



Legislative Fiscal Bureau

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March 27, 2017

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Natural Resources: Section 13.10 Request Related to PECFA Claim Payments --
Agenda Item III

REQUEST

The Department of Natural Resources (DNR) submitted a request on March 20, 2017, under section 13.10 of the statutes, for an increase of \$2,100,000 from the segregated (SEG) petroleum inspection fund for the petroleum environmental cleanup fund award (PECFA) appropriation [s. 20.370 (6)(fr)] in 2016-17.

BACKGROUND

The petroleum environmental cleanup fund award (PECFA) program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil systems. The amount of reimbursement varies from 75% to over 99% of eligible cleanup costs. Owners of certain underground and aboveground tanks may receive up to \$1,000,000 for the costs of investigation, cleanup and monitoring of environmental contamination. PECFA awards are funded from the segregated petroleum inspection fund, which receives revenue from a 2¢ per gallon petroleum inspection fee assessed on all petroleum products brought into the state, including gasoline, diesel, and heating oil. The fund also receives revenues from inspection and plan review fees for bulk petroleum tanks, and interest income on the fund balance.

The state paid the first PECFA awards in 1988-89. Claim levels increased during the 1990s as owners replaced or upgraded petroleum tank systems in compliance with federal and state requirements. In the 1990s, the program experienced a backlog of over \$200 million in claims that had been received and not paid. Issuance of \$387 million in petroleum inspection fee revenue obligations first authorized in 1999 Wisconsin Act 9 allowed the PECFA program to pay the backlog of claims in 2000 through 2003. Currently, the program has paid over \$1.5 billion in claims for cleanup at over 12,600 closed sites and 800 active sites.

Under 2015 Wisconsin Act 55, PECFA eligibility is not available for any site if a person: (a) did not notify the Department of Natural Resources (DNR) of the petroleum discharge and the

potential for submitting a claim before July 20, 2015; and (b) does not submit a claim for the reimbursement of eligible costs before July 1, 2020. In addition, Act 55 required that an owner or operator of an eligible site must submit a claim for reimbursement within 180 days after incurring the eligible costs, or February 1, 2016, whichever is later, or else the costs are no longer eligible for reimbursement.

During the 2015-17 biennium, the PECFA awards appropriation is authorized \$9,100,000 SEG, including \$4,550,000 in each of 2015-16 and 2016-17, in a biennial appropriation. DNR expended \$5,525,600 on PECFA awards in 2015-16, making \$3,574,400 available for expenditures in 2016-17.

On February 16, 2017, DNR announced that the PECFA program had expended all of the 2015-17 available appropriation, and the program would pay claims when funds become available. PECFA claims approved for reimbursement as of March, 2017, are being placed on a waiting list for payment after additional funding is available in the PECFA claims appropriation. DNR indicates that PECFA claim demand increased in response to the Act 55 requirements. In addition, many site owners may be trying to speed progress on site cleanup work during the 2016 through 2019 construction seasons, so they may submit final claims before the June 30, 2020.

ANALYSIS

The Governor's 2017-19 biennial budget would provide additional amounts of \$2,950,000 in 2017-18 and \$850,000 in 2018-19 for PECFA awards, to increase the available amount from \$9,100,000 in the 2015-17 biennium to \$12,900,000 in the 2017-19 biennium (\$7,500,000 in 2017-18 and \$5,400,000 in 2018-19). The administration indicates the larger amount in 2017-18 is intended to cover the PECFA claim backlog that is expected to develop during 2016-17.

As of March 20, 2017, DNR has \$717,100 in PECFA claims, of which \$90,100 in claims has been approved and will be paid when funds are available, and claims totaling \$627,000 are being reviewed, verified and processed for future payment. The Department is currently completing the processing of claims within approximately 30 days of receipt. DNR is receiving PECFA claims totaling approximately \$450,000 per month. DNR anticipates that the Department will continue to receive PECFA claims totaling approximately \$450,000 per month through much of the 2017-19 biennium, equaling demand of approximately \$5.4 million per year, and a total of \$10.8 million during the 2017-19 biennium.

The following table shows the estimated condition of the petroleum inspection fund from 2015-16 through 2018-19 under the Governor's budget recommendations for the 2017-19 biennium. In 2015-16, revenue from the 2¢ per gallon petroleum inspection fee, bulk tank fees and interest income totaled \$75.0 million. Preliminary expenditures totaled \$77.5 million in 2015-16, including: (a) \$28.7 million for revenue obligation debt service costs (shown as a reduction to available revenue); (b) \$27.8 million for expenditures from appropriations; and (c) \$21.0 million for a transfer from the petroleum inspection fund to the transportation fund, under one-time provisions of 2015 Act 55. (DNR has not finalized 2015-16 expenditures.) It is anticipated that in 2016-17, revenue from the petroleum inspection fee and other revenues will total \$76.9 million. In 2016-17, expenditures are expected to total approximately \$79.6 million, including: (a) \$31.1 million for revenue obligation debt service costs; (b) \$27.5 million for appropriations with over 90

positions; and (c) \$21.0 million for a transfer to the transportation fund under one-time provisions of 2015 Act 55.

Petroleum Inspection Fund Condition

	2015-16 *	2016-17	2017-18	2018-19	2018-19
	<u>Estimated</u>	<u>Estimated</u>	<u>Budget Bill</u>	<u>Budget Bill</u>	<u>Staff</u>
Opening Balance	\$21,786,300	\$19,330,400	\$16,650,100	\$12,145,500	
Revenues:					
Petroleum Inspection Fee	\$74,804,900	\$76,600,000	\$77,400,000	\$78,200,000	
Revenue Obligation Debt Service	-28,744,200	-31,084,400	-28,631,700	-25,925,900	
Petroleum Bulk Tank Fees and Other	<u>278,300</u>	<u>340,000</u>	<u>300,000</u>	<u>300,000</u>	
Total Revenues	\$46,339,000	\$45,855,600	\$49,068,300	\$52,574,100	
Total Revenue Available	\$68,125,300	\$65,186,000	\$65,718,400	\$64,719,600	
Expenditures:					
PECFA Awards	\$5,525,600	\$3,574,400**	\$7,500,000	\$5,400,000	
PECFA Administration	2,281,700	2,329,900	2,254,800	2,254,800	20.30
Petroleum Inspection	4,369,300	4,515,200	4,501,200	4,504,700	36.05
Transportation Fund	6,584,600	6,629,000	6,652,100	6,652,100	4.00
Other Programs ***	9,033,700	9,723,300	8,664,800	8,616,200	29.75
Expenditure of Prior Year Encumbrances	<u>0</u>	<u>764,100</u>	<u>0</u>	<u>0</u>	<u>0.00</u>
Total Expenditures	\$27,794,900	\$27,535,900	\$29,572,900	\$27,427,800	90.10
Less Transfer to Transportation Fund	\$21,000,000	\$21,000,000	\$24,000,000	\$24,000,000	
Cash Balance	\$19,330,400	\$16,650,100	\$12,145,500	\$13,291,800	
Encumbrances, Continuing Balances	-\$764,100	\$0	\$0	\$0	
Available Balance	\$18,566,300	\$16,650,100	\$12,145,500	\$13,291,800	

*DNR has not finalized 2015-16 expenditures.

**Shows estimated expenditures of \$3,574,400 as the amount remaining in the biennial appropriation.

***Other programs include appropriations for transfer to the segregated environmental management account, Department of Administration diesel truck idling reduction grants, Department of Agriculture, Trade and Consumer Protection weights and measures and unfair sales act, Department of Military Affairs emergency response board and major disaster assistance, Department of Revenue administration of petroleum inspection fee collections, and a reimbursement of the petroleum inspection fee paid on certain purchases of aviation fuel.

The first use of petroleum inspection fees is required to be payment on the \$387 million in PECFA revenue obligations issued to pay the 1990s PECFA claim backlog. As of December 1, 2016, the total amount of outstanding revenue obligations was \$76.1 million. The estimated revenue obligation debt service amounts shown in the table for 2016-17 through 2018-19 reflect the fixed principal and interest payment schedule established in the October, 2016, refinancing of short-term commercial paper to fixed-rate obligations, which will be retired on July 1, 2019.

Approximately 53% (\$82.4 million) of the budgeted expenditures from the petroleum inspection fund in the 2015-17 biennium will be for PECFA awards, DNR administration of the PECFA program, revenue obligation debt service costs, and Department of Agriculture, Trade and Consumer Protection (DATCP) petroleum inspection and tank regulation programs. In addition, approximately 35% (\$55.2 million) will be for the Department of Transportation appropriations and the transfer to the transportation fund. The remaining 12% includes \$19.5 million for other programs.

PECFA claims approved for reimbursement as of March, 2017, will be paid after the 2017-18 appropriation is available, or after additional funds are legislatively authorized for the appropriation in 2016-17, whichever action comes first. The current unavailability of PECFA funds will likely slow the progress of work at many sites for which consultants act as an agent for the owner for the purpose of filing a PECFA claim. Under the consultant agent process, the consultant completes the work, submits a PECFA claim for reimbursement on the owner's behalf, and receives the payment from DNR. Some consultants may stop active work at PECFA sites because they do not have the financial resources to wait until the 2017-19 biennial budget is enacted to receive DNR reimbursement of incurred costs.

Provision of additional funding for PECFA claims in 2016-17 would be expected to eliminate or minimize any PECFA claims backlog during the current fiscal year, and to maintain an uninterrupted flow of work at sites currently undergoing cleanup. The Department's request for \$2,100,000 could be expected to accomplish this (Alternative 1), and to provide more than sufficient funding for claims received between late February of 2017 and the date of enactment of the 2017-19 biennial budget.

The Committee could also consider approving a smaller amount of funding, such as \$1,900,000 (Alternative 2), which would provide funding for the claims received by the Department as of March 20, 2017 (\$717,000), plus claims received between March 20 and mid-June. It is likely that claims received after early June would be processed for payment by July, by which time it is possible that funding will be available under the 2017-19 biennial budget act. It is likely that \$1,900,000 would meet anticipated demand during 2016-17, but possible that it would not. Under this alternative, the Committee could review the anticipated need for PECFA claims funding during spring, 2017, deliberations on the 2017-19 biennial budget.

If the request is not approved, claims approved for reimbursement between March and June of 2017 will need to wait to receive payment until funding becomes available from the 2017-18 appropriation. It is possible that current work at these sites may slow or be put on hold until payment is received.

Any amount approved by the Committee under section 13.10 could be subtracted from the amount that would be provided by the Governor's biennial budget in 2017-18 to cover the anticipated backlog that is developing during 2016-17.

ALTERNATIVES

1. Approve the Department's request to provide \$2,100,000 petroleum inspection fund SEG in 2016-17 for PECFA claims under s. 20.370 (6)(fr) of the statutes.
2. Provide \$1,900,000 petroleum inspection fund SEG in 2016-17 for PECFA claims under s. 20.370 (6)(fr) of the statutes.
3. Deny the request.

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