



1997 ASSEMBLY BILL 861

March 2, 1998 - Introduced by Representatives JOHNSRUD, HARSDORF, UNDERHEIM, VANDER LOOP, GOETSCH, SKINDRUD, DUFF, OLSEN, HUTCHISON, OTTE, HUEBSCH, WARD, BRANDEMUEHL, OURADA, PORTER, PLALE, HUBER, GROTHMAN, MEYER, F. LASEE, KREIBICH, SCHAFER and KEDZIE, cosponsored by Senators MOEN, C. POTTER, PLACHE and WINEKE. Referred to Joint committee on Finance.

1 **AN ACT to amend** 25.47, 101.143 (3) (cm), 101.143 (4) (b) (intro.), 101.143 (4) (cm),
2 101.144 (2) (b) 1. and 101.144 (3m) (a) 3.; and **to create** 20.143 (3) (5), 20.143
3 (3) (t), 101.143 (1) (cq), 101.143 (3) (cp), 101.143 (3) (cs), 101.143 (3) (cw),
4 101.143 (4) (a) 9., 101.143 (4) (c) 11. and 12., 101.143 (4s), 101.143 (11), 101.144
5 (1) (aq) and 101.144 (1) (av) of the statutes; **relating to:** reimbursement for
6 costs incurred because of discharges from certain petroleum product storage
7 tanks, authority over discharges from petroleum storage tanks, authorizing
8 revenue obligations to be contracted and making appropriations.

Analysis by the Legislative Reference Bureau

Under current law, the department of commerce administers a program to reimburse owners of certain petroleum product storage tanks for a portion of the costs of cleaning up discharges from those tanks. This program is commonly known as PECFA. This bill makes changes related to PECFA and petroleum product discharge cleanups.

Revenue bonding

Under current law, PECFA awards are primarily funded from the petroleum inspection fee.

This bill allows PECFA awards to be funded from the proceeds of revenue bonds. The bill authorizes the issuance of not more than \$400,000,000 in revenue

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bonds for PECFA awards. The revenue bonds are to be repaid from the petroleum inspection fee.

PECFA process

Currently, to be eligible for PECFA, the owner of a petroleum product storage tank must investigate the discharge, prepare a plan for the cleanup and conduct the cleanup.

This bill generally imposes an additional requirement on the owner of a tank if a high priority factor exists in connection with the discharge. High priority factors include that the contaminant mass is moving or that a drinking water well has been contaminated. If a high priority factor is present, the owner must complete an analysis of alternative cleanup approaches and submit the analysis to the department of commerce. When the department receives an analysis, it may require the owner to implement one of the alternatives and establish a maximum reimbursable cost for the cleanup, require the owner to use specified contractors to conduct the cleanup or require the owner to use a public bidding process to select contractors to conduct the cleanup.

Under the bill, if the site of a discharge lacks a high priority factor, the owner must generally submit a proposal for a cleanup by controlling the source of the contamination using excavation, verification of the effectiveness of natural processes (called natural attenuation) in remedying the contamination, monitoring, deed restrictions or other restrictions on the use of or access to the site or a combination of those measures. When the department of commerce receives a proposal, it may approve the proposal and establish a maximum reimbursable cost for the cleanup, require the owner to develop a cleanup plan that uses other measures, require the owner to use specified contractors to conduct the cleanup or require the owner to use a public bidding process to select contractors to conduct the cleanup.

Under the bill, if an owner of a tank believes that the investigation, planning and cleanup can be completed for \$80,000 or less, the owner may proceed with the process without being subject to the new requirements described above. However, if it turns out that the process cannot be completed for \$80,000, the owner must stop work on the discharge site and inform the department of commerce. After reviewing the situation, the department may authorize the owner to continue the cleanup and establish a maximum reimbursable cost for the cleanup, require the owner to develop alternative cleanup proposals, require the owner to use specified contractors to complete the cleanup or require the owner to use a public bidding process to select contractors to complete the cleanup. If the owner of a tank who attempts to complete a cleanup for \$80,000 or less uses a consultant, the consultant is required to indemnify the owner for any costs of the cleanup that the department determines are ineligible for PECFA reimbursement. The consultant must provide a bond or letter of credit to ensure that the owner will be indemnified.

The bill authorizes the department of commerce to give priority in paying PECFA awards for cleanups that are completed for \$80,000 or less.

The bill authorizes the department of commerce and the department of natural resources (DNR) to review cleanups of petroleum discharges that are in progress to determine the efficacy and cost-effectiveness of the cleanups. Following a review,

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the department of commerce may establish a maximum reimbursable cost for the cleanup, require the owner to use specified contractors to complete the cleanup or require the owner to develop and implement a revise cleanup plan.

Authority over petroleum product discharges

Under current law, DNR generally has the authority to order a responsible person to conduct a cleanup of a hazardous substance and to oversee the cleanup. However, under current law, the department of commerce has this authority over cleanups of certain discharges from petroleum product storage tanks. The department of commerce has authority over cleanups if the site of the discharge is classified as low or medium priority based on the threat that the discharge poses to public health, safety and welfare and to the environment and if the site is not contaminated by nonpetroleum hazardous substances. Current law requires DNR and the department of commerce to enter into a memorandum of understanding that establishes procedures and standards for determining whether a site is high, medium or low priority.

Under this bill, DNR has authority over sites of discharges from petroleum product storage tanks that have high priority factors or are contaminated by other hazardous substances in addition to petroleum products and the department of commerce has authority over all other sites of discharges from petroleum product storage tanks. High priority factors include that the contaminant mass is moving or that a drinking water well has been contaminated.

For further information see the ***state and local*** 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.** 20.143 (3) (5) of the statutes is created to read:
2 20.143 **(3)** (5) *Petroleum storage environmental remedial action revenue*
3 *obligation repayment.* From the fund created under s. 101.143 (11) (b), all moneys
4 received by the fund and not transferred under s. 101.143 (11) (c) to the petroleum
5 inspection fund, for the purpose of the retirement of revenue obligations, providing
6 for reserves and for operations relating to the management and retirement of
7 revenue obligations issued under s. 101.143 (11). All moneys received are irrevocably
8 appropriated in accordance with subch. II of ch. 18 and further established in
9 resolutions authorizing the issuance of the revenue obligations and setting forth the

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1 distribution of funds to be received thereafter. Estimated disbursements under this
2 paragraph shall not be included in the schedule under s. 20.005.

3 **SECTION 2.** 20.143 (3) (t) of the statutes is created to read:

4 20.143 (3) (t) *Petroleum storage environmental remedial action revenue*
5 *obligation funding.* As a continuing appropriation, all proceeds from revenue
6 obligations issued under s. 101.143 (11) and deposited into the fund in the state
7 treasury created under s. 18.57 (1), for paying awards under s. 101.143 (4), providing
8 for reserves and for expenses of issuance and management of the revenue
9 obligations. Estimated disbursements under this paragraph shall not be included in
10 the schedule under s. 20.005.

11 **SECTION 3.** 25.47 of the statutes, as affected by 1997 Wisconsin Act 27, is
12 amended to read:

13 **25.47 Petroleum inspection fund.** There is established a separate
14 nonlapsible trust fund designated as the petroleum inspection fund, to consist of the
15 ~~fees imposed~~ any revenues derived under s. 168.12 (1) that are not pledged to the
16 fund created under s. 101.143 (11) (b), the moneys transferred under s. 101.143 (11)
17 (c), the payments under s. 101.143 (4) (h) 1m., the payments under s. 101.143 (5) (a)
18 and the net recoveries under s. 101.143 (5) (c).

19 **SECTION 4.** 101.143 (1) (cq) of the statutes is created to read:

20 101.143 (1) (cq) "Natural attenuation" means the reduction in the mass and
21 concentration of a substance due to naturally occurring physical, chemical and
22 biological processes.

23 **SECTION 5.** 101.143 (3) (cm) of the statutes is amended to read:

24 101.143 (3) (cm) *Monitoring as remedial action.* An owner or operator or person
25 owning a home oil tank system may, with the approval of the department of natural

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1 resources or, if the discharge is covered under s. 101.144 (2) (b), the department of
2 commerce, satisfy the requirements of par. (c) 2. and 3. by proposing and
3 implementing monitoring to ensure the effectiveness of the natural process of
4 ~~degradation~~ attenuation of petroleum product contamination.

5 **SECTION 6.** 101.143 (3) (cp) of the statutes is created to read:

6 101.143 (3) (cp) *Sites with high priority factors.* 1. This paragraph applies if
7 at least one of the following high priority factors exists in connection with a
8 petroleum product discharge:

9 a. The site investigation documents that the contaminant mass is moving.

10 b. Repeated tests show that the discharge has resulted in a concentration of
11 contaminants in a private or public potable well that exceeds the preventive action
12 limits established under s. 160.15.

13 c. Soil contamination exists within one meter of bedrock.

14 d. Petroleum product that is not in dissolved phase is present with a thickness
15 of 0.01 feet or more, as shown by repeated measurements from quarterly or
16 semiannual monitoring.

17 2. Except as provided in par. (cw), if a site has a high priority factor, the owner
18 or operator or person owning a home oil tank system shall complete an analysis of
19 alternative remedial actions designed to eliminate the risk factor and address the
20 contamination caused by the discharge. The analysis shall include estimates of the
21 costs of implementing each alternative. The owner or operator or person owning a
22 home oil tank system shall submit the analysis to the department.

23 3. When the department receives an analysis under subd. 2., the department
24 may do one of the following:

ASSEMBLY BILL 861**SECTION 6**

1 a. Require the owner or operator or person owning a home oil tank system to
2 implement one of the remedial action alternatives and establish a maximum
3 reimbursable cost for the remedial action.

4 b. Require the owner or operator or person owning a home oil tank system to
5 use specified service providers or to conduct the remedial action in conjunction with
6 the remedial action for another discharge.

7 c. Require the owner or operator or person owning a home oil tank system to
8 use a competitive public bidding process to select service providers.

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

10 101.143 (3) (cs) *Sites without high priority factors.* 1. Except as provided in
11 par. (cw), if no high priority factor specified in par. (cp) 1. exists in connection with
12 a petroleum product discharge, the owner or operator or person owning a home oil
13 tank system shall submit a proposal, including estimated costs, to the department
14 for remedial action using one or more of the following:

15 a. Control of the source of contamination using excavation.

16 b. Verification of the effectiveness of natural attenuation.

17 c. Monitoring.

18 d. Deed restrictions or other restrictions on the use of or access to the site.

19 2. When the department receives a proposal under subd. 1., the department
20 may do one of the following:

21 a. Approve the proposal and establish a maximum reimbursable cost for the
22 remedial action.

23 b. Require the owner or operator or person owning a home oil tank system to
24 develop and implement a remedial action proposal that uses measures other than
25 those specified in subd. 1. a. to d.

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1 c. Require the owner or operator or person owning a home oil tank system to
2 use specified service providers or to conduct the remedial action in conjunction with
3 the remedial action for another discharge.

4 d. Require the owner or operator or person owning a home oil tank system to
5 use a competitive public bidding process to select service providers.

6 **SECTION 8.** 101.143 (3) (cw) of the statutes is created to read:

7 101.143 (3) (cw) *Low-cost sites.* 1. If an owner or operator or person owning
8 a home oil tank system believes that a site investigation, remedial action plan and
9 remedial action, to the point at which the department of natural resources or the
10 department of commerce determines, based on available information, that no further
11 remedial action is necessary, can be completed for \$80,000 or less, excluding interest
12 costs, the owner or operator or person owning a home oil tank system may attempt
13 to complete the site investigation, remedial action plan and remedial action for
14 \$80,000 or less. The owner or operator or person owning a home oil tank system shall
15 inform the department of the intent to proceed under this subdivision before
16 beginning the remedial action. Paragraphs (cp) 2. and 3. and (cs) 1. and 2. do not
17 apply if the owner or operator or person owning a home oil tank system proceeds
18 under this subdivision.

19 2. If an owner or operator or person owning a home oil tank system proceeds
20 under subd. 1. and it appears that the remedial action cannot be completed, to the
21 point at which the department of natural resources or the department of commerce
22 determines, based on available information, that no further remedial action is
23 necessary \$80,000 or less, all work on the site must be stopped and the department
24 notified as soon as possible. After reviewing the situation, the department may do
25 one of the following:

ASSEMBLY BILL 861**SECTION 8**

1 a. Authorize the owner or operator or person owning a home oil tank system
2 to continue with the remedial action and establish a maximum reimbursable cost for
3 the remedial action.

4 b. Require the owner or operator or person owning a home oil tank system to
5 develop remedial action alternatives and implement one of the alternatives.

6 c. Require the owner or operator or person owning a home oil tank system to
7 use specified service providers to complete the remedial action or to conduct the
8 remainder of the remedial action in conjunction with the remedial action for another
9 discharge.

10 d. Require the owner or operator or person owning a home oil tank system to
11 use a competitive public bidding process to select service providers for the remainder
12 of the remedial action.

13 3. If an owner or operator or person owning a home oil tank system proceeding
14 under subd. 1. uses a consultant, the consultant shall indemnify the owner or
15 operator or person owning a home oil tank system for any costs of the remedial action
16 that the department determines to be ineligible. The consultant shall provide a bond
17 or a letter of credit in favor of the owner or operator or person owning a home oil tank
18 system in an amount sufficient to cover those costs.

19 4. If a consultant fails to provide a bond or letter of credit under subd. 3., the
20 department may summarily prohibit the consultant from acting as a consultant for
21 projects for which claims will be filed under this section. If a consultant repeatedly
22 fails to complete projects that proceed under subd. 1., to the point at which the
23 department of natural resources or the department of commerce determines, based
24 on available information, that no further remedial action is necessary, for \$80,000
25 or less, the department may prohibit the consultant from acting as a consultant for

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1 projects for which claims will be filed under this section or may prohibit the
2 consultant from acting as a consultant for projects that proceed under subd. 1.

3 **SECTION 9.** 101.143 (4) (a) 9. of the statutes is created to read:

4 101.143 (4) (a) 9. The department may give priority to paying an award for a
5 claim if the department of natural resources or the department of commerce has
6 determined, based on available information, that no further remedial action is
7 necessary with respect to the petroleum product discharge or has approved the use
8 of natural attenuation with long-term monitoring and eligible costs do not exceed
9 \$80,000.

10 **SECTION 10.** 101.143 (4) (b) (intro.) of the statutes is amended to read:

11 101.143 (4) (b) *Eligible costs.* (intro.) ~~Eligible~~ Except as provided in par. (c),
12 eligible costs for an award under par. (a) include actual costs or, if the department
13 establishes a ~~schedule~~ usual and customary cost under par. (cm) for an item, usual
14 and customary costs for the following items only:

15 **SECTION 11.** 101.143 (4) (c) 11. and 12. of the statutes are created to read:

16 101.143 (4) (c) 11. Costs of excavating soils if the level of contamination in the
17 soils is less than numerical residual contaminant levels approved by the department
18 of natural resources or the department of commerce.

19 12. Costs in excess of maximum reimbursable costs established by the
20 department under sub. (3) (cp) 3. a., (cs) 2. a. or (cw) 2. a. or (4s) (b) 1.

21 **SECTION 12.** 101.143 (4) (cm) of the statutes is amended to read:

22 101.143 (4) (cm) *Usual and customary costs.* The department ~~may~~ shall
23 establish a schedule of usual and customary costs for ~~any~~ some or all of the items
24 under par. (b) and may use that schedule to determine the amount of a claimant's
25 eligible costs.

ASSEMBLY BILL 861**SECTION 13**

1 **SECTION 13.** 101.143 (4s) of the statutes is created to read:

2 101.143 (4s) REMEDIAL ACTION REVIEW. (a) The department of commerce or the
3 department of natural resources may review remedial actions being conducted for
4 which claims have been or will be filed under sub. (3) to determine the efficacy and
5 cost-effectiveness of the remedial action and to determine whether ineligible costs
6 are being incurred.

7 (b) Following a review under par. (a) of a remedial action, the department of
8 commerce may do one or more of the following:

9 1. Establish a maximum reimbursable cost for the remedial action if the
10 department has not already done so.

11 2. Require the owner or operator or person owning a home oil tank system to
12 use specified service providers or to conduct the remainder of the remedial action in
13 conjunction with the remedial action for another discharge.

14 3. Require the owner or operator or person owning a home oil tank system
15 develop and implement a revised remedial action plan.

16 (c) The department may not reimburse an owner or operator or person owning
17 a home oil tank system for any costs incurred in connection with a discharge after
18 the owner or operator or person owning a home oil tank system, or the consultant
19 retained by the owner or operator or person owning a home oil tank system, fails to
20 provide information needed for a review under par. (a) or for any costs incurred after
21 the owner or operator or person owning a home oil tank system fails to comply with
22 requirements imposed under par. (b) 2. or 3.

23 **SECTION 14.** 101.143 (11) of the statutes is created to read:

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1 101.143 (11) REVENUE OBLIGATIONS. Awards under sub. (4) may be funded with
2 the proceeds of revenue obligations issued subject to and in accordance with subch.
3 II of ch. 18.

4 (b) The department may, under s. 18.56 (5), direct the department of revenue
5 to deposit in a separate fund in the state treasury revenues derived under s. 168.12
6 (1).

7 (c) The building commission may pledge revenues received or to be received in
8 the fund established in par. (b) to secure revenue obligations issued under this
9 subsection. The pledge shall provide for the transfer to the petroleum inspection
10 fund of all pledged revenues, including any interest earned on the revenues, that are
11 in excess of the amounts required to be paid under s. 20.143 (3) (s). The pledge shall
12 provide that the transfers be made at least quarterly and that the transferred
13 amounts are free of any prior pledge.

14 (d) The department shall have all other powers necessary and convenient to
15 distribute the pledged revenues and to distribute the proceeds of the revenue
16 obligations in accordance with subch. II of ch. 18.

17 (e) The department may enter into agreements with the federal government
18 or its agencies, political subdivisions of this state or private individuals or entities
19 to insure or in any other manner provide additional security for the revenue
20 obligations issued under this subsection.

21 (f) Revenue obligations may be contracted by the building commission when it
22 reasonably appears to the building commission that all obligations incurred under
23 this subsection can be fully paid from moneys received or anticipated and pledged to
24 be received on a timely basis. If the building commission proposes to contract
25 revenue obligations under this subsection, the building commission shall notify the

ASSEMBLY BILL 861**SECTION 14**

1 joint committee on finance in writing of the proposed action. If the cochairpersons
2 of the committee do not notify the building commission that the committee has
3 scheduled a meeting for the purpose of reviewing the proposed action within 14
4 working days after the date of the building commission's notification, the building
5 commission may contract the revenue obligations as proposed. If, within 14 working
6 days after the date of the building commission's notification, the cochairpersons of
7 the committee notify the building commission that the committee has scheduled a
8 meeting for the purpose of reviewing the proposed action, the building commission
9 may contract the revenue obligations only upon the approval of the committee.
10 Revenue obligations issued under this subsection shall not exceed \$400,000,000 in
11 principal amount, excluding obligations issued to refund outstanding revenue
12 obligations.

13 (g) Unless otherwise expressly provided in resolutions authorizing the
14 issuance of revenue obligations or in other agreements with the holders of revenue
15 obligations, each issue of revenue obligations under this subsection shall be on a
16 parity with every other revenue obligation issued under this subsection and in
17 accordance with subch. II of ch. 18.

18 **SECTION 15.** 101.144 (1) (aq) of the statutes is created to read:

19 101.144 (1) (aq) "High priority site" means the site of a discharge of a petroleum
20 product from a petroleum storage tank if at least one of the high priority factors in
21 s. 101.143 (3) (cp) 1. a. to d. exists.

22 **SECTION 16.** 101.144 (1) (av) of the statutes is created to read:

23 101.144 (1) (av) "Low priority site" means the site of a discharge of a petroleum
24 product from a petroleum storage tank that is not a high priority site.

25 **SECTION 17.** 101.144 (2) (b) 1. of the statutes is amended to read:

