

January 20, 1999

The Honorable Judy Robson
State Senator
P.O. Box 7882
Madison, WI 53708-7882

Dear Senator Robson:

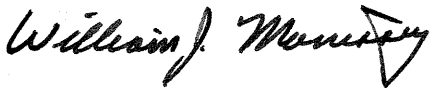
Thank you for your inquiry on the PECFA claims submitted by Art Fischer for Art's Service at 43 N. Wisconsin Avenue in Eikhorn.

We have two claim submittals to the PECFA program and that is why Mr. Fischer has received two letters from the program regarding review dates. The letters he received were not duplicates, but simply reflected the fact that there were two claims filed with the PECFA program.

The first claim received from Mr. Fischer is scheduled for payment in November of 1999. The second claim is projected to be paid in November or December of 2000. The significant delay in payment is unfortunately a function of the number of claims filed with the program and the dollar amount available each month for payments.

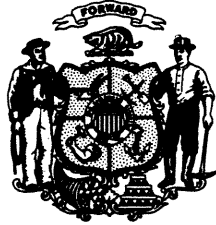
Again, thank you for letter and interest in the PECFA program.

Sincerely,



William J. Morrissey
Environmental & Regulatory Services Division

cc: Art Fischer



COPY

BRIAN BURKE
WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

January 13, 1999

George E. Meyer, Secretary
Department of Natural Resources
101 South Webster Street, 5th Floor
Madison, Wisconsin 53702

Dear Secretary Meyer:

Just a short note of encouragement to hold firm against pressures to weaken Wisconsin's groundwater protection laws under the guise of PECFA reform. While no one is openly advocating for a complete redraft of ch. 160, Wis. Stats., or NR 140, Wis. Admin. Code., there appear to be ideas of undermining the groundwater laws little by little in some people's heads. This is especially true, in my opinion, with respect to the application of site closure flexibility standards and the proposed overuse of natural attenuation.

I do not support giving Commerce control of all PECFA sites, there is obviously an important role for DNR to play here. Further, Commerce does not seem able to manage this type of large financial reimbursement program. Maybe it should be farmed out to a professional financial management firm. In addition, perhaps the state could take care of the cleanups and financing for small, family owned gas stations. They would just pay the \$7,500 or whatever and be done with it.

Lastly, I fail to understand why some factions are complaining so loudly about NR 700, Wis. Admin. Code, when it seems to work so well outside the PECFA program.

Thanks for your attention to my concerns.

Sincerely,

BRIAN BURKE
State Senator

Copy: Governor Tommy Thompson

STATE CAPITOL, POST OFFICE BOX 7882, MADISON, WISCONSIN 53707-7882

PHONE (608) 266-8535 OR 1-800-249-8173; FAX (608) 267-0274

Recycled Paper

PECFA Risk Assessment

Status of Risk Assessment Protocol

1. COMM 46 (MOU codified as an emergency rule) calls for development of a risk assessment protocol.
2. Protocols being developed for clay, silt and sandy soils.
3. General Criteria/Protocol for all sites:
 - Immediate closure at all sites with contamination below the enforcement standard.
 - Immediate closure of sites in non-developable aquifers that meet certain parameters (*developable aquifer yields at least 0.1 gallons per minute, excluding bedrock, determined by an open bore hole*).
 - Contamination above direct contact exposure values deeper than 4 feet from the surface does not constitute a direct contact threat.
 - Off-site contamination must be reduced to ES prior to closure, or off-site owner must agree to register property on GIS.
4. Clay Site Protocol
 - Meets NR 716 site investigation parameters regarding ES exceedences in any underlying developable aquifer.
 - Protocol:

Concentration of Contamination	Risk Factors	Contaminant Separation in Soil from top of Non-Developable Aquifer	Outcome
Below ES	None	At least 1 meter	Immediate closure
30 times ES within the property boundary and decreasing toward deeper levels	None	N/A	Immediate closure
Greater than 30 times ES within the property boundary	None	N/A	Remedial action – target is 30 times ES



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Motion Form

Last Modified January 1999

Date 1/29/99 Location 417 North
Moved by Grothman, Seconded by Welch

THAT, the Joint Committee for Review of Administrative Rules alters its December 29, 1998 deadline of 5:00 p.m. on February 1, 1999 to 5:00 p.m. on February ~~1~~ 29, 1999 relating to the conditional suspension of IHLR 47, Wis. Adm. Code, adopted on December 29, 1998
Comm 259

~~Unless risk protocol includes the following~~

John of 4/25/99

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBILSKI	✓		
4. Senator WELCH	✓		
5. Senator DARLING	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals	10	0	

Motion Carried

Motion Failed

Comm 47

Motion to rescind notion to suspend.

Talking Points

This attacks the wrong rule.

The rule forces sites to bid for the project.

This rule is one of the few things the agencies have done right—cost control.

Wouldn't it be ironic if JCRAR suspended the one area of PECFA that actually works well.

Comm 47 has saved \$4.4 million dollars in the first month it has gone into effect.

NR 749.04

Do not support motion to suspend!

This rule has nothing to do with cost controls or risk assessment, it is merely a punitive means to punish DNR and Commerce for not complying the way we would like.

We should really go after the Gov. for being so irresponsible (see below).

Legislative Reaction to the Executive Branch

Pass a motion to ask Joint Committee on Legislative Organization asking for authority to investigate the possibility of bringing legal action against members of the executive branch for not complying with the Executive Action of the JCRAR.

Talking Points

The Governor and the Executive Branch is required under the law to respond to the requests of JCRAR, under the legal authority given to them in §227 of the Wisconsin State Statutes (Refer to Ron to expand).

Allows us to make it clear to the Gov. we mean business.

Suspending the NR 749 will not go after the person holding up the rule, this will.

Puts the issue of culpability on the lab of the governor.

The Governor and his administration could have given us rules to save as much as \$100 million before the budget passes, apparently they aren't interested in saving the integrity of this program.

SENATOR JUDITH B. ROBSON
CO-CHAIR

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REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Motion Form

Last Modified March, 1999

Date: March 25, 1999

Location: Wisconsin State Capitol, Room 201 SE

Moved by **Robson,**

Seconded by **Grothman,**

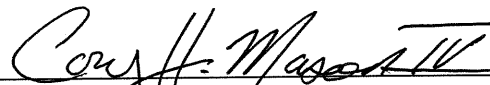
THAT, pursuant to § 227.19(4)(d), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the suspension period of **COMM 47** by 36 days.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI	✓		✓
4. Senator WELCH	✓		
5. Senator DARLING	✓		✓
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals	10	0	2*

Motion Carried

Motion Failed

* Roll was left open and the votes were cast by phone.


Cory H. Mason IV
Committee Clerk

PECFA Questions on Comm 46

JCRAR PH
3-25-99
201 SE

Question #2 (page 1-2)

Your answer gives definitions to two terms. You make reference to the first definition in another part of the administrative rules and then simply define the second. Why aren't these terms included in the definition section of Comm 46?

Question #3 (page 2)

Question 3 asks what the timeline is for developing the methodology for expanding plumes of contamination. Your answer is next July. If the public health and safety is involved, wouldn't this be something DNR should handle?

Why should we trust you to move forward until we know what the standards will be?

[You should be very uncomfortable about moving forward on this rule until we know what this protocol is]

Question #7 (page 3-4)

Question 7 asked if these standards were above numeric standards in Michigan and in the EPA. It seems clear that the standards for Ethylbenzene, Toulene, and Xelene are far above Michigan and Wisconsin standards. Why is that? Do you honestly believe that these numbers reflect the protection of public health and safety?

Has the DHFS been consulted in the establishment of these values?

Aren't the purposes of these numbers to protect people from contact, are there other purposes at play here?

[The numbers they put in here are so high it almost guarantees Commerce will get all of the sites. We should fight this tooth and nail.]

Question #12 (pages 5-6)

Question 12 asks when remediation targets will be established and by whom. What is the status of the remediation targets? Where are they? Who is setting them, and when will they be set?

It seems that the driving force here is cost controls at the expense of remediation and fixing the problem of the sites.

Are we offering bids to go forward with out remediation standards in the competitive bidding process? If so, why!?

Question #17 (page 8)

Question 17 says that all of the sites that are under the ES sites go to Commerce. How many is that? Won't it be most of them since the ES standards are set so high?

If you want to be really cynical:

Aren't the ES levels set so high in an effort to close the sites with a blatant disregard for public health so that you can contain costs and close sites?

General Closing Question:

WHEN ARE THEY GOING TO BEGIN WORK GROUPS ON THIS!!!

MAKE THEM COMMIT TO WITHIN TWO WEEKS FROM NOW.

JCRAR 3-25-99

Notes

Joanne Kloppenberg, DoJ

Does Comm 46 comply with 160 was the question she was asked?

Lack of clarity. You could tell the drafting attorneys from the departments were not consulted. Makes it difficult to defend the agencies in court when the rules are poorly written.

Developable groundwater term violates the spirit and maybe the letter of 160.

Enforcement standards must be monitored off and on site to comply with 160.

The remaining of 46 allows enforcement to go above off site and on site in some cases.

The risk criteria could be consistent, but there is no way to tell how it would be enforced.

Section 46.06 2e violates 160 as well.

Closure provisions that allow exceedences that violate 160.

None of these provisions provide that if there is an ES exceedence that it will result in coming into compliance.

She needs to know how this is different from NR 726

Robson: Talk about defending the depts.

Bad rules are often referred back to the depts. for fact finding.

Grothman: Can you use natural attenuation as a means of closure and be in compliance with 160.

Kloppenberg: No.

Grothman: What parts again are inconsistent?

Kloppenberg: Risk factors, remediation targets, and closure standards.

Grobbschmidt: Another way of what you are saying is that these rules lack the statutory authority.

Kloppenberg: Yes.

Kloppenber: Yes.

Seratti: Is much of what you are saying open to interpretation?

Kloppenber: No, she would use the language in NR 726.

Robson: What would you recommend they do?

Kloppenber: Have attorneys work on the rule. Require some showing with 160 when they write the rule.

Robson: How would it happen that you have to defend the agency?

Kloppenber: Consultants sue, neighbors of sites could sue the state as well.

Robson: Because the rule is so poorly written, how does that leave you in terms of a legal position?

Kloppenber: It is always better to have rules clarified and consistent with statutes at the front in them. Many closures do not include finding of fact or compliance with the law.

Grothman: Is water in non pottable groundwater in clay soil under this as well.

Patrick McCuthchen, DNR
Bill Morrissey, Commerce

Program people at Commerce and DNR were involved in drafting the rules.

Robson: Were attorneys involved at all or in discussing compliance?

Comm: The structure was not built around 160, but around risk standards that comply under 160.

Robson: Do you believe that Comm 46 has the statutory authority it needs to be in compliance with 160?

Comm: Obviously statute cannot be overwritten by rule.

Black: Do either of you have a legal background?

Comm: Business background
DNR: Hydrogeology

Grothman: Is there moisture in the ground that could be considered part of the groundwater law that doesn't apply to 160?

Comm: Yes they are called aquatards.

DNR: In most situations you can put in a well and get water.

Grothman: Do you feel that compared to other neighboring states there is significant compliance?

DNR: There is a difference because they write off entire systems and areas of the state.

Robson: Would you now address their questions and answers.

Robson: Can you write this in compliance with in 160 and have your attorneys look at it?

Commerce: Attorneys reviewed the rule and signed off on it. I don't think we can concede to the DOJ concerns and still do this rule.

DNR: We can look at this rule and modify it to address the concerns DOJ brought up.

Seratti: Why didn't you figure this out before you brought this forward? Please bring your legal staff next time.

Welch: This is a fine rule. If the AG wants it this way, he should introduce a bill.

Black [to Welch]: I think your comments are unfair. The DoJ has to go to court and defend this stuff. You weren't even here to hear her initial testimony. And if that is really what you want, you should reinstall the Public Intervenor.

Welch: I want 726 to go to 46 not the other way around.

Seratti: What is the directive we are giving here? Is it based solely on the DoJ attorneys.

Robson: Obviously they haven't even consulted attorneys. I would like them to do that. Before we spend any more time on this I would like to know we comply with 160.

John Alberts, Commerce
Jay Hochmuth, DNR

Alberts: Yes we will include the attorneys. If you recall, RBCA will not work here under 160.

Want to move 46 to a funding measure instead of closure.

Robson: You will include DOJ?

Alberts: Yes.

Hochmuth: Wants to clarify. DNR attorneys were consulted. However, there is new information available from the DOJ and we will consult with our attorneys about that.

This is an ER and is a work in process. But they believe it is legal.

Robson: When are you going to create work groups?

Hochmuth: We need to decide the scope and schedule of the permanent rule as well as an advisory committee.

John Robinson
WI Water Well Association

Too many questions that are too vague and they do need to be cross-referenced to 160 and NR 726.

Please continue to work through the legal issues.

An aggressive education program has to come into play after the rule is promulgated.

AERC Snapshot Survey No. 3 - Preliminary Results

May 27, 1999

	Yes	No	Don't Know
Is there any evidence of a drinking water well being impacted at or above NR 140 PALS?	11%	70%	19%
Is the site located in an area served by a public water supply?	73%	24%	3%
Is there any evidence of any petroleum vapor impacts in utility corridors or confined spaces?	0%	70%	30%
Is there currently any measurable free product (>0.01') on the site?	16%	65%	19%
Has an on-site NR 140 enforcement standard exceedence been documented?	76%	8%	16%
Has an off-site (not including road rights-of-way) NR 140 enforcement standard exceedence been documented?	14%	54%	32%
Has an off-site (including road rights-of-way) NR 140 enforcement standard exceedence been documented?	24%	46%	30%
Based on what you know of the ASTM RBCA process, would this site be closable now if that process was being used instead of NR 700?	35%	27%	38%

Prepared by Boyd N. Possin, P.G.

Environmental Compliance Consultants, Inc.

Green Bay, WI

920-434-5023

bnpassin@eccinow.com

PECFA ACCOUNTING AS OF 04/30/99

PECFA Chapter 20 Allotment Authority for FY9 (7/1/98-6/30/99)	94,131,700.00
FY9 Expenditures	78,169,651.06
Remaining PECFA FY9 Spending Authority	15,962,048.94
Month End Expenditures	7,198,565.33
Month End Payments	100
Total FY 9 Payments	1,221

Breakdown of Claims Paid:

Commercial UST	4963	568,932,223.48
Home Heating	864	4,810,006.87
State Order	7	179,606.85
Aboveground	244	38,912,048.24
Terminal	5	1,115,033.57
VTAE	3	152,015.97
School	136	3,290,044.87
Farm (under 1,100 gallon)	65	2,139,707.38
Tribal Trust Lands	1	16,321.19
Total Occurrences Paid	6,288	\$619,547,008.42

*Add 266 million in
house NOT paid (880 mil)*

Total Number of PECFA Sites (including those not paid)	<i>326 New Sites Added Since 12/31/98</i>	13,052
Dept of Commerce Occurrence Closures (7/1/96-Month Ended)		1,887

55.3%

Dollars Paid On PECFA Occurrences						
Open and Closed Month Ending 04/30/99						
OPEN				CLOSED		
Cost Range	# Sites	Amount Paid	Average	# Sites	Amount Paid	Average
1-50,000	1033	\$ 27,072,536.01	\$ 26,207.68	2557	\$ 40,539,097.93	\$ 15,854.16
50,001-100,000	546	\$ 39,118,710.16	\$ 71,645.99	392	\$ 28,408,196.41	\$ 72,469.89
100,001-150,000	291	\$ 36,225,648.29	\$ 124,486.76	160	\$ 19,347,220.54	\$ 120,920.13
150,001-200,000	214	\$ 37,309,398.23	\$ 174,342.98	98	\$ 16,802,917.62	\$ 171,458.34
200,001 >	790	\$ 292,442,267.30	\$ 370,180.09	207	\$ 82,153,288.28	\$ 396,875.79
TOTAL	2874	\$ 432,168,559.99	\$ 150,371.80	3414	\$ 187,250,720.78	\$ 54,847.90

Prepared By: Carol Klewin

*9638 Active Sites - No claims yet
Received for 6434 Sites*

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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified March, 1999

Date: May 27, 1999

Location: 417 North; GAR Room; Wisconsin State Capitol; Madison, WI

Moved by Welch, Seconded by Grothman

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of **Emergency Rule COMM 46** by **60 days**, at the request of the Department of Natural Resources and the Department of Commerce.

Amend to 30 days

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator SHIBLISKI	X		X
4. Senator WELCH	X		
5. Senator DARLING	X		
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		X
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Motion Form

Last Modified March, 1999

Date: May 27, 1999

Location: 417 North; GAR Room; Wisconsin State Capitol; Madison, WI

Moved by _____, Seconded by _____

THAT, pursuant to § 227.19(1)(b), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the delayed effective date of suspension of **Administrative Rule COMM 47** by **30 days**.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator SHIBLISKI	X		X
4. Senator WELCH	X		
5. Senator DARLING	X		
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		X
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

Motion Carried

Motion Failed

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Motion Form

Last Modified September 1999

Date 9/22/99 Location Rm 201 SE, State Capital
Moved by Welch, Seconded by Gunderson

THAT, pursuant to § 227. 26(2)(b), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules

~~111~~ Comm 46

Agencies required to put policy in rule form.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON			X
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			X
4. Senator WELCH	✓		
5. Senator DARLING	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals	8		2

*by polling

Motion Carried Motion Failed

Comm 46 by itself not sufficient - needs
to be done w/ budget.

Order to promulgate rule.

~~Weds Han Gina Derrick Champion~~
~~WI Nurse Assoc~~
~~re Nurse Compact Bill~~

→ talking points for IR re
nurse compact

Comm 46 -

regular rule, not emergency rule
(standing comte, not JCRAR)

Jay Hochmutz, DNR

7-9521



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

October 11, 2000

George Meyer, Secretary
Department of Natural Resources
101 South Webster Street
Madison, WI 53707-7921

Dear Secretary Meyer:

The Joint Committee for the Review of Administrative Rules met in Executive Session on October 11, 2000 and adopted the following motion:

Comm 46/NR 746

Relating to PECFA.

Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of Comm 46/NR 746 by 60 days, at the request of the Departments of Commerce and Natural Resources.

Ayes: (9) Representatives Grothman, Gunderson,
Black and Kreuser ; Senators Robson, Grobschmidt,
Shibilski*, Schultz and Welch.

Noes: (0)

Absent: (2) Senator Shibilski, Representative Seratti

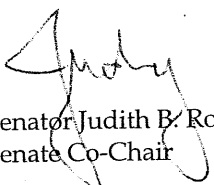
Motion Carried: Extension Granted.

9 Ayes, 0 Noes, 2 Absent.

*voted by paper ballot

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

October 11, 2000

Room 225 Northwest, State Capitol Building

Moved by Grothman, Seconded by Welch

THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule Comm 46/NR 746 by 60 days, at the request of the Departments of Commerce and Natural Resources.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			✓
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI			✓
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

CORRESPONDENCE/MEMORANDUM

Publication No. RR-605

DATE: August 27, 1998

TO: All Remediation and Redevelopment Staff

FROM: R&R Management Team *Mark Gordon*

SUBJECT: Implementation Guidance for ch. NR 749.

The purpose of this memo is to provide you with guidance to help implement ch. NR 749, which was approved by the Natural Resources Board on August 26, 1998 and should become effective in early September. This guidance attempts to answer all of the major questions raised during the development of this rule. As issues come up that are not specifically addressed in this memo, we would encourage you to discuss them with your supervisor and if appropriate, please forward them to Mark Gordon who will be supplementing this guidance on an as needed basis. We are also working on a separate memo on how to process the checks we receive, which should be available shortly.

1. Question. When is a fee required?

Answer. In general, a fee is required anytime that a person specifically requests the Department's review of a document.

2. Question. Do we charge a fee when the code requires that a specific document be submitted?

Answer. No. A note was added to s. NR 749.04(1), which states that we do not intend to charge a fee if an applicant is simply submitting a document to satisfy a particular code provision.

3. Question. Do we charge a fee when the Department chooses to review a document?

Answer. No. If the Department decides to review a document, such as a site investigation workplan that was submitted to satisfy the requirements of s. NR 716.09, a review fee is not required.

4. Question. Do all requests for case close-out need to be accompanied by a review fee?

Answer. Yes. Section NR 726.05(1) indicates that: "...responsible parties or other interested parties may request that the Department close the case after compliance with all applicable State and Federal health and environmental laws has been achieved." Therefore, if a request for case close-out is submitted, the \$750 review fee must be included in order for the request to be considered complete. There is a note following the Table in s. NR 749.04 that specifically indicates all requests for case close-out must be accompanied by the appropriate fee.

Implementation Guidance for ch. NR 749 - August 27, 1998

5. Question. Does the Department charge a fee for technical assistance provided over the telephone?

Answer. In general we should not be charging people for the assistance we provide over the phone. For example, general questions on the scope or implementation of the RR Program, requests for information, interpretation of existing rules or guidance, as well as most site specific questions are the types of information we should continue to provide without the need for someone to first pay a fee.

However, the rule indicates that the person paying the fee can request that assistance be provided verbally. Therefore, if a responsible party submits a report and specifically requests a response by phone, we should provide our comments as requested after we have received the review fee. Under this scenario, a brief note should be sent to the file that generally summarizes our major comments.

6. Question. Should we charge for meetings and if so, under what conditions?

Answer. Consistent with the previous question, we should generally not be charging people for time spent in a meeting to discuss general program issues. If a meeting is requested in conjunction with our review of a document, or as the mechanism for the Department to provide their review comments and the review fee has been paid, then we should make an attempt to meet with the applicant as part of providing the assistance requested. We need to be careful not to allow an applicant to attempt to utilize one or more meetings to obtain formal Department review comments on a document for which they have not paid a review fee.

7. Question. When someone pays a review fee, what type of response should be provided?

Answer. In most cases, a letter should be sent to the applicant which contains the Department's specific comments on the document. The letter should provide an indication of whether the document is: 1) acceptable as submitted, 2) acceptable with the need to consider specific comments, 3) acceptable only if certain modifications are made or 4) unacceptable as submitted.

As discussed earlier, if the applicant specifically requests verbal comments (either by phone or through a meeting) we can provide our response in this manner although there should be documentation of the major comments provided with a note to the file. If the type of assistance is not specified we should consult with the applicant to determine the type of response they are expecting.

Implementation Guidance for ch. NR 749 - August 27, 1998

8. **Question.** If a submittal is rejected or needs a significant amount of additional information in order for us to approve the document or provide meaningful comments, do we charge another review fee?

Answer. This was one of the most controversial issues in developing the NR 749 fee rule. We had originally included a provision that allowed the Department to charge another fee each time a request for assistance did not contain the necessary information to allow a final decision to be made. The intent of this provision was to encourage applicants to submit complete documents the first time. Ultimately, we decided to drop this provision from the emergency rule in order to reduce the number of controversial issues. We did indicate to members of the NR 700 Focus Group that we would like to have additional discussions on the mechanism for obtaining complete and accurate submittals during development of the permanent rule. Given this change, if an applicant has already submitted a review fee, then Department review of any subsequent submittals is included in the original fee.

9. **Question.** How are requests for Department assistance handled if they are submitted prior to the effective date of the rule?

Answer. Those requests that are submitted prior to the time that the rule becomes effective are not required to include a review fee. If however, the request can not be approved without a significant amount of additional information, then the applicant should be notified that if the necessary information is submitted after NR 749 if effective the appropriate review fee must be included.

For example, there are currently a significant number of case close-out requests that, following our review, are determined to be incomplete or not approvable as submitted. If an applicant needs to gather a significant amount of additional information which is then submitted after NR 749 becomes effective, then the \$750 review fee would need to be included with the supplemental information.

10. **Question.** Should we waive the fees if a review takes less than a specified amount of time?

Answer. No. As part of the discussions leading to the development of the flat fee approach, it was recognized that there would be instances where the actual review time could be significantly less than the amount of time typically needed to process the type of application submitted. Utilizing a flat fee approach does not require that the specific number of hours for each case be tracked. As a result, a waiver of the fees for those projects that are processed more quickly is not included in the rule.

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11. Question. Do we charge separate review fees if several reports are submitted concurrently?

Answer. If, for example, a site investigation report is submitted along with an evaluation of remedial alternatives or if a request for a site specific RCL is included along with a case close-out request then only the higher of the two fees must be submitted. In both of the examples cited above a single fee of \$750 would be required.

12. Question. Should we require that fees be paid when we need to issue an order to a responsible party to compel a cleanup?

Answer. If the Department needs to issue an order, we should include a provision that requires certain critical submittals receive Department review and concurrence before the responsible party proceeds ahead. The order should also specify that the submittals include the appropriate review fee. In general, we should be requiring that site investigation workplans, site investigation reports, remedial action options reports, and case close-out requests be submitted for Department review.

13. Question. Do the fees in NR 749 apply to requests for liability exemptions from voluntary parties?

Answer. NR 749.02 specifically indicates that persons seeking Department assistance under s. NR 292.15, Stats., which is the section entitled: "Voluntary party remediation and exemption from liability", shall comply with ch. NR 750. This means that as in the past with prospective purchasers, a voluntary party would need to submit an application along with the \$250 fee. If the Department determines that the applicant meets the definition of a voluntary party then a site specific activity code would be established, the appropriate advanced deposit would need to be submitted and the applicant would be billed on an hourly basis as set out in ch. NR 750.

14. Question. What fees does the Department of Commerce intend to reimburse to PECFA eligible sites?

Answer. On July 24, 1998 the Department of Commerce sent a memo to DNR which basically indicates they will reimburse fees associated with case close-out requests and potentially no further action requests under NR 708. They also stated that they may be willing to reimburse for two other options including: 1) requests for a reduction in monitoring, and 2) requests for a reduction in reporting frequency and complexity. The specific memo from Commerce is attached.

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15. Question. How do the review fees apply to PECFA sites that are proceeding to complete their cleanup for under \$80,000?

Answer. We anticipate that only a very limited number of groundwater impacting sites will attempt to follow these provisions. If a site wishes to pursue this approach it is likely the only review fee we will charge for is their request for case close out. However, if they request Department assistance for other documents they would pay the appropriate fee.

16. Question. What happens if someone submits a Site Investigation Report and requests Department review, and then following our review we determine that the site should be handled by Commerce?

Answer. For the vast majority of cases, PECFA sites will not be requesting Department review of a site investigation report since the fee is not a PECFA eligible expense. If we encounter this scenario, we should return the fee and transfer the site to Commerce in accordance with the provisions in the PECFA MOU.

17. Question. Do we charge a fee for closing out a spill case under the provisions in NR 708?

Answer. If a responsible party implements an immediate action under ch. NR 708 and the Department determines that no further action is necessary through our signoff on the spill reporting form, then no review fee is required. If however, the responsible party requests a formal letter documenting our decision that no further action is needed then the \$250 fee must be submitted. Language covering this scenario is included as a footnote following the Table in s. NR 749.04.

18. Question. Do we charge a fee for requests for approval of a Landspreading Plan under ch. NR 718, or for infiltration/injection proposals under ch. NR 812.

Answer. Yes. The review time typically needed for both of these types of submittals can be significant. Therefore, if an applicant requests approval of either proposal we should indicate that the \$500 fee for "other technical assistance" should be submitted.

19. Question. Do we charge a fee for review of NR 141 exemption requests?

Answer. No. The time needed for review of these requests is typically not significant and as a result a fee should not be assessed.

MEMORANDUM

DATE: July 24, 1998

TO: Jay Hochmuth

FROM: John Alberts 

SUBJECT: PECFA Reimbursement of DNR Review Actions

You have presented the Department of Commerce with a question on the extent to which PECFA will reimburse for fees charged under the proposed DNR emergency rule for the "collection of fees for Department activities under ch. 292, Wis. Stats". I hope that this memo resolves at least some parts of your question.

A review of the fee package leads us to believe that only the fees for "case close out action" and "no further action letters" are potentially reimbursable under PECFA. I emphasize potentially eligible because, especially in the case of no further action letters, the claimant may not reach their deductible. Although they may have had a release, performed some remedial action, and paid a fee for a no further action letter, they may not have incurred enough cost to exceed their deductible. Consequently, a review fee would not end up being reimbursed. Additionally, we will only reimburse for one closure letter for an occurrence. If an owner receives one letter and then chooses to seek a second, less restrictive closure, the second review would not be reimbursable.

Although there is a fairly extensive list of fees presented, our overall conclusion is that the remaining items are not core to the PECFA program's efforts to control costs. In addition, the other reviews detailed are elective on the part of the claimant and, consequently, the owner should make the decision on whether the expenditure of personal funds balances against the value achieved through a review.

The potential for these remaining reviews, to be of assistance in controlling PECFA costs, is greatly reduced by the DNR's official position that you have no ability to require an owner to do less on a site than what they propose. (Assuming that what they propose will result in a remediation.) This acknowledgement that the remaining reviews will not be an avenue for cost control, leads us to the conclusion that they should not be part of the PECFA reimbursement schedule.

The list of fees, that the DNR has established, is extensive but we see areas that are, unfortunately, missed. Some of these could be of benefit to the PECFA program. Two examples of DNR reviews that we would like to see are:

- "Review of proposals for reduced sampling" a review where the number of sample points and the frequency of sampling is reduced based upon site specific conditions in order to reduce unnecessary work and cost.
- "Review of reporting frequency and complexity" a review where the frequency, detail and format of reporting are reduced to reflect true site conditions, timelines and real information needs.

The fee package being advanced by the DNR is the responsibility of your agency and, consequently, what is reimbursable by PECFA should not be the major issue in the creation of the package. I understand, however, your interest in information on which fees might be eligible for PECFA reimbursement. I hope that his memo has been helpful in answering your questions.

cc D. Schmiedicke

Jan 19 1999

State Senator
Robert T. Welch,

JAN 20 1999

Dear Sir:

Received your letter of Dec 30 '99 and greatly appreciate what you are doing to expediate payment to landowners for Environmental Clean-up.

We have been involved in this clean-up operation since April 3, 1990 when our gas-tanks were removed. This has been a constant worry for us for these many years and has taken its toll on my husband's health.

My husband is 82 and I am 75, we had hoped these years would be happy ones of retirement, but find we are still under the pressure of this clean-up program and our only hope is that it will be completed before we die so that it is not passed on to our children.

We are caught between "a Rock and a hard place" — our property cannot be sold, as the bank will not release it until payment has been made to them from PECCA.

We are not complaining, as we are very thankful that we live in Wisconsin and the United States of America, we have been "Blessed" in many ways, but only hope that you can help find an end to this problem that many small business owners have been experiencing these past years.

(over)

Thank you for your concern and whatever you can do.

Very Sincerely,

Jean + John Sitterle

(Former owners of Johnny's Standard Service - Wautoma, Wis. Closed our business Nov 1994, removed Shop + Garage Building in order to further the Clean-up operation in 1998. Had been in business 48 yrs.) (Mar)



January 14, 1999

Senator Bob Welch
P.O. Box 7882
Madison, Wis.
53707-7882

JAN 19 1999

RE: Reformulation of the Petroleum Environmental Cleanup Program (PECFA)

Dear Senator Welch,

My name is Kevin Cooper. I am president of Cooper Environmental Resources (Cooper) West Bend, Wis. I have been in the environmental cleanup business for 14 years. I started Cooper Environmental May 1, 1990. My Pecfa registration number is 00178. The company's Pecfa registration number is 00058. I am a licensed professional geologist as well as a certified hazardous waste manager (CHMM).

I applaud your efforts at trying to restructure the States pollution laws. A risk based approach should have been indoctrinated into State Statue many years ago. The issue of trying to formulate an understanding between PECFA and DNR doctrines is difficult at best. To a layman PECFA's monetary remorse is due solely to the DNR's extravagant cleanup standards. My view of the subject is that there is plenty of blame that should be cast upon Pecfa itself. I will attempt to describe the inner workings and philosophy of the Pecfa system in the vernacular of a person that has been "in the trenches"

The Pecfa department has decided that the claim submittal process is far more important than the final outcome of the cleanup process. The Pecfa department is trying to shoulder their monetary shortcomings onto the consultant. Individual claims reviewers can and do whatever they want without any accountability. There is no apparent chain of command. There is no apparent consistency between claim reviewers. Individual claim reviewers are given the unbridled authority to deny Pecfa claims in there entirety or portions of work at there discretion. The advisarial stroke of a claim reviewer's pen destroy's peoples lives. The Pecfa staff can and does whatever it wants without reproccussion or remorse. Because the Pecfa claim review process is so onerous and unpredictable the consultant is forced into a guessing game. The result of Pecfa's irrational and unpredictable behavior is that work is done in an overly conservative manner. Pecfa is there own worse enemy.

There is absolutely no communication between Pecfa staff and cleanup professionals. The system has denigrated to adversary, mistrust and at times hatred. Lengthy court battles occur when claim reviewers deny costs. More often than not dissapprved costs fall into the realm of capricious and arbitrary. There is no minimum standard of training or experience required to be a Pecfa claim reviewer. If a claim reviewer doesn't understand a process or the procedures that occurred on a cleanup site they quite simply deny the costs. The site owner is left holding the shortfall and accumulated interest until an appeal is heard by an administrative law judge. The appeal process usually takes 14 - 18 months.

Jan. 14, 1999
Senator Welch
Page 2

In Pecfa's eyes it's easier to assume that all consultants are dishonest. Pecfa's normal course of action is to encourage site owners to sue their consultant for any cost denials. The basic fact of the matter is that the claim reviewers can and do whatever they want without any modicum of reason, logic or accountability. The Pecfa system is out of control.

I recommend that the entire Pecfa reimbursement system be put on hold. The Pecfa system is destroying peoples lives. Draw a line in the sand. Do not continue until Pecfa's management philosophy is changed. Do not allow the Pecfa people any more power without the assurance that they will start treating the people of the State of Wisconsin with dignity and respect. The present management and especially their legal consul have acted in an unbridled fashion long enough.

Sincerely,



Kevin Cooper
President, Cooper Environmental and Engineering