinitely: (a) aboveground petroleum storage tank systems with 5,000 or less gallons (Commerce believes there may be a few of these tanks at bulk plants); (b) home heating oil tanks (maximum PECFA award of \$7,500); and (c) farm fuel tanks with 1,100 or less gallons that are more than 40 feet from a building (maximum PECFA award of \$100,000).

8. Commerce's 1997-99 biennial budget request recommended providing PECFA eligibility until May 1, 2005, for aboveground tanks that do not have to upgrade. The provision is not included in the budget bill. Commerce's recommendation would provide four years after the state upgrading deadline that non-regulated aboveground tanks could use to identify any PECFA-eligible cleanup costs. The additional four years could be viewed as a way of phasing out PECFA eligibility over time, first for federally-regulated underground tanks, second for state-regulated aboveground tanks and finally for non-regulated aboveground tanks. In addition, if the same deadline of May 1, 2005, would be provided for home heating oil and farm fuel tanks, it could effectively phase out PECFA eligibility for all tanks where contamination is identified after that date.

## **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation to eliminate PECFA eligibility for aboveground petroleum storage tank systems after they meet state standards for upgrading an existing system or are new, aboveground systems that meet state performance standards and that are installed after April 30, 1991.

2. Approve the Governor's recommendation, but change the effective date from the first day of the seventh month to the first day of the fourth month after the effective date of the biennial budget act.

3. Approve the Governor's recommendation. Further: (a) change the effective date from the first day of the seventh month to the first day of the fourth month after the effective date of the biennial budget act; (b) specify that the site would retain PECFA coverage for 90 days after completion of upgrading if the owner applies for private pollution liability insurance within 30 days after upgrading is completed; and (c) specify that all petroleum storage tank systems that are not subject to upgrading requirements in administrative rules are not eligible for PECFA for contamination identified and remediation begun after May 1, 2005.

4. **Maintain current law.**

Prepared by: **Kendra Bonderud**

MO# Alt. 2

|           |                                    |                                    |   |
|-----------|------------------------------------|------------------------------------|---|
| BURKE     | <input checked="" type="radio"/> Y | N                                  | A |
| DECKER    | <input type="radio"/> Y            | <input checked="" type="radio"/> N | A |
| GEORGE    | <input type="radio"/> Y            | <input checked="" type="radio"/> N | A |
| JAUCH     | <input type="radio"/> Y            | <input checked="" type="radio"/> N | A |
| WINEKE    | <input checked="" type="radio"/> Y | N                                  | A |
| SHIBILSKI | <input checked="" type="radio"/> Y | N                                  | A |
| COWLES    | <input checked="" type="radio"/> Y | N                                  | A |
| PANZER    | <input checked="" type="radio"/> Y | N                                  | A |
|           |                                    |                                    |   |
| JENSEN    | <input checked="" type="radio"/> Y | N                                  | A |
| OURADA    | <input checked="" type="radio"/> Y | N                                  | A |
| HARSDORF  | <input checked="" type="radio"/> Y | N                                  | A |
| ALBERS    | <input checked="" type="radio"/> Y | N                                  | A |
| GARD      | <input checked="" type="radio"/> Y | N                                  | A |
| KAUFERT   | <input checked="" type="radio"/> Y | N                                  | A |
| LINTON    | <input checked="" type="radio"/> Y | N                                  | A |
| COGGS     | <input type="radio"/> Y            | <input checked="" type="radio"/> N | A |

AYE 12 NO 4 ABS

To: Joint Committee on Finance  
From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **PECFA -- Eligibility for Non-Upgraded Tanks (Commerce -- Building and Environmental Regulation)**

[LFB Summary: Page 153, #12]

## CURRENT LAW

The Petroleum Environmental Cleanup Fund Award (PECFA) program provides reimbursement to eligible owners and operators for most of the costs of cleanup of contamination from eligible petroleum product storage tank systems. Commerce deducts a statutory deductible from the amount of the eligible costs. For underground tanks the deductible is \$2,500 plus 5% of eligible costs, up to \$7,500 per occurrence; for aboveground tanks it is generally \$15,000 plus 2% of eligible costs over \$200,000. Federally-regulated new systems or systems that are upgraded to meet federal standards are no longer eligible for PECFA. Sites where the owner or operator has received a prior PECFA award for a cleanup are no longer eligible for PECFA.

## GOVERNOR

Repeal the current statutory provision that denies PECFA eligibility for sites with previous PECFA awards, which would provide continued PECFA eligibility for sites that have been cleaned up until they meet federal and state upgrading standards.

## DISCUSSION POINTS

1. Federal law requires federally-regulated sites that are not eligible for PECFA awards to be covered by private pollution liability insurance or to provide other means of demonstrating proof of financial responsibility for new releases of petroleum products.

2. Some sites have undergone a PECFA-eligible cleanup but the owners have not upgraded or replaced tanks to meet the 1998 federal or 2001 state deadline to upgrade or close the tanks. For example, a site owner: (a) may have completed a cleanup and replaced the tanks but did not replace piping or install spill detection equipment so the site does not yet meet the federal upgrading requirements; or (b) may not have had sufficient funds to completely upgrade the tank systems at the same time that the owner completed a cleanup but will complete the upgrading at a later date before the upgrading deadlines. No estimate of the number of sites that would be affected under the bill is available.

3. Concerns have been raised that owners of non-upgraded sites with a prior PECFA award may encounter difficulty in obtaining private sector insurance.

4. Commerce officials indicate that private sector pollution liability insurance is generally available for \$300 to \$400 per tank per year, but that private insurance for sites where petroleum storage tanks do not meet federal or state upgrading requirements related to installation and safety is not as readily available or affordable. The Petroleum Marketers Association of Wisconsin and Wisconsin Association of Convenience Stores have negotiated a pollution legal liability and corrective action insurance policy with American International Specialty Lines Insurance tailored to Wisconsin for Association members. The policy provides insurance for new and upgraded underground petroleum product storage tank systems beyond that required under federal requirements with a minimum premium of \$1,500 per site (which would typically include three tanks) per year. This insurance is available to sites that have not completed upgrading, but typically at a higher cost that varies by site depending on what is known about any past contamination.

5. Under the bill, PECFA program costs would increase if sites that had a previous PECFA award and did not upgrade tanks to meet federal and state requirements at the time of the cleanup have a subsequent release of petroleum products and undergo another PECFA cleanup. Currently, the subsequent release would not be eligible for PECFA.

6. Commerce indicates that it is sometimes difficult to determine whether the source and cause of subsequent spills is from a new spill or from historical contamination which was eligible under the original PECFA claim. When Commerce cannot prove that contamination is new, it generally approves subsequent cleanup as a reopening of the original PECFA claim. After a tank is upgraded, leak detection equipment can make a clearer determination of when contamination occurred. PECFA costs could increase substantially for sites where the

Department determines the subsequent contamination is the result of a new spill rather than part of the original spill.

7. It could be argued that a site should not be eligible for more than one PECFA award and that the PECFA program should not continue to fund costs incurred for subsequent spills at sites where the owner opted not to complete the upgrade (including required spill prevention and leak detection equipment) at the time of the original cleanup. That is, the effect of the bill would be to shift the cost for subsequent cleanups from the owner to the state until the upgrading is completed, while owners who completed upgrades would not be covered. This could be viewed as placing owners who voluntarily complied with the more costly and stringent requirements to prevent future spills at a competitive disadvantage to owners who did not fully upgrade.

### ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to repeal the current statutory provision that denies PECFA eligibility for sites with previous PECFA awards.
2. Maintain current law.

Prepared by: Kendra Bonderud

*Alt. 1* *no action necessary*

| MO# |           |   |     |
|-----|-----------|---|-----|
| 1   | BURKE     | Y | N A |
|     | DECKER    | Y | N A |
|     | GEORGE    | Y | N A |
|     | JAUCH     | Y | N A |
|     | WINEKE    | Y | N A |
|     | SHIBILSKI | Y | N A |
|     | COWLES    | Y | N A |
|     | PANZER    | Y | N A |
|     | JENSEN    | Y | N A |
| 2   | OURADA    | Y | N A |
|     | HARSDORF  | Y | N A |
|     | ALBERS    | Y | N A |
|     | GARD      | Y | N A |
|     | KAUFERT   | Y | N A |
|     | LINTON    | Y | N A |
|     | COGGS     | Y | N A |

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_