

2. Remove a minimum of 0.75 gallons and a maximum of 1.5 gallons during the test.
3. Each test shall continue for 150 minutes or more unless the test results clearly demonstrate that the hydraulic conductivity of the well is greater than  $1 \times 10^{-5}$  centimeters per second.
4. Determine if the hydraulic conductivity of the well is less than or equal to  $1 \times 10^{-5}$  centimeters per second based upon the test results.

(d) Both rising head and falling head tests may be conducted in piezometers and shall be conducted in accordance with all of the following criteria:

1. Remove a minimum of 0.75 gallons for the rising head test and add a slug with a volume equivalent to 0.75 gallons or more for the falling head test.
2. The volume of groundwater water removed from the well shall be less than the total volume of water within the well casing above the top of the well screen.
3. The sum of the filter pack length and the filter pack seal shall be used as the length of well screen when calculating hydraulic conductivity.
4. The drawdown in the well shall not exceed the top of the filter pack seal.
5. The length of well screen shall be at least four feet.
6. Each test shall continue for 45 minutes or more per well unless the test results clearly demonstrate that the hydraulic conductivity of the well is greater than  $1 \times 10^{-5}$  centimeters per second.
7. Determine if the hydraulic conductivity of the well is less than or equal to  $1 \times 10^{-5}$  centimeters per second based upon the test results.

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### FINDING OF EMERGENCY

The Wisconsin Natural Resources Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts contributing to the emergency is: The Department of Commerce has adopted administrative rules under sections 101.143 and 101.144, Stats., to implement the Petroleum Environmental Cleanup Fund Act (PECFA). The purpose of PECFA is to reimburse responsible persons for the eligible costs incurred to investigate and remediate petroleum product discharges from a petroleum product storage system or home oil tank system. The attached emergency rule is being proposed in response to resolutions adopted by the Joint Committee for Review of Administrative Rules (JCRAR) which directed the Department of Commerce and the Department of Natural Resources to promulgate a joint emergency rule, incorporating parts of a Memorandum of Understanding between the two agencies that relates to the classification of contaminated sites. JCRAR has made it clear that the committee was prepared to suspend the Department of Commerce's PECFA rules if the agencies failed to adopt the emergency rule that JCRAR was directing them to adopt.

The foregoing emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 26, 1999.

This rule takes effect upon publication in the official state newspaper as provided in s. 227.24, Stats.

Dated at Madison, Wisconsin June 3, 1999

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

LRB or Bill No./Adm. Rule No.

Amendment No. if Applicable

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**FISCAL ESTIMATE**

DA-2048 N(R10/94)

**Subject**

Creation of NR 746 and revisions to NR 716, 720, 722 and 726

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget       Yes       No  
 Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive       Mandatory  
2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Government Units Affected:  
 Towns       Villages       Cities  
 Counties       WTCS Districts  
 School Districts       Others

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

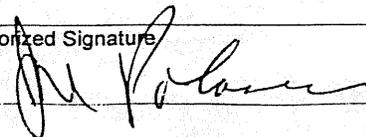
**Assumptions Used in Arriving at Fiscal Estimate**

**SUMMARY OF BILL/RULE** - Creation of NR 746 and related revisions to NR 716, Site Investigations; NR 720, Soil Standards; NR 722, Standards for Selection of Remedial Actions; and NR 726, Case Closure include new requirements for classification of sites, and create additional risk criteria to be used in selecting responses to contaminated sites. The changes also allow closure of clay-type sites after the investigation, if all the risk criteria are met, and all conditions of closure are met. This change is based on an assumption that natural attenuation will eventually reduce groundwater contamination below enforcement standards at clay-type sites, without any active remedies being implemented.

**Long-Range Fiscal Implications**

Contamination will remain at clay-type sites for decades before groundwater enforcement standards are met. State monies for cleanup may be needed later. In addition, further evaluation of the workload implications of the new rule will be needed to determine whether it is more or less labor intensive than current procedures for overseeing cleanups.

5

| Agency | Prepared By | Phone No.      | Authorized Signature   | Phone No.      | Date       |
|--------|-------------|----------------|--|----------------|------------|
| DNR    | Joe Polasek | (608) 266-2794 |  | (608) 266-2794 | 05/05/1999 |

**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Amendment No.

Subject

Creation of NR 746 and revisions to NR 716, 720, 722 and 726

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

| II. Annualized Costs:  | Annualized Fiscal impact on State funds from: |                 |
|--|---|-----------------|
|  | Increased Costs                               | Decreased Costs |
| A. State Costs by Category   |   |                 |
| State Operations - Salaries and Fringes  | \$0   |                 |
| (FTE Position Changes)   | 0.00  |                 |
| State Operations - Other Costs   | \$0.  |                 |
| Local Assistance   | \$0   |                 |
| Aids to Individuals or Organizations   | \$0   |                 |
| <b>TOTAL State Costs by Category</b>   | \$0   | \$0             |
| B. State Costs by Source of Funds  | Increased Costs                               | Decreased Costs |
| GPR  |   |                 |
| FED  |   |                 |
| PRO/PRS  |   |                 |
| SEG/SEG-S  |   |                 |
| III. State Revenues:   | Increased Rev.                                | Decreased Rev.  |
| <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small> |   |                 |
| GPR Taxes  |   |                 |
| GPR Earned   |   |                 |
| FED  |   |                 |
| PRO/PRS  |   |                 |
| SEG/SEG-S  |   |                 |
| <b>TOTAL State Revenues</b>  | \$0   | \$0             |

**NET ANNUALIZED IMPACT**

|                        | STATE | LOCAL |
|------------------------|-------|-------|
| NET CHANGE IN COSTS    | \$0   | \$0   |
| NET CHANGE IN REVENUES | 6 \$0 | \$0   |

|        |             |                |                      |                |            |
|--------|-------------|----------------|----------------------|----------------|------------|
| Agency | Prepared By | Phone No.      | Authorized Signature | Phone No.      | Date       |
| DNR    | Joe Polasek | (608) 266-2794 | <i>Joe Polasek</i>   | (608) 266-2794 | 05/05/1999 |



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 22, 1999

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: PECFA Provisions - Comparison of Current Law, the Recommendations of the Governor's 1999-01 Biennial Budget Bill and the Recommendations of the Joint Legislative Audit Committee

This memorandum provides background about the petroleum environmental cleanup fund award (PECFA) program and recent actions by the administering agencies and legislative committees. Attached is a comparison of provisions of current law, the recommendations of the Governor's 1999-01 biennial budget bill and the recommendations of the Joint Legislative Audit Committee, as contained in Assembly Bill 218 and Senate Bill 86.

### CURRENT LAW

The PECFA program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage systems and home heating oil systems. The amount of reimbursement varies from a minimum of 75% to over 99% of eligible cleanup costs. Owners of certain underground and aboveground tanks may receive up to \$1,000,000 for the costs of investigation, cleanup and monitoring of environmental contamination.

The program is funded from a portion of a 3¢ per gallon petroleum inspection fee. PECFA awards have grown from \$312,000 in 1988-89 to \$94.1 million in 1998-99. Currently, there are over 12,000 sites at which a cleanup has been, or is expected to be, funded by PECFA. As of April 1, 1999, \$612.3 million in PECFA awards have been made for partial or full cleanup at 6,230 of these sites. Of the total payments, \$179.5 million (30%) has been paid for completion of cleanups at 3,315 sites (53% of sites with payments).

PECFA was created in response to the costs of federal requirements enacted to prevent the release of petroleum from underground storage tanks into the environment. Federal

regulations generally apply to commercially-owned underground storage systems, and farm and residential tanks larger than 1,100 gallons. Federal regulations require owners to: (a) replace or upgrade their tanks by December 22, 1998; (b) have leak detection systems; and (c) demonstrate financial responsibility or have insurance for underground petroleum storage tank systems. State regulations incorporate the federal requirements and also apply to certain smaller tanks, such as certain heating oil tanks and small farm and residential tanks, which are not federally-regulated. State regulations require certain of these tanks to be upgraded by May 1, 2001.

The Department of Commerce (Commerce) administers the financial reimbursement portion of the program and cleanup of low and medium priority petroleum sites (PECFA-eligible and non-PECFA eligible). The Department of Natural Resources (DNR) administers cleanup of high priority petroleum sites and sites contaminated by substances other than or in addition to petroleum, and establishes state environmental standards for cleanup of PECFA-eligible and non-PECFA eligible sites in the state.

In order to be eligible for a PECFA award, the owner must do the following: (a) report the petroleum discharge to DNR and Commerce; (b) notify Commerce of the possibility of submitting a PECFA claim, prior to conducting a site investigation or remedial action; (c) register the petroleum tank system with Commerce; (d) complete a site investigation to determine the degree and extent of contamination from the petroleum discharge; (e) prepare a remedial action plan that identifies specific activities proposed to be conducted; (f) conduct all remedial action activities at the site to restore the environment to the extent practicable and minimize the harmful effects of the discharge, in accordance with the hazardous substances spills law and groundwater law; and (g) receive written approval from DNR for high priority sites or Commerce for low or medium priority sites that the remedial activities meet the standards that DNR has established.

## **CLAIMS BACKLOG**

As of April 1, 1999, the Department of Commerce had received 3,542 PECFA award applications totaling \$254.5 million that had not been paid. The backlog consists of two components, claims that have not been reviewed and claims that have been reviewed and are awaiting payment. The first component consists of 1,301 claims for \$106.4 million that are waiting to be assigned to staff for review. The \$106.4 million in submitted costs generally includes any loan interest costs incurred prior to the submittal of the claim to Commerce. During the claim review process, on average, approximately 6% of the submitted costs are determined to be ineligible for reimbursement. The second component of the backlog consists of 2,241 claims for \$148.0 million that have been reviewed and will be paid when sufficient petroleum inspection revenues have been received to pay the claims. The \$148.0 million in reviewed claims excludes any ineligible costs that were claimed, but includes additional loan interest costs incurred from the time of submittal of the claim to the date on which the claim is expected to be paid. Claims received in April, 1999, will be paid approximately three years after they are

received. Claims reviewed and approved for payment in April, 1999, will actually be paid in approximately October, 2000.

## **ADMINISTRATIVE RULES**

PECFA reimbursement procedures are established in s. 101.143 of the statutes and administrative code chapter COMM 47, revisions to which were effective April 21, 1998. COMM 47 provides cost guidelines for various cleanups, bid requirements, requirements for consultants and other items intended to promote cost containment under PECFA. Sites are subject to a maximum allowable cost for a site investigation and the development of a remedial action plan of \$40,000 unless Commerce pre-approves additional costs. The remedial action plan develops a remedial alternative, which is a method for cleaning up the site. If a claimant can achieve a closed remedial action with total costs of \$80,000 or less, excluding interest costs, the site would not be subject to public bidding and the investigation cost cap.

The procedures for sites where a remedial alternative is received by Commerce on or after April 21, 1998, vary depending on whether any of five defined environmental factors are present. The environmental factors determine the risk the site poses to human health or the environment. Sites without an environmental factor would be limited to use of non-active remediation approaches, excavation, remediation by natural attenuation and monitoring of the contamination. Consultants must prepare a remedial action plan and Commerce must approve the cost information before the remedial action at the site begins. Commerce may establish a maximum reimbursable cost for the cleanup and may require a public bidding process to establish a lower site cost.

A May, 1998, memorandum of understanding between Commerce and DNR establishes the respective functions of the two agencies related to the PECFA program, procedures to ensure that cleanups are consistent with the hazardous substances spills law and procedures, standards and schedules for determining which sites are classified as high, medium or low priority.

Beginning in September, 1998, the Joint Committee for Review of Administrative Rules (JCRAR) directed Commerce and DNR to promulgate a joint emergency rule relating to the classification of contaminated sites, the disbursement of funds, the definition of environmental risk and the development of a risk protocol. Since then, JCRAR has adopted several motions to suspend COMM 47 at a future date if Commerce and DNR do not make sufficient progress towards incorporating aspects of assessment of the environmental risk of a site. COMM 46 was promulgated as an emergency rule effective January 1, 1999, to define PECFA interagency responsibilities and incorporate some aspects of risk assessment. JCRAR continues to discuss modifications of COMM 46 that can incorporate additional risk-based analysis in conformance with the groundwater law.

## **JOINT LEGISLATIVE AUDIT COMMITTEE**

In October, 1998, the Legislative Audit Bureau (LAB) published an evaluation of the PECFA program, which reviewed program costs, cleanup standards, financial responsibility of site owners and program management by DNR and Commerce. The LAB report stated that the following four features of the PECFA program's design contribute to relatively high costs: (a) Wisconsin's numeric enforcement standards for petroleum contaminants are similar to many other states' cleanup standards, but Wisconsin uses the more stringent preventive action limits as the cleanup goal for most sites; (b) Wisconsin applies its standards to all groundwater, regardless of its potential uses, while other states typically adjust their standards based on whether the groundwater is or will likely be used for drinking; (c) Wisconsin has not developed a system for prioritizing when sites must be cleaned up based on their relative threat to human health or the environment; and (d) site owners have significantly less financial liability for cleanup in Wisconsin than in other states, limiting their incentive to control costs. The LAB report included a number of recommendations related to program management.

Based in part on the LAB review, the Joint Legislative Audit Committee introduced Assembly Bill 218 and Senate Bill 86 and recommended approval of a substitute amendment on March 18, 1999. The companion bills, as amended, have been referred to the Joint Committee on Finance. The attachment compares the provisions of current law, the Governor's budget recommendations and the Joint Legislative Audit Committee recommendations.

Prepared by: Kendra Bonderud  
Attachment

**ATTACHMENT**

**PECFA Provisions - Comparison of Current Law, the Recommendations of the Governor's 1999-01 Biennial Budget Bill and the Recommendations of the Joint Legislative Audit Committee (ASA 1 to Assembly Bill 218 and SSA 1 to Senate Bill 86)**

["LFB p. \_\_, # \_\_ " Refers to the Legislative Fiscal Bureau Summary of the Governor's 1999-01 Budget Recommendations]

| Current Law   | Governor's 1999-01 Budget Bill  | Joint Legislative Audit Committee Bill                                   |
|---|---|--|
| <p><b>1. Revenue Bonding.</b> No provision.</p>   | <p><b>1. Revenue Bonding.</b> [LFB p. 148, #2] Authorize the Building Commission to issue \$450 million in revenue obligations, to be paid from petroleum inspection fees, to fund the payment of claims under the PECFA program.</p>   | <p><b>1. Revenue Bonding.</b> Same as Governor.</p>                      |
| <p><b>2. Commerce PECFA Staff.</b> Commerce is authorized adjusted base funding of \$2,508,700 SEG and 30.8 SEG positions from the petroleum inspection fund to administer the PECFA program.</p>   | <p><b>2. Commerce PECFA Staff.</b> [LFB p. 149, #3] Provide an additional \$152,200 SEG in 1999-00 and \$174,800 SEG in 2000-01 with 3.0 SEG hydrogeologist positions.</p>  | <p><b>2. Commerce PECFA Staff.</b> No change to current law.</p>         |
| <p><b>3. Petroleum Inspection Fee.</b> The Department of Revenue collects a petroleum inspection fee of three cents per gallon on petroleum products that are received for sale in this state. Revenues are deposited in the petroleum inspection fund and are used to fund PECFA awards for reimbursement of cleanup costs from petroleum tank discharges, PECFA administration, petroleum inspection administration and other environmental programs.</p> | <p><b>3. Petroleum Inspection Fee.</b> [LFB p. 149, #4] Authorize Commerce to change the amount of the petroleum inspection fee after January 1, 2002, under certain conditions. As of that date and by January 1 of every subsequent even-numbered year, Commerce would be required to increase the fee if unpaid PECFA claims as of the preceding June 30 exceed \$10 million, or decrease the fee if the fund balance exceeds \$10 million and no PECFA revenue obligations are outstanding. Any modification of the petroleum inspection fee would become effective the following April 1.</p>  | <p><b>3. Petroleum Inspection Fee.</b> No change to current law.</p>     |
| <p><b>4. Site Priority Categorization.</b> Commerce and DNR are required to enter into a memorandum of understanding (MOU) that establishes procedures and standards for determining whether a site is high, medium or low priority. The MOU that Commerce and DNR entered into in May, 1998, categorizes as high priority any site with an exceedence of a groundwater enforcement standard.</p>   | <p><b>4. Site Priority Categorization.</b> [LFB p. 150, #5] Effective December 1, 1999, direct Commerce to promulgate a rule to establish the standards for categorizing sites of petroleum product discharges. The Commerce rule would: (a) incorporate any agreements with DNR on site classification and any resolution of disagreements by the Secretary of DOA; (b) not provide that all sites at which a groundwater enforcement standard is exceeded be classified as high priority; and (c) classify no more than 50% of sites as high priority. Commerce would be required to promulgate emergency rules regarding the standards for categorizing sites within</p> | <p><b>4. Site Priority Categorization.</b> No change to current law.</p> |

| Current Law   | Governor's 1999-01 Budget Bill  | Joint Legislative Audit Committee Bill  |
|---|---|---|
| <p><b>5. Risk-Based Analysis.</b> No provision.</p>   | <p>30 days after the effective date of the bill. The rule would have a delayed effective date of December 1, 1999. Commerce would be required to revise the rules if more than 50% of sites are classified as high priority six months after the rules are in effect.</p>   | <p><b>5. Risk-Based Analysis.</b> Require Commerce, in consultation with DNR, to promulgate rules specifying a method for determining the risk to public health, safety and welfare and to the environment posed by discharges of petroleum products. The method must include consideration of the routes for migration of petroleum product contamination. Direct DNR and Commerce to apply the method to determine the risk posed by a discharge for which the departments receive notification.</p>  |
| <p><b>6. Award Prioritization.</b> Commerce generally reviews completed claim applications in the order in which they are received, and places approved claims in line to be paid when funds are available. However, claims are reviewed and paid immediately if they are for home heating oil tank cleanups. Also, claims are placed at the beginning of the claim review line if the investigation and cleanup can be completed for equal to or less than \$80,000, and are placed in line to be paid when funds are available.</p> | <p><b>5. Risk-Based Analysis.</b> No provision.</p> <p><b>6. Award Prioritization.</b> [LFB p. 150, #6] Authorize Commerce to promulgate administrative rules for assigning award priorities to cleanups, except for cleanups of discharges from home heating oil tanks, small farm tanks and heating oil tanks owned by school districts or technical college districts. If Commerce promulgates rules for award prioritization, it would be required to: (a) base the award priorities on environmental factors and other appropriate factors; (b) apply the award priorities only to occurrences for which remedial action plans are approved by Commerce after the effective date of the rules; (c) pay PECFA awards for cleanups that begin after the rules take effect in order of the award priorities; and (d) notify an owner or operator of a petroleum product storage system to which the rules apply of the date on which Commerce determines it is appropriate to begin remedial action activities or emergency actions, based on the Department's estimate of when funds would be available to pay an award under the award priorities. The owner or operator would be authorized to delay beginning a remedial action activity or emergency action until the date on which Commerce determines it is appropriate to begin the activities. Commerce would be authorized to deny PECFA reimbursement for interest costs if an owner or operator begins the activities before the beginning date determined by Commerce.</p> | <p><b>6. Award Prioritization.</b> Direct Commerce and DNR to jointly determine when it is appropriate to begin remedial action based on the determination of risk for the discharge and the availability of funds to pay awards. An owner or operator would not be permitted to or required to begin remedial action until Commerce and DNR approve the commencement of the remedial action activities. These provisions would not apply if the discharge is from a home heating oil tank, small farm tank or heating oil tank owned by a school district, or if the remedial action is in response to an emergency.</p> |

| Current Law  | Governor's 1999-01 Budget Bill  | Joint Legislative Audit Committee Bill  |
|--|---|---|
| <p><b>7. Remedial Action Plan.</b> Claimants are required to prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted. At the request of the claimant, DNR or Commerce, whichever has jurisdiction, shall review the site investigation and remedial action plan and advise the claimant on the adequacy of the proposed remedial action activities. DNR or Commerce shall complete a final review of the remedial action activities within 60 days after the claimant notifies the appropriate department that the remedial action activities are completed.</p> <p><b>8. Maximum Award.</b> The maximum PECFA award for underground petroleum tanks is \$100,000 for small farm tanks, \$190,000 for school district or technical college district heating oil tanks, \$500,000 for systems where the product is not stored for resale and handles 10,000 or less gallons per month or \$1,000,000 for systems where the product is stored for resale or that handles more than 10,000 gallons per month.</p> | <p><b>7. Remedial Action Plan.</b> [LFB p.150, #6] Require claimants to submit the remedial action plan prepared under current law to Commerce for approval. Require Commerce to either approve or disapprove the submitted remedial action plan. Delete the requirement that, at the request of the claimant, DNR or Commerce shall review the site investigation and remedial action plan and advise the claimant on the adequacy of the proposed remedial activities. Retain the current law requirement that DNR or Commerce complete a final review of the remedial action activities within 60 days after the claimant notifies the appropriate department that the remedial action activities are completed.</p> <p><b>8. Maximum Award.</b> [LFB p. 151, #7] Change the maximum PECFA award for any underground petroleum tank site to \$100,000 if the site is classified as medium or low priority under the rule promulgated by Commerce under the bill. The change in the maximum award would apply to claimants whose remedial action plan is approved by Commerce on or after December 1, 1999.</p> | <p><b>7. Remedial Action Plan.</b> Same provision as Governor, except that Commerce would not be required to either approve or disapprove the submitted remedial action plan. In addition, direct Commerce to review the remedial action plan for a low or medium priority site, and DNR and Commerce to jointly review the remedial action plan for a high priority site, and to determine the least costly method of completing the remedial action activities and complying with groundwater enforcement standards. DNR and Commerce would be required to determine whether natural attenuation will complete the remedial action activities in compliance with groundwater enforcement standards.</p> <p><b>8. Maximum Award.</b> Direct DNR and Commerce to notify the owner or operator of their determination of the least costly method of completing the remedial action activities and complying with groundwater enforcement standards and that reimbursement for remedial action is limited to the amount necessary to implement that method. While the general maximum award would not change from current law, the maximum reimbursement for individual sites could be limited under the provision.</p> |
| <p><b>9. Deductible Amount.</b> The deductible under the PECFA program for most underground tanks is \$2,500 plus 5% of eligible costs, but not more than \$7,500 (reached at \$100,000 of eligible costs). The deductible for heating oil tanks owned by public school districts and technical college districts is 25% of eligible costs. The deductible for aboveground storage tanks is \$15,000 plus 2% of eligible costs over \$200,000, except for aboveground storage tanks located at terminals is \$15,000 plus 5% of the amount by which eligible costs exceed \$200,000. A terminal is a facility that is connected to a petroleum pipeline.</p>   | <p><b>9. Deductible Amount.</b> [LFB p. 151, #8] Change the PECFA award deductible amount for underground petroleum product storage tank systems for marketers (the system stores products for resale) or nonmarketers that handle an annual average of more than 10,000 gallons of petroleum per month, to \$10,000, plus another \$2,500 if the eligible costs exceed \$50,000, plus \$2,500 if the eligible costs exceed \$80,000, plus \$10,000 for each whole \$100,000 by which eligible costs exceed \$150,000. The deductible for aboveground storage tanks located at terminals would change to \$15,000 plus 15% of the amount by which eligible costs exceed \$200,000.</p>  | <p>Direct Commerce to conduct an annual review for sites that are classified as low or medium priority, and DNR and Commerce to jointly conduct an annual review for high priority sites, and make the same determinations of the least costly method, use of natural attenuation and maximum reimbursement in #7.</p> <p><b>9. Deductible Amount.</b> Change the deductible for most underground tanks to be 100% of the amount by which eligible costs exceed \$18,750 but do not exceed \$21,250, plus 10% of the amount by which eligible costs exceed \$21,250 but do not exceed \$40,000, plus 5% of the amount by which eligible costs exceed \$40,000, but not more than \$7,500 (reached at \$102,500 of eligible costs). The deductible would not change for school district, technical college district, home heating oil or aboveground tanks. The change would first apply to costs incurred on the effective date of the bill.</p>  |

| Current Law   | Governor's 1999-01 Budget Bill   | Joint Legislative Audit Committee Bill  |
|---|--|---|
| <p><b>10. Interest Cost Reimbursement.</b> Reimbursable interest rates are limited to 2% above the prime rate for loans secured after January 31, 1993, and before October 15, 1997, and 1% above the prime rate for loans secured on or after October 15, 1997. Currently, the prime rate is approximately 8.5%.</p>   | <p>Commerce would be authorized to promulgate administrative rules that specify information and audit requirements. The change would first apply to remedial action activities or emergency actions that begin on the effective date of the biennial budget act.</p> <p><b>10. Interest Cost Reimbursement.</b> [LFB p. 152, #9] Require that PECFA reimbursement for interest costs incurred by a PECFA claimant would be: (a) eliminated for applicants with gross revenues that exceed \$20,000,000 in the most recent tax year before the applicant submits a claim; and (b) limited to 5% for other applicants. The limitations would first apply to interest incurred on November 1, 1999, for claims submitted on November 1, 1999.</p> | <p><b>10. Interest Cost Reimbursement.</b> No change to current law.</p>  |
| <p><b>11. Bidding Process.</b> Commerce is authorized to promulgate rules under which the department selects service providers to provide investigation or remedial action services in specified areas. The rules may provide that the costs of a service for which Commerce has selected a service provider in an area are not eligible costs or that eligible costs are limited to the amount that the selected service provider would have provided, if an owner or operator uses a service provider other than the service provider selected by Commerce to perform the service. Commerce promulgated administrative rule changes in Comm 47 under which Commerce may establish a maximum reimbursable amount for remedial actions.</p> | <p><b>11. Bidding Process.</b> [LFB p. 152, #10] Authorize Commerce to promulgate rules that require a person to pay a specified fee as a condition of submitting a bid to provide a service for a cleanup under the PECFA program. Any fees collected under the provision would be deposited in the petroleum inspection fund. If Commerce imposes a fee, the Department would be authorized to use the PECFA awards appropriation to purchase, or provide funding for the purchase of, insurance to cover the amount by which the costs of conducting the cleanup service exceed the amount bid to conduct the cleanup service.</p>  | <p><b>11. Bidding Process.</b> Require DNR or Commerce, whichever agency has jurisdiction over the site, to estimate the cost to complete a site investigation, remedial action plan and remedial action for an occurrence. If that estimate exceeds \$60,000, direct Commerce to implement a competitive public bidding process to assist in determining the least costly method of remedial action. Commerce would not be permitted to implement the bidding process if: (a) an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility or within 100 feet of any other well used to provide water for human consumption; (b) DNR waives the requirement on the grounds that the waiver is necessary in an emergency to prevent or mitigate an imminent hazard to public health, safety or welfare or to the environment; or (c) DNR waives the requirement after providing notice to the Secretary of Commerce.</p> |
| <p><b>12. Joint Agency Report.</b> 1997 Act 237 (the 1997-99 biennial budget adjustment act) directed the Secretaries of DOA, Commerce and DNR to submit reports to the Joint Committee on Finance for consideration at the Committee's September, 1998, and March, 1999, s. 13.10 meetings that document the progress of DNR and Commerce towards meeting the requirements of the memorandum of understanding related to administration of the PECFA program and high, medium and low</p>  | <p><b>12. Joint Agency Report.</b> [LFB p. 152, #11] Require Commerce and DNR to submit a report to the Governor and appropriate standing committees of the Legislature every January 1 and July 1 that relates to petroleum storage tank cleanups that are in progress. The report would be required to provide the following information for each petroleum cleanup that is underway: (a) the date on which the record of the site investigation was received; (b) the environmental risk factors, as defined</p>  | <p><b>12. Joint Agency Report.</b> Require Commerce and DNR to submit a report to the Joint Legislative Audit Committee, Joint Committee on Finance and appropriate standing committees of the Legislature no later than October 1 annually, for the previous fiscal year. The report would be required to include the following information: (a) the number of notifications of petroleum discharges received by the departments and the number of written approvals of remedial action activities</p>   |

| Current Law  | Governor's 1999-01 Budget Bill  | Joint Legislative Audit Committee Bill   |
|--|---|--|
| <p>priority sites. The reports were submitted. The reports included information about: (a) the progress toward determining the classification of petroleum discharge sites as high, medium or low priority; (b) the number of petroleum discharge sites under the jurisdiction of DNR and Commerce; (c) the number of petroleum discharge sites closed by DNR and Commerce; (d) the time that it takes to close petroleum discharge sites after the discharges are reported to the state; (e) the progress made by Commerce in using the authority under the PECFA statute in requiring the use of specified service providers in order to reduce costs of cleanups and in requiring owners of petroleum discharge sites to use a public bidding process in order to reduce the costs of cleanups; (f) a summary of the definitions in the MOU of high, medium and low priority sites and the reasons for those definitions; and (g) if more than 30% of the total known active petroleum discharge sites are classified as high priority, a description of the causes for that number of high priority sites.</p> | <p>by Commerce rule, identified at the site; and (c) the year in which DNR or Commerce expects to issue a case closure letter or written approval of the remedial action activities for the site.</p> | <p>provided by the departments; (b) the percentage of sites classified as high priority; (c) the name of each person providing engineering consulting services to a claimant and the number of claimants to whom the person has provided those services; (d) the charges for engineering consulting services for which remedial action activities are approved by the departments and for other sites; (e) the charges by service providers other than engineering consultants for services for which reimbursement is provided, including excavating, hauling, laboratory testing and landfill disposal; and (f) strategies for recording and monitoring complaints of fraud in the program and for the use of Commerce employees who conduct audits to identify questionable claims and investigate complaints.</p>  |
| <p><b>13. Usual and Customary Costs.</b> Commerce is authorized to establish a schedule of usual and customary costs for items eligible for PECFA reimbursement, and to limit reimbursement to the usual and customary cost.</p>   | <p><b>13. Usual and Customary Costs.</b> No change to current law.</p>  | <p><b>13. Usual and Customary Costs.</b> Require Commerce to establish a schedule of usual and customary costs for items that are commonly associated with PECFA claims. Require Commerce to use the schedule to determine the amount of eligible costs for an occurrence for which a competitive bidding process is not used, except in circumstances under which higher costs must be incurred to complete the remedial action activities and comply with groundwater enforcement standards. Commerce would not be allowed to use the schedule for an occurrence for which a competitive bidding process is used. The schedule would be required to include the maximum number of reimbursable hours for particular tasks and the maximum reimbursable hourly rates for those tasks. Commerce would be required to use methods of data collection and analysis that enable the schedule to be revised to reflect changes in actual costs. This provision would not apply after June 30, 2001. After June 30, 2001, the current law authorization (instead of requirement) for Commerce to establish a schedule of usual and customary costs would be</p> |

| Current Law  | Governor's 1999-01 Budget Bill   | Joint Legislative Audit Committee Bill   |
|--|--|--|
| <p><b>14. Administrative Rules.</b> Commerce is authorized to promulgate administrative rules to administer the reimbursement program and has done so in Comm 47 and Comm 46. DNR administrative rules in the NR 700 series contain requirements for cleanup of contaminated property.</p>   | <p><b>14. Administrative Rules.</b> See administrative rule descriptions under #4, 6, 9, 11.</p> | <p>effective again.</p> <p>Direct Commerce to evaluate the operation of the usual and customary cost schedule and report on the results of the evaluation to the Joint Legislative Audit Committee, the Joint Committee on Finance and the appropriate standing committees of the Legislature no later than the first day of the 14<sup>th</sup> month beginning after the effective date of the bill.</p>   |
| <p><b>14. Administrative Rules.</b> Direct Commerce, in consultation with DNR, to promulgate rules specifying procedures to be used by Commerce and DNR while remedial actions are being conducted, including: (a) annual reviews that include use of the risk-based analysis rule promulgated under the bill; and (b) annual reports by consultants estimating the additional costs that must be incurred to complete the remedial action activities in compliance with the groundwater enforcement standard.</p> |  | <p><b>14. Administrative Rules.</b> Direct Commerce, in consultation with DNR, to promulgate rules to facilitate effective and cost-effective administration of the program that specify: (a) information that must be submitted under the section, including quarterly summaries of costs incurred with respect to a discharge for which a claim is intended to be submitted but for which a final claim has not been submitted; (b) formats for submitting the information required under (a); and (c) review procedures that must be followed by DNR and Commerce staff when reviewing the information submitted under (a).</p> |
|  |  | <p>Direct Commerce, in consultation with DNR, to promulgate rules specifying: (a) the conditions under which Commerce and DNR employees must issue approvals of remedial action activities; and (b) training and management procedures to ensure that employees comply with the requirements under (a).</p>  |
|  |  | <p>Direct Commerce to promulgate emergency rules for the above three provisions no later than 30 days after the effective date of the bill. Direct Commerce to submit</p>  |

| Current Law  | Governor's 1999-01 Budget Bill  | Joint Legislative Audit Committee Bill  |
|--|---|---|
| <p><b>15. Financial Management.</b> No provision.</p>  | <p><b>15. Financial Management.</b> No provision.</p>   | <p>proposed permanent rules to the Legislative Council Staff no later than the first day of the third month beginning after the effective date of the bill.</p> <p>Direct DNR to submit proposed changes in its administrative rules necessary to implement the bill to the Legislative Council staff no later than the first day of the sixth month after the effective date of the bill.</p>  |
| <p><b>15. Financial Management.</b> No provision.</p>  | <p><b>15. Financial Management.</b> Direct Commerce to, no later than the first day of the sixth month beginning after the effective date of the bill, to: (a) update its financial data base for the PECFA program to ensure that complete cost information related to each occurrence and to the annual payment to each owner or operator is readily available; (b) investigate any variances between the amount of total payments indicated by the financial data base for the PECFA program and the amount of total payments indicated by the accounts maintained by DOA to identify when the variances occurred and the reasons for the variances; and (c) make any changes in the department's financial data base needed to ensure that the data base is consistent with the accounts maintained by DOA.</p> | <p><b>15. Financial Management.</b> Direct Commerce to, no later than the first day of the sixth month beginning after the effective date of the bill, to: (a) update its financial data base for the PECFA program to ensure that complete cost information related to each occurrence and to the annual payment to each owner or operator is readily available; (b) investigate any variances between the amount of total payments indicated by the financial data base for the PECFA program and the amount of total payments indicated by the accounts maintained by DOA to identify when the variances occurred and the reasons for the variances; and (c) make any changes in the department's financial data base needed to ensure that the data base is consistent with the accounts maintained by DOA.</p> |
| <p><b>16. Emergency Situations.</b> An owner or operator may submit a PECFA claim after notifying Commerce without completing an investigation or preparing a remedial action plan if: (a) an emergency existed which made the investigation and remedial action plan inappropriate; or (b) the owner or operator acted in good faith in conducting the remedial action activities and did not willfully avoid conducting the investigation or preparing the remedial action plan.</p> | <p><b>16. Emergency Situations.</b> No change to current law.</p>   | <p><b>16. Emergency Situations.</b> Repeal (b) under current law and instead require that, in order to submit a PECFA claim for an emergency situation, the owner or operator must have notified DNR of the emergency before conducting the remedial action and DNR must have authorized emergency action.</p>  |

Department of Commerce

Emergency Rule Relating to the Petroleum Environmental Cleanup Fund Interagency  
Responsibilities

Finding of Emergency and Rule Analysis

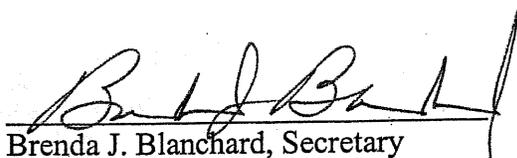
The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.143 and 101.144, Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An emergency rule in response to that directive was adopted by the Department and became effective on January 1, 1999. Since that date, further improvements for jointly administering the PECFA fund have been developed, which are consistent with the JCRAR directive and which are expected to significantly mitigate the backlog of claims to this oversubscribed fund.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this  
18 day of February, A.D. 1999,  
By the Department of Commerce

  
Brenda J. Blanchard, Secretary

SECTION 1. Chapter Comm 46 is repealed and recreated to read:

CHAPTER Comm 46  
PETROLEUM ENVIRONMENTAL CLEANUP FUND INTERAGENCY  
RESPONSIBILITIES

**Comm 46.01 Purpose.** The purpose of this rule is to identify the roles, processes and procedures that guide the departments of commerce and natural resources in the administration of their respective responsibilities for high, medium and low priority petroleum contaminated sites. The requirement, which is the basis of this rule, was established in 1995 Act 27 and mandated that the two agencies determine the:

(1) Respective functions of the two departments.

(2) Procedures to ensure that remedial actions taken under this section are consistent with actions taken under s. 292.11, Stats.

(3) Procedures, standards and schedules for determining whether the site of a discharge of a petroleum product from a petroleum storage tank is classified as high, medium or low priority.

**Comm 46.02 Definitions.** In this chapter:

(1) "Commerce" means the department of commerce.

(2) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(3) "Developable groundwater" means a formation, excluding bedrock, that can yield 0.2 gallons per minute or more of groundwater, determined by an open bore hole.

(4) "DNR" means the department of natural resources.

(5) "Enforcement standard" means a numerical value expressing the concentrations of a substance in groundwater which is adopted under s. 160.07, Stats., and s. NR 140.10 or s. 160.09, Stats., and s. NR 140.12.

(6) "High priority site" means a remediation site that meets one or more of the following criteria:

(a) Presence of a hazardous substance other than petroleum from a petroleum product storage tank system.

(b) Contamination to an area of exceptional environmental value where the discharge would pose a greater than normal threat.

(c) Confirmed groundwater contamination where any compound detected is equal to or greater than an established enforcement standard.

(7) "Low priority site" means a remediation site where:

(a) There is only petroleum contamination and no threat to groundwater, and

(b) No evidence of a hazardous substance other than the petroleum product that was discharged from the petroleum product storage tank system.

(8) "Medium priority site" means a remediation site that meets the following criteria:

(a) No evidence of contamination by a hazardous substance other than the petroleum product, which was discharged from the petroleum storage tank system; and

(b) No confirmed groundwater contamination at or above the enforcement standard.

(9) "Remediation target" means the contamination concentration level(s) at which a site will be granted, or eligible for, closure utilizing an institutional control option, including a groundwater use restriction, or any other appropriate tool.

**Comm 46.03 Site authority.** (1) GENERAL. The assignment of authority for high, medium and low priority petroleum contaminated sites shall be determined according to the following:

(a) The DNR shall have authority for high priority sites.

(b) Commerce shall have authority for low and medium priority sites.

(2) AUTHORITY. The authority for a site falling under an agency's jurisdiction includes but is not limited to enforcement, remediation supervision and direction, referrals for legal action, and decision making regarding granting or denying closure or an approval for no further action.

(3) JOINT ADMINISTRATION. The departments of Commerce and DNR shall implement a system of joint decision making for:

(a) The setting of remediation targets for sites that are competitively bid or bundled with another site(s). When the targets are achieved, the site shall be closed without requiring or reimbursing for additional remedial efforts except for otherwise eligible post closure costs.

(b) The selection of remedial bids.

(4) CLOSURE DECISIONS. For any site with confirmed groundwater contamination equal to or greater than the enforcement standard following completion of the site investigation and for which a closure request has been submitted, the following steps will be taken:

(a) A site closure request is prepared and submitted to DNR with the appropriate fee.

(b) The DNR reviews the request and makes a determination on closure, either with or without institutional controls or tools.

(c) The DNR will forward a copy of all closure determinations to Commerce.

(d) If Commerce identifies a site they believe has met its remediation target(s), but has not submitted a closure request, they may request DNR take action to solicit a closure request from the site owner.

(5) DISPUTE RESOLUTION. Any disputes between the agencies under subs. (3) or (4) will be subject to the following dispute resolution process. Project managers will discuss their differences, and the basis for them, in an attempt to resolve the dispute. If the dispute is not resolved, the decision will be referred to the appropriate division administrators; if the dispute still remains unresolved, the department Secretaries shall be the final decision-makers.

**Comm 46.04 Site investigation.** (1) GENERAL. The investigation of petroleum contaminated sites shall be conducted in a manner designed to meet ch. NR 716 and to minimize costs while providing sufficient data necessary for risk assessment and remediation decision making.

(2) METHODOLOGY. The departments shall develop an agreed upon methodology for determining if there is evidence of an expanding plume and the actions to take if the data provided through the investigation is not adequate. This methodology will be part of the investigation process.

**Comm 46.05 Risk Assessment.** (1) GENERAL. Jointly created risk assessment protocols, shall be used to measure the environmental, safety and health risks associated with petroleum contaminations and to determine a required action level which could include, but not be limited to, adequate source control and measures to address environmental risk factors, or whether the site may be closed without additional action.

(2) RISK CRITERIA. Decisions regarding the remediation and closure of sites shall be based upon an application of risk criteria. The following risk criteria will be used in decision making:

(a) No environmental factor(s), as defined in ch. Comm 47, exists;

(b) Site closure may not take place until environmental factors, that are identified, are addressed;

(c) Contamination in groundwater is below the enforcement standard off-site except in a public roadway or right of way;

(d) No contamination above Table 46.05 values occurs within 4 feet of the ground surface;

(e) On-site contamination, in a water sample from non-developable groundwater, does not exceed 300 times the enforcement standard;

(f) There is a separation distance between contamination and the developable groundwater of 5 feet or more, or the contamination is decreasing, in the soil, as it approaches the developable groundwater;

(g) There is no impact or potential impact to a receptor of concern as defined by the departments;

(h) There is no enforcement standard exceedance in any groundwater within 1000 feet of a public well;

(i) There is no enforcement standard exceedance in any groundwater within 100 feet of a private well.

**TABLE 46.05**

|              |             |
|--------------|-------------|
| Benzene      | 0.620 mg/kg |
| 1,2 DCA      | 0.340 mg/kg |
| Ethylbenzene | 230.0 mg/kg |
| Toluene      | 520.0 mg/kg |
| Xylene       | 860.0 mg/kg |

**Comm 46.06 Site closure.** (1) GENERAL. The actions of the DNR and Commerce in making site closure or no further action decisions and in approving remedial actions on a site shall incorporate that:

(a) Sites where contamination is determined to be below the enforcement standard on site and below the enforcement standard off site, and no environmental factors exist, shall be closed without requiring or reimbursing for additional remedial efforts except for otherwise eligible post closure costs.

(b) Sites with contaminants above the enforcement standard on site but below the enforcement standard off site in the developable groundwater, and not greater than 300 times the enforcement standard in the non-developable groundwater, and no environmental factor(s) or requirement for source control, shall be offered closure with a

groundwater use restriction or a GIS registration. Additional funding will not be provided except for otherwise eligible post closure costs. If the off-site owner does not accept the GIS registration or the groundwater use restriction, additional funding will still not be provided except for otherwise eligible post closure costs and additional remedial efforts, beyond natural attenuation, will not be required.

(c) Sites that meet the criteria of s. Comm 46.05 (2) will be closed after investigation without requiring or reimbursing for additional remedial efforts except for otherwise eligible post closure costs.

(d) Sites that do not meet all criteria of s. Comm 46.05 (2) may be closed after only the investigation, if it is determined that the site poses no additional risk and it has been determined that additional source control is not needed.

(e) Sites that do not meet all criteria of s. Comm 46.05 (2) and are determined to pose additional risk shall conduct remedial efforts to address and resolve the risk.

(f) The criteria of s. Comm 46.05 (2) are statements of what constitute risk factors. The elements established through those statements will be used by the departments in the process of setting remediation targets and in decisions on whether to grant closure or no further action.

(2) DETERMINATION OF COMPLIANCE WITH THE ENFORCEMENT STANDARD. When determining whether a site is above or below either the enforcement standard or any other contaminant level or target, recognition shall be made of the impact of error of measurement, repeatability of test results and statistical significance. The DNR and Commerce shall develop, by June 30, 1999, a process for taking these considerations into account and then revise and/or adopt administrative rules as appropriate.

(3) TRACKING OF REMEDIATION PROGRESS. (a) The departments shall establish a system for electronically tracking the achievement of remediation targets. They shall use the tracking system to determine if remediation funding should end and if a site closure request should be submitted.

(b) The departments shall jointly require and enforce the use of the electronic reporting system by claimants.

**Comm 46.07 Transfer of sites.** (1) GENERAL. The DNR will establish the responsibility of either Commerce or DNR for a site within 60 days of the receipt of the site investigation report, unless any of the following apply:

(a) The DNR has requested additional information after reviewing the site investigation report and the requested information has not been submitted.

(b) The site is the subject of an enforcement action initiated by the DNR.

(c) Other circumstances over which the DNR has no control have prevented the DNR from making a site classification determination.

(2) CONSULTANT DETERMINATION. Consultants performing site investigations may determine, as part of a joint agency site classification pilot, whether a site is high, medium or low priority and submit the investigation report directly to the agency they believe has jurisdiction.

(3) CHANGES IN CLASSIFICATION. If a site is classified as high, medium or low priority, and the DNR or Commerce determines that the classification is incorrect, that agency will transfer the site and all related data to the other agency within 14 days.

(4) LIST OF SITES IN REMEDIATION. The departments will develop and maintain a reconciled list of sites in remediation including data on target levels, risk factors, expected closure costs and other relevant data.

(End)

*File reference: e-rule b*

FISCAL ESTIMATE  
DOA-2048 (R10/92)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

ILHR 46

Amendment No. if Applicable

Subject: Petroleum Environmental Cleanup Fund Interagency Responsibilities

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increases Costs - May be possible to Absorb  
Within Agency's Budget       Yes       No  
  
 Decrease Costs

Local:    X No local government costs

1.  Increase Costs  
     Permissive     Mandatory  
2.  Decrease Costs  
     Permissive     Mandatory

3.  Increase Revenues  
     Permissive     Mandatory  
4.  Decrease Revenue  
     Permissive     Mandatory

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others \_\_\_\_\_  
 School Districts     WTCS Districts

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

The Department is promulgating the rule to implement new provisions in the working relationship between the Departments of Natural Resources and Commerce in the administration of the PECFA program. At this point in time, the longer term fiscal impact of these changes cannot be determined. A workload study will follow that will be completed by the two agencies after implementation and assessment of impact.

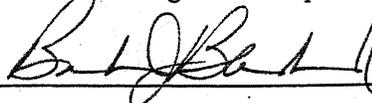
**Long-Range Fiscal Implications**

None known.

Agency/Prepared by: (Name & Phone No.)

Bill Morrissey 266-7605

Authorized Signature/Telephone No.



Date

2/18/95

**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R10/92)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

LRB or Bill No/Adm. Rule No.  
ILHR 46

Amendment No.

Subject: Petroleum Environmental Cleanup Fund Interagency Responsibilities

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

| II. Annualized Costs:   | Annualized Fiscal impact on State funds from: |                 |
|---|---|-----------------|
|   | Increased Costs                               | Decreased Costs |
| <b>A. State Costs By Category</b>   |   |                 |
| State Operations - Salaries and Fringes   | \$  | \$ -            |
| (FTE Position Changes)  | ( 0 FTE)                                      | ( - 0           |
| State Operations - Other Costs  |   | -               |
| Local Assistance  |   | -               |
| Aids to Individuals or Organizations  |   | -               |
| <b>TOTAL State Costs By Category</b>  | \$ 0  | \$ - 0          |
| <b>B. State Costs By Source of Funds</b>  |   |                 |
| GPR   | \$  | \$ -            |
| FED   |   | -               |
| PRO/PRS   | 0   | - 0             |
| SEG/SEG-S   | 0   | - 0             |
| <b>III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b> |   |                 |
| GPR Taxes   | \$  | \$ -            |
| GPR Earned  |   | -               |
| FED   |   | -               |
| PRO/PRS   | 0   | - 0             |
| SEG/SEG-S   | 0   | - 0             |
| <b>TOTAL State Revenues</b>   | \$ 0  | \$ - 0          |

**NET ANNUALIZED FISCAL IMPACT**

|                        | STATE | LOCAL |
|------------------------|-------|-------|
| NET CHANGE IN COSTS    | \$ 0  | \$ 0  |
| NET CHANGE IN REVENUES | \$ 0  | \$ 0  |

Agency/Prepared by: (Name & Phone No.)

Bill Morrissey 266-7605

Authorized Signature/Telephone No.



Date

2/14/99

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: July 7, 1994

TO: Natural Resources Board Members

FROM: George E. Meyer 

SUBJECT: Background Memo -- NR 700 Rule Series -- Comprehensive Environmental Response Action Rule, Adoption Request for NR 720 - Soil Quality Standards and NR 722 - Remedy Selection plus Amendments to previously adopted NR 700 Rule Series Chapters.

1. Why Is The Rule Being Proposed?

The NR 700 rule series provides for a consistent approach to responding to environmental contamination. There are multiple programs within the Department that respond to environmental contamination, such as the Leaking Underground Storage Tank (LUST), Hazardous Substance Spill Program, Environmental Repair Program (ERP), Hazardous Waste Management, Solid Waste Management and Wastewater programs. Each of these different response programs approach environmental contamination similarly: first, identifying the problem; then defining it; selecting a remedy; and installing and operating the remedy. Though the approach is similar, there are specific state and federal mandates, directives or guidance that must be followed or considered for each program. The NR 700 rule series establishes the generic response approach and also addresses the specific program requirements.

At the September 1993 Board meeting, the Board adopted seventeen of the nineteen chapters in the rule series. Adoption was deferred on NR 720 - Soil Quality Standards and NR 722 - Remedy Selection. As directed, a subgroup of the External Advisory Committee (EAC) was formed to resolve the outstanding issues with the remaining two chapters. The subgroup of the EAC is identified as the NR 700 Focus Group. Attachment 6 provides a list of those involved in the Focus Group.

Six public hearings were held throughout the state in March 1994. The Board authorized hearings at the January 1994 meeting. Because of Legislative and broad public interest in the rule, the Focus Group and staff have worked at a fast and diligent pace to bring an acceptable, revised package to the Board for adoption after the public hearing process.

In addition to specific input from the Focus group on the rule, the group also made several other recommendations with respect to a new NR 1 Policy Statement on land use; statutory changes to address de minimis spill reporting of hazardous substances and combining the spill law and repair law into one law; improving PECFA; and Department organization as it pertains to remedial actions.

## 2. Summary of Rule

The NR 700 series is a comprehensive administrative rule package governing environmental contamination cleanups conducted under the state's Hazardous Substance Discharge, Environmental Repair, and Abandoned Container laws. It also provides specific guidance and direction to those programs overseeing cleanups under solid and hazardous waste or wastewater authorities. The overall intent of the rule series is to:

- \* Establish under one code the procedures and standards for cleaning up sites;
- \* Assist those responsible for causing the contamination in understanding their legal responsibilities for restoring the environment;
- \* Provide guidance to environmental firms that conduct investigations, design remedial actions, and construct and operate remedial systems; and
- \* Ensure consistent review by Department staff who oversee the work.

The following is a summary of the key changes made to the previous package the Board considered for adoption in September 1993.

### NR 700 - General Requirements

**Added:** Subsection defining "simple" and "complex" sites. The importance of this classification is twofold; first, it determines the level of Department involvement in the response process for a particular site or facility; second, it establishes how rigorous the remedy evaluation and selection process will be. Simple sites will have minimal Department involvement and have the option to follow a streamlined remedy selection process.

**Revised:** Department review and oversight was amended to reflect the simple site classification and, as previously stated, Department review and oversight will be minimal at simple sites or facilities. This will allow Department staff to concentrate their efforts on complex sites.

### NR 720 - Soil Quality Standards

**Revised:** Two tier system replaced with a single, numeric standard for each compound that will be applied to simple sites or facilities.

**Revised:** The numeric value used for each compound is greater than the original Residual Contaminant Level Goal (RCLG) but less than the Residual

Contaminant Level (RCL) and is still protective of public health, safety and welfare and the environment.

Revised: To simplify the process, especially for simple sites, the application of the direct contact values to only the top two feet has been removed. This change results in using one, more stringent value for a compound instead of applying two values for each compound.

Addition : Allows responsible parties to revise the values in the tables based on site specific information obtained during the investigation. An equation and list of variables are included in the code, and offers responsible parties more flexibility under the simple site process.

### NR 722 - Standards for Selecting Remedial Actions

Revised: Overall, the entire code was restructured to minimize confusion and incorporate the streamlined process for simple sites.

Revised: The requirement to evaluate treatment options and implement if feasible for any site has been deleted and replaced with a preference to evaluate and select treatment option(s) that destroy contaminants for those sites or facilities classified as complex.

Revised: The 250 cubic yard volume limitation for contaminated media has been retained, but additional exceptions have been added. Most notably is the recognition that composite lined landfills require more engineering than single - clay lined landfills. The volume limitation will not apply to composite lined landfills because of the additional engineering which is considered to be more protective of the environment. It is important to note the Focus Group recommended that further landfill restrictions of contaminated media be evaluated in the context of revisions to the Solid Waste Management rules, NR 500.

### 3. How Does This Proposal Affect Existing Policy?

One of the primary purposes of the proposed rule series is to codify guidance and practices the Department is currently using. This encompasses the overall response approach, which includes conducting an adequate investigation whose results form the basis for the selection and implementation of a suitable remedy; and finally, when appropriate, closing out the case.

The Department's practices have evolved as it has gained experience and as additional programs have been established. For example, spill reporting and response have been required since 1978; participation in the federal Superfund program began in 1983; the

1984 Groundwater Law established the Environmental Repair program and the Environmental Repair Fund (now known simply as the Environmental Fund); and full implementation of the federal LUST program began in 1989. The goal of the proposed rule series is to clarify the Department's existing practices as they apply across the range of Emergency and Remedial Response programs that conduct or require cleanup of environmental contamination.

However, the proposed rule series does more than simply codify policies and procedures. First, by establishing numeric standards for residual soil contamination, the Department is moving away from setting unique, site-specific standards for each cleanup. Accordingly, these standards will clarify the expectations and requirements for adequate remedial action and advance the objective of statewide consistency in cleanup requirements for individual sites.

The changes in degree of Department review and oversight; simple and complex site classifications; streamlining remedy selection; and establishing a single numeric standard for each compound sets a framework for allowing cooperating responsible parties to expeditiously respond to their environmental contamination.

#### 4. Board Involvement

In the September 1993, the NR 700 Rule Series was presented to the Board for adoption. The Board adopted seventeen of the nineteen chapters in the rule series. The Board directed Secretary Meyer to form a subgroup of the External Advisory Committee (EAC) to resolve the outstanding issues with the remaining two chapters. The subgroup of the EAC is identified as the Focus Group and Attachment 6 provides a list of those participating with the Department staff.

At the January 1994 Board meeting, public hearing authorization was granted. Six public hearings were held, throughout the state, as discussed in Section 5 of this document.

The Board also directed Secretary Meyer to work with representatives of business, environmental organizations and government to seek a modification of section 144.76, Wisconsin Statutes, allowing less than immediate reporting of de minimis amounts of spilled hazardous materials that are not likely to cause harm to the environment or public health or safety. Section 10 of this background memo provides additional information on this topic.

#### 5. Hearing Synopsis

##### A. Hearing Dates and Locations:

Date/Time

Location

March 11, Friday  
9:00 a.m.

Green Bay Wildlife Sanctuary (Auditorium)  
Sanctuary Road  
Green Bay, WI

March 14, Monday  
9:00 a.m.

Spooner National Guard Armory (Auditorium)  
HWY 70  
Spooner, WI

March 14, Monday  
2:00 p.m.

Eau Claire South Middle School (Auditorium)  
2115 Mitscher Ave.  
Eau Claire, WI

March 15, Tuesday  
9:00 a.m.

Waukesha County Office Bldg. (Brookfield Room)  
500 Riverview Ave.  
Waukesha, WI  
(Note: Enter through door #6)

March 18, Friday  
8:30 a.m.

State Capitol, Room 421 South  
Madison, WI

B. Number of Appearances: See Attachment 9.

C. Summary of Public Comments: See Attachment 10. Attachment 11 is the Legislative Council Staff Clearinghouse report.

D. Public Contacts after Hearings: Focus Group meetings were held on May 27, 1994 and June 21, 1994 to discuss the public comments received during the public comment period and possible rule language modifications to the public comment draft.

6. Who will be Affected by this Proposed Rule?

These rules will affect many individuals, large and small businesses, state and local units of government, and the environmental consulting industry. There are currently some 8,000 active LUST cases, 40 Superfund sites, 135 state response cases requiring action, and annually 1,200 hazardous substance spills and 50 abandoned container cases. The type of incidents vary from small discharges from traffic accidents to large, areawide contamination cases such as the Wausau Water Supply Superfund site.

When the Department began drafting this rule, it assembled the EAC for advice and assistance. Attachment 5 of this background memo contains a list of the committee membership, which has been meeting since September 1991, and Attachment 6 contains a list of the Focus Group that has been meeting since October 1993.

As in May 1993, staff held six public hearings in March 1994 to make sure people are aware of the changes being proposed to the rule series. Staff are also continuing to work with other state agencies, most notably the Departments of Transportation and Agriculture, Trade and Consumer Protection on Memorandums of Understanding to address NR 700 and response implementation issues.

The Department has attempted to restructure the proposed rules series to further minimize unnecessary or unwarranted work undertaken at hazardous substance discharge sites or environmental repair sites or facilities. In the long term, the successful implementation of the rule changes should streamline response activities by clarifying procedures and reducing any uncertainty regarding Department requirements.

## 7. Key Issues and Recommended Changes

As a result of the public comment period, several key issues were raised. The following is a summary of those issues and recommended changes:

### A. NR 700 - Simple/Complex Site Classification and Department Oversight.

- Issue 1: The terms "simple" and "complex" have different meanings as used in ch. NR 700 related to oversight and ch. NR 720 related to determination of soil cleanup levels. This has resulted in confusion.
- Background: Based on comments received, the use of the terms "simple" and "complex" in both chs. NR 700 and 720 has created confusion because these terms do not have the same meaning, strictly speaking, in both chapters. For example, a "simple" site with no Department oversight can use the generic soil cleanup levels in ch. NR 720. However, this does not imply that a "complex" site with Department oversight cannot use the generic criteria where they are available. Similarly, there is the impression that sites meeting the "simple" criteria in ch. NR 700 must use the generic criteria, which is not the case.
- Options:
- 1) Change the terms "simple" and "complex" in ch. NR 700 to "non-oversight" and "oversight."
  - 2) Change the terms "simple" and "complex" in ch. NR 720 to "generic" and "site-specific."
  - 3) Change the terms in both chapters per options 1 and 2.
  - 4) Leave the terminology as it is and attempt to clarify the intent in rule language and notes.

**Recommendation: Option 2**

**Issue 2:** Simple sites that have groundwater contamination above the Preventative Action Limits (PALs) require Department approval for closure.

**Background:** The definition of simple sites in ch. NR 700 can include sites that have groundwater contamination. This provision was included because the presence of groundwater contamination does not necessarily make the site complex. Thus, simple sites with groundwater contamination can proceed with the remedial action and self-certify closure without Department oversight. This is not a problem at sites where the groundwater remedial action can meet the PALs in ch. NR 140. However, at many sites with groundwater contamination, particularly those with low permeability soils, it may not be technically or economically feasible to meet the PALs. At present, these sites could be closed out by our closeout committees with a variance from the PALs. However, this requires a written variance from the Department under s. NR 140.28(3) and, in some cases, would require an alternative concentration limit. Responsible parties cannot self-certify closure under these circumstances.

- Options:**
- 1) Change the simple site definition to exclude all sites with groundwater contamination.
  - 2) Change the oversight provisions to require Department approval of closures at sites with groundwater contamination.
  - 3) Change the oversight provisions to require Department approval of closures at all sites.
  - 4) Provide further clarification in the rule of the meaning of s. NR 700.11(3)b that explains that the no further action determinations for "simple" sites require that all standards be met. If groundwater is contaminated above the PAL and no additional remedial action is practicable, at the site, the site would need a site-specific review and require DNR to issue an exemption under NR 140 to close out the site.

**Recommendation: Option 4**

**Issue 3:** Purchaser liability limitation in 1993 Wisconsin Act 453 requires approval or certification by the Department.

**Background:** The Legislature recently passed Wisconsin Act 453 which includes provisions for limiting liability for cleanups under s. 144.76, Stats., for tax delinquent lands and purchasers of properties in some instances. The provisions for limitation of liability for purchasers of contaminated property in s. 144.765, Stats., requires that the Department "approve" the response action and "certify" that the cleanup is adequate. Such approvals and certifications will require that the Department review such cases.

**Options:**

- 1) Add an exemption to s. NR 700.11(3) for cases handled under s. 144.765, Stats., similar to the one for PECFA cases.
- 2) Require Department oversight on all cases.

**Recommendation:** Option 1

**Issue 4:** Concern over lack of Department oversight and "sign off" for closure of simple sites.

**Background:** Lenders, some industries, and environmental groups are concerned with the lack of oversight for simple sites. They argue that this will adversely impact property transactions due to the uncertainty of a future audit by the Department and create risks for parties involved in a cleanup. However, the Focus Group advised that the interests of the public are better served by the concentration of finite Department resources on complex site cleanups.

**Options:**

- 1) Require Department oversight on all cases.
- 2) Leave rule as currently written.

**Recommendation:** Option 2

#### **B. NR 720 - Soil Quality Standards**

**Issue 5:** Contaminated soils that meet the cleanup levels for direct contact can fail the TCLP and be hazardous waste.

**Background:** In at least one instance, contaminated soil from a site that meets the direct contact cleanup levels for hexavalent chromium and cadmium in ch. NR 720 has been tested using the Toxicity Characteristic Leaching Procedure (TCLP) for hazardous waste and failed. Chromium was also found in the groundwater above the enforcement standard. This soil can be considered hazardous waste. This has raised the concern that the cleanup levels for

direct contact in Table 2 of NR 720 may not be sufficiently restrictive in all cases.

This issue is more a matter of perception than reality in that the soil cleanup levels for direct contact in Table 2 are not intended to be protective of leaching to groundwater and are not related to hazardous waste determinations. Ch. NR 720, as written, requires that leaching to groundwater be evaluated in all cases.

- Options:
- 1) Modify the cleanup levels in Table 2 to address contaminant leaching.
  - 2) Leave the cleanup levels in Table 2 as written and attempt to clarify the rule language and requirements with a note.
  - 3) Add a note indicating that soils meeting the generic cleanup levels in Table 2 could still fail TCLP.

Recommendation: Options 2 and 3;

Issue 6: Legality of NR 720 challenged for not specifying the standard of "restoration to the extent practicable" of s. 144.76, Stats.

Background: The Legislative Clearinghouse comments on this subject pertain to the Purpose section of the code. Many other commentors addressed this issue with respect to the soil standards, particularly the Direct Contact Pathway soil standards.

- Options:
- 1) Use No Detect/Background for (Table 2) the non-industrial general standards and leave the industrial standards as written with a requirement for a deed restriction for the site to remain industrial.

This option would be the most straight forward to implement and would be viewed as consistent with the requirement for restoration to the extent practicable. There would still be flexibility for site-specific determinations under the NR 720.19 process.

- 2) Re-write the Purpose section and make the non-industrial direct contact standards analogous to the PAL. This can be accomplished by taking 10% of carcinogenic substances and 20% of the non-carcinogenic substances and then using those concentrations as the non-industrial general standards. The industrial standards would remain the same as presently written due to the requirement of a deed restriction limiting use to industrial unless the non-industrial standards are met.

This option would be more cumbersome to implement than ND/Background but would be workable. It could be viewed as consistent with the statutory requirement since it could be viewed as analogous to the derivation of the PAL in s. 160 Stats. Again, there would still be site-specific flexibility available in NR 720.19.

- 3) Use ecological effects as a basis for the general non-industrial standards.

This would require a considerable effort to develop general ecologically based standards. Time and lack of data severely limit this option.

- 4) Leave the code as written.

**Recommendation:** Option 2, See Order for revised rule language in s. NR 720.01 PURPOSE.

**Issue 7:** Additivity of Gasoline Range Organics (GRO) and Diesel Range Organics (DRO) for a total of 100 or 250 mg/kg for simple sites.

**Background:** The public comment draft of ch. NR 720 presented DRO/GRO as 100 or 250 mg/kg, depending on soil type. Many people interpreted this to mean either DRO or GRO would be 100 or 250 mg/kg. Others interpreted it to mean DRO plus GRO would be 100 or 250 mg/kg. Some comments do not support the addition of GRO\DRO. GRO and DRO were meant to be a bridge provision, to cover additional contaminants from petroleum, until more compounds are put into Table A.

- Options:**
- 1) Leave additive as written in the public comment version of the code.
  - 2) Change to non-additive, so total contamination can be 500 ppm for GRO + DRO in clay and 200 ppm GRO + DRO in other soils.

**Recommendation:** Option 2

**Issue 8:** Table values in ch. NR 720 to be used as trigger level to initiate a NR 716 investigation.

**Background:** Trigger levels indicate a release has occurred and cleanup levels are based on residual levels that are protective of public health and the environment.

- Options:**
- 1) Explain the difference between trigger levels and clean-up levels. GRO/DRO do not tell you the concentration of the Table 1 constituents this would cause significant implementation problem.
  - 2) Provide specific guidance on the level of effort needed for different site situations. Thus, not every site investigation would require a full NR 716 investigation.

**Recommendation:** Option 2

**Issue 9:** Preventive Action Limit (PAL) as basis for soil standards to protect groundwater pathway.

**Background:** Various people or interest groups interpret the use of PALs differently when applied to cleanups. As such, utilizing the PAL as a key assumption for the soil standard to protect groundwater again raises the issues related to this topic.

- Option:**
- 1) Reiterate the requirements of s. 160, Stats., and NR 140 for the requirement of not allowing groundwater to be contaminated above the PAL. The NR 700 Focus Group was unanimous in its endorsement of the use of PALs as the foundation for soil standards to protect the groundwater pathway.

**Recommendation:** Option 1

**Issue 10:** Exposure assumptions for the Direct Contact pathway.

**Background:** Comments state that we should use standard EPA assumptions instead of the assumption that were used to calculate the Table 2 values in the proposed version of NR 720.

- Options:**
- 1) Use EPA base assumptions, this will change the Table 2 values minimally and will provide a greater degree of widespread acceptance for process.
  - 2) Leave as presently written.

**Recommendation:** Option 1

**Issue 11:** Dilution attenuation factor difference between simple and simple plus.

**Background:** It has been pointed out in comments that the equation in the 'simple plus' is just a dilution factor, not a dilution attenuation factor as stated. Also the difference in having a 5 foot mixing zone for the table and a 10 foot for simple plus has caused confusion.

- Options:**
- 1) Reduce simple plus mixing zone to 5 feet and add sorption. This would be better in the clay sites than the larger mixing zone. It also would be more reflective of the retardation of compound migration in clay soils. This would begin to add consideration of the significance of the impact as allowed in NR 140.
  - 2) Leave equation as written in code with the ten foot mixing zone and change the reference to dilution factor instead of dilution attenuation factor.

**Recommendation:** Option 1

### NR 722 - Standards for Selecting Cleanup Actions

**Issue 12:** Proposed NR 722 is challenged for not adequately addressing the Spill Law, Environmental Repair Law and Solid Waste Recycling Law insofar as they require restoration of the environment.

**Background:** The key issue associated with these comments is whether or not treatment should be required if it is shown that treatment is economically feasible. Without requiring both evaluation and implementation of treatment options,

the requirement of these three laws are not being met, in the opinion of the commentators opposed to the chapter.

This issue has been the most controversial issue within the Focus Group and as reflected in the public comments received. The proposed version establishes a process and list factors which should be considered (all or some applied to the site) when determining the technical and economic feasibility of a remedial option. The chapter also states that the Department prefers that a destructive treatment remedial option be selected, but does not require it. The chapter does have specific requirements with respect to volume limitations (250 cubic yards) at non composite lined landfills.

Overall, the chapter was written to allow for flexibility when selecting a remedy, within a framework, to meet the needs of a specific situation at a site or facility.

**Options:**

- 1) Retain public comment version.
- 2) Seek adoption of September 1993 version which required treatment options to be evaluated and implemented, if feasible.
- 3) Remove chapter from package and continue debate.
- 4) In conjunction with Option 1, establish a schedule to revise the Solid Waste rules (NR 500) to address landfilling of contaminated soil. Attachment 14 provides additional information on the schedule to revise NR 500. The Focus Group advised that the environmental interests in promoting treatment would best be served by revision in the rules regulating landfills and other disposal practices.

**Recommendation: Option 4**

Please note that the Department intends to have a NR 500 rule revision schedule available by the Board meeting that will explain how the Department will proceed to address this issue.

**Issue 13:** The proposed volume limitation provides too many exceptions and as such, cannot realistically implemented.

**Background:** The proposed rule applies a 250 cubic yard disposal limitation for landfills that are not lined with a composite liner or a liner that is equivalent to a composite liner. It is fair to say that identifying and agreeing to what an equivalent composite liner is may be very difficult.

- Options:**
- 1) Remove the entire requirement from the code.
  - 2) Remove the language about "equivalent" composite liner from the code.
  - 3) Leave as written in the public comment draft.

**Recommendation:** Option 3; Please note that with the proposed NR 500 rule revisions to address landfilling of contaminated soil, this issue will again be evaluated in that context with the benefit of having some experience with this concept under NR 722.

**Issue 14:** The Focus Group raised concern about having to deal with two programs Emergency and Remedial Response (ERR) and Solid Waste Management (SWM) to receive approval for off-site disposal of treated soil that had been previously contaminated.

- Options:**
- 1) Leave NR 718, Management of Solid Waste Excavated during Response Actions as is.
  - 2) Revise NR 718 and via internal understanding, the ERR program will implement.

**Recommendations:** Option 2

## 8. Related Rule Amendments

Minor changes to several administrative rules are proposed as part of this rules package. Additions or modifications to ss. NR 110.26(10)(a), 150.03(6)(b)7 and (8)(e)20.e, 158.03, 158.05, 213.07, 214.08, 508.20(11), 635.17(1) and 685.05(1)(d) are

included in the proposed rulemaking. Two new sections, ss. NR 500.08(6) and NR 685.05(1)(f) are also created. These changes add references to the soil quality standards in ch. NR 720 to existing rules and revise language in existing rules to be consistent with the terminology of the NR 700 rules series.

9. Fiscal Impact

As required by Wisconsin law, any rulemaking must consider the fiscal impacts of a proposed rulemaking on local and county governments, as well as state agencies. Overall, the Department expects that there will be long-term cost savings, although short-term costs will probably increase as consultants and staff become familiar with the rule. Please refer to the Fiscal Impact, Attachment 2, for details.

10. Information on Environmental Analysis

The Department has concluded that the proposed rules are not a "major", new state action which requires an environmental impact statement, because the rules would not significantly affect the quality of the human environment. An environmental impact statement is not required prior to final, "non-major" action by the Department to adopt these rules. This determination is based on the analysis found in the Environmental Assessment, Attachment 3.

11. Small Business/Final Regulatory Flexibility Analysis

As previously discussed, the proposed rules will affect almost any site with environmental contamination. Small businesses, such as individually owned gas stations and agricultural cooperatives, are two types of small businesses that may have environmental contamination problems, due largely to past practices. These rules will provide a clear indication of what actions are needed and better define when a remedial action is complete and provide flexibility based upon the simple and complex site classification addition. Based on the analysis presented in the Small Business/Final Regulatory Flexibility Analysis, in Attachment 4, the Department believes the rules will not pose a significant, new economic impact on a substantial number of small businesses. This conclusion is based upon the fact that response actions are currently underway and the proposed rules codify existing practices and provide clarity by establishing compound specific, numeric soil quality standards.

To ensure that the proposed rules reflect the concerns of large and small businesses, public and private sectors, and other affected interests, the Department assembled the EAC to assist in drafting the rule series and a Focus Group of key individuals from the EAC and others involved in response actions to resolve the outstanding issues regarding Department review and oversight, soil standards and remedy selection.

12. Focus Group Report

During the last three months, the Focus Group and Department staff worked to resolve the key issues associated with the soil standards and remedy selection. In addition, the Focus Group discussed several other issues related to the implementation of the NR 700 rule series. The Focus Group Report can be found in Attachment 7 and discusses the following key issues:

- NR 1 - Land Use Statement - The Board should direct staff to develop a proposal, with external input, reflecting the Department's policy on land use issues.
- Offer to work with the Department of Industry, Labor and Human Relations (DILHR) and DNR to continue to improve the PECFA program.
- Statutory initiative to combine the Spill and Repair laws, with no changes to the substantive requirements in the existing laws.
- Restructure organization of the agency to reflect a single, comprehensive cleanup program.
- Continue to proceed with the statutory change to allow for less than immediate reporting of de minimis amounts of spilled hazardous materials in circumstances that are not likely to cause harm to the environment or public health or safety. Attachment 8 provides a draft of the proposed (most current) statutory language.

13. Tipping Fees for Landfilling of Contaminated Soils

The Board directed staff, as part of the public comment period to solicit input on whether or not the Natural Resources Board should endorse a proposal to amend the statutes to increase landfill tipping fees for the disposal of contaminated soil, debris and sediment and to promote to use the treatment recycling options. Many comments were received, in favor and opposition to this concept. Attachment 9 is a draft of a budget proposal which directs staff to continue to study this topic before making a recommendation to amend the statutes.

14. Ability to Pay Consideration for Remedy Selection

The Board directed staff, as part of the public comment period to solicit input on whether or not ch. NR 722 should be amended to include an analysis of the responsible party's ability to pay for the evaluation of the economic feasibility of remedial options. The majority of the comments received on this topic were opposed to the concept. From the staff's perspective, the issue creates implementation problems that the program is not capable of addressing, such as determining an individual's financial status. Based upon these factors and input, this concept is not being added to the proposed rule.

15. Comparison of the Proposed Rule to EPA Requirements

NR Code

EPA Regulations

NR 700 - Department Oversight

Not Applicable

NR 720 - Soil Quality Standards

No federal rules or regulations addressing soil standards exist. EPA is working on soil screening levels-triggers rather than standards. Program staff are involved in this effort along with several other states to assist EPA staff.

NR 722 - Remedy Selection

The National Contingency Plan (NCP) contains a remedy selection process for National Priority List (NPL) sites, commonly known as Superfund sites. The process requires treatment/permanent options to be evaluated and implemented, if feasible. If the NCP would be applied to sites, other than Superfund sites, then NR 722 is less stringent than the federal NCP.

16. Summary of Reports Mandated by the Proposed Rule

Attachment 13 lists the reports required by the proposed rule. Because chs. NR 708, 716, 724 and 726 were redrafted due to including discussions on simple and complex sites, the reports associated with those chapters are listed, though the reports are all currently in effect because those chapters were promulgated on May 1, 1994. The only new report is the remedial options report contained in ch. NR 722 - Remedy Selection. The report, from a general perspective, accomplishes the same as the Feasibility Study required at federal Superfund sites in accordance with the NCP.

## CORRESPONDENCE/MEMORANDUM

State of Wisconsin

Department of Natural Resources  
Bureau for Remediation and Redevelopment

DATE: October 12, 1998

TO: Natural Resource Board Members

FROM: George E. Meyer - AD/5 *George*

SUBJECT: Background Memorandum for the adoption of ch. NR 749 as a permanent rule pertaining to the collection of fees for Department activities under ch. 292, Wis. Stats.

1. Why is this Rule Package Being Proposed?

The 1997-99 Biennial Budget, (1997 Wisconsin Act 27) became effective on October 14, 1997 and contained a major initiative for the Remediation and Redevelopment (RR) Program in Brownfields cleanup and redevelopment. The 1997-99 Biennial Budget also authorized the Department to assess and collect fees by rule to offset the costs of providing assistance as set forth under the new budget. In order to help successfully implement the Brownfields initiative, the budget allocated 7 new program revenue positions to the RR Program which brings the total number of RR program revenue positions to 10.

On April 29, 1998 the Joint Committee on Finance approved motion #1202 which prohibited the Department from charging PECFA-eligible sites for any Department assistance needed for the purpose of receiving reimbursement under the PECFA program. The motion also converted 3 program revenue positions to PECFA SEG funding. On June 2, 1998 the Governor vetoed both of these provisions in their entirety. He also requested that the Department of Commerce include these fees as a PECFA-eligible expense and that the Department of Natural Resources promulgate the emergency fee rule no later than September 1, 1998. On July 24, 1998 Commerce issued a memo indicating that they intended to reimburse for case closeout decisions, certain types of "no further action" determinations and possibly several other requests for assistance.

On August 26, 1998 the Natural Resources Board adopted emergency order RR-43-98(E). On August 27, 1998 the Department issued Implementation Guidance for ch. NR 749 (see Attachment I) in order to help ensure consistent application of the new rule. NR 749 was promulgated on September 19, 1998 and the rule will remain in effect for at least 150 days and possibly as long as 270 days, if both 60 day extensions are granted.

In order for the Department to successfully implement the new Brownfields initiative, and in an effort to avoid an interruption in the collection of fees, the Department is proposing that the Board adopt ch. NR 749 as a permanent rule. This will allow the 7 new program revenue positions to be filled and these additional resources devoted to this effort as quickly as possible.

Adoption of ch. NR 749 Regarding Fees as a Permanent Rule - October 12, 1998.

2. Summary of the Rule:

Chapter NR 749 sets forth a fee schedule for services specifically requested by responsible parties, including such items as: off-site letters, limited liability letters, close out letters, requests for liability clarification, providing technical assistance, and other related activities.

In developing the fee table we utilized existing information on the average amount of time necessary to perform the specific review. For those items that are either newly added by the Biennial Budget (such as negotiated agreements and off-site letters) or those we typically do not receive a large number of submittals for review (such as development of alternative soil cleanup standards), we estimated the necessary Department review time.

3. How Does This Proposal Affect Existing Policy?

The RR Program has long relied on segregated accounts, such as the Environmental Fund as well as the Federal Leaking Underground Storage Tank (LUST) and Superfund Programs to provide funding to staff the program via grants and cooperative agreements. The 1997-99 Biennial Budget contained a major new initiative for the RR Program in the area of Brownfields cleanup and redevelopment. The Budget Bill authorized the Department to collect fees to offset the cost for much of the assistance that was previously provided by the RR Program as well as for the new services created in the budget.

4. Previous Board Involvement:

The Board was involved with a very similar issue when the Department developed ch. NR 750 regarding fees for implementation of the purchaser liability program as authorized by the Contaminated Land Recycling Law (1993 Wisconsin Act 453). The Board was also briefed and consulted during the downsizing of the LUST Program due to federal grant cutbacks. More recently, the Board authorized hearings on proposed ch. NR 749 at their March, 1998 meeting and adopted ch. NR 749 as an emergency rule at their August, 1998 meeting.

5. Who Will Be Affected by the Proposed Rules?

This rule will affect persons that request assistance from the Department including: municipalities, developers, lenders, prospective purchasers, industries and responsible parties.

Adoption of ch. NR 749 Regarding Fees as a Permanent Rule - October 12, 1998.

6. Fiscal Impacts:

It is difficult to estimate the overall fiscal impact of the rule for several reasons. First, payment of a fee is generally only required if the applicant specifically requests department assistance on a particular issue. Second, there are some types of "assistance" (e.g. Negotiated Agreements) that were added as part of the Budget Bill. Finally, no detailed information on the percentage of applications that will be submitted by local units of government was available. As a result, a qualitative evaluation was utilized during the development of the emergency rule.

7. Environmental Assessment:

This action is a Type III action under section NR 150.20 and does not require preparation of an Environmental Analysis or an Environmental Impact Statement.

8. Small Business Analysis:

The ch. NR 749 emergency fee rule has been in affect since September 19, 1998 and most of the submittals received thus far are case closeout requests, a majority of which are likely PECFA eligible. As discussed earlier, the Department of Commerce made the fees associated with case closeout requests and certain no further action determinations PECFA-eligible expenses, which should significantly help PECFA sites defined as a small business.

Further, initial discussions with representatives of the Dry Cleaning industry have led to a preliminary agreement that the Department will require responsible parties to obtain agency review of both site investigation workplans and remedial action options reports in order to be eligible for reimbursement from the dry cleaners environmental fund. The 2 SEG funded positions provided by the dry cleaners will be used to provide these reviews. Any other Department assistance requested would need to include the appropriate review fee. This should also provide important help to small businesses.

9. Hearing Summary:

As authorized by the Natural Resources Board in March, the Department held 4 public hearings on the proposed rule in April, as specified below:

| <u>Location</u> | <u>Date</u> | <u>Number Attending</u> |
|-----------------|-------------|-------------------------|
| Eau Claire      | April 13th  | 4                       |
| Green Bay       | April 14th  | 2                       |
| Waukesha        | April 15th  | 2                       |
| Madison         | April 16th  | 3                       |

Adoption of ch. NR 749 Regarding Fees as a Permanent Rule - October 12, 1998.

Of the 11 people that attended the four hearings, seven filled out appearance slips. The appearance slips indicated that 4 people were in opposition to the proposed rule, 1 was in support, and 2 indicated that they were attending as interest may appear. The comments received at the April public hearings have been incorporated into the responsiveness summary (see Attachment II).

10. NR 700 Focus Group Recommendations:

The Department has held 9 meetings with the NR 700 Focus Group (see Attachment III for the membership list) since beginning the rulemaking process in December, 1997. Based on the discussions at the last meeting on September 22nd and the response to the Department's follow-up letter requesting feedback on our proposed course of action, it appears that Focus Group members are not opposed to the Department pursuing promulgation of ch. NR 749 as a permanent rule provided that we continue to meet with the Group to determine what changes are necessary over the long-term.

**NR 749.04**

**Remediation and  
Redevelopment Fees**

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD CREATING RULES

SUSPENDED

The State of Wisconsin Natural Resources Board proposes an order to create NR 749 relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

RR-43-98(E)

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 227.11(2) and ch. 292, Stats.

Statutes interpreted: ch. 292, Stats.

This order creates ch. NR 749, Wis. Adm. Code which establishes a flat fee for persons requesting Department assistance under ch. 292, Stats. The 1997-99 Biennial Budget contained a major initiative in the area of Brownfields cleanup and redevelopment. The budget authorized the Department to collect fees, by rule, to offset the cost for much of the assistance currently provided and for the new services created in the budget.

In order to help successfully implement the Brownfields initiative, the budget allocated 7 new program revenue positions to the Remediation and Redevelopment Program which brings the total number of RR program revenue positions to 10. Promulgation of ch. NR 749 will allow the Department to devote these additional resources toward implementing this initiative.

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SECTION 1. Chapter NR 749 is created to read:

CHAPTER NR 749  
FEES FOR PROVIDING ASSISTANCE; REMEDIATION AND REDEVELOPMENT PROGRAM

NR 749.01 PURPOSE. The purpose of this chapter is to establish fees to offset the department's costs of providing assistance under ch. 292, Stats. The department's authority to impose fees is found in ss. 292.11(7)(d)2., 292.13(3), 292.21(1)(c)1.d., 292.35(13) and 292.55(2), Stats.

NR 749.02 APPLICABILITY. This chapter applies to persons seeking department assistance under ch. 292, Stats., except that those persons seeking department assistance under s. 292.15, Stats., shall comply with ch. NR 750.

NR 749.04 FEES. (1) When a person requests the department to review a document listed in Table 1, the person requesting this assistance shall pay to the department the applicable fees. A person may request that department assistance be provided in either written form or in the form of oral comments. Appropriate fees shall accompany all requests for specific department assistance. Department assistance will not be provided unless the applicable fee accompanies the request for assistance. These fees are not proratable or refundable.

**Note:** If the NR 700 series rules require that a document be submitted to the department, such as in s. NR 716.09(1), but the person does not specifically request a department review of the document, then a review fee is not required.

**Note:** The department has prepared a document which provides additional information and

guidance for implementing this rule. A copy can be obtained by contacting the Bureau for Remediation and Redevelopment, Public Information Requests, P.O. Box 7921, Madison, WI 53707.

(2) If the department determines that a request for assistance does not contain enough information to render an opinion, or that the request is incomplete or inaccurate in some other manner, the department will notify the applicant of the reasons for this decision.

**TABLE 1 - FEE SCHEDULE**

| Type of Letter or Assistance                            | Statutory Citation          | Fee    |
|---|-----------------------------|--------|
| Tax Cancellation Agreement                              | ss. 75.105(2)(d) and 292.55 | \$ 500 |
| Negotiated Agreements                                   | s. 292.11(7)(d)2.           | 1000   |
| Off-site Letters  | s. 292.13(3)                | 500    |
| Lender Assessments                                      | s.292.21(1)(c)1.d.          | 500    |
| Negotiation and Cost Recovery                           | s. 292.35(13)               | (a)    |
| General Liability Clarification Letters                 | s. 292.55                   | 500    |
| Lease Letters - Single Properties                       | s. 292.55                   | 500    |
| Lease Letters - Multiple Properties                     | s. 292.55                   | 1000   |
| Case Close-out Actions under ch. NR 726 (b)             | s. 292.55                   | 750    |
| Site Investigation Workplan                             | s. 292.55                   | 500    |
| Site Investigation Report                               | s. 292.55                   | 750    |
| Site Specific Soil Cleanup Standards; NR 720.19 Reports | s. 292.55                   | 750    |
| Remedial Action Options Report                          | s. 292.55                   | 750    |
| Remedial Design Reports                                 | s. 292.55                   | 750    |
| Operation and Maintenance Reports                       | s. 292.55                   | 300    |
| Construction Documentation Report                       | s. 292.55                   | 250    |
| Long-term Monitoring Plans                              | s. 292.55                   | 300    |
| No Further Action Letters under ch. NR 708 (c)          | s. 292.55                   | 250    |
| Other Technical Assistance                              | s. 292.55                   | 500    |

(a) Local governmental units in the negotiation and cost recovery process in s. 292.35, Stats., shall pay fees for each service requested.

(b) All requests for case closure need to be accompanied by the review fee in order to be considered complete.

(c) Immediate actions associated with spill cleanup activities, including department signoff on the spill reporting form, do not require a review fee.

**Note:** The department will not review Phase I or Phase II Environmental Assessments, unless they are part of the Voluntary Party Liability Exemption process in s. 292.15, Stats., or as part of a lender requesting this review in accordance with s. 292.21(1)(c)1.d., Stats.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 26, 1998

The rules shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin September 1, 1998

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**FISCAL ESTIMATE**  
DOA-2048 NR10/94)

**Subject**  
Fee Assessment Structure for Department Activities Under Wis. Stat. Ch. 292

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues
- Decrease Existing Appropriation       Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

Decrease Costs

**Local:**  No local government costs

- 1.  Increase Costs
  - Permissive     Mandatory
- 2.  Decrease Costs
  - Permissive     Mandatory

- 3.  Increase Revenues
  - Permissive     Mandatory
- 4.  Decrease Revenues
  - Permissive     Mandatory

5. Types of Local Governmental Units Affected:
- Towns       Villages       Cities
  - Counties     Others \_\_\_\_\_
  - School Districts       WTCS Districts

**Fund Sources Affected**  
 GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**  
20.370 (2) (dh)

**Assumptions Used in Arriving at Fiscal Estimate**

**SUMMARY OF RULE** - The 1997-99 Biennial Budget (1997 Wisconsin Act 27) contained a major initiative in the area of Brownfields cleanup and redevelopment. To enable the Department to implement the Brownfields initiative, the Legislature authorized the Department to promulgate rules to collect fees to cover the costs for much of the Brownfields-related assistance currently provided and for the newly-created Brownfields services, and the Legislature authorized 7.0 program revenue FTE for the Remediation and Redevelopment (RR) Program, increasing to 10 the total RR program revenue FTE. Promulgating Ch. NR 749 will allow the Department to devote these authorized resources to implementing the Brownfields initiative.

**FISCAL IMPACT -**

**I. Fiscal Impact to State Government** - The impact to state government is estimated as follows:

- A. Revenues - Table A (attached) contains the Department's estimate of the annual number of requests for assistance and the associated annual revenues. Based on the projected number of requests and the associated fees, the annual revenue is estimated at \$993,250/year.
- B. Expenditures - There are no increased Departmental expenditures associated with this proposal. The associated position and expenditure authority were requested in 1997 Wisconsin Act 27. There may be a cost to other state agencies if they specifically request Department assistance.

**II. Fiscal Impact to Local Government** - The impact to local government is estimated as follows:

- A. Revenues - None.
- B. Expenditures - Based on experience and existing information, applications from local units of government are estimated to account for approximately 10% of the applications received annually. This results in a total projected cost to local units of government of \$99,325/year.

**Long-Range Fiscal Implications**  
None.

Agency/Prepared by: (Name & Phone No.)  
Joe Polasek, 266-2794

Authorized Signature/Telephone No.  
*Joe Polasek by EE*      266-2794

Date  
7/24/98

**FISCAL ESTIMATE WORKSHEET**

1997 Session

Detailed Estimate of Annual Fiscal Effect  
 HOA-2047 (R10/94)

ORIGINAL     UPDATED  
 CORRECTED \*     SUPPLEMENTAL

|   |               |
|---|---------------|
| LRB or Bill No./Adm. Rule No.<br>NR 749 | Amendment No. |
|---|---------------|

Subject  
 Fee Assessment Structure for Department Activities Under Wis. Stat. Ch. 292

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
 None.

| II. Annualized Costs:                   | Annualized Fiscal impact on State funds from: |                 |
|---|---|-----------------|
|   | Increased Costs                               | Decreased Costs |
| A. State Costs by Category              |   |                 |
| State Operations - Salaries and Fringes | \$  | \$              |
| (FTE Position Changes)                  | ( FTE)  | (- FTE)         |
| State Operations - Other Costs          |   |                 |
| Local Assistance                        |   |                 |
| Aids to Individuals or Organizations    |   |                 |
| <b>TOTAL State Costs by Category</b>    | \$ 0  | \$ 0            |

| B. State Costs by Source of Funds | Annualized Fiscal impact on State funds from: |                 |
|-----------------------------------|---|-----------------|
|                                   | Increased Costs                               | Decreased Costs |
| GPR                               | \$  | \$              |
| FED                               |   |                 |
| PRO/PRS                           |   |                 |
| SEG/SEG-S                         |   |                 |

| III. State Revenues: Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Annualized Fiscal impact on State funds from: |                |
|--|---|----------------|
|  | Increased Rev.                                | Decreased Rev. |
| GPR Taxes  | \$  | \$             |
| GPR Earned   |   |                |
| FED  |   |                |
| PRO/PRS  | 993,250                                       |                |
| SEG/SEG-S  |   |                |
| <b>TOTAL State Revenues</b>  | \$ 993,250                                    | \$ 0           |

**NET ANNUALIZED FISCAL IMPACT**

|                        | STATE      | LOCAL     |
|------------------------|------------|-----------|
| NET CHANGE IN COSTS    | \$ 0       | \$ 99,325 |
| NET CHANGE IN REVENUES | \$ 993,250 | \$ 0      |

|   |   |                 |
|---|---|-----------------|
| Agency/Prepared by: (Name & Phone No.)<br>Joe Polasek, 266-2794 | Authorized Signature/Telephone No.<br><i>Joe Polasek by EE</i> 266-2794 | Date<br>7/24/98 |
|---|---|-----------------|

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TABLE A - ESTIMATED ANNUAL REVENUE GENERATION

| Type of Letter or Assistance                            | Estimated Number of Submittals | Fee     | Sub-total        |
|---|--------------------------------|---------|------------------|
| Tax Cancellation Agreement                              | 5                              | 500     | 2500             |
| Negotiated Agreements                                   | 5                              | 1000    | 5000             |
| Off-site Letters  | 75                             | 500     | 37500            |
| Lender Assessments                                      | 25                             | 500     | 12500            |
| Negotiation and Cost Recovery                           | 2                              | 1000(*) | 2000             |
| General Liability Clarification Ltrs.                   | 50                             | 500     | 25000            |
| Lease Letters - Single Properties                       | 20                             | 500     | 10000            |
| Lease Letters - Multiple Properties                     | 5                              | 1000    | 5000             |
| Case Close-out Actions                                  | 1000                           | 750     | 750000           |
| Site Investigation Workplan                             | 20                             | 500     | 10000            |
| Site Investigation Report                               | 20                             | 750     | 15000            |
| Site Specific Soil Cleanup Standards; NR 720.19 Reports | 40                             | 750     | 30000            |
| Remedial Action Options Report                          | 30                             | 750     | 22500            |
| Remedial Design Reports                                 | 10                             | 750     | 7500             |
| Operation and Maintenance Reports                       | 5                              | 300     | 1500             |
| Construction Documentation Rept.                        | 5                              | 250     | 1250             |
| Long-term Monitoring Plans                              | 20                             | 300     | 6000             |
| No Further Action Letters                               | 100                            | 250     | 25000            |
| Other Technical Assistance                              | 50                             | 500     | 25000            |
| <b>GRAND TOTAL:</b>                                     |                                |         | <b>\$993,250</b> |

(\*) Estimated cost for the services requested.