

**Petroleum Environmental Cleanup  
Fund Award (PECFA) Program**

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## TABLE OF CONTENTS

Introduction.....	1
Eligibility Criteria.....	2
DNR and Commerce Jurisdiction of Cleanup.....	3
Cleanup Requirements .....	4
PECFA Award Payments .....	6
Total Potential PECFA Sites .....	11
PECFA Administration.....	13
PECFA Program Costs.....	14
Petroleum Inspection Fund.....	21
Appendices.....	24
Appendix I Major Federal and Storage Tank Requirements Affecting PECFA .....	25
Appendix II Eligible and Ineligible Costs Under PECFA.....	27
Appendix III PECFA Maximum Awards, Total Annual Awards and Deductibles.....	29
Appendix IV Additional PECFA Award Requirements .....	30
Appendix V PECFA Program Process.....	32
Appendix VI PECFA Payments by County, as of June 30, 2008.....	33
Appendix VII Appropriations from the Petroleum Inspection Fund, 2007-09.....	34
Appendix VIII PECFA Legislative History, Major Provisions.....	35



# Petroleum Environmental Cleanup Fund Award (PECFA) Program

## Introduction

The petroleum environmental cleanup fund award (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 2¢ per gallon petroleum inspection fee (3¢ prior to April 1, 2006). PECFA awards grew from \$0.3 million in 1988-89 to a high of \$296.6 million in 1999-00 and have since declined to \$14.6 million in 2007-08. A total of \$387 million in revenue obligations was authorized by the Legislature and issued for payment of PECFA claims. The revenue obligation debt service is being paid from petroleum inspection fee revenues that would have otherwise been used for PECFA awards.

There are over 17,000 occurrences at which a cleanup has been, or is expected to be, funded by PECFA. As of December 1, 2008, \$1.49 billion in PECFA awards have been made for partial or full cleanup at 12,707 of these occurrences. Of the total payments, \$1.29 billion (86% of payments) has paid for completion of cleanup of 11,575 occurrences (91% of occurrences with at least one payment). An occurrence is a contiguous contaminated area resulting from one or more petroleum products discharge. (A site can potentially have more than one occurrence for purposes of reimbursement under the program.)

The PECFA program was created in response to the costs of federal requirements enacted to prevent the release of petroleum and other regulated substances 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 required owners to: (a) replace or upgrade their tanks by December 22, 1998; (b) have leak detection systems; and (c) demonstrate financial responsibility or have pollution insurance for underground storage systems. State regulations incorporate the federal requirements and also apply state regulations to certain smaller tanks, such as certain heating oil tanks and small farm and residential tanks, which are not federally-regulated.

The Department of Commerce (Commerce) administers the financial reimbursement portion of the program and cleanup of low- and medium-risk petroleum sites (PECFA-eligible and non-PECFA eligible). The Department of Natural Resources (DNR) administers cleanup of high-risk petroleum sites and sites with petroleum and non-petroleum contamination and establishes state environmental standards for cleanup of contaminated sites in the state. The two agencies jointly administer provisions related to analyzing the risk of the contamination at PECFA sites, bidding the remedial action activities and maintaining consistency of program administration.

This paper describes the following aspects of the PECFA program: (a) program eligibility criteria and claim requirements; (b) award

guidelines; (c) the number of PECFA sites; (d) program administration; (e) program costs; (f) the petroleum inspection fee; and (g) revenue obligation authority. A series of appendices are included which contain additional information about program requirements, legislative history, program costs and the petroleum inspection fund.

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### Eligibility Criteria

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Eligibility for the PECFA program is defined in section 101.143 of the statutes. Owners of the following types of petroleum product storage tanks are eligible: (a) commercial underground and aboveground tanks of 110 gallons or more in capacity; (b) farm and residential vehicle fuel tanks storing more than 1,100 gallons of petroleum products that are not for resale; (c) home heating oil systems; (d) farm vehicle fuel tanks storing 1,100 or less gallons if the system is on a parcel of 35 or more acres of contiguous land devoted primarily to agricultural use which produces certain minimum farm income; (e) public school district and technical college district heating oil tanks used to store heating oil for consumptive use on the premises where stored; and (f) tanks located on trust lands of an American Indian tribe if the owner or operator otherwise complies with Commerce administrative rules concerning petroleum product storage systems (Chapter Comm 10 of the administrative code) and PECFA (Chapter Comm 47).

The petroleum product storage system or home heating oil system must have been previously registered with Commerce. Petroleum products are defined as gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil. Appendix I lists the major federal and state storage tank requirements affecting potential PECFA sites.

In order to be eligible for a PECFA award, the owner must do the following:

1. Report the petroleum discharge to DNR or the Department of Military Affairs, Division of Emergency Government, in a timely manner;
2. Notify Commerce of the discharge and of the possibility of submitting a PECFA claim, prior to conducting a site investigation or remedial action;
3. Register the petroleum tank system with Commerce;
4. Complete an investigation to determine the degree and extent of environmental damage caused by the petroleum discharge;
5. Prepare a remedial action plan that identifies the specific activities proposed to be conducted;
6. Conduct all remedial action activities at the site to restore the environment to the extent practicable and minimize the harmful effects of the discharge, which may include monitoring to ensure the effectiveness of the natural process of degradation of petroleum product contamination if approved by DNR (for high-risk sites) or Commerce (for low- or medium-risk sites); and
7. Receive approval from DNR or Commerce that the remedial activities meet cleanup standards.

In an emergency situation, an owner of a petroleum product storage system, or a person owning a home heating oil system, may submit a claim to Commerce without completing a site investigation or remedial action plan if: (a) an emergency existed that made the investigation or plan inappropriate; and (b) the owner notified Commerce and DNR of the emergency before conducting the emergency action and DNR and Commerce jointly authorized emergency action.

Persons who become owners of an eligible site who were not the owners when the discharge occurred are also eligible to submit a PECFA claim unless they should have known that a discharge

occurred. Further, if Commerce approves, an owner of an eligible system or person owning a home heating oil system may enter into a written agreement with another person (including insurance companies, banks and consulting firms) to serve as their agent in order to submit a PECFA claim. If an agent is involved, payments are made jointly to the agent and owner. The state Department of Transportation (DOT) may also serve as an agent if the PECFA site affects a transportation project and DOT's participation is approved by Commerce.

### **Farm Tanks**

Underground and aboveground farm vehicle fuel tanks of 1,100 gallons or less capacity are eligible for PECFA if the petroleum product storage system stores petroleum products that are not for resale and if certain criteria are met. Eligibility criteria for these farm tanks include the following:

1. The petroleum storage system must be on:  
(a) a parcel of 35 or more acres of contiguous land devoted primarily to agricultural use, including land designated by DNR as part of the Ice Age Trail, which produced gross farm profits of not less than \$6,000 during the preceding year, or not less than \$18,000 during the three preceding years; or  
(b) a parcel of 35 or more acres of which at least 35 acres, during part or all of the preceding year, were enrolled in the conservation reserve program.

2. The owner of the farm tank must receive a letter or notice from DNR or Commerce indicating that the owner must conduct a site investigation or remedial action because of a discharge from the farm tank or an order to conduct such an investigation or remedial action.

An owner or operator who formerly owned a PECFA-eligible farm tank may submit a PECFA claim at any time after he or she transferred ownership of the land, if the land meets other program criteria, including the acreage test and the gross farm profits test on the date of the initial

notification of the discharge.

### **Eligibility for New, Cleaned and Upgraded Sites**

Federal and state laws require owners or operators of petroleum underground storage tanks to provide proof of financial responsibility for cleanup of contamination at the sites and for compensation of third parties for bodily injury and property damage caused by accidental releases from the sites. Underground systems that are owned or operated by marketers are required to provide proof of financial responsibility of \$1,000,000 per occurrence. Before sites were cleaned up or upgraded, the PECFA program provided a method for owners or operators to meet the financial responsibility requirements.

PECFA eligibility is not available to new or upgraded underground petroleum storage tank systems that meet administrative rule Comm 10 and federal standards. PECFA eligibility was not available after December 22, 2001, for: (a) new aboveground petroleum tank systems that are installed after April 30, 1991, and that meet state upgrading standards; and (b) aboveground petroleum tank systems that are upgraded to state standards if a petroleum discharge is confirmed after December 22, 2001, and that confirmation is made after the tank system met upgrading requirements.

Aboveground petroleum storage tanks over 5,000 gallons were required to meet state upgrading requirements by May 1, 2001, but do not have to meet any federal upgrading requirements. There are no federal or state upgrade requirements for aboveground tanks storing 5,000 or fewer gallons.

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### **DNR and Commerce Jurisdiction of Cleanup**

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DNR administers remedial actions and completion of cleanup at high-risk petroleum

storage tank discharge sites and at sites with contamination from petroleum and non-petroleum hazardous substances. Commerce administers remedial actions and completion of cleanup at low- and medium-risk petroleum storage tank discharge sites.

Section 101.144 of the statutes and administrative code chapters Comm 46 and NR 746 establish: (a) the respective functions of the two agencies in the administration of cleanup at PECFA sites; (b) procedures to ensure that cleanups at Commerce-administered sites are consistent with the hazardous substances spills law; and (c) procedures, standards and schedules for determining the priority for bidding the remediation work at sites.

Currently, s. 101.144 (1) of the statutes classifies a petroleum site as high-risk if it meets one or more of the following criteria: (a) repeated tests show that the discharge has resulted in a concentration of contaminants in a private or public potable well that exceeds a preventive action limit, as defined in s. 160.01 (6); (b) petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements; (c) there is a groundwater enforcement standard exceedence within 1,000 feet of a public drinking water well or within 100 feet of any other well used to provide water for human consumption; or (d) there is a groundwater enforcement standard exceedence in fractured bedrock. DNR has jurisdiction for administering the cleanup at high-risk petroleum storage tank discharge sites. In addition, DNR has jurisdiction for medium- and low-risk petroleum storage tank discharge sites that also have contamination from non-petroleum hazardous substances. Finally, DNR generally has jurisdiction over unranked sites until sufficient information is available to classify the site as high-, medium-, or low-risk. All other petroleum sites, excluding unranked sites, are medium- or low-risk under the jurisdiction of Commerce. A site with contamination solely from petroleum products and additives to petroleum products (such as lead or oxygenates) is categorized as a site with contami-

nation solely from petroleum products.

Administrative rules Comm 46 (effective March 1, 2001) and NR 746 (effective February 1, 2001) codify the procedures for transfer of sites to Commerce as they are classified if they are not high-risk or co-contaminated and for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available. The rules also include provisions related to joint administration of requirements related to: (a) setting remediation targets for sites; (b) tracking the achievement of remediation progress and success; and (c) reporting of program activities.

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## Cleanup Requirements

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Section 292.11 of the statutes requires that persons who possess or control a hazardous substance which is discharged or who cause the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state. DNR is responsible for establishing environmental cleanup standards for groundwater and soil. DNR promulgated the NR 700 administrative rule series to cover responses to discharges of hazardous substances at PECFA-eligible and non-PECFA eligible sites. NR 700 allows responsible parties to choose an appropriate cleanup method for their properties. DNR provides rules and technical guidance on a variety of methods.

### Groundwater

Contaminated groundwater can affect human health by adversely impacting drinking water supplies, surface water and the migration of explosive or toxic vapors into basements. Cleanup standards for groundwater contamination at contaminated sites are established under Chapter 160 of the statutes and Chapter NR 140 of the administrative code. The statutes require DNR to establish en-

enforcement standards for substances of public health concern and public welfare concern. The enforcement standard is a numerical value for the concentration of a contaminant in groundwater. It is based on federally-determined contaminant limits for specific compounds, including consideration of health risk and other factors. If no federal contaminant limit has been established for a specific compound the state calculates an enforcement standard. Most petroleum contamination occurs from compounds that have federally-established limits.

Chapter 160 of the statutes requires DNR to establish, by administrative rule, a preventive action limit (PAL) for each substance for which an enforcement standard is established. The PAL is a contamination limit that is more stringent than the groundwater enforcement standard and is intended as a warning level to allow action to be taken prior to violation of the enforcement standard. Each state agency that regulates activities that may affect the groundwater is required to promulgate rules that establish the range of responses that the agency may take or require the party responsible for the contamination to take if the PAL is exceeded.

The DNR administrative rule chapter NR 140 and the NR 700 series include a groundwater cleanup goal of the PAL. DNR allows cleanups to achieve a standard less stringent than the PAL if achieving the PAL is determined not to be technically or economically feasible. DNR does this by granting an exemption to NR 140 for contamination above the PAL but below the enforcement standard. This has become a routine approach in the cleanup of PECFA-eligible sites.

In addition, DNR administrative rule chapters NR 140 and NR 726 allow flexible closure of contaminated sites. Flexible closure means that cleanup activities can be stopped and the site closed when groundwater contamination levels exceed enforcement standards if the following conditions are met: (a) the source of contamination has been adequately cleaned up; (b) groundwater

contamination exceeding NR 140 PALs will not migrate across the property line on to any property for which a PAL exemption has been granted, or which has been included on the GIS registry for an enforcement standard exceedance and for which a notification letter has been provided by DNR to the property owner regarding residual contamination, or has a recorded groundwater use restriction on the deed; (c) natural processes will break down the contamination in a reasonable amount of time to meet state groundwater standards; (d) there is no threat to human health and the environment as a result of selecting natural attenuation as the remedial option; and (e) except for NR 140, all applicable public health and environmental laws have been complied with.

A DNR administrative rule, effective November 1, 2001, created a geographic information system (GIS) registry that includes information about contaminated sites that have been closed with a groundwater enforcement standard exceedance. The rule requires that sites with residual groundwater contamination in excess of the NR140 enforcement standard be placed on a GIS registry. The site information is available on the DNR Internet web site. A DNR administrative rule, effective August 1, 2002, requires inclusion on the GIS registry of sites approved for closure with residual soil contamination.

As of October 1, 2008, 6,114 sites have been placed on the GIS registry of closed sites with a groundwater enforcement standard exceedance, residual soil contamination, or both. Of this total, 4,652 are PECFA-eligible. Of the 6,114 sites: (a) 2,273 sites have a groundwater enforcement standard exceedance, of which 1,944 are PECFA-eligible; (b) 1,356 sites have soil contamination only, of which 698 are PECFA-eligible; and (c) 2,485 sites have both groundwater and soil contamination, of which 2,010 sites are PECFA-eligible.

## **Soil**

Contaminated soil can affect human health if a

person has direct contact with contaminated soil or if the contamination degrades groundwater or air quality. Soil remediation standards are contained in Chapter NR 720, which includes numerical values for a limited number of specific compounds that represent concentrations of contaminants that can remain in soil at a site and not cause groundwater to become contaminated above groundwater quality standards in NR 140. NR 720 also includes numerical values for a limited number of compounds that represent the amount of contaminants that can remain at a site and not cause a risk to human health through eating or breathing contaminated soil particles. NR 720 also allows consultants to develop site specific soil cleanup standards, which are based on conditions at the site and can allow most or all of the contaminated soil to remain in place at certain sites. DNR administrative rules also include standards for the one-time landspreading of petroleum contaminated soils at certain suitable locations, with natural degradation of the contaminants by soil microorganisms.

#### **Comm 46 and NR 746 Cleanup Requirements**

Identical administrative rules Comm 46 and NR 746 include requirements for standards to be applied by both agencies for administration of cleanup at petroleum-contaminated sites. Comm 46 and NR 746 establish risk criteria for screening sites to determine whether a remedial action will be required, to set remediation targets and to determine whether the site may be closed after completion of the site investigation or after remedial action. A remediation target is a goal that may be set for a site to establish the contaminant concentration in groundwater or soil, or both, that when achieved will result in the granting of site closure by the administering agency.

Sites that meet all of the risk screening criteria may be closed after the completion of an acceptable site investigation if specified conditions are met. If the site has groundwater contamination that exceeds the preventive action limits but is below the enforcement standards, or exceeds the enforcement standards, the site may be closed

when it meets certain conditions. NR 726 flexible closure requirements must be met. The rules also specify procedures for Commerce and DNR site closure decisions after remedial action is taken at the site to address one or more of the risk screening criteria.

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### **PECFA Award Payments**

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Commerce is responsible for issuing PECFA awards, after eligible costs have been incurred and DNR (for high-risk sites) or Commerce (for medium- and low-risk sites) has approved all remedial action. Reimbursement procedures are established in s. 101.143 of the statutes and administrative code chapter Comm 47. The procedures related to submittal of PECFA claims changed for claims submitted after April 21, 1998 and again after May 1, 2006, changes in Comm 47 went into effect.

A PECFA claim must contain all of the following: (a) for a claim covering a site investigation and preparation of a remedial action plan, a copy of the site investigation report and a departmental letter indicating that remedial action plan submittal requirements have been complied with; (b) a copy of the Commerce tank inventory form for each petroleum tank system at the site; (c) bid specifications and bids for commodity services; (d) documentation of actual costs incurred in the cleanup; (e) proof of payment including accounts, invoices, sales receipts or records documenting actual eligible costs; (f) written approval from DNR (for high-risk sites) or Commerce (for low- or medium-risk sites) for completed remedial activities; and (g) other records and statements that Commerce determines are necessary to complete the application.

#### **Eligible Costs**

In general, eligible costs include the costs of investigating, cleaning and remediating discharges from petroleum product storage tanks, monitoring costs, compensation of third parties for damages

caused by underground tank discharges and other costs determined to be necessary by Commerce. Appendix II provides a list of the statutory eligible and ineligible costs.

There are exclusions from eligible costs, including any cost incurred before August 1, 1987 (the date PECFA began), costs for activities conducted outside Wisconsin and costs determined by Commerce to be unreasonable or unnecessary. Administrative rule Comm 47 includes an additional description of ineligible costs.

Commerce promulgated rule changes for a schedule of usual and customary costs, which applies to all work performed after May 1, 2006. All PECFA occurrences must use the schedule, except for the following: (a) work for which a reimbursement cap has been established through the bid process; (b) work performed within the initial 72 hours after the onset of the need for an emergency action; and (c) work performed for home heating oil tank systems. Commerce only reimburses for the tasks in the schedule, or that have been otherwise approved by the Department. Reimbursement is limited to the actual costs, or the maximum amount for the task in the usual and customary cost schedule, whichever is less. Owners and their consultants are required to use a standardized invoice for all work performed after May 1, 2006.

Owners were required to submit an occurrence classification form by May 31, 2006. Commerce is using the forms to do one or more of the following: (a) limit reimbursement to the costs listed in the usual and customary cost schedule; (b) specify a reimbursement cap for costs that are not listed in the schedule; (c) specify a scope of work and a corresponding reimbursement cap; and (d) specify a period during which the public bidding process will be deferred. Comm 47 specifies that Commerce may not reimburse costs for any work performed between May 1, 2006, and the date the Department receives the occurrence classification form. As of December, 2008, an occurrence classification form had not been completed for 319 sites.

Commerce promulgated an administrative rule identifying ineligible costs to which a penalty would apply, effective May 1, 2006. If a claimant submits a PECFA claim that includes the specified ineligible costs, Commerce is required to reduce the PECFA award by an amount equal to half of the ineligible costs after removal of the ineligible costs from the claim. If a consultant submits the ineligible costs, the consultant is required to pay a penalty to Commerce equal to half the ineligible costs.

Effective May 1, 2006, Comm 47 rule changes specify several additional ineligible costs. For example, costs are ineligible if they: (a) are for work performed between the due date of any submittal (such as a report) and the date a past-due submittal is actually submitted; (b) exceed the maximum reimbursable amount determined by the competitive bidding process; (c) are incurred prior to obtaining certain approvals from Commerce; and (d) exceed reimbursement caps established by the Department for specific activities at the site.

### **Progress Payments**

PECFA claims are paid on a first-in first-out basis for completed cleanup actions, with the claim date established as the date that the complete claim package and all necessary approvals are received by Commerce. However, Commerce may provide a progress payment prior to all costs being incurred under certain circumstances and provide priority processing of certain claims.

An owner or operator may submit a claim annually if the owner or operator has incurred \$50,000 in unreimbursed eligible PECFA costs and at least one year has elapsed since submission of the last claim.

All home heating oil and farm tank claims are processed and paid as soon as they are received. Commerce provides priority processing to claims where the site can be investigated and cleaned up to the point of closure for \$60,000 or less, excluding interest.

Commerce makes progress payments after the following milestones are completed: (a) completion of an emergency action; (b) completion of a site investigation and remedial action plan; (c) completion of remedial action activities; (d) approval of natural attenuation as a final remedial response or at the end of each one-year cycle of monitoring necessary to show that remediation by natural attenuation will occur; (e) at the end of each one-year cycle of monitoring required for off-site contamination; and (f) after implementation and one year of operation, sampling and monitoring of an active treatment system and every year thereafter. Commerce also allows progress payments at sites based on extreme life safety and environmental risk, and where the claimant has demonstrated that he or she does not have the financial means to conduct a remediation without progress payments.

### **Cost Containment Provisions**

Comm 47 provides cost guidelines for various cleanups, bid requirements, requirements for consultants and other items intended to promote cost containment under PECFA. Effective May 1, 2006, sites are subject to a maximum allowable cost for a site investigation and development of a remedial action plan of \$20,000, unless Commerce pre-approves additional costs.

Between 1999 and May 1, 2006, if a claimant could achieve a closed remedial action with total costs of \$60,000 or less, the claimant could obtain approval to be exempt from requirements to submit investigation and other interim environmental reports, be subject to public bidding requirements, and to adhere to a \$40,000 cap on investigation costs. This provision was not available to claimants after the May 1, 2006, rule changes went into effect.

Sites where a site investigation was not started as of January 15, 1993, and for which a remedial alternative was received by Commerce on or after April 21, 1998, are subject to several cost control measures. The maximum allowable cost for a site investigation, excluding interest and interim action costs, is \$20,000 as of May 1, 2006 (\$40,000 prior to

May 1, 2006), unless pre-approved by Commerce.

Consultants working on site investigations are required to periodically report to Commerce on the consultant's progress and the estimated cost of work remaining on the investigation. Commerce or DNR may direct the consultant or responsible party to carry out specific activities necessary to achieve the most cost-effective collection of investigation data necessary to determine whether the occurrence is subject to competitive public bidding, and to define the closure standard, remediation target of cleanup to be met, or scope of work for the remediation. The consultant must notify Commerce when the investigation is complete. Commerce or DNR are then required to send a written determination to the responsible party and consultant, stating whether the site is subject to public bidding for the remediation component, or whether the responsible party must take other action.

### **Site Bidding**

DNR or Commerce, whichever agency has jurisdiction over the site, is required to estimate the cost to complete a site investigation and remedial action for an occurrence. If that estimate exceeds \$60,000, Commerce is required to implement a competitive public bidding process to assist in determining the least costly method of remedial action. Commerce may not implement the bidding process if: (a) Commerce and DNR choose to waive the use of the bidding requirement if 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; or (b) Commerce or DNR waives the requirement after providing notice to the other agency. Work performed as part of an emergency action within the initial 72 hours of the onset of the need, is not subject to public bidding. Comm 47 authorizes Commerce to waive the public bidding process if it determines bidding would not be cost-effective, or that the estimated additional cost to complete a scope of work is reasonable.

Commerce may disqualify a public bid for remedial action activities at a PECFA site if the Department determines the bid is unlikely to establish a maximum reimbursement amount that will sufficiently fund the activities and outcome objective included in the bid specifications. Commerce may also disqualify a public bidder from submitting a bid for remedial action activities at a PECFA site if, based on past performance of the bidder, the bidder has demonstrated an inability to finish remedial actions within previously established cost limits.

Commerce and DNR are using a joint decision-making process for the selection of remedial bids. The agencies require all sites that have an estimated cost to closure that will exceed \$60,000 to be bid, unless the site meets the requirements for bidding to be waived or deferred.

After Commerce identifies the least costly qualified bid under the public bidding process, Commerce, or Commerce and DNR for DNR-administered sites, determines the least costly method of remedial action or the reimbursement cap for a defined scope of work. Commerce notifies the claimant of the determination. The claimant then has 60 days to execute a written contract with one of the firms that submitted a bid, to perform the work included in the Commerce notification. If the claimant does not execute the written contract, interest expense is ineligible for reimbursement between the time Commerce issues the notification, until a contract is executed and work commences.

Under the Comm 47 changes effective May 1, 2006, when Commerce notifies a responsible party and his or her consultant that the responsible party's site is subject to the public bidding process, the responsible party is required to submit a claim for eligible costs incurred to that date, and is required to submit it no later than 120 days after the date of the Commerce notice. If the claimant does not submit the claim within the 120 days, interest expenses are not eligible between the date of the Department's notice and the date the claim is filed.

Between the beginning of public bidding and November, 2008, Commerce conducted 57 rounds of competitive public bidding for approximately 1,250 sites. The competitive bidding established total reimbursement caps of \$33.1 million, including bids to take a site to closure and bids to establish a specific scope of work at a site.

### **Consultants and Service Providers**

Consultants and consulting firms must register with Commerce for admission to participate in the PECFA program. Consultants would include, but not be limited to, engineers, hydrogeologists and environmental scientists or specialists. Commerce may disqualify consultants or consulting firms from participating in PECFA for non-compliance with PECFA program requirements. Consultants may provide cleanup services if the site has been through the public bidding process or is using the usual and customary cost schedule. Consulting firms, laboratories and drillers must maintain insurance coverage for errors and omissions of at least \$1,000,000 per claim.

Commerce is authorized to promulgate rules under which it would select service providers to provide investigation or remedial action services in specified areas. Commerce is allowed to: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service. Commerce and DNR worked jointly on a pilot study to evaluate the use of regional service providers for the program. In August, 2004, the agencies put the pilot study on hold, and instead, promulgated an administrative rule that contained a usual and customary cost schedule.

Commerce is required to collect information from consultants annually that estimates the additional costs that must be incurred to complete the remedial action activities in compliance with the groundwater enforcement standard. In the most recent reporting cycle, completed in 2007,

information was submitted for 922 occurrences (approximately half of open sites). Of the reporting sites, 670 (73%) reported the site investigation was complete. The estimated cost to bring the 922 sites to closure was \$21.3 million.

### **Interest Cost Reimbursement**

Reimbursement for interest costs associated with loans secured on or after November 1, 1999, for remediation is limited based on the applicant's gross revenues in the most recent tax year as follows: (a) if gross revenues are up to \$25 million, interest reimbursement is limited to the prime rate minus 1%; and (b) if gross revenues are over \$25 million, interest reimbursement is limited to 4%.

Loan origination fees are reimbursable at no more than two points of the loan principal. Annual loan renewal fees charged on or after April 21, 1998, are reimbursable at no more than 1% of the outstanding unreimbursed loan amount.

Effective September 1, 2001, if an applicant submits a final claim more than 120 days after receiving notification from DNR or Commerce that no further action is necessary at the site, interest costs incurred more than 60 days after receiving the notice are not eligible for reimbursement. If an applicant received written notification from DNR or Commerce before September 1, 2001, that no further action is necessary, and the applicant submits a final claim more than 120 days after September 1, 2001, (January 2, 2002) interest costs incurred by the applicant on or after January 2, 2002, are not eligible costs. Commerce is aware of 69 sites that were closed before September 1, 2001, but where the owners submitted the final claim after January 2, 2002, resulting in a reduction of reimbursement of interest costs.

If an applicant does not complete the site investigation within five years after the applicant notified Commerce about the discharge, or by October 1, 2003, whichever is later, the applicant is ineligible for reimbursement of interest costs incurred after the later of those two dates. Commerce is

aware of 28 sites where claims have been submitted that had a reduction of reimbursement of interest costs under this provision. The Department believes there may be 94 other sites where claims have not been submitted, which will experience a reduction of reimbursement of interest costs under the provision.

Comm 47 rule changes effective on May 1, 2006, deny reimbursement of interest costs if a responsible party did not submit a claim within 120 days of receiving a written directive from Commerce to submit the claim. In this situation, any interest expense is ineligible from the 121<sup>st</sup> day and extending until the Department receives the claim.

### **Award Limits and Deductibles**

The law establishes maximum awards per occurrence, total annual award levels and deductibles that vary depending on the type of petroleum storage tank, the number of tanks and when the costs were incurred. The law also establishes deductibles, which are the amounts the owner must pay for the cleanup. Appendix III indicates award limits according to the date costs were incurred, type of tank, number of tanks and type of owner, and the deductibles for the types of tanks.

The maximum award for commercial underground tanks, almost 80% of the occurrences under the program, was \$1,000,000 per occurrence for investigations and remedial activities started before December 22, 2001. Award amounts decreased to \$190,000 for aboveground and underground tanks, for costs incurred on or after December 22, 2001. However, the maximum award in effect before December 22, 2001, applies to all eligible costs for investigations and remedial activities started before December 22, 2001. In addition to the overall maximum award, the maximum award for individual claims is limited to the amount determined by Commerce and DNR to be necessary to implement the least costly method of completing remedial action and complying with groundwater enforcement standards.

The maximum award for eligible farm tanks of 1,100 gallons or less is \$100,000. Farm tanks are subject to a limitation that in any fiscal year, not more than 5% of the amounts appropriated for PECFA awards may be used for these tanks.

The maximum award for tanks owned by public school districts and technical college districts that store heating oil for consumptive use on the premises is \$190,000. Public school tanks are subject to a separate limit of 5% of the amounts appropriated for PECFA awards.

Award amounts distinguish between marketers and non-marketers of petroleum products. A "marketer" is a facility at which petroleum is sold (gas stations, truckstops or convenience stores). A "non-marketer" is a facility at which petroleum products are stored not for sale, but for use by the business (trucking and construction firms). For non-marketers, maximum PECFA awards differ depending on the annual average monthly volume a facility handles. Facilities handling more than 10,000 gallons per month have a higher maximum award amount than those with volumes under 10,000 gallons a month.

When there is an intermingled plume of contamination that contains discharges from both aboveground and underground petroleum storage tank systems, Commerce calculates the deductible according to the predominant method of storage at the site, measured in gallons. For example, if the site primarily used aboveground petroleum storage tank systems, then the deductible for aboveground systems would apply.

Effective for remedial action activities that begin on or after November 1, 1999, Commerce is required to notify the owner or operator of a low- or medium-risk site, and DNR and Commerce are required to notify the owner or operator of a high-risk site, of their determination of the least costly method of completing the remedial action activities and complying with groundwater enforcement standards. The agencies are using the competitive

public bidding process to establish the least costly method to complete the remedial action.

Commerce is required to conduct an annual review for low- or medium-risk sites, and Commerce and DNR are required to jointly conduct an annual review for high-risk sites and make the same determinations of the least costly method, use of natural attenuation and limit on maximum reimbursement. Commerce and DNR are authorized to review and modify established maximum reimbursement amounts for remedial action activities if the Departments determine that new circumstances, including newly discovered contamination at a site, warrant the review. Commerce and DNR are using information obtained through the annual reporting to review the work being performed at each site.

#### **Additional Award Requirements**

Appendix IV indicates other provisions that affect PECFA awards. These include acts of negligence or fraud, compensation claims from third-party suits and involvement of lending institutions.

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### **Total Potential PECFA Sites**

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Potential PECFA sites are regulated under federal and state storage tank requirements. As of December, 2008, Commerce regulated approximately 210,800 flammable and combustible liquid storage tanks. Of this number, 177,900 are underground petroleum product storage tank systems under federal and state requirements and 32,800 are aboveground petroleum product storage tank systems under state requirements. Of the 210,800 tanks, approximately 71,800 are active in-use tanks, 131,200 are closed tanks, 7,100 are abandoned, 600 are temporarily out-of-service, and 200 are in the process of being installed. (Temporarily out-of-service tanks are not currently being used, and have not been closed or abandoned, but will either return to

active use after a short period of time or will be closed.) Of the 71,800 active in-use systems, 53,100 are underground tank systems, of which 12,400 are regulated under federal requirements. The 71,800 active in-use systems also include 18,700 above-ground in-use tanks. Commerce believes that all of the active, in-use federally-regulated tanks have been upgraded to meet 1998 federal requirements.

Commerce and DNR submit semi-annual reports to the Legislature identifying the number of petroleum-contaminated sites administered by each agency. Commerce and DNR identified 16,812 petroleum-contaminated sites that were included in the databases of both agencies as of June 30, 2008.

Table 1 shows the number of active and closed petroleum-contaminated sites administered by DNR and Commerce that have been reconciled in the databases of both agencies. As of June 30, 2008, open (active) sites represented 10.3% (1,730) of the 16,812 reconciled sites and closed sites represented the remaining 89.7% (15,082) of reconciled sites.

**Table 1: Petroleum-Contaminated Sites Under DNR and Commerce Jurisdiction, June 30, 2008 -- Sites in Both Commerce and DNR Databases**

	Open	Closed	Total
<b>DNR-Administered Sites</b>			
High-Risk	970	4,382	5,352
Medium-Risk	22	1,377	1,399
Low-Risk	5	1,606	1,611
Unranked	<u>267</u>	<u>687</u>	<u>954</u>
Subtotal DNR	1,264	8,052	9,316
<b>Commerce-Administered</b>			
Medium-Risk	282	4,338	4,620
Low-Risk	<u>184</u>	<u>2,692</u>	<u>2,876</u>
Subtotal Commerce	466	7,030	7,496
<b>Total DNR and Commerce Reconciled Sites</b>	1,730	15,082	16,812

As of June 30, 2008, DNR administered 73.1% (1,264) of the open sites and Commerce administered the remaining 26.9% (466). Of the open sites, 56.1% (970 of 1,730) are high-risk sites, 28.5% (493 sites) are medium- or low-risk sites and 15.4% (267 sites) have not been ranked because there is not yet sufficient information to classify the site.

In addition to the sites shown in Table 1, DNR data for June 30, 2008, also indicates that there are 4,589 sites (602 open and 3,987 closed sites) that are included in the DNR database but have not yet been matched to a site in the Commerce database, for a potential total of 21,401 identified petroleum-contaminated sites.

The number of petroleum-contaminated sites in the reconciled databases of both agencies increased from 10,916 in September, 1998, to 16,812 in June, 2008. Table 2 shows how the number of open and closed petroleum-contaminated sites has changed since 1998. The proportion of closed sites increased from 45% in September, 1998, to 90% in June, 2008. Further, the number of open sites has steadily declined since 1999, and represented 10% of identified sites in the databases of both agencies as of June 30, 2008.

**Table 2: Number of Petroleum-Contaminated Sites, Sites in Both Commerce and DNR Databases as Reported in Joint Agency Reports to the Legislature**

Date	Open Sites	% of Sites	Closed Sites	% of Sites	Total Sites
September, 1998	5,970	54.7%	4,946	45.3%	10,916
June, 1999	6,139	50.1	6,121	49.9	12,260
August, 2000	5,531	40.5	8,132	59.5	13,663
June, 2001	4,611	31.9	9,851	68.1	14,462
June, 2002	4,126	26.7	11,302	73.3	15,428
June, 2003	3,604	22.9	12,166	77.1	15,770
June, 2004	3,034	18.9	12,994	81.1	16,028
June, 2005	2,638	16.2	13,646	83.8	16,284
June, 2006	2,240	13.6	14,227	86.4	16,467
June, 2007	1,967	11.8	14,707	88.2	16,674
June, 2008*	1,730	10.3	15,082	89.7	16,812

\*Commerce and DNR corrected the June 30, 2008, data in December, 2008.

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## PECFA Administration

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Commerce has primary responsibility for the financial management of the PECFA program, which includes issuing the award payments, and for the review of remedial action work completed at low- and medium-risk sites. DNR is responsible for development and enforcement of cleanup standards and for review of remedial action work completed at high-risk sites. Before Commerce can issue a PECFA award, DNR (for high-risk sites) or Commerce (for low- and medium-risk sites) is required to provide written approval that the investigation and cleanup of environmental contamination is conducted according to state environmental standards and that the harmful effects from the discharge are minimized according to the hazardous substance spills law. Appendix V summarizes this process.

### Department of Commerce

In 2008-09, Commerce allocates \$3,669,200 and 36.1 positions to administer its responsibilities related to claim processing and payment and cleanup of medium- and low-risk sites. Commerce funding includes: (a) \$2,872,000 in segregated revenues and 25.8 positions from the petroleum inspection fund; and (b) \$797,200 and 10.3 positions from the federal LUST program grant received from the U.S. Environmental Protection Agency.

Commerce administers the cleanups at 6,758 low- and medium-risk sites as of June 30, 2008, of which 552 were open sites. Commerce staff review claims, make PECFA payments, answer PECFA-related inquiries, monitor PECFA claims in progress, conduct the bid process for certain claims, construct bid "bundles" of sites to be cleaned up as one action, administer the bid process for sites with estimated remedial costs above \$60,000, issue orders to proceed for low- and medium-risk sites, estimate the least costly method of completing remedial action activities, conduct an annual review of low- and medium-risk sites and

jointly conduct an annual review of high-risk sites with DNR, conduct a limited number of pre-reviews for larger claims and perform other duties related to program administration. Commerce also makes additional efforts to contact the responsible parties at sites where cleanup has slowed or stopped, in order to move those site cleanups closer to completion.

Other program administration responsibilities include reviewing requests to approve increases in site investigation costs above the \$20,000 cap, approving remedial alternatives, conducting appeals made by PECFA claimants, conducting audits, reviewing engineered remedial systems, taking enforcement actions and regulating consultants who perform PECFA work.

### Department of Natural Resources

In 2008-09, DNR allocates \$964,400 and 11.5 positions to administer its responsibilities related to cleanup at high-risk sites. This includes: (a) federal LUST program funding of \$779,100 and 9.5 hydrogeologist and engineer positions; and (b) \$185,300 in segregated revenues with 2.0 positions from the petroleum inspection fund.

DNR administers cleanup at 10,352 high-risk and unranked sites as of June 30, 2008, of which 1,392 were open sites. The sites under DNR jurisdiction are high-risk sites with petroleum contamination, are unranked or have petroleum and non-petroleum contamination (and thus may be shown in Table 1 as medium- or low-risk). DNR participates in the review and selection of bids for sites with estimated remedial costs above \$60,000, issues orders to proceed for high-risk sites, estimates the least costly method of completing remedial action activities at high-risk sites and jointly conducts an annual review of high-risk sites with Commerce.

DNR also makes additional efforts to contact the responsible parties at sites where cleanup activities have slowed or stopped, in order to move those site cleanups closer to completion, sends

letters to responsible parties, and issues notices to proceed for cases that are not actively managed. DNR also issues guidance that is used by consultants to conduct appropriate cleanups.

### Fee Revenue

DNR charges fees under administrative rule NR 749 to persons who request DNR actions such as case close-out letters (\$750) or no further action letters (\$250) for PECFA and non-PECFA sites. The fees are collected as program revenue and offset the costs of providing several types of assistance related to brownfields redevelopment. DNR also collects fees for adding sites to an online geographic information system (GIS) registry of sites approved for closure where a groundwater enforcement standard is exceeded (\$250) or closed with residual soil contamination (\$200). Fees from these activities and other brownfields-related technical assistance generated \$724,700 in 2007-08 from PECFA and non-PECFA sites. The fees are not reimbursable expenses under the PECFA program.

Commerce is authorized to promulgate rules to assess and collect fees to recover its costs of approving requests by owners or operators for case closure and providing other assistance requested by claimants at petroleum sites. Commerce has not promulgated rules or assessed fees under the provision. If it does, the fees will not be reimbursable expenses under the PECFA program.

### Department of Justice

Prior to July 1, 2005, Commerce and the Department of Justice (DOJ) had a memorandum of understanding (MOU) for several years, through which Commerce

paid DOJ for special agent services to investigate potential PECFA fraud by owners, consultants and service providers. In 2004-05, DOJ worked on eight investigations of potential criminal violations including possible conspiracy to commit theft by fraud, anti-trust, and bid-rigging issues. Commerce terminated the MOU, and as of December, 2008, had not referred additional cases to DOJ.

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### PECFA Program Costs

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Table 3 is a summary, by fiscal year, of PECFA program expenditures from 1988-89 through 2007-08 and the estimated amounts in 2008-09. The PECFA program may pay cumulative awards totaling \$1.5 billion by the end of 2008-09. The program has paid awards through the end of 2007-08 total-

**Table 3: PECFA Program Costs Paid from the Petroleum Inspection Fund by Fiscal Year**

	PECFA Awards	Rev. Bond Awards	Rev. Bond Debt. Pyt.	Commerce Admin.*	DNR Admin.*	Total
1988-89	\$312,000	\$0	\$0	\$40,300	\$33,800	\$386,100
1989-90	7,249,100	0	0	80,000	81,500	7,410,600
1990-91	22,802,900	0	0	193,900	94,300	23,091,100
1991-92	24,621,500	0	0	209,600	99,900	24,931,000
1992-93	43,531,700	0	0	419,900	544,200	44,495,800
1993-94	64,871,900	0	0	585,200	428,100	68,885,200
1994-95	80,891,500	0	0	943,000	441,800	82,276,300
1995-96	106,960,700	0	0	1,073,900	796,500	108,831,100
1996-97	95,902,700	0	0	1,645,300	680,600	98,228,600
1997-98	94,131,700	0	0	2,222,800	235,900	96,590,400
1998-99	94,131,700	0	0	2,139,100	255,200	96,526,000
1999-00	89,219,100	207,394,400	6,879,300	2,246,900	233,000	305,972,700
2000-01	80,680,400	43,711,500	13,790,300	2,701,200	250,900	141,134,300
2001-02	74,999,900	30,008,300	22,536,300	2,971,000	287,800	130,803,300
2002-03	67,995,700	62,272,500	23,713,700	2,757,000	303,800	157,042,700
2003-04	49,795,300	43,136,100	30,183,500	2,848,000	301,900	126,264,800
2004-05	42,707,000	1,835,900	29,575,500	2,648,200	313,000	77,079,600
2005-06	21,311,100	0	70,471,700	2,269,300	328,400	94,380,500
2006-07	22,514,100	0	31,152,700	2,609,300	344,300	56,620,400
2007-08	14,591,100	0	29,561,300	2,459,100	162,800	46,774,300
2008-09**	12,000,000	0	30,000,000	2,824,300	189,900	45,014,200
Total	\$1,111,221,100	\$388,358,700	\$282,221,100	\$35,887,300	\$6,407,600	\$1,824,095,800
Percent	60.9%	21.3%	15.5%	2.0%	0.3%	100.0%

\*Excludes federally-funded staff paid through the Leaking Underground Storage Tank program and staff funded from program revenue.

\*\*Estimated.

ing \$1.49 billion (\$1.1 billion cash allotment from petroleum inspection fees and \$388 million from revenue obligations proceeds) for partial or final cleanups at 12,655 occurrences. Administrative costs paid from the petroleum inspection fee for Commerce (\$35.9 million) and DNR administration (\$6.4 million) will total 2.3% of cumulative program expenditures at the end of 2008-09.

### Type of Tank System

The majority of PECFA occurrences for which at least one payment has been made had contamination from federally-regulated commercial underground petroleum storage tank systems, such as found at gasoline stations. Table 4 shows the distribution of PECFA occurrences and awards by the type of petroleum tank system for PECFA payments made as of June 30, 2008. The distribution of payments includes PECFA payments for occurrences that had been finalized and occurrences where payments have partially reimbursed remedial action. Commercial underground petroleum product storage tanks represented 79% of the PECFA occurrences where at least one payment has been made and 88% of PECFA payments made as of June 30, 2008. Home heating oil tanks were the second largest group of occurrences, representing 10% of PECFA occurrences, but less than 1% of PECFA payments.

### Payments Per Occurrence

Table 5 shows the distribution of PECFA occurrences and awards by the amount paid per occurrence for the \$1,488 million in PECFA payments for 12,655 occurrences made as of June 30, 2008. While 48% of the occurrences had received less than

**Table 4: Distribution of PECFA Payments by Type of Tank (as of June 30, 2008)**

Tank Type	Number of Occurrences	% of Occurrences	Total Payments	% of Payments	Average Payment Per Occurrence
Commercial					
Underground	9,958	78.7%	\$1,305,155,235	87.7%	\$131,066
Aboveground	898	7.1	143,839,474	9.7	160,178
Terminal	30	0.2	15,942,669	1.1	531,422
Farm under 1,100 gal	236	1.9	10,034,168	0.7	42,518
Home Heating Oil	1,303	10.3	7,117,193	0.5	5,462
School District	220	1.8	5,179,221	0.3	23,542
Tribal Trust	5	0.0	239,398	0.0	47,880
Technical College	5	0.0	159,168	0.0	31,834
Total	12,655	100.0%	\$1,487,666,527	100.0%	\$117,556

**Table 5: Distribution of PECFA Payments – All Occurrences (as of June 30, 2008)**

Amount Per Occurrence	Number of Occurrences	% of Occurrences	Total Payments	% of Payments	Average Payment Per Occurrence
\$50,000 and less	6,051	47.8%	\$116,654,370	7.9%	\$19,279
\$50,001 to \$100,000	2,570	20.3	185,024,561	12.4	71,994
\$100,001 to \$150,000	1,127	8.9	137,942,942	9.3	122,398
\$150,001 to \$200,000	701	5.6	121,249,533	8.2	172,967
\$200,001 to \$250,000	480	3.8	107,578,263	7.2	224,121
\$250,001 to \$300,000	324	2.6	89,027,382	6.0	274,776
\$300,001 to \$350,000	244	1.9	79,135,205	5.3	324,325
\$350,001 to \$400,000	211	1.7	78,827,391	5.3	373,590
\$400,001 to \$450,000	170	1.3	72,062,276	4.8	423,896
\$450,001 to \$500,000	208	1.6	99,898,035	6.7	480,279
\$500,001 to \$550,000	102	0.8	53,446,723	3.6	523,987
\$550,001 to \$600,000	77	0.6	44,306,232	3.0	575,406
\$600,001 to \$650,000	90	0.7	56,378,128	3.8	626,424
\$650,001 to \$700,000	67	0.5	45,163,811	3.0	674,087
\$700,001 to \$750,000	45	0.4	32,810,227	2.2	729,116
\$750,001 to \$800,000	43	0.4	33,135,157	2.2	770,585
\$800,001 to \$850,000	24	0.2	19,892,514	1.3	828,855
\$850,001 to \$900,000	32	0.3	27,975,915	1.9	874,247
\$900,001 to \$950,000	18	0.1	16,640,732	1.1	924,485
\$950,001 to \$1,000,000	71	0.6	70,517,128	4.8	993,199
Total	12,655	100.0%	\$1,487,666,527	100.0%	\$117,556

\$50,000 each, this category of occurrences comprised less than 8% of the total payments. Conversely, 4.6% of the occurrences had received more than \$500,000 each, and this category of occurrences comprised 27% of the total payments. The average PECFA payment per occurrence (including closed occurrences and occurrences with cleanups in process) was \$117,600. This represented an increase in the average PECFA payment from the \$95,600 average for the 5,658 occurrences for which a payment had been made by June 30, 1998.

Of the 12,655 occurrences for which at least one PECFA payment had been made by June 30, 2008, final payments had been made for completed cleanup at 11,472 occurrences (91%). This is shown in Table 6. The \$1.27 billion in PECFA payments for the closed occurrences represented 86% of PECFA payments made as of June 30, 2008. In comparison, Table 7 shows how the number and percentage of open occurrences and payments for open occurrences have declined from 1998 to 2008 as open occurrences are moved from the category of open to closed, and the number and percentage of closed occurrences and payments for closed occurrences has increased.

**Table 6: Distribution of PECFA Payments -- Closed Occurrences (as of June 30, 2008)**

Amount Per Occurrence	Number of Occurrences	% of Occurrences	Total Payments	% of Payments	Average Payment Per Occurrence
\$50,000 and less	5,743	50.1%	\$108,614,288	8.5%	\$18,912
\$50,001 to \$100,000	2,275	19.8	163,829,306	12.9	72,013
\$100,001 to \$150,000	960	8.4	117,425,612	9.2	122,318
\$150,001 to \$200,000	604	5.2	104,584,790	8.2	173,154
\$200,001 to \$250,000	427	3.7	95,739,548	7.5	224,214
\$250,001 to \$300,000	285	2.5	78,406,120	6.2	275,109
\$300,001 to \$350,000	209	1.8	67,836,555	5.3	324,577
\$350,001 to \$400,000	183	1.6	68,295,362	5.4	373,199
\$400,001 to \$450,000	140	1.2	59,333,087	4.7	423,808
\$450,001 to \$500,000	190	1.7	91,409,608	7.2	481,103
\$500,001 to \$550,000	87	0.8	45,620,868	3.6	524,378
\$550,001 to \$600,000	63	0.5	36,175,579	2.8	574,216
\$600,001 to \$650,000	71	0.6	44,501,396	3.5	626,780
\$650,001 to \$700,000	56	0.5	37,774,501	3.0	674,545
\$700,001 to \$750,000	34	0.3	24,737,735	1.9	727,580
\$750,001 to \$800,000	32	0.3	24,706,246	1.9	772,070
\$800,001 to \$850,000	19	0.2	15,739,131	1.2	828,375
\$850,001 to \$900,000	22	0.2	19,203,716	1.5	872,896
\$900,001 to \$950,000	10	0.1	9,218,686	0.7	921,869
\$950,001 to \$1,000,000	62	0.5	61,671,048	4.8	994,694
<b>Total</b>	<b>11,472</b>	<b>100.0%</b>	<b>\$1,274,823,182</b>	<b>100.0%</b>	<b>\$111,125</b>

Over 50% of closed occurrences received payments that totaled less than \$50,000 per occurrence and this category of occurrences represented 9% of final PECFA payments. Only 4% of occurrences with final payments received over \$500,000 per occurrence, but this category represented 25% of final payments. The average PECFA payment for completed occurrences was \$111,100. This average represented an increase from the \$49,900 average payment for 2,880 occurrences by June 30, 1998, and the

\$103,000 average payment for 7,814 final occurrences by June 30, 2002.

As of June 30, 2008, partial PECFA payments had been made for \$212.3 million at 1,183 occurrences, which represented 9% of all occurrences with at least one payment and 14% of all payments being at active sites with at least one payment. Table 8 shows the payments made at active occurrences by the payment amount per occurrence.

**Table 7: PECFA Occurrences With At Least One Payment, Open and Closed Occurrences (\$ in Millions)**

Date	Number of Open Occurrences	% Open Occur. to All Occur.	Total Payments for Open Occurrences	% Payments for Open to All Payments	Number of Closed Occurrences	% Closed Occur. to All Occur.	Total Payments for Closed Occurrences	% Payments for Closed to All Payments	Total Number of Occur. With Payment	Total Payments
June 30, 1998	2,853	50.4%	\$408.1	75.5%	2,802	49.6%	\$132.6	24.5%	5,655	\$540.7
June 30, 1999	2,892	45.2	436.2	68.7	3,503	54.8	199.0	31.3	6,395	635.2
June 30, 2000	3,295	38.7	524.2	56.2	5,218	61.3	407.8	43.8	8,513	932.0
June 30, 2001	2,670	28.9	447.2	42.3	6,578	71.1	609.1	57.7	9,248	1,056.3
June 30, 2002	2,100	21.2	362.2	31.2	7,783	78.8	799.3	68.9	9,883	1,161.6
June 30, 2003	1,839	17.1	352.7	27.3	8,894	82.9	939.1	72.7	10,733	1,291.9
June 30, 2004	1,723	14.9	328.0	23.7	9,816	85.1	1,054.0	76.3	11,539	1,382.0
June 30, 2005	1,660	13.9	305.3	21.4	10,325	86.1	1,120.5	78.6	11,985	1,425.8
June 30, 2006	1,523	12.4	273.5	18.9	10,724	87.6	1,177.1	81.1	12,247	1,450.6
June 30, 2007	1,343	10.8	237.7	16.2	11,133	89.2	1,233.2	83.8	12,476	1,470.8
June 30, 2008	1,183	9.3	212.8	14.3	11,472	90.7	1,274.8	85.7	12,655	1,487.6

While 26% of partial payment occurrences had received less than \$50,000 per occurrence as of June 30, 2008, they represented 4% of total partial payments. Approximately 10% of partial payment occurrences received over \$500,000 in PECFA payments as of June 30, 2008, and the payments for these occurrences represented 38% of PECFA partial payments. The average PECFA payment for partially reimbursed occurrences was \$179,900. Additional PECFA payments can be expected at these occurrences before they are closed.

PECFA payments have been made in all 72 counties. Milwaukee County sites have received the largest amount of PECFA payments, including 2,177 occurrences and \$216.1 million, representing 17.2% of total occurrences and 14.5% of total payments made as of June 30, 2008. Dane County occurrences received the second highest level of total payments (8.2% of payments) and Waukesha County was third at 4.8% of payments. Appendix VI summarizes PECFA payments made by county.

### Distribution of PECFA Costs

Information is available about the components of PECFA costs for claims paid after January 1, 1994. Table 9 indicates the distribution of PECFA costs for all PECFA claims processed between January 1, 1994, and June 30, 2008. This included claims totaling \$1,293.5 million for 11,907 occurrences. Commerce data on PECFA claims indicates that the largest category of PECFA payments is consultant services, accounting for 40% of total costs. The second largest category of costs is loan interest and other loan-related expenses for loans secured to clean up PECFA sites, representing 20% of PECFA costs. Claims submitted on or after May 1, 2006, administrative rule changes went into ef-

**Table 8: Distribution of PECFA Payments -- Active Occurrences (as of June 30, 2008)**

Amount Per Occurrence	Number of Occurrences	% of Occurrences	Total Payments	% of Payments	Average Payment Per Occurrence
\$50,000 and less	308	26.1%	\$8,040,082	3.8%	\$26,104
\$50,001 to \$100,000	295	24.9	21,195,254	9.9	71,848
\$100,001 to \$150,000	167	14.1	20,517,330	9.6	122,858
\$150,001 to \$200,000	97	8.2	16,664,743	7.8	171,801
\$200,001 to \$250,000	53	4.5	11,838,715	5.6	223,372
\$250,001 to \$300,000	39	3.3	10,621,262	5.0	272,340
\$300,001 to \$350,000	35	3.0	11,298,650	5.3	322,819
\$350,001 to \$400,000	28	2.4	10,532,029	4.9	376,144
\$400,001 to \$450,000	30	2.5	12,729,189	6.0	424,306
\$450,001 to \$500,000	18	1.5	8,488,427	4.0	471,579
\$500,001 to \$550,000	15	1.3	7,825,856	3.7	521,724
\$550,001 to \$600,000	14	1.2	8,130,653	3.8	580,761
\$600,001 to \$650,000	19	1.6	11,876,732	5.6	625,091
\$650,001 to \$700,000	11	0.9	7,389,310	3.5	671,755
\$700,001 to \$750,000	11	0.9	8,072,492	3.8	733,863
\$750,001 to \$800,000	11	0.9	8,428,911	4.0	766,265
\$800,001 to \$850,000	5	0.4	4,153,383	1.9	830,677
\$850,001 to \$900,000	10	0.8	8,772,199	4.1	877,220
\$900,001 to \$950,000	8	0.7	7,422,046	3.5	927,756
\$950,001 to \$1,000,000	9	0.8	8,846,081	4.2	982,898
Total	1,183	100.0%	\$212,843,345	100.0%	\$179,918

fect are categorized as consulting, commodity, usual and customary costs, loan interest or other costs. Thus, the future amounts in those categories will increase.

### Claims Awaiting Payments

As of December 1, 2008, Commerce had received 50 PECFA award applications totaling \$680,000 that had not been paid. The backlog consisted of two components, claims that have not been reviewed and claims that have been reviewed but are awaiting payment. The first component consisted of 28 claims for \$480,000 being reviewed or that were waiting to be assigned to staff for review. The second component of the backlog consisted of 22 claims for \$200,000 that had been reviewed and would be paid within two months.

The backlog of PECFA claims that had been received and had not been paid exceeded \$200 million during the months of June, 1997, through February, 2000. By February, 2000, Commerce had reviewed but not paid almost \$210 million in claims. Issuance of revenue obligations under 1999

**Table 9: Distribution of PECFA Award Payments (January 1, 1994 Through June 30, 2008)\***

Description of Cost Component	Total Claim Amount	% of Awards
<b>Consulting.</b> Consultant staff costs such as pump tests, pilot tests, bioremediation evaluation, meals, travel, lodging, remediation system checks, survey fees, operation and maintenance fees.	\$524,386,117**	40.5%
<b>Loan Interest.</b> Loan origination fees, loan renewal fees, other interest expenses associated with loans secured for site remediation.	262,219,372**	20.3
<b>Soil Treatment.</b> Payments to landfills for disposal of contaminated soil, thermal treatment of soil, disposal of noncontaminated soils.	129,304,607	10.0
<b>Remedial Equipment.</b> Costs associated with renting or purchasing remedial equipment such as remediation buildings, remediation system components, valves, pumps, pipes, plumbing, construction, control panel components, installation fees, maintenance of remedial equipment.	108,243,570	8.4
<b>Laboratory Tests.</b> Laboratory tests and analysis of soils and water, sample handling and shipping, disposal of samples.	70,584,115	5.5
<b>Monitoring.</b> Monitoring of remediation progress such as drilling wells, supplies and materials for well installation, soil boring costs, well abandonment fees, geoprobes.	67,933,877	5.3
<b>Excavation.</b> Costs associated with the excavation of contaminated soil such as equipment and labor.	36,658,856	2.8
<b>Trucking.</b> Hauling contaminated soils and backfill, transporting water for treatment, delivering remedial equipment to the site, truck rental.	34,201,451	2.6
<b>Backfill.</b> Sand, gravel, stone or other materials that backfill the remediated site.	28,470,216	2.2
<b>Commodity.</b> Includes costs such as remedial equipment, laboratory tests, monitoring, excavation, and trucking. Effective May 1, 2006, Commerce began tracking these costs as one category.	13,190,228**	1.0
<b>Usual and Customary Costs.</b> Effective May 1, 2006, Commerce established a schedule of the maximum reimbursement amount for tasks commonly associated with PECFA site cleanups.	2,782,741**	0.2
<b>Other.</b> General costs not elsewhere classified such as PECFA claim preparation fees if prepared by someone other than a consultant, replacement of potable wells.	15,542,555**	1.2
<b>Total</b>	<b>\$1,293,517,705</b>	<b>100.0%</b>

\*Based on claims paid for \$1,293.5 million for 11,907 occurrences. There were also non-eligible costs of \$90,757,279, equaling 6.6% of total submitted costs.

\*\*Eligible costs in claims submitted on or after May 1, 2006, administrative rule changes went into effect are included in one of five categories.

Act 9 authorization allowed the backlog of claims to be paid.

Claims are generally reviewed and paid in the order the complete claim is received and any nec-

essary approvals have been made by Commerce or DNR. However, claims are reviewed immediately if they are for home heating oil or farm tank cleanups or if the investigation and cleanup can be completed for equal to or less than \$60,000. Home heat-

ing oil and farm tank claims are paid as soon as they are approved and claims for \$60,000 or less are placed in line to be paid when funds are available.

### **Estimated Total Program Cost**

In 1991, the Department of Industry, Labor and Human Relations (which administered the PECFA program prior to the July 1, 1996, transfer of the program to Commerce) and DNR submitted a report on PECFA to the Joint Committee on Finance in which the agencies estimated total potential PECFA cost at approximately \$970 million if various programmatic changes and cost containment measures would be adopted. Most of the changes were implemented in 1991 through 1994. Program expansions enacted in 1993 Act 416 were estimated to increase total program cost by approximately \$315 million, for a total program cost of approximately \$1.3 billion.

The growing costs of operating and maintaining engineered remedial systems were not factored into earlier estimates of the cumulative costs of the program. This includes systems that require power, usually electrical, to continuously pump petroleum products and other contamination out of the groundwater or to extract petroleum vapors from the soil. In the fall of 1996, estimates of the cumulative cost of the PECFA program had increased to \$1.4 to \$1.8 billion.

Commerce and DNR began to implement program changes included in 1999 Act 9 and Comm 47 and Comm 46 in 1999 and 2000. In the fall of 2000 and fall of 2002, Commerce officials updated the estimate of the cumulative cost of the program to approximately \$1.8 billion to clean up approximately 16,000 sites. In the fall of 2004, Commerce officials continued to estimate that cumulative program costs could reach approximately \$1.8 billion.

In 2005 and 2006, Commerce used a \$40,000 EPA grant to study the estimated future financial liability of the PECFA program for petroleum-contaminated sites. The Department estimated

that, as of July, 2006, there were 3,171 sites with petroleum contamination that could potentially seek future PECFA reimbursement totaling \$387.9 million. The \$387.9 million in estimated potential future PECFA costs, when added to cumulative PECFA reimbursements approaching \$1.5 billion as of June, 2006, would result in a total cumulative potential program cost of \$1.8 to \$1.9 billion.

In October, 2008, Commerce updated its estimate of the future financial liability of the program for PECFA claims. The Department calculated there are 2,799 sites with reported contamination that remain a potential future liability to the PECFA program. Of these sites, 1,680 have established PECFA eligibility, and have received \$192.2 million in PECFA payments, but have an estimated remaining financial liability of \$106.7 million. PECFA eligibility has not yet been established for the remaining 1,119 sites with reported contamination. Due the uncertainty of estimating the eligibility or future financial liability of the program for these sites, the Department did not estimate the projected PECFA program costs for these sites. However, Commerce estimated 70 sites will establish eligibility in 2009 and 56 in 2010, with total cumulative financial liability for the 126 sites of approximately \$14 million over three to seven years from the time of determination of eligibility to the final site closure date.

The state will pay a cumulative total in PECFA claims of over \$1.5 billion by June, 2009. Under the October, 2008, Commerce estimate of the remaining future financial liability of the program for sites that have established PECFA eligibility and are anticipated to establish eligibility in 2009 and 2010, remaining potential liability will exceed \$120.7 million. Thus, the total cumulative program costs could range from \$1.6 to \$1.7 billion. At the current average rate of payment of claims of approximately \$17 million per year, it might take seven to ten years for over \$120 million in potential remaining costs to be submitted to Commerce for reimbursement.

The estimate of potential liability would vary

depending on the number and cleanup costs for sites for which eligibility is determined after 2008, and the actual remaining cleanup costs for sites with PECFA eligibility. The rate at which PECFA claims are paid would vary depending on the amount of time it takes responsible parties to clean up sites.

Federally-regulated (gas station) sites were required to close or upgrade by the end of 1998. It is likely that sites identified in recent years mainly included properties where a PECFA-eligible occurrence was discovered during a transfer of ownership, settlement of an estate, or discovery during a building or road construction project. In addition, sites might be identified where the responsible party has not been willing or able to begin a cleanup, the site has been abandoned, or the owner of a federally-regulated site did not comply with the 1998 deadline to upgrade or close tanks.

### **Bonding to Fund PECFA**

On March 14, 1994, the Attorney General issued a legal opinion that the state may use the proceeds from general obligation bonds to fund an expansion of the PECFA program. The opinion stated that PECFA is a program to improve land or waters for the public purpose of mitigating environmental threats caused by past practices, and that bonding for PECFA would not violate the constitutional prohibition against contracting debt for works of internal improvements.

1999 Act 9 authorized the Building Commission to issue revenue obligations of up to \$270 million in principal amount (typically long-term bonds or short-term notes), to be paid from petroleum inspection fees, to fund the payment of claims under the PECFA program. The PECFA revenue obligations were created as a special fund in an account maintained by a trustee. Act 9 specified that the Legislature finds that a nexus exists between the PECFA program and the petroleum inspection fund in that fees imposed on users of petroleum are used to remedy environmental damage caused

by petroleum storage. The act also contained a moral obligation pledge whereby the Legislature expressed its expectation and aspiration that, if the Legislature reduces the rate of the petroleum inspection fee and if the funds in the petroleum inspection fund are insufficient to pay the principal and interest on the revenue obligations, the Legislature would make an appropriation from the general fund sufficient to pay the principal and interest on the revenue obligations.

The Building Commission authorized the first \$270 million in revenue obligations in February and May of 2000. Between March and December of 2000, \$250 million of revenue obligation proceeds had been issued and the proceeds were subsequently used to pay PECFA claims and substantially reduce the claim backlog.

In 2001 Act 16, an additional \$72 million in revenue obligations were authorized. In 2003 Act 33, an additional \$94 million in revenue obligations were authorized, for total authorization of \$436 million. In 2007 Act 20, \$49,076,000 in remaining, but unused bonding authority, was repealed, for a net cumulative total PECFA revenue obligation authority of \$387 million. No bonding authority is available for future issuance.

All of the \$387 million in PECFA revenue obligation authority has been issued as of December, 2008. This includes issuance of \$245 million in long-term revenue obligations and \$142 million in short-term commercial paper. As of December 1, 2008, the total amount of outstanding revenue obligations (the amount the state owes in principal) was \$231 million, which included \$88.7 million in long-term obligations with a weighted average interest cost of 4.71%, and \$142.3 million in short-term commercial paper with a weighted average interest rate of 2.09%.

The state made payments of \$29.6 million in payments to the revenue obligation debt service trustee account in 2007-08. The state will make debt service payments to the trustee account of approximately \$30.0 million in 2008-09 for the

minimum required principal and interest payments on long-term obligations and interest only payments on short-term obligations.

Table 10 shows the actual and estimated annual payments to the revenue obligation trustee for petroleum inspection fee revenue obligation debt service from 2007-08 through 2011-12. The debt service amounts are based on an assumption that the state will continue to make the minimum required principal and interest payments for long-term obligations and interest only payments on short-term obligations (at current rates of 2% to 3%). The remaining principal amount would be \$142.3 million on June 30, 2013. However, any undesignated petroleum inspection fund balances can be used to pay additional debt service beyond the minimum required amounts, shown in the table. The Department of Administration monitors the proportion of short-term debt to total debt and may pay some of the principal on the short-term obligations or convert them to long-term fixed rate debt before 2013.

**Table 10: Petroleum Inspection Fee Revenue Obligation Payments to the Trustee Debt Service Account (\$ in Millions)**

	Payment Amount*	Principal Balance**
2007-08 actual	\$29.6	\$252.3
2008-09 est.	30.0	231.0
2009-10 est.	30.2	208.7
2010-11 est.	30.2	185.7
2011-12 est.	30.3	160.6
2012-13 est.	22.9	142.3

\*Does not include any principal payment on \$142.3 million in short-term commercial paper.

\*\*June 30 outstanding principal balance after making required payments.

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### Petroleum Inspection Fund

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The PECFA program is funded from the segregated petroleum inspection fund. Revenue for the fund is generated from the petroleum inspection

fee. Under Chapter 168 of the statutes, Commerce is responsible for inspecting petroleum products brought in to the state to assure that the product meets minimum product grade and environmental specifications. The grade specifications are established by administrative rule and are based on nationally recognized standards, specifications and classifications. A petroleum inspection fee is imposed on all of the inspected petroleum products. The Department of Revenue (DOR) collects the fee at the same time it collects the motor vehicle fuel tax at petroleum company terminals.

Approximately 3.7 billion gallons of petroleum are inspected annually (including gasoline, diesel and heating oil). Each one cent of petroleum inspection fee generates revenues of approximately \$37 million annually. Therefore, the current 2¢ per gallon fee is estimated to generate approximately \$74 million annually.

The petroleum inspection fund also receives revenues from inspection and plan review fees for bulk petroleum tanks, and interest income on the fund balance.

Although a petroleum inspection fee existed since at least 1880, it has been used as a funding source for cleanup of petroleum contamination only since the creation of the PECFA program in 1988. In 1988 the fee was 0.4¢ per gallon and was increased to 1¢ in 1991, to 2¢ in 1992, and to 3¢ per gallon in 1993. The fee was decreased from 3¢ to 2¢ per gallon, on April 1, 2006.

The petroleum inspection fund provides funds for PECFA, Commerce's petroleum tank and inspection programs and several other programs. The appropriations funded from the petroleum inspection fund are summarized in Table 11 and are listed in Appendix VII. Approximately 36% (\$32.2 million) of the total expenditures from the petroleum inspection fund in 2007-09 will be for PECFA awards and Commerce and DNR administration of the PECFA program, including 27.8 positions. (In addition to these expenditures, the state will spend \$59.6 million for revenue obligation

**Table 11: Petroleum Inspection Fund, Appropriations 2007-09 Biennium\***

	2007-08	2008-09
PECFA Awards **	\$14,600,000	\$12,000,000
PECFA Administration --		
Commerce and DNR	3,014,200	3,014,200
Commerce --		
Petroleum Inspection	5,547,400	5,547,400
Transfer to Transportation Fund	20,321,700	6,321,700
Other Programs	<u>11,242,300</u>	<u>10,250,900</u>
Total Appropriations	\$54,725,600	\$37,134,200

\*Excludes expenditures for PECFA revenue obligation debt service and transfers to the general fund.

\*\* Estimated PECFA award expenditures are shown. The appropriation was \$20,000,000 in 2007-08 and \$20,000,000 in 2008-09.

debt service, which is not included in Table 11.) An additional 12% (\$10.7 million) of expenditures will be for Commerce petroleum inspection programs with 43 positions, which includes staff at 11 petroleum laboratories that inspect petroleum products that enter the state (and are subject to the fee), gas stations and other petroleum tank locations. A total of \$26.6 million is transferred to the transportation fund for expenditure by the Department of Transportation (DOT) for the motor vehicle emissions testing program in southeast Wisconsin. (This represents 30% of the total expenditures from the fund for the 2007-09 biennium.) Other programs are funded with \$14 million (16% of expenditures during the biennium) and 39.35 positions as shown in Appendix VII. Programs include: (a) DOR collection of the petroleum inspection fee; (b) petroleum inspection fee refunds to eligible airlines; (c) Commerce diesel truck idling reduction grant program (created in 2005 Wisconsin Act 25); (d) Department of Military Affairs major disaster assistance program (created in 2005 Wisconsin Act 269); and (e) brownfields, clean air and environmental programs in Commerce, DNR, DOT, the Department of Agriculture, Trade and Consumer Protection and the Department of Military Affairs.

The condition of the petroleum inspection fund is shown in Table 12. The petroleum inspection fund is currently expected to have an unencumbered balance of approximately \$16.8 million on July 1, 2009.

In addition to appropriations from the petroleum inspection fund, \$6.2 million was transferred from the petroleum inspection fund to the general fund, under the requirements of 2007 Wisconsin Acts 20 and 226, the biennial budget act and budget repair act. Those acts require the Department of Administration to allocate a total of \$460 million in lapses from most state agencies to the general fund. In the 2007-09 biennium, the \$6.2 million equals approximately 7% of expenditures from the petroleum inspection fund. A cumulative total of \$61.76 million has been or will be transferred to the general fund by the end of 2008-09. The amounts transferred in each year are shown in Table 13.

**Table 12: Petroleum Inspection Fund Condition, 2006-07 Through 2008-09 (\$ in Millions)**

	2006-07 Actual	2007-08 Actual	2008-09 Estimated
<b>Revenues</b>			
Opening Balance, July 1	\$44.4	\$21.2	\$15.9
Petroleum Inspection Fee	72.1	76.8	74.0
Revenue Obligation Debt Service Costs	-31.2	-29.6	-30.0
Petroleum Bulk Tank Inspection Fees	0.2	0.2	0.2
Interest Income on Fund and Other	<u>1.6</u>	<u>0.9</u>	<u>0.8</u>
Total Revenue	\$42.7	\$48.3	\$45.0
Total Revenue Available	\$87.1	\$69.5	\$60.9
<b>Expenditures</b>			
PECFA Awards and Administration	\$25.4	\$17.2	\$15.0
Other Expenditures	20.3	35.4	22.6
Payplan Reserves	<u>0.0</u>	<u>0.0</u>	<u>0.5</u>
Total Expenditures	\$45.7	\$52.6	\$38.1
Transfer to the General Fund	<u>-20.2</u>	<u>-1.0</u>	<u>-5.2</u>
Cash Balance, June 30	\$21.2	\$15.9	\$17.6
Encumbrances/Continuing Balances	-0.8	-6.7	-0.8
Available Balance	\$20.4	\$9.0	\$16.8

**Table 13: Transfers from the Petroleum Inspection Fund to the General Fund**

Fiscal Year	Amount
2001-02	\$1,187,800
2002-03	2,028,900
2003-04	20,954,200
2004-05	209,900
2005-06	10,860,600
2006-07	20,258,800
2007-08	1,019,400
2008-09 estimated	<u>5,240,700</u>
Total	\$61,760,300

## Appendices

Several appendices provide additional information about the PECFA program. These include:

- Appendix I describes the major federal and state storage tank requirements affecting PECFA.
- Appendix II lists eligible and ineligible costs under PECFA, based on requirements in Section 101.143 of the Statutes and Chapter Comm 47 of the Administrative Code.
- Appendix III summarizes the maximum awards, total annual awards and deductibles.
- Appendix IV summarizes additional requirements affecting PECFA awards.
- Appendix V illustrates the PECFA program process from the time of discovery of a petroleum discharge, through cleanup and payment of a PECFA award.
- Appendix VI lists the number of PECFA sites and total PECFA payments by county as of June 30, 2008.
- Appendix VII lists appropriations from the petroleum inspection fund during 2007-09.
- Appendix VIII summarizes the major provisions of legislation that created and subsequently modified the PECFA program.

## APPENDIX I

### Major Federal and State Storage Tank Requirements Affecting PECFA

Requirement Tanks Included	Federal Regulations	State Regulations	PECFA
	(a) Commercial underground petroleum product storage tanks larger than 110 gallons, (b) commercial underground hazardous chemical storage tanks larger than 110 gallons, and (c) underground farm and residential vehicle fuel tanks larger than 1,100 gallons.	(a) All federally regulated tanks, (b) heating oil tanks where the petroleum products are not for resale, (c) farm and residential tanks of 1,100 gallons or less, (d) aboveground tanks, and (e) tanks with product having a flash point of 200°F or less. (The flash point is the temperature at which the substance can be ignited.)	(a) Commercial underground and aboveground fuel tanks larger than 110 gallons, (b) farm and residential vehicle fuel tanks larger than 1,100 gallons, (c) home heating oil tanks, (d) farm tanks of 1,100 gallons or less that meet certain eligibility criteria, and (e) public school district and technical college district heating oil tanks used to store heating oil for consumptive use on the premises where stored.
Tanks Excluded	(a) Underground heating oil tank systems where the petroleum products are not for resale, (b) farm and residential tanks 1,100 gallons or less, (c) aboveground tank systems, (d) commercial tanks of 110 gallons or less, and (e) tanks containing nonhazardous chemicals and/or substances meeting certain federal exemptions.	Tanks with product having a flash point above 200°F.	(a) Commercial tanks of 110 gallons or less capacity, (b) residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, (c) farm tanks of 1,100 gallons or less if they don't meet the eligibility criteria for inclusion, (d) nonresidential heating oil tanks for consumptive use on the premises where stored unless included above as public school district or technical college district tanks, (e) tanks owned by this state or the federal government, and (f) pipeline facilities.
Deadline for Release Detection System	Required by December 22, 1993, for all federally regulated tanks regardless of age.	For federally regulated tanks, required by December 22, 1993, same as federal regulations. For new and existing underground heating oil tanks over 4,000 gallons, requirement phased in by May 1, 1995. For new and existing underground heating oil tanks of 4,000 gallons or less, required by May 1, 2001. For aboveground systems over 5,000 gallons, required by May 1, 2001 to have diking or a system of release detection. For underground farm and residential tanks of 1,100 gallons or less, must upgrade by May 1, 2001.	Maximum awards for underground and aboveground tanks decrease from either \$1,000,000 or \$500,000 to \$190,000 on December 22, 2001. Investigations and remedial activities started before December 22, 2001, would continue to be eligible for the higher awards. The maximum award for eligible farm tanks is \$100,000. The maximum award for eligible public school district and technical college district tanks is \$190,000. In any fiscal year, not more than 5% of amounts appropriated for PECFA awards may be used for farm tanks and not more than 5% may be used for school district tanks.
Deadline for Upgrading or Removal of Tanks	Required by December 22, 1998.	For federally regulated tanks, required by December 22, 1998, same as federal regulations. Required by May 1, 2001, for farm and residential tanks, heating oil tanks over 4,000 gallons and aboveground storage tanks over 5,000 gallons.	
Other Site Requirements	New tank systems must meet design and installation standards. Closure assessment is required when tank is closed. Hazardous substance tanks also require secondary containment.	For federally regulated tanks, same requirements as federal regulations. For underground heating oil tanks over 4,000 gallons, closure assessment is required at tank closure.	

**APPENDIX I (continued)**

**Major Federal and State Storage Tank Requirements Affecting PECFA**

<b>Requirement</b>	<b>Federal Regulations</b>	<b>State Regulations</b>	<b>PECFA</b>
<p>Financial Responsibility (Insurance) Requirement</p>	<p>Proof of financial responsibility for covering the costs of corrective actions and third-party claims.</p> <p>Owners of petroleum underground storage tanks (UST) systems engaged in petroleum production, or owners with an average annual monthly volume of 10,000 gallons or more: \$1,000,000 per occurrence.</p> <p>Owners of petroleum UST systems not engaged in petroleum production, or owners with an average annual monthly volume of less than 10,000 gallons: \$500,000 per occurrence.</p> <p>In addition, owners of 1 to 100 USTs must have annual aggregate insurance of \$1,000,000; owners of 101 or more USTs, \$2,000,000. However, requirement is deferred until December, 1993, for owners of 1 to 12 underground tanks or owners of 100 or fewer tanks at a single facility.</p>	<p>For federally regulated tanks, same requirements as federal regulations. Not required for non-federally regulated tanks.</p>	<p>Provides award amounts for federally regulated underground petroleum product tanks that are equivalent to the federal financial responsibility requirements.</p> <p>PECFA eligibility is denied effective January 1, 1994, if a tank: (a) meets state or federal standards for new tanks or existing tank upgrades; or (b) is located on property on which cleanup was previously conducted for which a PECFA award was issued, and within the area on which those remedial action activities were conducted. However, certain sites with new or upgraded tanks would continue to be eligible for PECFA for specified time periods if they meet certain criteria.</p> <p>Owners of underground tanks are required to provide proof of financial responsibility for the first \$5,000 of eligible costs incurred because of a petroleum products discharge.</p>

## APPENDIX II

### Eligible and Ineligible Costs Under PECFA Section 101.143, Wisconsin Statutes (See Comm 47 for Additional Ineligible Costs)

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#### Eligible Costs

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1. Investigation of potential sources of contamination by testing to determine the tightness of tanks and lines, if the method is approved by Commerce.
2. Removal of petroleum products from surface water, groundwater or soil.
3. Investigation and assessment of contamination caused by a petroleum product storage tank system or home heating oil system.
4. Preparation of remedial action plans.
5. Removal of contaminated soils.
6. Soil treatment and disposal.
7. Environmental monitoring, including monitoring of natural bioremediation progress.
8. Laboratory testing of covered petroleum products.
9. Maintenance of equipment for petroleum product recovery or remedial action activities.
10. State or municipal permits for installation of remedial equipment.
11. Actual costs for the purchase or rental of temporary building structures to house remedial equipment.
12. Restoration or replacement of a private or public potable water supply.
13. Contractor or subcontractor costs for remedial action activities.
14. Actual travel and lodging costs that are not in excess of state travel rates.
15. Other costs identified by Commerce as necessary for proper investigation, remedial action planning and remedial action activities.
16. Compensation of third parties for bodily injury and property damage, excluding the loss of fair market value, caused by petroleum products discharged from an underground storage system.
17. Certain interest expenses if a loan is specifically secured for a remediation. The maximum reimbursable interest rate for loans secured after January 31, 1993, and before October 15, 1997, is 2% above the prime rate. For loans secured on or after October 15, 1997 and before November 1, 1999, the maximum reimbursable interest rate is 1% above the prime rate. For loans secured on or after November 1, 1999, the maximum reimbursable interest rate is the prime rate minus 1% if the applicant's gross revenues are up to \$25 million and 4% if the applicant's gross revenues are over \$25 million. Loan origination fees are reimbursable at no more than two points of the loan principal. Annual loan renewal fees charged before April 21, 1998, are reimbursable at no more than 1% of the unreimbursed amount and remaining loan balance, and annual loan renewal fees charged on or after April 21, 1998, are reimbursable at no more than 1% of the outstanding unreimbursed loan amount.

18. Claim preparation fees up to \$500 for a certified public accountant, contractor, or other independent preparer.

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### **Ineligible Costs**

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1. Costs incurred before August 1, 1987 (the date PECFA began).

2. Costs of retrofitting or replacing a petroleum product storage system or home heating oil system.

3. Other costs Commerce determines are associated with, but not integral to, the eligible costs.

4. Costs, other than certain third party compensation, which Commerce determines are unreasonable or unnecessary to carry out the remedial action activities as specified in the remedial action plan.

5. Costs or remedial action activities conducted outside of Wisconsin.

6. Cost for remedial actions funded under the federal LUST program.

7. After November 1, 1991, costs of emptying, cleaning and disposing of a tank and other costs normally associated with closing and removing any petroleum product storage system or home heating oil system.

8. Fees charged by DNR or Commerce on or after October 29, 1999, to recover their costs for providing approval of investigation or remedial action or for providing other assistance requested by claim applicants.

9. Costs that exceed the amount necessary to comply with the requirements to complete an investigation and remedial action and with enforcement standards using the least costly method.

10. Effective September 1, 2001, if an applicant submits a final claim more than 120 days after receiving notification from DNR or Commerce that no further action is necessary at the site, interest costs incurred more than 60 days after receiving the notice are not eligible for reimbursement. If an applicant received written notification from DNR or Commerce that no further action is necessary before September 1, 2001, and the applicant submits a final claim more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120<sup>th</sup> day after September 1, 2001, are not eligible costs.

11. If an applicant does not complete the site investigation within five years after the applicant notified Commerce about the discharge, or by October 1, 2003, whichever is later, the applicant is ineligible for reimbursement of interest costs incurred after the later of those two dates.

12. See Comm 47 of the Administrative Code for additional ineligible costs that are unreasonable or unnecessary to complete the remedial action activities.

**APPENDIX III**

**Petroleum Environmental Cleanup Fund Award (PECFA) --Maximum Awards, Total Annual Awards and Deductibles**

Type of Tank	Owner	Costs Incurred Beginning 8-1-87 and Before 12-22-01		Costs Incurred Beginning 12-22-01 <sup>1</sup>		
		Maximum Award Per Occurrence	Total Annual Awards	Maximum Award per Occurrence	Total Annual Awards	Deductible <sup>2</sup>
Home Heating Oil	All	\$7,500	N/A	No Change	No Change	No Change
Underground	Non-Marketer (the system does not store products for resale and handles 10,000 or less gallons per month)	\$500,000 <sup>1</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Underground	Marketer (the system stores products for resale) or Non-Marketer with system that handles more than 10,000 gallons per month	\$1,000,000 <sup>1</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	Non-Marketer (the system does not store products for resale and handles 10,000 or less gallons per month)	\$500,000 <sup>1</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	Marketer (the system stores products for resale) or Non-Marketer with system that handles more than 10,000 gallons per month	\$1,000,000 <sup>1</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	Terminal (a petroleum product storage system that is connected to a pipeline facility)	\$1,000,000 <sup>1</sup>	\$1,000,000 <sup>5</sup>	\$190,000	190,000	\$10,000 per occurrence
Farm <sup>6</sup>	Underground and aboveground vehicle fuel systems of 1,100 gallons or less storing products not for resale	\$100,000 <sup>1</sup>	\$1,000,000 <sup>5</sup>	No Change	\$190,000	No Change
Public School District <sup>7</sup> And Technical College District	Heating oil for consumptive use on the premises	\$190,000 <sup>1</sup>	\$1,000,000	No Change	\$190,000	No Change

(1) Maximum award in effect before December 22, 2001, applies to all eligible costs for investigations and remedial activities started before December 22, 2001.

(2) Commerce may waive the deductible if it determines that the owner or operator is unable to pay. If Commerce waives the deductible, it shall file a lien against the property until the deductible is paid.

(3) Nonprofit housing organizations are exempt from paying the deductible for tanks owned by the organization if they assist low-income persons with housing-related problems.

(4) For individual claims, the maximum award is limited to the amount determined by Commerce and DNR to be necessary to implement the least costly method of completing remedial action and complying with groundwater enforcement standards.

(5) \$2,000,000 maximum annual award if the claimant owns or operates more than 100 petroleum product storage tank systems.

(6) In any fiscal year, not more than 5% of amounts appropriated for PECFA awards may be used for farm tanks.

(7) In any fiscal year, not more than 5% of amounts appropriated for PECFA awards may be used for school district tanks.

## APPENDIX IV

### Additional PECFA Award Requirements

In addition to award limits and deductibles, the following provisions affect awards described under the "PECFA Award Payments" section of this paper.

**State-Ordered Investigations.** Commerce is required to make awards for claims filed after August 9, 1989, for eligible costs incurred after August 1, 1987, for investigating the existence of a discharge or presence of petroleum products in soil or groundwater, if the investigation is ordered by Commerce or DNR and no discharge or contamination is found. Awards for these costs require no deductible. If a discharge or contamination from an underground or aboveground storage tank is subsequently discovered, Commerce is required to reduce the award by the amount provided for the investigation. Awards made for the finding of a subsequent discharge from a home heating oil system are not reduced.

**Negligence.** Contributory negligence of a claimant does not prohibit an individual from submitting a claim and no award may be diminished as a result of negligence attributed to an eligible claimant. Contributory negligence is an act or omission amounting to a lack of ordinary care on the part of an individual, which contributes to an injury to the individual or property damage.

**Improper Storage.** Commerce can deny any claim if there has been fraud or willful disregard for the laws concerning the proper storage of petroleum products on the part of the owner.

**Lending Institutions.** Awards can be assigned to a lending institution by a PECFA claimant, if a loan has been made to the claimant for a PECFA cleanup. As a result of the assignment, a lien, which secures all principal, interest, fees, costs and expenses of the lending institution, is created. This

lien has priority over any preexisting or subsequent lien, security interest or other interest in the PECFA award.

**Third-Party Actions.** Owners of underground storage tanks who are eligible for PECFA awards are required to notify Commerce of any action by a third-party for compensation for bodily injury or property damage caused by a petroleum discharge. Property damage specifically excludes the loss of fair market value resulting from contamination. Commerce is allowed to intervene in any third-party action, in order to represent PECFA in any injury or property claim.

**Lenders Hold Harmless Provisions.** Lenders are held harmless for the full amount of otherwise eligible expenses relating to PECFA loans made by a lender regardless of any willful misconduct, gross negligence or fraud on the part of an owner or operator, the amount of which would be paid to the lender at the time that the award would otherwise be made, provided that certain conditions are met. The lender must assign to Commerce an interest in the collateral pledged by the owner or operator to secure the loan. Commerce may recover its costs from an owner or operator for any payments the Department makes to a lender under this provision.

**Fraudulent Claims.** Commerce has the right to recover any award made to an owner of a petroleum product storage system, or a person owning a home heating oil system, if the claim is determined to be fraudulent or requirements of PECFA are not followed. In these cases, Commerce is required to request that the state Attorney General take action to recover the award and the Attorney General is required to take appropriate action. Net proceeds from recovered awards are deposited into the petroleum inspection fund.

**Discharges Caused by Service Providers.**

Commerce is required to deny any PECFA claim where the petroleum product discharge was caused by a person who provided services or products to the claimant or to a prior owner or operator of the petroleum product storage system or home oil tank system.

**Personal Liability.** If a person conducts a remedial action activity, whether or not a PECFA claim is filed, the claim and remedial action are not evidence of liability or an admission of liability for any potential or actual environmental pollution. However, PECFA does not limit a person's liability for damages resulting from a petroleum product storage system or home heating oil tank. All the authority, powers and remedies provided for under PECFA are in addition to any authority, power or remedy provided in statute or common law.

**Certification of Consultants.** Comm 47 includes requirements for the certification or registration of persons who provide consulting services to owners and operators who file PECFA claims. The rule authorizes revocation or suspension of the certification or registration if the consultant or consulting firm fails to comply with the requirements of Comm 47. The rule established procedures for certification and revocation or suspension of certification.

**Waiver of Deductible.** Commerce may defer the deductible if Commerce determines that the

owner or operator is unable to pay. If Commerce waives the deductible, it shall record a lien against the property until the deductible is paid in full.

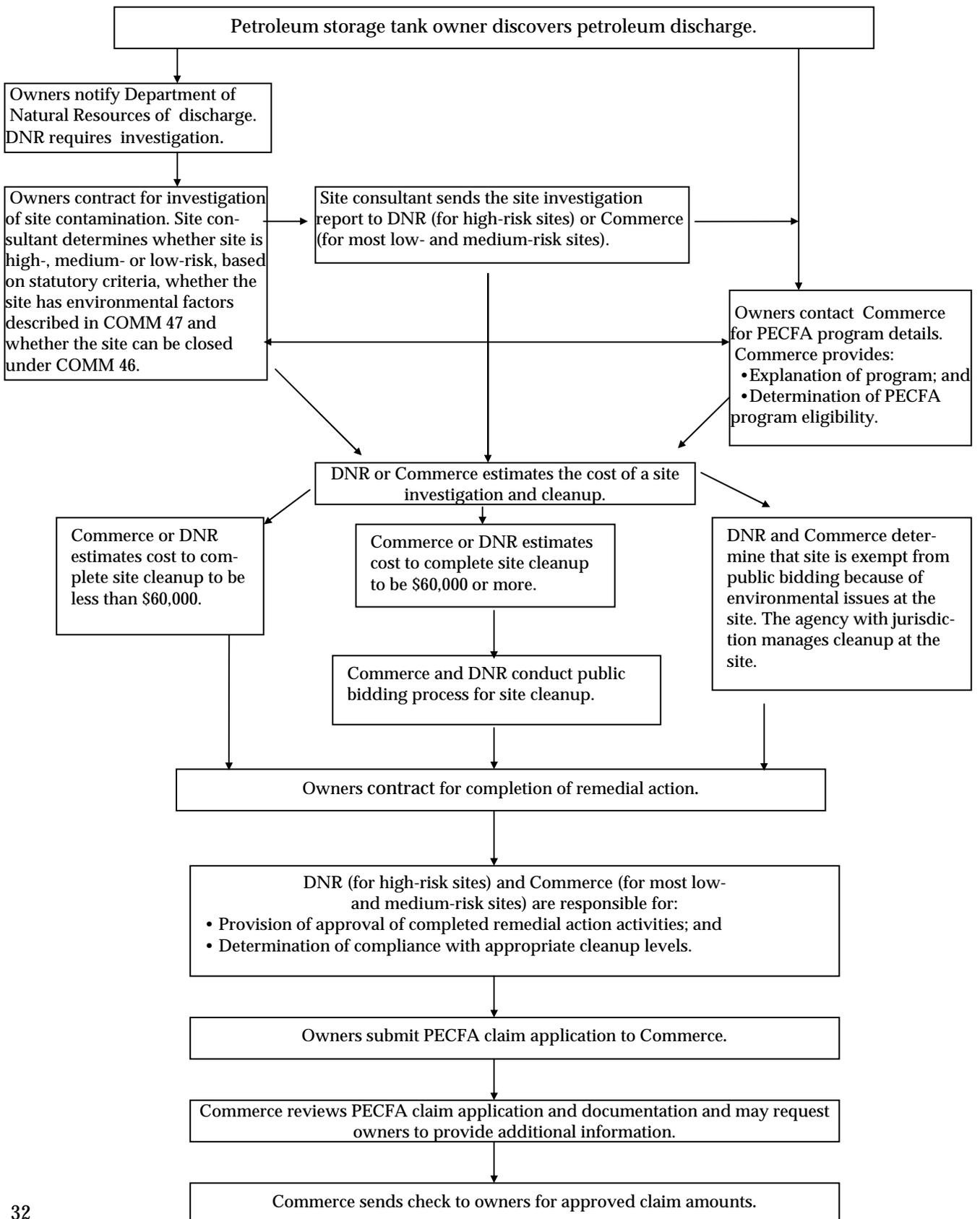
**Proof of Financial Responsibility.** An owner or operator of an underground petroleum product storage system shall provide proof of financial responsibility for the first \$5,000 of eligible costs.

**Sale of Remedial Equipment.** When a person sells any remedial equipment or supplies that were purchased with PECFA funds, the person must pay the proceeds of the sale to Commerce. Commerce is required to deposit the proceeds into the petroleum inspection fund. The amount of any proceeds of the sale of equipment would not change the reimbursement entitlement amount to an owner, operator or home heating oil tank owner.

**Appeals.** Under 2001 Act 16, a person files an appeal of a decision of Commerce concerning a PECFA claim, and if the amount at issue is \$100,000 or less, the person may request arbitration rather than appeal. The arbitrator would be a person designated by Commerce under rules promulgated by the Department. As of January 1, 2009, Commerce has not promulgated rules to implement the provision. If a person chooses arbitration, the arbitrator would hold a hearing and issue a decision within five business days after the conclusion of the hearing. The decision of the arbitrator would be final and stand as the decision of the Department.

## APPENDIX V

### PECFA Program Process



## APPENDIX VI

### PECFA Payments by County, as of June 30, 2008

County	Number of Sites	Total Payments	County	Number of Sites	Total Payments
Adams	37	\$5,491,996	Manitowoc	194	\$25,448,110
Ashland	69	8,504,355	Marathon	256	30,450,861
Barron	87	7,718,624	Marinette	120	10,687,027
Bayfield	87	8,389,008	Marquette	54	5,435,090
Brown	444	57,838,278	Menominee	5	1,130,324
Buffalo	43	4,300,726	Milwaukee	2,177	216,062,484
Burnett	38	5,217,244	Monroe	132	18,122,965
Calumet	96	11,591,299	Oconto	94	12,995,934
Chippewa	166	11,906,523	Oneida	159	28,318,485
Clark	116	14,022,181	Outagamie	382	46,662,085
Columbia	176	20,687,326	Ozaukee	207	22,397,003
Crawford	43	4,282,251	Pepin	14	727,412
Dane	843	122,082,013	Pierce	65	5,258,086
Dodge	218	29,642,835	Polk	99	8,449,015
Door	92	8,673,487	Portage	139	13,060,258
Douglas	172	21,576,673	Price	77	12,328,953
Dunn	57	5,431,948	Racine	384	42,168,386
Eau Claire	165	12,310,603	Richland	86	8,037,487
Florence	18	2,530,511	Rock	223	25,176,280
Fond du Lac	287	36,701,779	Rusk	54	7,574,712
Forest	35	3,918,146	Saint Croix	110	9,621,035
Grant	117	13,970,506	Sauk	199	21,701,445
Green	62	8,693,392	Sawyer	90	8,636,623
Green Lake	92	11,230,764	Shawano	128	15,193,585
Iowa	33	4,421,470	Sheboygan	279	37,108,757
Iron	41	5,105,049	Taylor	80	12,264,913
Jackson	70	8,643,248	Trempealeau	72	8,993,311
Jefferson	185	24,124,707	Vernon	98	10,352,032
Juneau	93	10,782,729	Vilas	116	17,241,275
Kenosha	241	34,899,512	Walworth	193	24,738,034
Kewaunee	67	7,373,050	Washburn	28	1,955,214
La Crosse	179	19,592,093	Washington	219	33,857,311
Lafayette	47	7,263,733	Waukesha	699	71,243,264
Langlade	63	9,066,665	Waupaca	130	15,236,821
Lincoln	68	7,667,232	Waushara	62	8,735,461
			Winnebago	375	45,885,130
			Wood	<u>209</u>	<u>28,759,405</u>
			Total	12,655	\$1,487,666,527

## APPENDIX VII

### Appropriations from the Petroleum Inspection Fund, 2007-09

			2007-08 Appropriated	2008-09 Appropriated	2008-09 Authorized Positions
<b>Petroleum Environmental Cleanup Fund Award Program</b>					
<i>Commerce</i>					
143	(3)(v)	PECFA Awards	\$20,000,000	\$20,000,000	
	(3)(w)	PECFA Administration	2,824,300	2,824,300	25.80
<i>Natural Resources</i>					
370	(2)(dw)	Environmental repair, petroleum spills administration (PECFA)	<u>185,300</u>	<u>185,300</u>	<u>2.00</u>
		(Subtotal)	\$23,009,600	\$23,009,600	27.80
<b>Other Programs</b>					
<i>Agriculture, Trade and Consumer Protection</i>					
115	(1)(r)	Unfair Sales Act	\$224,300	\$224,300	2.35
	(1)(s)	Weights and Measures	644,900	644,900	6.00
<i>Commerce</i>					
143	(1)(qa)	Business development center; brownfields activities and staff	216,000	216,000	2.50
	(3)(r)	Safety and buildings - petroleum inspection	5,547,400	5,547,400	43.00
	(3)(sm)	Diesel truck idling reduction grants	2,000,000	2,000,000	0.00
	(3)(sn)	Diesel truck idling reduction grant administration	70,400	70,400	1.00
<i>Natural Resources</i>					
370	(2)(bq)	Vapor recovery administration	92,100	92,200	1.00
	(2)(br)	Air management - mobile sources	1,318,400	1,326,700	4.00
	(2)(dw)	Environmental repair, petroleum spills administration (remediation and redevelopment, and cooperative environmental assistance)	1,268,300	1,268,500	14.00
	(2)(mu)	Environmental fund - environmental repair and well compensation	1,049,400	1,049,400	0.00
	(3)(ms)	Pollution prevention	92,400	92,400	1.00
	(4)(mw)	Environmental fund - Groundwater management	766,900	766,900	0.00
	(8)(mq)	Mobile source air pollution	737,400	737,400	0.50
	(9)(mq)	Mobile source air pollution	178,300	178,300	1.00
<i>Transportation</i>					
395	(4)(dq)	Air quality - demand management	357,600	357,600	4.00
<i>Military Affairs</i>					
465	(3)(r)	State emergency response board	466,800	466,800	0.00
	(3)(s)	Major disaster assistance *	1,000,000	0	0.00
<i>Revenue</i>					
566	(1)(s)	Petroleum inspection fee collection	163,700	163,700	2.00
<i>Miscellaneous Appropriations</i>					
855	(4)(r)	Petroleum allowance	600,000	600,000	0.00
	(4)(w)	Transfer to transportation fund	<u>20,321,700</u>	<u>6,321,700</u>	<u>0.00</u>
		(Subtotal)	\$37,116,000	\$22,124,600	82.35
<b>Total Petroleum Inspection Fund Appropriations</b>			<b>\$60,125,600</b>	<b>\$45,134,200</b>	<b>110.15</b>

\* The appropriation is \$0 but may expend up to \$1,000,000 of the 2006-07 ending balance.

## APPENDIX VIII

### PECFA Legislative History Major Provisions

PECFA was created during the 1987-89 legislative session and has been modified in subsequent legislative sessions. The Appendix identifies legislative changes made to: (a) tanks which are eligible; (b) deductible and award amounts; (c) the inspection fee revenue limitation; (d) the awards appropriation (this does not include funding for Commerce and DNR administration); (e) eligible costs; (f) program termination date; (g) reports that have been required regarding PECFA; (h) eligibility criteria; (i) administrative rule requirements; and (j) administration.

#### 1987-89 Legislative Session

Act	Description
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27	Create PECFA, segregated fund, additional petroleum inspection fee and require DNR to pay claims for the investigation and cleanup of petroleum from leaking underground storage tanks. Funding and positions in DNR vetoed by Governor (program not implemented).
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399	Repeal program created in 1987 Act 27. Create similar program in DILHR. Create eligibility criteria, eligible and ineligible costs, claimant requirements, the PECFA Council and other administrative provisions. Require DNR to review investigations, and proposed and final remedial activities.
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*Eligible Tanks.* Commercial underground, underground tanks storing products for resale and home heating oil.

*Deductible and Award Limit.* For commercial tanks: \$5,000 deductible, maximum award \$146,250 or 75% of costs, whichever is less, between August 1, 1987, and August 1, 1989. After August 1, 1989, maximum lowered to \$97,500 or 50% of costs, whichever is less. For home heating oil tanks: 25% deductible, maximum award of \$7,500. If the award appropriation is insufficient to fund all awards, awards may be made based on priority.

*Inspection Fee Revenue Limit.* Generate no more than \$7.5 million annually.

*Awards Appropriation.* \$7.4 million in 1988-89.

## 1989-91 Legislative Session

31 *Eligible Tanks.* All underground petroleum product storage tanks except: (a) tanks under 110 gallons; (b) farm and residential tanks under 1,100 gallons storing petroleum products not for resale; (c) nonresidential heating oil tanks; and (d) tanks owned by the state or federal government.

*Eligible Costs.* Third-party claims added to list of previously eligible costs.

*Deductible and Award Limit.* For owners of 100 to 999 tanks meeting certain criteria, for costs incurred after August 9, 1989, and before October 26, 1990: \$50,000 deductible and \$950,000 maximum award. All other owners: \$5,000 deductible and maximum award of \$195,000 before July 1, 1993. After July 1, 1993, and before July 1, 1995, \$10,000 deductible and maximum award of \$190,000. DILHR required to recalculate awards based on 100% of eligible costs rather than 75% or 50%. Eliminate provision allowing awards to be made based on priority.

*Inspection Fee Revenue Limit.* Generate no more than \$25.0 million annually.

*Awards Appropriation.* \$7.5 million in 1989-90 and 1990-91.

*Program Termination.* Make no awards for costs incurred after June 30, 1995.

254 *Eligible Tanks.* Aboveground tanks included.

255 *Deductible and Award Limit.* Decrease \$50,000 deductible created in Act 31 to \$5,000. Create a maximum award of \$1,000,000 for marketers of petroleum products and facilities handling more than an annual average 10,000 gallons per month. For all others establish a \$500,000 maximum. Create annual aggregate amount of \$2,000,000 for owners and operators of 101 or more tanks and \$1,000,000 for owners of 100 or less tanks. Decrease the maximum award to \$190,000 on July 1, 1995.

*Termination Date.* Eliminate termination date.

## 1991-93 Legislative Session

39 *Deductible and Award Amount.* Modify deductible to \$5,000 or 5% copayment, whichever is greater. Allow DILHR to defer the deductible in certain cases.

*Eligible Costs.* Disallow costs normally associated with replacement or closure of a petroleum product storage system. Discontinue PECFA eligibility for sites that are cleaned up. Allow DILHR to become a party to a third-party law suit. Allow DILHR to establish a usual and customary cost schedule.

*Inspection Fee Revenue Limit.* \$57 million for 1991-92 only. Revenue could only exceed \$25 million with the approval of the Joint Committee on Finance.

*Awards Appropriation.* \$24.7 million in 1991-92 and in 1992-93.

*Report.* Require DNR and DILHR to prepare a report on PECFA to be submitted to the Legislature and the Joint Committee on Finance.

- 82 *Deductible and Award Amounts.* Modify deductible to \$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence.

*Eligible Costs.* Allow a claimant to assign an award to a lending institution. Include costs of bioremediation as an eligible cost. Reinstate PECFA eligibility for sites that are cleaned up. Allow the Department of Transportation to become an agent for an owner, with the prior approval of DILHR.

*Report.* Require DILHR and the Office of the Commissioner of Insurance to report to the Legislature and the Joint Committee on Finance regarding private pollution liability insurance.

- 269 *Inspection Fee Revenue Limit.* Eliminate the revenue limitation. Create a statutory petroleum inspection fee of 2¢ per gallon of petroleum inspected, of which 1.4¢ would support PECFA awards and administration.

*Awards Appropriation.* \$43.5 million in 1992-93.

*Reports.* Require DNR to provide reports on: (a) economic costs of the soil cleanup standards; and (b) feasibility of modifying the groundwater health risk standards.

### **1993-95 Legislative Session**

- 16 *Inspection Fee.* Increase the petroleum inspection fee to 3¢ per gallon until July 1, 1995, or the day after publication of the 1995-97 biennial budget act, whichever is later. After that date, the fee would decrease to 1.74¢ per gallon. Create a segregated petroleum inspection fund in which all petroleum inspection revenues are deposited. Convert all appropriations funded from the fee to segregated appropriations.

*Awards Appropriation.* \$70.5 million in 1993-94. \$75.5 million in 1994-95. Convert the appropriation from annual to biennial.

*Award Limit.* Delay the decrease in the maximum award for underground tanks from July 1, 1995, to July 1, 1998. Specify that the higher awards apply to all eligible costs for investigations and remedial activities started before July 1, 1998.

*Eligibility Criteria.* Effective January 1, 1994, deny PECFA eligibility for certain new, upgraded, or previously cleaned up sites.

*Report.* Provide \$30,000 SEG in 1993-94 to contract with a consultant to develop a standardized project cost accounting system.

416 *Inspection Fee.* Delete the decrease in the petroleum inspection fee, so that the fee will remain at 3¢ per gallon after June 30, 1995.

*Awards Appropriation.* Direct that annual funding be increased by \$8.5 million beginning in 1995-96.

*Eligible Tanks.* Expand eligibility to: (a) farm tanks of 1,100 gallons or less storing petroleum products not for resale that meet certain farm size, use and income criteria; (b) public school district and technical college district heating oil tanks for consumptive use on the premises; and (c) Indian trust land tanks if the owner or operator complies with DILHR rules regarding petroleum product storage systems. Modify the eligibility for new, upgraded or previously cleaned up sites to provide eligibility for certain tanks until January 1, 1996.

*Deductible and Award Amounts.* Increase the maximum award for aboveground tanks to be the same as for underground tanks for costs incurred beginning May 7, 1994, (\$500,000 or \$1,000,000 per occurrence). Modify the deductible for aboveground tanks for costs incurred beginning May 7, 1994, to \$15,000 plus 2% of eligible costs over \$200,000 for nonterminals and \$15,000 plus 5% of eligible costs over \$200,000 for terminals. Effective July 1, 1998, decrease the maximum award for aboveground tanks to \$190,000 and the deductible to \$10,000. Provide a maximum award for small farm tanks of \$100,000 with a deductible of \$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence. Limit farm tanks to no more than 5% of the total PECFA awards appropriation in any fiscal year. Provide a maximum award for public school district and technical college district tanks of \$190,000 per occurrence with a deductible of 25% of eligible costs. Limit public school district tanks to no more than 5% of the total PECFA awards appropriation in any fiscal year. Exempt nonprofit housing organizations that assist low-income persons with housing-related problems from paying the deductible for home heating oil tanks that the organizations own.

*Rules.* Direct DILHR to promulgate rules to take effect by January 1, 1996, that identify the petroleum product storage system or home oil tank system which discharged a petroleum product and when a petroleum product discharge that caused a contamination occurred. The rule shall permit a clear determination of what petroleum contamination is eligible for an award after December 31, 1995. Direct DILHR to promulgate a rule establishing a priority system for paying awards for small farm tanks and for school district tanks. Authorize DILHR to promulgate a rule with requirements for the certification or registration of persons who provide consulting services to owners and operators, and revocation or suspension of the certification or registration.

*Report.* Require DILHR to report to the Joint Committee on Finance by September 1, 1994, on the feasibility of establishing a toll-free telephone number to answer PECFA questions.

## 1995-97 Legislative Session

Act	Description
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27	<i>Awards Appropriation.</i> \$84.0 million in 1995-96 and in 1996-97.
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*Inspection Fee Collection.* Transfer collection of the petroleum inspection fee from DILHR to the Department of Revenue (DOR) as of January 1, 1996. DOR would collect the fee at petroleum company terminals at the same time it collects the motor vehicle fuel tax.

*Administration.* Transfer DILHR's Safety and Buildings Division, including PECFA administration to the new Department of Commerce (formerly Development) effective on July 1, 1996. Transfer jurisdiction over cleanup of low and medium priority petroleum storage tank site cleanups (PECFA-eligible and non-PECFA eligible) from DNR to Commerce effective on July 1, 1996, and transfer 12.0 SEG positions from DNR to Commerce. Retain jurisdiction over cleanup of high priority sites within DNR. Direct DOD and DNR to prepare a memorandum of understanding establishing the division of responsibilities, functions of the two agencies, procedures that would be implemented to ensure that actions are consistent with the hazardous substances spills law and procedures for determining which sites are high, medium and low priority sites.

*Award Limit.* Apply the maximum PECFA award provisions for aboveground tanks for costs incurred on or after May 7, 1994, and before July 1, 1998, retroactively to costs incurred on or after August 1, 1987 (the effective date of the program). This retroactively increased maximum PECFA awards for aboveground tanks from \$195,000 to \$500,000 or \$1,000,000.

*Lender Hold Harmless Provisions.* Hold lenders harmless for the full amount of otherwise eligible expenses relating to PECFA loans made by a lender regardless of any willful misconduct, gross negligence or fraud on the part of an owner or operator, the amount of which would be paid to the lender at the time that the award would otherwise be issued under the PECFA program, provided that certain conditions are met. Authorize DILHR to recover any costs from an owner for DILHR payments made to a lender under the provision. Direct DILHR to deposit any cost recoveries into the petroleum inspection fund.

## 1997-99 Legislative Session

Act	Description
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27	<i>Awards Appropriation.</i> \$91.1 million in 1997-98 and in 1998-99. (The Joint Committee on Finance took action in December, 1997 under s. 13.10 of the statutes to increase the appropriation by \$3.0 million annually to \$94.1 million in each year of the 1997-99 biennium).
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*Eligible Tanks.* Eliminate eligibility for new and upgraded aboveground tanks after December 22, 2001. Provide eligibility for sites that have been cleaned up under PECFA until they meet federal and state upgrading standards. Provide eligibility for new and upgraded underground tanks for

contamination identified by January 1, 1996. Deny eligibility for discharges that are caused by individuals or organizations who provided services or products to the current or prior owner or operator of the site.

*Award Limit.* Eliminate the \$500,000 annual maximum allocation for home heating oil tank awards, and instead, review and pay such claims as soon as they are received. Delay the decrease in the maximum award for underground and aboveground tanks from July 1, 1998, to December 22, 2001.

*Deductible.* Calculate the deductible for an intermingled plume of contamination from aboveground and underground petroleum storage tank systems, according to the predominant method of storage at the site, measured in gallons.

*Interest Cost Reimbursement.* Limit PECFA reimbursement for interest costs for loans secured on or after the effective date of the Act to the prime rate plus 1% and limit reimbursement of loan origination fees to no more than 2% of the loan principal.

*Eligible Costs.* Authorize Commerce to make additional PECFA payments for certain costs to enhance the approved remedial action activities or implement new remedial action activities. Authorize Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas. Require a claimant or consultant who submits a PECFA claim that includes certain ineligible costs, as identified in administrative rule, to pay a penalty equal to half the ineligible costs. Require that the owner pay the proceeds of any sales of remedial equipment or supplies purchased with PECFA funds to Commerce for deposit into the petroleum inspection fund. Specify that third party compensation for "property damage" does not include the loss of fair market value resulting from the contamination.

237 *Report.* Direct DNR, Commerce and DOA to submit reports to the Joint Committee on Finance at the Committee's September, 1998, and March, 1999, s. 13.10 meetings that document the progress of the agencies towards meeting the requirements of the memorandum of understanding (MOU) for administration of petroleum-contaminated sites.

*Appeals.* Allow a person to appeal a decision of Commerce related to PECFA by choosing arbitration, rather than an administrative hearing if the amount at issue is \$20,000 or less.

### 1999-01 Legislative Session

Act	Description
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9	<i>Awards Appropriation.</i> \$94.1 million in 1999-00 and \$94.1 million in 2000-01.
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*Revenue Obligations.* Authorize the Building Commission to issue revenue obligations of up to \$270 million, to be repaid from petroleum inspection fees, to fund the payment of PECFA claims.

*Administration.* Authorize Commerce to promulgate rules to assess and collect fees to recover its costs of approving requests by owners or operators for case closure and providing other assistance requested by claimants at petroleum sites. Direct that any fees charged by Commerce and DNR on or after the effective date of the Act for the approval of case closures and other requested assistance not be reimbursable expenses under the PECFA program.

Direct the Secretary of the Department of Administration to determine how federal LUST funding should be allocated to DNR and Commerce, and to submit a report of its determination to the Joint Committee on Finance for approval at its December, 1999, s. 13.10 meeting.

Classify a petroleum site as high-risk (instead of high priority previously) if it meets one or more of the following criteria: (a) repeated tests show that the discharge has resulted in a concentration of contaminants in a private or public potable well that exceeds a preventive action limit, as defined in s. 160.01(6); (b) petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements; (c) there is a groundwater enforcement standard exceedence within 1,000 feet of a public drinking water well or within 100 feet of any other well used to provide water for human consumption; or (d) there is a groundwater enforcement standard exceedence in fractured bedrock. Provide DNR with jurisdiction for administering the cleanup at high-risk petroleum sites, and also all sites with contamination from non-petroleum hazardous substances. Classify all other petroleum sites, excluding unranked sites, as medium- or low-risk under the jurisdiction of Commerce. Categorize a site with contamination solely from petroleum products and additives to petroleum products (such as lead or oxygenates) as a site with contamination solely from petroleum products. Direct that DNR transfer sites to Commerce based on the new classification of sites by December 1, 1999. If the definition of high-risk sites results in classifying more than 35% of sites as high-risk by December 1, 1999, direct Commerce to promulgate emergency rules that establish standards that classify no more than 35% of petroleum sites as high-risk, excluding unranked sites and sites with contamination from non-petroleum hazardous substances.

*Award Prioritization.* Review and pay claims related to eligible farm tanks as soon as they are received.

*Deductible.* Changes the deductible for underground petroleum product storage tank systems and farm tanks to retain the prior \$2,500 plus 5% of eligible costs, but eliminate the \$7,500 maximum deductible. Increase the deductible for aboveground storage tanks located at terminals to \$15,000 plus 10% of the amount by which eligible costs exceed \$200,000. Apply the changes in deductible beginning with remedial action plans that are submitted on or after November 1, 1999. Authorize Commerce to promulgate rules describing a class of owners or operators for whom the deductible is based on financial hardship.

*Risk-Based Analysis.* Direct Commerce and DNR to jointly 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. Require that the method include individualized consideration of the routes for migration of petroleum product contamination at each site. Direct DNR and Commerce to apply the method to determine the risk posed by a discharge for which the Departments receive notification, effective with remedial action activities that began on or after November 1, 1999. Commerce and DNR were required to submit permanent rules to the

Legislature under s. 227.19 no later than June 1, 2000. (Administrative rules Comm 46 and NR 746 contain these provisions.)

*Remedial Action Plans and Maximum Award.* Require Commerce to review the remedial action plan for a low- or medium-risk site, and DNR and Commerce to jointly review the remedial action plan for a high-risk site, and determine the least costly method of completing the remedial action activities and complying with groundwater enforcement standards. Require the agencies (Commerce at a low- or medium-risk site or DNR and Commerce at a high-risk site) to determine whether natural attenuation will complete the remedial action activities in compliance with groundwater enforcement standards. Require Commerce to notify the owner or operator of a low- or medium-risk site, and DNR and Commerce to notify the owner or operator of a high-risk site, 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. Require Commerce to conduct an annual review for low- or medium-risk sites, and Commerce and DNR to jointly conduct an annual review for high-risk sites and make the same determinations of the least costly method, use of natural attenuation and limit on maximum reimbursement. Commerce and DNR are authorized to review and modify established maximum reimbursement amounts for remedial action activities if the Departments determine that new circumstances, including newly discovered contamination at a site, warrant the review. Establish an effective date for the maximum award provisions of November 1, 1999, for remedial action activities that begin on or after that date.

*Interest Cost Reimbursement.* Limit PECFA reimbursement for interest costs for loans secured on or after November 1, 1999, based on the applicant's gross revenues in the most recent tax year, to be: (a) the prime rate minus 1% if gross revenues are up to \$25 million; and (b) 4% if gross revenues are over \$25 million.

*Site Bidding and Insurance.* 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. Deposit any fees collected in the petroleum inspection fund. Authorize Commerce, if it imposes a fee, to use the PECFA awards appropriation to purchase insurance to cover the amount by which the costs of conducting the cleanup service exceed the amount bid to conduct the cleanup service.

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. Require that Commerce may not implement the bidding process if: (1) Commerce and DNR choose to waive the use of the bidding requirement if 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; or (2) Commerce or DNR waives the requirement after providing notice to the other agency.

Authorize Commerce to disqualify a public bid for remedial action activities at a PECFA site if, based on information available to the Department and experience with remedial actions at other

PECFA projects, the bid is unlikely to establish a maximum reimbursement amount that will sufficiently fund a cleanup necessary to meet applicable site closure requirements.

Authorize Commerce to disqualify a public bidder from submitting a bid for remedial action activities at a PECFA site if, based on past performance of the bidder, the bidder has demonstrated an inability to finish remedial actions within previously established cost limits.

*Report.* Require Commerce and DNR to submit a report to the Governor, appropriate standing committees of the Legislature, the Joint Audit Committee and the Joint Committee on Finance every January 1 and July 1 that relates to petroleum storage tank cleanups that are in progress. Require that the report provide information for each petroleum cleanup that is underway, and other information about the program. Direct Commerce to submit a report to the Joint Committee on Finance and the Joint Committee for Review of Administrative Rules, by March 1, 2000, that recommends actions Commerce could take to reduce interest costs incurred by claimants, including a review of the schedule for progress payments for claims submitted under the program.

*Usual and Customary Costs.* Require Commerce to establish a schedule of usual and customary costs for items that are commonly associated with PECFA claims and to use it in certain situations. Require Commerce to evaluate the operation of the usual and customary cost schedule and report on the results of the evaluation to the Joint Audit Committee, the Joint Committee on Finance and the appropriate standing committees of the Legislature by December 1, 2000.

*Administrative Rules.* Require Commerce and DNR are required to promulgate joint rules related to procedures, cost-effective administration and inter-agency training practices and submit permanent rules to the Legislature by June 1, 2000. Require DNR to submit any changes required in its rules necessary to implement the joint DNR and Commerce rules by June 1, 2000. Commerce and DNR included some of the changes in Comm 46 and 47 and NR 746.

*Financial Management.* Require Commerce to make specified improvements to its financial management of the PECFA program, primarily related to reconciling its financial database with state accounts maintained by DOA.

*Emergency Situation.* Require that in order to submit a PECFA claim for an emergency situation, the owner or operator must have notified DNR and Commerce of the emergency before conducting the remedial action and DNR and Commerce must have jointly authorized emergency action. Repeal the portion of the definition of emergency as a situation where 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.

## 2001-03 Legislative Session

Act	Description
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16	<i>Awards Appropriation.</i> \$75.0 million in 2001-02 and \$68.0 million in 2002-03.
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*Revenue Obligations.* Increase authorization for revenue obligations from \$270 million by \$72 million to \$342 million, to fund the payment of PECFA claims.

*Interest Cost Reimbursement.* Effective September 1, 2001, if an applicant submits a final claim more than 120 days after receiving notification from DNR or Commerce that no further action is necessary at the site, interest costs incurred more than 60 days after receiving the notice are not eligible for reimbursement. If an applicant received written notification from DNR or Commerce before September 1, 2001, that no further action is necessary, and the applicant submits a final claim more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120<sup>th</sup> day after September 1, 2001, are not eligible costs. If an applicant does not complete the site investigation within five years after the applicant notified Commerce or DNR about the discharge, or by October 1, 2003, whichever is later, the applicant is ineligible for reimbursement of interest costs incurred after the later of those two dates.

*Appeals Process.* If a person files an appeal of a decision of Commerce concerning a PECFA claim, and if the amount at issue is \$100,000 or less, the person may request arbitration rather than appeal. The arbitrator would be a person designated by the Department under rules promulgated by the Department. If a person chooses arbitration, the arbitrator would hold a hearing and issue a decision within five business days after the conclusion of the hearing. The decision of the arbitrator would be final and stand as the decision of the Department.

*Farm Tank Eligibility.* Allow an owner or operator who formerly owned a PECFA-eligible farm tank to submit a PECFA claim at any time after he or she transferred ownership of the land, if the land meets other program criteria, including the acreage test and the gross farm profits test on the date of the initial notification of the discharge.

*Annual Progress Payments.* Allow an owner or operator to submit a claim annually if the owner or operator has incurred \$50,000 or more in unreimbursed eligible PECFA costs and at least one year has elapsed since submission of the last claim.

## 2003-05 Legislative Session

Act	Description
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33	<i>Awards Appropriation.</i> \$68.0 million in 2003-04 and \$68.0 million in 2004-05.
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*Revenue Obligations.* Increase authorization for revenue obligations from \$342 million by \$94 million to \$436 million, to fund the payment of PECFA claims.

## 2005-07 Legislative Session

Act	Description
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25	<i>Awards Appropriation.</i> \$40.4 million in 2005-06 and \$37.6 million in 2006-07.
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*Petroleum Inspection Fee.* Decrease the petroleum inspection fee by 1¢ from 3¢ to 2¢ per gallon, effective May 1, 2006.

85	<i>Petroleum Inspection Fee.</i> Change the date on which the petroleum inspection fee would decrease from 3¢ to 2¢ per gallon, to April 1, 2006, instead of May 1, 2006.
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## 2007-09 Legislative Session

Act	Description
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25	<i>Awards Appropriation.</i> \$20 million in 2007-08 and \$20 million in 2008-09.
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*Revenue Obligations.* Decrease authorization for revenue obligations from \$436 million by \$49,076,000 to \$386.9 million, to delete authority that was not used.