



1995 ASSEMBLY BILL 1089

March 28, 1996 - Introduced by Representatives JOHNSRUD, BRANDEMUEHL, SILBAUGH and AINSWORTH, cosponsored by Senators COWLES and RUDE. Referred to Joint committee on Finance.

1 **AN ACT to repeal** 101.143 (3) (as) and 101.143 (3) (e); **to amend** 101.143 (2) (e),
2 101.143 (3) (a) (intro.), 101.143 (3) (ae) 1., 101.143 (3) (am) 1., 101.143 (3) (c) 4.,
3 101.143 (3) (cm), 101.143 (3) (d), 101.143 (3) (f) 5., 101.143 (4) (b) 15., 101.143
4 (4) (d) 1., 101.143 (4) (dm) 1., 101.143 (4) (e) 1. b. and c. and 101.143 (7m); and
5 **to create** 101.143 (2) (h), 101.143 (3) (ae) 3., 101.143 (3) (am) 5., 101.143 (4) (a)
6 8. and 101.143 (4) (ce) of the statutes; **relating to:** various changes to the
7 petroleum storage remedial action program, extending the time limit for
8 emergency rule procedures, providing an exemption from emergency rule
9 procedures and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, this state provides financial assistance to owners of certain petroleum product storage tanks for costs incurred because of discharges from those tanks. This program is commonly referred to as PECFA. The PECFA program is currently administered by the department of industry, labor and human relations (DILHR). On July 1, 1996, the 1995 biennial budget act transfers responsibility for administering PECFA from DILHR to the department of development (renamed the department of commerce).

Under current law, the maximum allowable PECFA awards for most kinds of storage tanks are decreased on July 1, 1998. This bill delays that decrease to December 22, 2002.

Under current law, the owner or operator of a storage tank is generally ineligible for a PECFA award for the cleanup of a discharge from the tank if the owner

or operator has received a PECFA award for an earlier discharge from that tank. This bill eliminates that exception.

Under this bill, if an owner or operator of a storage tank received a PECFA award but the remedial action for which that award was granted failed to remedy the discharge, the owner or operator may receive additional financial assistance to remedy the discharge. The amount of the original award plus the additional financial assistance may not exceed the maximum allowable PECFA award.

Under current law, a PECFA award for a discharge from an underground storage tank, other than a home oil tank, may include the costs of compensation to 3rd parties for bodily injury and property damage caused by the discharge. Under this bill, a PECFA award for a discharge from an aboveground storage tank, other than a home oil tank, may also include the costs of compensation to 3rd parties for bodily injury and property damage caused by the discharge.

Under current law, the owner or operator of a petroleum storage tank that has discharged must receive approval of the cleanup from the department of natural resources (DNR) before receiving a PECFA award if the site is a high priority site. This bill eliminates the requirement of DNR approval but authorizes the department of commerce to require DNR approval as a condition of department of commerce approval in situations that the department of commerce specifies by rule.

This bill authorizes the department of commerce to promulgate rules under which it requires the owners and operators of petroleum storage tanks located on the same or adjacent sites to use the same service providers to conduct cleanups of discharges from those tanks as a condition of receiving PECFA reimbursement. The bill also authorizes the department of commerce to promulgate rules under which the department selects service providers to provide services for the operation or maintenance of remedial action equipment or systems in specified areas. The rules may deny PECFA reimbursement for services performed by a person other than a selected provider or limit PECFA reimbursement to the amount that the selected provider could have charged for the service.

This bill authorizes DILHR, before July 1, 1996, to promulgate emergency rules for the PECFA program without a finding of emergency. The rules may remain in effect for not longer than 2 years. The bill authorizes the department of commerce, after June 30, 1996, and before January 1, 1997, to promulgate emergency rules for the PECFA program without a finding of emergency. The rules may remain in effect for not longer than 2 years.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 101.143 (2) (e) of the statutes is amended to read:

1 101.143 (2) (e) The department shall promulgate rules, with an effective date
2 of no later than January 1, 1996, specifying the methods the department will use
3 under sub. (3) (ae), and (am) ~~and~~-(as) to identify the petroleum product storage
4 system or home oil tank system which discharged the petroleum product that caused
5 an area of contamination and to determine when a petroleum product discharge that
6 caused an area of contamination occurred. The department shall write the rule in
7 a way that permits a clear determination of what petroleum product contamination
8 is eligible for an award under sub. (4) after December 31, 1995.

9 **SECTION 2.** 101.143 (2) (h) of the statutes is created to read:

10 101.143 (2) (h) The department may promulgate rules that require, in specified
11 types of situations, a written determination from the department of natural
12 resources that remedial action activities performed under sub. (3) (c) 3. meet the
13 requirements of s. 144.76 before the department issues its approval under sub. (3)
14 (c) 4.

15 **SECTION 3.** 101.143 (3) (a) (intro.) of the statutes is amended to read:

16 101.143 (3) (a) *Who may submit a claim.* (intro.) Subject to pars. (ae), and (am)
17 ~~and~~-(as), an owner or operator or a person owning a home oil tank system may submit
18 a claim to the department for an award under sub. (4) to reimburse the owner or
19 operator or the person for the eligible costs under sub. (4) (b) that the owner or
20 operator or the person incurs because of a petroleum products discharge from a
21 petroleum product storage system or home oil tank system if all of the following
22 apply:

23 **SECTION 4.** 101.143 (3) (ae) 1. of the statutes, as affected by 1995 Wisconsin Act
24 27, is amended to read:

1 101.143 (3) (ae) 1. An owner or operator or a person owning a home oil tank
2 system is not eligible for an award under this section for costs incurred because of
3 a petroleum product discharge from a petroleum product storage system or a home
4 oil tank system that meets the performance standards in 40 CFR 280.20 or in rules
5 promulgated by the department relating to underground storage tank systems
6 installed after December 22, 1988, except as provided in subd. 2. or 3.

7 **SECTION 5.** 101.143 (3) (ae) 3. of the statutes is created to read:

8 101.143 (3) (ae) 3. Subdivision 1. does not apply if a change in rules
9 promulgated by the department of natural resources necessitates further remedial
10 action activities with respect to a petroleum product discharge for which an award
11 was issued under this section.

12 **SECTION 6.** 101.143 (3) (am) 1. of the statutes, as affected by 1995 Wisconsin
13 Act 27, is amended to read:

14 101.143 (3) (am) 1. An owner or operator or a person owning a home oil tank
15 system is not eligible for an award under this section for costs incurred because of
16 a petroleum product discharge from a petroleum product storage system or a home
17 oil tank system if the discharge is confirmed, or activities under par. (c) or (g) are
18 begun with respect to that discharge, after the day on which the petroleum product
19 storage system or home oil tank system first meets the upgrading requirements in
20 40 CFR 280.21 (b) to (d) or in rules promulgated by the department relating to the
21 upgrading of existing underground storage tank systems, except as provided in
22 subds. 2. to ~~4~~ 5.

23 **SECTION 7.** 101.143 (3) (am) 5. of the statutes is created to read:

24 101.143 (3) (am) 5. Subdivision 1. does not apply if a change in rules
25 promulgated by the department of natural resources necessitates further remedial

1 action activities with respect to a petroleum product discharge for which an award
2 was issued under this section.

3 **SECTION 8.** 101.143 (3) (as) of the statutes, as affected by 1995 Wisconsin Act
4 27, is repealed.

5 **SECTION 9.** 101.143 (3) (c) 4. of the statutes, as affected by 1995 Wisconsin Act
6 27, is amended to read:

7 101.143 (3) (c) 4. Receive written approval from the department of natural
8 resources or, if the discharge is covered under s. 101.144 (2) (b), from the department
9 of commerce that the remedial action activities performed under subd. 3. meet the
10 requirements of s. 144.76.

11 **SECTION 10.** 101.143 (3) (cm) of the statute, as affected by 1995 Wisconsin Act
12 27, is amended to read:

13 101.143 (3) (cm) *Monitoring as remedial action.* An owner or operator or
14 person owning a home oil tank system may, with the approval of the department of
15 natural resources or, if the discharge is covered under s. 101.144 (2) (b), the
16 department of commerce, satisfy the requirements of par. (c) 2. and 3. by proposing
17 and implementing monitoring to ensure the effectiveness of the natural process of
18 degradation of petroleum product contamination.

19 **SECTION 11.** 101.143 (3) (d) of the statutes, as affected by 1995 Wisconsin Act
20 27, is amended to read:

21 101.143 (3) (d) *Review of site investigations, remedial action plans and*
22 *remedial action activities.* The department of natural resources or, if the discharge
23 is covered under s. 101.144 (2) (b), the department of commerce shall, at the request
24 of the claimant, review the site investigation and the remedial action plan and advise
25 the claimant on the adequacy of proposed remedial action activities in meeting the

1 requirements of s. 144.76. The advice is not an approval of the remedial action
2 activities. The department of natural resources or, if the discharge is covered under
3 s. 101.144 (2) (b), the department of commerce shall complete a final review of the
4 remedial action activities within 60 days after the claimant notifies the appropriate
5 department that the remedial action activities are completed.

6 **SECTION 12.** 101.143 (3) (e) of the statutes, as affected by 1995 Wisconsin Act
7 27, is repealed.

8 **SECTION 13.** 101.143 (3) (f) 5. of the statutes, as affected by 1995 Wisconsin Act
9 27, is amended to read:

10 101.143 (3) (f) 5. The written approval of the department of natural resources
11 or the department of commerce under par. (c) 4.

12 **SECTION 14.** 101.143 (4) (a) 8. of the statutes is created to read:

13 101.143 (4) (a) 8. If the department issues an award under this section for
14 remedial action activities that were necessitated by a petroleum product discharge
15 from a petroleum product storage system or home oil tank system and it is
16 subsequently determined that the approved remedial action activities failed to
17 remedy the discharge, then the department may approve additional financial
18 assistance for costs incurred to enhance the approved remedial action activities or
19 implement new remedial action activities. The total amount of an original award
20 under this section plus additional financial assistance provided under this
21 subdivision is subject to the limits in pars. (d) to (e), (ei) and (em) on amounts of
22 awards.

23 **SECTION 15.** 101.143 (4) (b) 15. of the statutes is amended to read:

1 101.143 (4) (b) 15. For an owner or operator only, compensation to 3rd parties
2 for bodily injury and property damage caused by a petroleum products discharge
3 from ~~an underground~~ a petroleum product storage tank system.

4 **SECTION 16.** 101.143 (4) (ce) of the statutes is created to read:

5 101.143 (4) (ce) *Eligible cost; service providers.* 1. The department may
6 promulgate rules under which the costs incurred for a specified service because of
7 discharges from petroleum product storage systems located on the same or adjacent
8 parcels of land are not eligible costs under par. (b) unless the owners or operators of
9 those petroleum product storage systems obtain the service from the same service
10 provider.

11 2. The department may promulgate rules under which the department selects
12 service providers to provide services for the operation or maintenance of remedial
13 action equipment or systems in specified areas. The rules may provide that the costs
14 of a service for which the department has selected a service provider in an area are
15 not eligible costs under par. (b), or that eligible costs are limited to the amount that
16 the selected service provider would have charged, if an owner or operator of a
17 petroleum product storage system located in that area, or a person owning a home
18 oil tank system located in that area, uses a service provider other than the service
19 provider selected by the department to perform the services.

20 **SECTION 17.** 101.143 (4) (d) 1. of the statutes is amended to read:

21 101.143 (4) (d) 1. The department shall issue an award under this paragraph
22 for a claim filed after July 31, 1987, for eligible costs, under par. (b), incurred on or
23 after August 1, 1987, and before ~~July 1, 1998~~ December 22, 2002, by the owner or
24 operator of an underground petroleum product storage tank system and for eligible
25 costs, under par. (b), incurred on or after ~~July 1, 1998~~ December 22, 2002, by the

1 owner or operator of an underground petroleum product storage tank system if the
2 petroleum product discharge on which the claim is based is confirmed and activities
3 under sub. (3) (c) or (g) are begun before ~~July 1, 1998~~ December 22, 2002.

4 **SECTION 18.** 101.143 (4) (dm) 1. of the statutes, as affected by 1995 Wisconsin
5 Act 27, is amended to read:

6 101.143 (4) (dm) 1. The department shall issue an award under this paragraph
7 for a claim for eligible costs, under par. (b), incurred on or after August 1, 1987, and
8 before ~~July 1, 1998~~ December 22, 2002, by the owner or operator of a petroleum
9 product storage system that is not an underground petroleum product storage tank
10 system and for eligible costs, under par. (b), incurred on or after ~~July 1, 1998~~
11 December 22, 2002, by the owner or operator of a petroleum product storage system
12 that is not an underground petroleum product storage tank system if the petroleum
13 product discharge on which the claim is based is confirmed and activities under sub.
14 (3) (c) or (g) are begun before ~~July 1, 1998~~ December 22, 2002.

15 **SECTION 19.** 101.143 (4) (e) 1. b. and c. of the statutes are amended to read:

16 101.143 (4) (e) 1. b. Eligible costs, under par. (b), incurred on or after ~~July 1,~~
17 ~~1998~~ December 22, 2002, by the owner or operator of a petroleum product storage
18 system that is not an underground petroleum product storage system if those costs
19 are not reimbursable under par. (dm) 1.

20 c. Eligible costs, under par. (b), incurred on or after ~~July 1, 1998~~ December 22,
21 2002, by the owner or operator of an underground petroleum product storage tank
22 system if those costs are not reimbursable under par. (d) 1.

23 **SECTION 20.** 101.143 (7m) of the statutes is amended to read:

24 101.143 (7m) INTERVENTION IN 3RD-PARTY ACTIONS. An owner or operator of an
25 ~~underground~~ a petroleum product storage tank system shall notify the department

1 of any action by a 3rd party against the owner or operator for compensation for bodily
2 injury or property damage caused by a petroleum products discharge from the
3 ~~underground~~ petroleum product storage tank system if the owner or operator may
4 be eligible for an award under this section. The department may intervene in any
5 action by a 3rd party against an owner or operator for compensation for bodily injury
6 or property damage caused by a petroleum products discharge from ~~an underground~~
7 a petroleum product storage tank system if the owner or operator may be eligible for
8 an award under this section for compensation awarded in the action.

9 **SECTION 21. Nonstatutory provisions; commerce.**

10 (1) ADDITIONAL AWARDS FOR FAILED REMEDIAL ACTION. The department of
11 commerce shall study the implementation of section 101.143 (4) (a) 8. of the statutes,
12 as created by this act, with particular attention to the effect of the maximum
13 allowable awards under the petroleum environmental cleanup fund award program.
14 No later than March 1, 1997, the department shall distribute its report on the study
15 to the appropriate standing committees of the legislature, as determined by the
16 president of the senate and the speaker of the assembly, in the manner provided
17 under section 13.172 (3) of the statutes and to the cochairpersons of the joint
18 committee on finance.

19 (2) EMERGENCY RULES.

20 (a) The department of commerce may use the procedure under section 227.24
21 of the statutes to promulgate rules under section 101.143 of the statutes, as affected
22 by the laws of 1995. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,
23 the emergency rules may remain in effect for a period not to exceed 2 years.
24 Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the department

1 need not provide evidence of the necessity of preservation of the public peace, health,
2 safety or welfare in promulgating the rules under this paragraph.

3 (b) The department of commerce may not promulgate emergency rules under
4 paragraph (a) after December 31, 1996.

5 **SECTION 22. Nonstatutory provisions; industry, labor and human**
6 **relations.**

7 (1) EMERGENCY RULES. Before July 1, 1996, the department of industry, labor
8 and human relations may use the procedure under section 227.24 of the statutes to
9 promulgate rules under section 101.143 of the statutes, as affected by the laws of
10 1995. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency
11 rules may remain in effect for a period not to exceed 2 years. Notwithstanding section
12 227.24 (1) (a) and (2) (b) of the statutes, the department need not provide evidence
13 of the necessity of preservation of the public peace, health, safety or welfare in
14 promulgating the rules under this subsection.

15 **SECTION 23. Effective dates.** This act takes effect on July 1, 1996, or on the
16 day after publication, whichever is later, except as follows:

17 (1) SECTION 22 of this act takes effect on the day after publication.

18 (END)