



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #535

### PECFA Program Sunset (Natural Resources -- Environmental Quality)

[LFB 2019-21 Budget Summary: Page 309, #15]

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#### CURRENT LAW

The Department of Natural Resources (DNR) administers the petroleum environmental cleanup fund award (PECFA) program, which reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil systems. The amount of reimbursement varies from 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 PECFA awards appropriation is one of several appropriations funded from the segregated (SEG) petroleum inspection fund, which receives revenue from a 2¢ per gallon petroleum inspection fee. The Department of Agriculture, Trade and Consumer Protection (DATCP) inspects all petroleum products brought into the state, including gasoline, diesel, and heating oil. The Department of Revenue (DOR) collects the fee. The fund also receives revenues from inspection and plan review fees for bulk petroleum tanks, and interest income on the fund balance.

The state paid the first PECFA awards in 1988-89. Claim levels increased during the 1990s as owners replaced or upgraded petroleum tank systems in compliance with federal and state requirements. In the 1990s, the program experienced a backlog of over \$200 million in claims that had been received and not paid. Issuance of \$387 million in petroleum inspection fee revenue obligations first authorized in 1999 Wisconsin Act 9 allowed the PECFA program to pay the backlog of claims in 2000 through 2003.

Under 2015 Wisconsin Act 55, PECFA eligibility is not available for any site if a person: (a) did not notify DNR of the petroleum discharge and the potential for submitting a claim before July 20, 2015; and (b) does not submit a claim for the reimbursement of eligible costs before July 1, 2020.

Under 2017 Wisconsin Act 59, beginning on June 30, 2020, the Secretary of the Department

of Administration is required to annually transfer the unencumbered balance of the petroleum inspection fund to the transportation fund, except for an amount equal to not less than 5% of the gross revenues received by the petroleum inspection fund during the fiscal year in which the transfer is made.

During the 2017-19 biennium, the PECFA awards appropriation was provided \$7,500,000 SEG from the petroleum inspection fund in each of 2017-18 and 2018-19, in a biennial appropriation. DNR expended \$5,855,500 on PECFA awards in 2017-18, making \$9,144,500 available for expenditures in 2018-19.

## **GOVERNOR**

Change the deadline for submittal of a claim for the reimbursement of eligible costs under the PECFA program from June 30, 2020, to June 30, 2021. Maintain base funding of \$7,500,000 SEG for PECFA awards in each of 2019-20 and 2020-21.

## **DISCUSSION POINTS**

1. The administration indicates the rationale for extending the deadline for submittal of PECFA claims by one year is to give some current claimants sufficient time to complete work and submit claims.

2. Currently, site owners and consultants will need to accomplish as much PECFA-eligible cleanup work as possible during the construction season of 2019. This would provide time for them to complete site cleanup, obtain DNR approval of site closure, and assemble and submit final PECFA claims before the June 30, 2020, claim submittal deadline. It is possible that, depending on weather conditions in the winter of 2019-20, and the type of work remaining at individual sites undergoing cleanup, some investigation and remediation work could be completed in the winter of 2019-20 and spring of 2020.

3. As of April 30, 2019, the PECFA program has paid a cumulative total of \$1.56 billion for partial or full cleanup at 13,512 occurrences. Of the total payments, \$1.49 billion (96% of payments) had paid for completion of cleanup at 13,111 occurrences (97% of occurrences with at least one payment). The remaining 401 occurrences (3% of total occurrences) are open and have received payments totaling \$67.6 million. For calculation of payment maximums, an occurrence is a contiguous contaminated area resulting from one or more petroleum products discharge. A site potentially has more than one occurrence. Currently, there are only a few sites with more than one occurrence. DNR issues approval of final cleanup work for sites rather than occurrences. The remainder of this paper refers to sites that are still in the process of being cleaned up.

4. In January, 2019, DNR received semi-annual site status reports for 341 of the remaining 413 open PECFA sites. These reports included estimates of approximately \$15.7 million in additional cleanup costs for the 314 sites. DNR indicates the cost estimates provided by site owners or consultants might be higher than actual costs will be. In addition, no cost estimates were submitted for 72 open sites. The attachment shows the location of the 341 sites by county. They are located in

65 of the 72 counties in the state, including the following numbers per DNR region: (a) 36 in the northeast; (b) 71 in the northern; (c) 98 in the south central; (d) 92 in the southeast; and (e) 44 in the west central region.

5. DNR has approved final cleanup action and closed approximately 80 PECFA sites per year for the last three years. The Department indicates that many of the opened remaining sites are complex or stalled, where cleanup is happening slowly. Some cleanups might not be completed in time to submit final PECFA claims by the June 30, 2020, deadline. DNR estimates it will close 100 to 120 sites between January, 2019, and June, 2020, and there will be approximately 350 remaining open sites on June 30, 2020.

6. DNR estimates the proposed one-year extension of the deadline to submit PECFA claims might allow cleanup work at 60 additional sites to be completed during the construction season of 2020, winter of 2020-21, and spring of 2021, and to be reimbursed under the program. It is not possible to determine at which 60 individual sites cleanup would not be completed before July 1, 2020, but could be completed by June 30, 2021. It is uncertain how long the cleanup would take at an individual site, because site conditions differ. In addition, the one-year extension of the deadline might help bring cleanup work at additional sites closer to completion. Approximately 60 of the sites listed in the attachment may complete cleanup between July 1, 2020, and June 30, 2021, and would receive PECFA reimbursement under the bill but not under current law. This might result in approximately 290 remaining open PECFA sites on June 30, 2021.

7. It is likely that cleanup at some sites would not be completed by the extended June 30, 2021, claim submittal deadline. It is possible that some sites at which cleanup began in 2015, the deadline for notifying DNR of the discharge, may require more than five years to complete cleanup due to the complexity of conditions at the site or other factors. It is possible that extending the claim submittal deadline could provide an environmental benefit by encouraging cleanup of complex sites that might otherwise stall or remain contaminated with no further cleanup work accomplished without state resources.

8. Under current law and the bill, any cleanup costs not submitted by the deadline would be the financial responsibility of the claimant. Approval of the Governor's recommendation would allow approximately 60 additional currently eligible sites to complete cleanup, or to move closer to completion [Alternative 1].

9. The Committee could choose to extend the deadline for currently eligible claimants to submit PECFA claims by two years, until June 30, 2022 [Alternative 2], instead of one year under the bill. This would allow an estimated 60 additional sites to complete cleanup between July 1, 2021, and June 30, 2022, in addition to the estimated 60 sites expected to complete cleanup between July 1, 2020, and June 30, 2021, and receive PECFA reimbursement. It is possible this would provide some complex sites, or sites that are difficult to address, additional time during 2021 and 2022 to finish cleanup. This might result in approximately 230 remaining open PECFA sites on June 30, 2022.

10. DNR estimates it will spend the full \$9,144,500 available for expenditure in 2018-19, including carryover funds from 2017-18, and the base funding amount of \$7,500,000 in each of 2019-20 and 2020-21. Under current law, an unknown amount of claims submitted late in 2019-20 would

be paid in 2020-21 because it would take a few months for DNR to process a claim, depending on the complexity of the claim and the number of claims submitted shortly before the deadline. Under the bill, it is anticipated that claims submitted late in 2020-21 might be paid in 2021-22.

11. Under both current law and the bill, any balance in the PECFA awards appropriation at the end of 2019-20 would carry forward for expenditure in 2020-21, and would not affect the amount transferred from the petroleum inspection fund to the transportation fund at the end of 2019-20. Under the current PECFA claim submittal deadline, an indeterminate portion of the \$7.5 million provided in 2020-21 would be spent on PECFA claims submitted late in 2019-20, and any appropriation balance at the end of 2020-21 would lapse to the petroleum inspection fund for transfer to the transportation fund. Under the bill's one-year extension of the PECFA claim submittal deadline, it is likely that closer to the full \$7.5 million appropriated in 2020-21 would be spent on PECFA claims and would not be available for transfer to the transportation fund at the end of 2020-21.

12. Under current law, an indeterminate portion of the \$7.5 million appropriated in 2020-21 for PECFA awards would likely lapse to the petroleum inspection fund for transfer to the transportation fund at the end of 2020-21. Owners of approximately 60 PECFA sites would have to pay for contamination cleanup costs they incur during 2020-21. Under the bill, those funds would be spent on cleanup at approximately 60 sites, and would not be transferred to the transportation fund at the end of 2020-21.

13. PECFA sites commonly use consultants as agents for purposes of filing PECFA claims. Under the consultant-agent process, the consultant completes site work, submits a PECFA claim on the owner's behalf, and receives reimbursement from DNR. If program funding is insufficient to pay claims, some consultants may stop active work at PECFA sites until reimbursements are available to provide funding for agents' operations costs. It could be argued that sufficient funds should be provided for PECFA claims during the 2019-21 biennium to ensure continuity of payment of claims. Under current law, PECFA site owners and consultants could complete cleanup work during the 2019 construction season or spring of 2020, and submit final claims during 2019-20. Under the bill's one-year extension of the claim submittal deadline [Alternative 1], PECFA site owners and consultants could complete cleanup work in 2020 and the spring of 2021 and submit final claims for reimbursement of cleanup costs during 2020-21. Under a two-year extension [Alternative 2], PECFA site owners and consultants could complete cleanup work in 2021 and the spring of 2022 and submit final claims during 2021-22.

14. If the appropriation were to run out of funds late in the 2019-21 biennium, it is possible that site cleanup work could slow during 2021 until additional funds were provided for PECFA awards. If the appropriated funds were not sufficient, DNR could submit a s.13.10 request for additional funds in 2020-21.

15. The first use of petroleum inspection fees is required to be payment on the \$387 million in PECFA revenue obligations issued to pay the 1990s PECFA claim backlog. As of December 1, 2018, the total amount of outstanding revenue obligations was \$27.2 million. The final fixed-rate obligations will be retired on July 1, 2019. The petroleum inspection fund will not incur debt service costs in the 2019-21 biennium.

16. Under the bill as introduced, the petroleum inspection fund will have a June 30, 2021, balance of approximately \$3.9 million. This is shown in the following table. Revenue deposited in the petroleum inspection fund will total approximately \$157.1 million during the 2019-21 biennium. Expenditures from the fund will total approximately \$163.0 million during the 2019-21 biennium, including the required year-end transfer to the transportation fund, with 91.45 authorized positions. Of this total, approximately 18% (\$29.1 million) of the expenditures, plus 55.72 positions, will be for PECFA awards, DNR administration of the PECFA program, and DATCP petroleum inspection and tank regulation programs. In addition, approximately 69% (\$112.3 million) will be for the Department of Transportation appropriations and the transfer to the transportation fund. The remaining 13% includes \$21.6 million for other programs.

### Petroleum Inspection Fund Condition

	2017-18 <u>Actual</u>	2018-19 <u>Estimated</u>	2019-20 <u>Budget Bill</u>	2020-21 <u>Budget Bill</u>	2020-21 <u>Staff</u>
Opening Balance	\$17,158,300	\$15,790,300	\$9,771,100	\$3,945,500	
<b>Revenues:</b>					
Petroleum Inspection Fee	\$79,706,300	\$77,500,000	\$77,800,000	\$77,900,000	
Revenue Obligation Debt Service	-28,633,000	-25,925,900	0	0	
Petroleum Bulk Tank Fees and Other	<u>1,053,900</u>	<u>1,110,000</u>	<u>1,110,000</u>	<u>310,000</u>	
Total Revenues	\$52,127,200	\$52,684,100	\$78,910,000	\$78,210,000	
Total Revenue Available	\$69,285,500	\$68,474,400	\$88,681,100	\$82,155,500	
<b>Expenditures:</b>					
PECFA Awards	\$5,855,500	\$9,144,500	\$7,500,000	\$7,500,000	
PECFA Administration	2,164,900	2,180,000	2,152,300	2,152,300	18.57
Petroleum Inspection	4,491,000	4,593,900	4,883,700	4,898,800	37.15
Transportation Fund	6,650,300	6,661,800	6,648,400	6,648,400	4.00
Other Programs *	10,333,600	11,904,000	10,758,600	10,792,400	31.73
Expenditure of Prior Year Encumbrances	<u>0</u>	<u>219,100</u>	<u>0</u>	<u>0</u>	<u>0.00</u>
Total Expenditures	\$29,495,300	\$34,703,300	\$31,943,000	\$31,991,900	91.45
Less Transfer to Transportation Fund	\$24,000,000	\$24,000,000	\$52,792,600	\$46,253,100	
<b>Cash Balance</b>	\$15,790,200	\$9,771,100	\$3,945,500	\$3,910,500	
Encumbrances, Continuing Balances	-\$1,863,600	\$0	\$0	\$0	
<b>Available Balance</b>	\$13,926,600	\$9,771,100	\$3,945,500	\$3,910,500	

\*Other programs include appropriations for transfer to the segregated environmental management account, DNR contaminated land cleanup administration and air management, Department of Administration (DOA) diesel truck idling reduction grants, Department of Agriculture, Trade and Consumer Protection weights and measures regulation and Unfair Sales Act enforcement, Department of Military Affairs emergency response board and major disaster assistance, Department of Revenue administration of petroleum inspection fee collections, and a reimbursement of the petroleum inspection fee paid on certain purchases of aviation fuel.

17. Sites that entered the PECFA program by the July 20, 2015, deadline created in 2015 Act 55 have almost five years, until June 30, 2020, to submit a PECFA claim and be eligible for

reimbursement under the program. Some may argue that five years should be a sufficient amount of time to complete work at a site. Further, some may argue that if the site owner has not been able to complete the cleanup before the current deadline, the site owner should pay for the remainder of cleanup themselves instead of being reimbursed by the state for cleanup costs incurred by the owner. In addition, it could be argued that eligible sites should have been identified in the 1990s, 2000s, and 2010s, and had sufficient time to complete work. The Committee could take no action, which would maintain the current deadline of June 30, 2020, for PECFA claim submittal [Alternative 3].

18. If the Committee chooses to maintain the current deadline of June 30, 2020, for PECFA claim submittal, it could also consider providing all of the \$15 million in base funding for the biennium in 2019-20 instead of maintaining \$7.5 million in each of 2019-20 and 2020-21. This would provide the same amount of funding for claims, but would provide no base funding going forward to the 2021-23 biennium [Alternative 4]. This alternative would not affect the amount transferred from the petroleum inspection fund to the transportation fund at the end of 2019-20 or 2020-21.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to change the deadline for submittal of a claim for the reimbursement of eligible costs under the PECFA program from June 30, 2020, to June 30, 2021.

2. Change the deadline for submittal of a claim for the reimbursement of eligible costs under the PECFA program from June 30, 2020, to June 30, 2022.

3. Take no action. (The deadline for submittal of PECFA claims would remain June 30, 2020.)

4. Maintain the current PECFA claim submittal deadline of June 30, 2020. In addition, transfer \$7.5 million from 2020-21 to 2019-20 for claims. (This would maintain \$15 million for claims in 2019-21, and all of it would be provided in 2019-20, in the current biennial appropriation.)

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Attachment

## ATTACHMENT

### Open PECFA Sites by County, For Which Cleanup Cost Information Was Submitted in January, 2019 \*

<u>County</u>	<u>Number of Open Sites</u>	<u>County</u>	<u>Number of Open Sites</u>
Adams	1	Milwaukee	55
Ashland	2	Monroe	3
Barron	4	Oconto	1
Bayfield	4	Oneida	2
Brown	7	Outagamie	3
Buffalo	1	Ozaukee	4
Burnett	4	Pierce	1
Calumet	4	Polk	6
Chippewa	5	Portage	1
Clark	8	Price	3
Columbia	11	Racine	7
Dane	27	Richland	6
Dodge	9	Rock	7
Door	2	Rusk	5
Douglas	13	Sauk	3
Dunn	4	Sawyer	1
Florence	1	Shawano	3
Fond du Lac	2	Sheboygan	4
Forest	1	St. Croix	2
Grant	13	Taylor	8
Green	4	Trempealeau	2
Iowa	1	Vilas	1
Iron	4	Walworth	5
Jackson	4	Washburn	1
Jefferson	10	Washington	7
Juneau	1	Waukesha	11
Kenosha	8	Waupaca	2
Lafayette	5	Winnebago	2
Langlade	2	Wood	<u>7</u>
Lincoln	2		
Manitowoc	2	Total	341
Marathon	6		
Marinette	3		
Marquette	2		
Menominee	1		

\*Approximately 72 additional sites are open but did not submit estimates of cleanup cost.