

AB 255
10

Testimony on AB 255
Assembly Environmental and Natural Resources Committee
February 17, 1998

Presented by
Jay Hochmuth, Administrator,
Air & Waste Division

Thank you for the opportunity to speak today on AB 255. Secretary Meyer and I were briefed by the Petroleum Marketers on the bill recently. It is my understanding that additional items have been added since our original meeting. We received this bill draft at 10:00 yesterday and have been working since then to understand its full impact.

DNR agrees that the PECFA financial situation needs to be addressed quickly and effectively. We have been working with the Department of Commerce on development of a revised PECFA rule that would contain many of the same cost containment provisions as this proposed legislation. Many of the provisions in this bill can have a significant impact on conserving PECFA. These include:

- Analysis of alternatives for remedial actions, and cost statements for each alternative
- Establishing maximum reimbursable costs for approved remedial actions
- Use of specified service providers to conduct adjacent remedial actions at one time
- Competitive bidding to select service providers

However, DNR has very serious concerns with the provisions of this bill and is therefore unable to support it. First and foremost, this bill sets a large group of groundwater contaminating sites outside of the groundwater statute passed by the Legislature in 1984. We do not agree that the solution to the PECFA financial problem is to carve out sites that receive state reimbursement and treat them **less stringently** than other sites whose owners are paying the full cost of cleanup.

Two fundamental problems with PECFA are: 1) a federal mandate to upgrade tanks that drives an aggressive tank removal schedule, and 2) lack of incentive to use the most cost effective cleanup methods. Commerce has identified competitive bidding, bundled services, and other cost containment measures as options to address the incentive for cost containment. **Let's not confuse selection of high cost remedies by some consultants with a flaw in Wisconsin's groundwater protection strategy.**

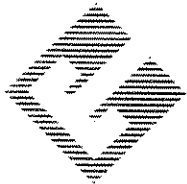
This bill would move a high percentage of petroleum contaminated sites into long term natural attenuation of the contamination. DNR believes that natural attenuation can be an effective and cost efficient technology, and we have taken the lead in incorporating this strategy into our rules, but this bill does not establish the appropriate provisions for choosing sites that should be included in natural attenuation monitoring. In fact, it may result in higher future costs when new remedies need to be used at some of these sites. It will leave many property owners with long term contamination, resultant impacts on their property values, and redevelopment problems.

The 1995-97 budget bill divided responsibility for LUST site management between DNR and Commerce. This is working in accordance with the MOU developed by the agencies. Changing it at this time, as this bill would do, would further confuse property owners. Worse, this bill would blur the line between DNR's groundwater protection role and Commerce's reimbursement role, leaving many site owners confused about who they must answer to in meeting environmental standards.

DNR has taken many steps to help contain PECFA costs.

- In November of 1996 DNR promulgated rule revisions, allowing closure of sites that exceed state groundwater standards if the contaminants are naturally attenuating. These sites need to collect sufficient data prior to closure, so it's early to show the cost savings. However, about 100 sites have been closed using this provision, and about half of the new sites are proposing to use natural attenuation.
- DNR has provided technical guidance on selecting and implementing natural attenuation as a groundwater cleanup technology.
- DNR is currently closing 50 groundwater impacting sites per month
- DNR has closed over 6600 LUST sites since 1988, 44% of all the LUST sites reported in Wisconsin.
- We have developed new reporting forms to reduce the volume of narrative reports that consultants prepare.
- In 1995 we established an advisory group that meets quarterly to advise us of implementation problems encountered by users of our cleanup rules.

In conclusion, DNR wants to see PECFA conserved as a critically important tool for completing environmental cleanups. We agree that significant new incentives for cost containment are needed while sites are cleaned up consistent with state groundwater standards. We do not agree that this bill as presently drafted will accomplish that result. Nevertheless, we are fully committed to working with all parties to develop a consensus solution to the PECFA problem.



ENVIRONMENTAL COMPLIANCE CONSULTANTS, INC.

P.O. Box 11417 • GREEN BAY, WI 54307-1417 • 920-434-6380 (VOICE) • 920-434-6381 (FAX)

COPY FOR
MEMBERS

Testimony Given February 17, 1998, by Boyd N. Possin, P. G., President, Environmental Compliance Consultants, Inc., before the Wisconsin Assembly Environmental Committee Concerning Assembly Substitute Amendment to 1997 Assembly Bill 255

Page 1 of 3

I appear today in support, with only minor reservations, of the Assembly substitute amendment being considered.

I must preface my remarks by telling you that I am an environmental consultant—a hydro-geologist, a registered professional geologist in the State of Wisconsin, and a registered consultant under the Wisconsin PECFA program—who is the president of an environmental consulting firm. Approximately seventy five percent of the business volume of my firm derives from the PECFA program.

In light of this, at least some of the things I will say today might just surprise you! So, here goes...

I wish—all things considered—that we would not legislate many of the things that are in this bill. They more properly ought to be implemented as administrative code, in fact, as part of the new COMM 47 administrative rule. However, I sympathize with the supporters of this legislative effort who want very badly to have you pass its PECFA backlog bonding provisions, and who feel that you might not do so because you will not be impressed with the efforts of the COMM 47 Code Advisory Committee effort to date (of which I am part) in coming up with viable measures to control the runaway costs of the PECFA program. These supporters have included in this bill a number of provisions which they feel are key to this cost control effort (including one which would *require* a statutory change), and they are asking you to, in essence, bypass the code committee process and put the provisions directly into the PECFA statute.

I am not today going to take up your time discussing the merits of whether or not the backlog should be paid off with a state bonding effort. I assume others will do that. Suffice it to say that I am among those who believe that such a bonding effort is, indeed, a very good idea, but only if cost control measures are put into place to ensure that the backlog does not build right up again.

I will, therefore, concentrate on the cost-control portions of the bill. In my view, its main cost-control provisions are three-fold:

- **Institute a two-tiered prioritization system, ranking groundwater-contaminated sites into high and low risk categories.** Fundamentally, high priority PECFA sites would be those that pose a potential imminent and substantial threat to human health, safety and welfare. Low priority sites would be, by definition, those that do not pose such a risk.
 - The owners/operators of high priority sites would be reimbursed for their efforts at removing whatever factors are present which cause the risk at such sites to be high.
 - The owners/operators of low priority sites would be reimbursed for their efforts at documenting, through sampling, the naturally-occurring cleanup which occurs at petroleum sites—a process we in the business refer to as “remediation by natural attenuation,” or “RNA,” for short.

The assumption is that the *large majority* of groundwater-contaminated LUST sites would turn out to be low priority, and would fall into the relatively inexpensive RNA mode.

Yes, you heard that right—the *great majority* of the groundwater-contaminated LUST sites you are having us consultants clean up pose *no threat* to human health, safety, welfare, or for that matter, to the environment, itself. After having my company work on nearly four hundred of these sites all around the state over the past seven and a half years, I *conservatively* estimate that *at least ninety percent of all LUST sites pose absolutely no threat to human health and the environment*. Never have, never will.

Of course that *is* a matter of opinion! But it *is* the opinion of a person who's been working as a professional environmental consulting hydrogeologist for going on *twenty five* years—about as long as *anyone* has been doing that sort of thing! And I'm not the only person who thinks that way. Many of my colleagues agree.

The PECFA program has, in my view, resulted in an obligation on the part of Wisconsin's taxpayers to eventually come up with more (perhaps a *lot* more) than a billion dollars of revenue that will result in *zero* net benefit to *anyone* except those to whom it will have provided employment—a few consultants, contractors, and regulators. (Remember, the person who is telling you this has made a very nice living for himself and about fifty employees, all “participating” at the trough of this public largesse. Talk about biting the hand that feeds!)

But I digress...

- **Cut back spending at sites through a complex, micro-managed system of incentives, cost caps and unit rate controls, and bidding.** I won't dwell on this here today. As I wrote this testimony the night before the hearing, I anticipated that many people will today want to rather harshly criticize various aspects of these micro-management cost-control systems. I imagine I will even sympathize with some of the objections they will raise.

However, contrary to many (but not all) of my colleagues, I do not have any particular problem with the techniques, *per se*—neither competitive remedial bidding nor the “bundling” of the remedial efforts at several different sites into one remedial and/or consulting contract are all that threatening to me. They do involve change, and significant change bedevils all of us.

In fact, such changes may indeed save a little money, and do it without bringing the world to an end. I cannot imagine that some or all of these things will not be put into place, and that's just fine. As a typical consultant—that is, a reasonably clever and resourceful business person—just tell me what the “rules of the game” are, and I'll figure out a way to help my customers comply with environmental regulations, and make a living doing it.

No, the problem I have with all such micro-management proposals is the fact that some people (who ought to know better) have deluded themselves into thinking that these kinds of changes alone will result in the PECFA program's coming into balance. What utter nonsense! Such procedures might, if we're careful and *very* lucky, cut spending by, say, 20–30 percent, when, to bring the program into balance, we need to cut spending by 200–300 percent!

- The third major cost-control step in the legislation is anything but micro-management. It involves sending all groundwater contamination sites that have been ranked as low priority to the Department of Commerce (Commerce), where that department will

Testimony Given February 17, 1998, by Boyd N. Possin, P. G., President, Environmental Compliance Consultants, Inc., before the Wisconsin Assembly Environmental Committee Concerning Assembly Substitute Amendment to 1997 Assembly Bill 255

Page 3 of 3

oversee the selection of the cleanup remedy, and, eventually, approve the site closures. In other words, Commerce, not DNR, would be the environmental regulator of record on such sites.

I support this measure in light of the fact that funding decisions have been made to deny DNR the staff necessary to have any chance at all of dealing with the thousands and thousands of LUST site cases that have sprung up as a result of the PECFA program. Therefore, I'd like to see DNR's extremely limited resources totally focused on the high priority sites—those that present a threat to public health and the environment. Even then, I do not think they will have enough staff to deal with the high priority site workload, but, perhaps, it will be, shall we say, a bit "less impossible"!

The fundamental problem presented by the PECFA program is that we are spending too much money cleaning up sites that are "dirty" only because the system of statutes, administrative codes, and policies we in Wisconsin have developed over the past fourteen years says they are dirty. They're dirty by virtue of the exceedence of groundwater and soil standards that are applied mindlessly, statewide, without regard to site-specific conditions. When we passed our mindless groundwater law in the mid 1980s, and followed it with an incredibly generous PECFA statute a few years later, well, we got what we asked for!

Information from the National Fund Administrator's Conference last June indicates that the PECFA program, as you have budgeted it, is unmatched, on a per capita basis, by the similar reimbursement programs in the other forty nine states. And that's only what you've *budgeted*.

In terms of PECFA money actually expended, but not yet totally reimbursed, it appears as though, on a per capita basis, Wisconsin may end up spending on the order of *twice as much* as Florida, the next highest per capita spending state. Something is very, very wrong here. I don't think it is reasonable to conclude that a problem of this magnitude can simplistically be ascribed to overspending by consultants. As Commerce's Bill Morrissey often points out, even if we were to make *all* consulting fees ineligible for reimbursement, what remains would *still* be a gross over subscription of PECFA revenues!

Presently, PECFA program staff have nearly \$250 million in claims piled up on their desks that have been submitted and are awaiting review and reimbursement. In addition, there's probably on the order of \$250-\$350 million *more* that has been expended but which has yet to be submitted for reimbursement because the various projects on which the costs have accumulated have yet to reach the next claim reimbursement milestone. The total present backlog—on the order of *half a billion dollars*—is equal to or greater than the entire amount of PECFA monies that have been reimbursed through the *eight year history* of the program!

* Arguably the backlog problem is worsening ~~ever more~~ quickly of late. During the month of January 1998, ~~data from the PECFA staff indicate that more than \$25 million in claims was submitted. Just think, in only one month more than a quarter of the entire fiscal year's \$94 million was submitted for reimbursement!~~

We have to stop this massive hemorrhaging, and, in my opinion, the *only* way we can do so is to stop spending massive amounts of money on sites that threaten...*nothing!*

I believe that the proposed legislation—especially the high/low priority ranking system and the moving of low priority sites to Commerce—would go a long way toward achieving that goal.

* Not true. Found out today that "only" \$13 million of claims was received. Still this is \$5.5 million more than the \$7.5 million of Petroleum Inspection fee revenue that come into the program.

BNP 2-17-98

WISCONSIN PETROLEUM INC.

540 EAST BURNETT STREET P.O. BOX 218 BEAVER DAM, WISCONSIN 53916 PHONE: 414/887-8187

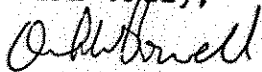
1-23-97

Mark F. Putra
DNR
Horicon Flyway Center
n7725 Hwy 28
Horicon, Wi. 53032

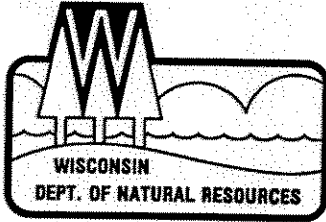
Per your letter dated 11-19-97, I agree with you progress has been extremely slow. I started fast, hired Key Environmental to investigate the problem and applied for a Pecfa Loan at 3 banks. I had to stop the investigation after the expense was \$25,000, and I had been declined a Pecfa Loan at 3 banks. I have been trying to get one ever since to no avail.

However I have approached Jim and Genia Fletcher to co-sign a Pecfa note with me. They are consulting with their lawyer presently. As soon as I get a loan I will proceed. I will advise you on a 30 day basis of the status of my loan request.

Yours Truly,



Dick W. Powell
President
Wisconsin Petroleum Inc.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Ruthe E. Badger, District Director

Horicon Flyway Center
N7725 Highway 28
Horicon, WI 53032
TELEPHONE 920-387-7860
FAX 920-387-7888

November 19, 1997

File Ref: 03-14-002595

Certified Mail
Return Receipt Requested

Mr. Dick Powell
Wisconsin Petroleum Inc.
540 E. Burnett Street
Beaver Dam, WI 53916

SUBJECT: NOTICE OF VIOLATION
Park Avenue Shell, 133 Park Avenue, Beaver Dam

Dear Mr. Powell:

On April 18, 1995, the Department sent you a letter explaining your responsibilities under the Wisconsin Spill Law. The letter was sent to you because you are the owner of a property where a leaking petroleum tank discharged contaminants to the environment. A review of the project file reveals that Key Environmental was hired to perform the site investigation, and address the free product problem. Unfortunately, the Department has not been receiving update reports, and it appears progress in this matter has been extremely slow.

Section 292.11 of the Wisconsin Statutes requires that, "A person who possesses or controls a hazardous substance which is discharged or who causes 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 this state." The Statute also authorizes the Department of Natural Resources to enforce clean-up requirements.

Releases from underground storage tanks regulated under Subtitle I of the Resource Conservation and Recovery Act require compliance with the provisions of 40 CFR Parts 280 and 281. This is federal law administered by the Environmental Protection Agency (EPA). EPA has the authority to take enforcement action at any time, but will generally not take action against parties cooperating with the state. Because you are the owner of the property where a hazardous substance has been discharged, you are responsible for:

1. Determining the horizontal and vertical extent of contamination.
2. Cleaning up the contamination.
3. Proper disposal of all petroleum contaminants.

Within sixty (60) days you must complete the site investigation and submit a report documenting the full vertical and horizontal extent of contamination.

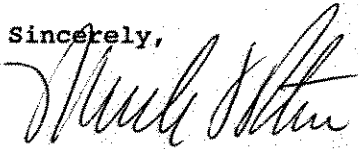
Quality Natural Resources Management
Through Excellent Customer Service



page 2, Dick Powell, November 19, 1997

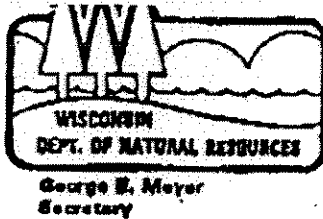
Failure to comply will result in an immediate request for the commencement of an enforcement action by the District Environmental Enforcement Specialist. Such an enforcement action may include an Administrative Order or a request for prosecution under Section 292.11 of the Wisconsin Statutes.

Sincerely,



Mark F. Putra, Hydrogeologist
Remediation & Redevelopment
Telephone: (414) 387-7867

cc: City of Beaver Dam Fire Inspector
Key Environmental, W66 N215 Commerce Ct., Cedarburg, WI 53012
File



State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

Harrison Area Headquarters
 N7725 Highway 40
 Harrison, Wisconsin 53030
 TELEPHONE 414-387-7888
 TELEFAX 414-387-7888

TO: John Simon
 375 9680

April 18, 1995

File Ref:
 Dodge County

Mr. Dick Powell
 Wisconsin Petroleum Inc.
 540 E. Burnett Street
 Beaver Dam, WI 53916

Subject: Park Avenue Shell Station, 133 Park Avenue, City of Beaver Dam

Dear Mr. Powell:

On April 17, 1995, the Department received a report from Kurt W. Jacobson, ET² Inc. Mr. Jacobson prepared the report on behalf of his client, City of Beaver Dam, and the work detailed in the report was performed to define the extent of contamination associated with tanks which were located in the Park Avenue right-of-way. As part of that work, a geoprobe was installed on your property at the northeast corner of your building and free phase petroleum product was identified in the soil. Based on this information, it appears a petroleum release has occurred on your property.

The spill law authorizes the Department of Natural Resources to enforce cleanup of contaminated sites, under s. 144.76 of the Wisconsin Statutes. As the owner of the property where a hazardous substance discharge has occurred, you are required to determine the horizontal and vertical extent of contamination and clean-up/properly dispose of the contaminants.

Your legal responsibilities are defined both in statute and in administrative rules. The hazardous substance spill law, s. 144.76 (3) Wisconsin Statutes, states:

RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes 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.

Wisconsin Administrative Code NR 700 through NR 728 establishes requirements for interim actions, public information, site investigation, design and operation of remedial action systems, and case closure. Wisconsin Administrative Code NR 140 establishes groundwater standards.

It is important that an investigation begin at your site as soon as possible. The longer contamination is left in the environment, the farther it can spread and the more difficult and costly it becomes to cleanup. Since this cleanup must comply with Wisconsin laws and rules, professional engineering and hydrogeologic experience is necessary. Therefore, you should hire a professional environmental consultant who can assure you that Department policies and guidelines are being followed.

Your consultant will help you in providing the Department with the following:

- Submit written verification (such as a letter from the consultant) that you have hired an environmental consultant. Please submit this information within 30 days of the date of this letter.
- Submit an investigation workplan explaining what work will be performed to

Mr. Dick Powell - April 18, 1995

identify the extent of contamination. This workplan should include a time schedule. Also, please provide documentation of any previous work performed related to this release.

- Submit the investigation report defining the degree and extent of any soil and/or groundwater contamination.
- Provide a remedial action plan outlining the remedy selected.
- Provide a remedial action report with data supporting your consultant's conclusions and recommendations for future work or site closure.

In addition, you will be required to keep the Department informed on site progress by submitting 30, 60 or 90 day updates. You will be notified when to provide the status reports at the time you submit your investigation workplan. Also, you will receive an annual site status form every February. It will be necessary for you to complete this form and return it promptly to the address provided.

There are times when staffing levels do not allow us to keep current with workload demands. However, to maintain your compliance with the spill law and chs. NR 700 through NR 728, investigation and cleanup actions should not be unnecessarily delayed waiting for DNR responses. In the event that you experience delays, please refer to NR 716.09(3) regarding Department review of sites.

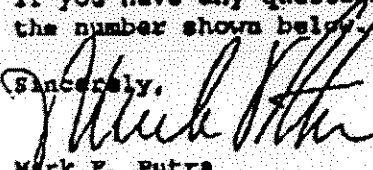
Your correspondence and reports regarding this site should be sent to Marilyn Jahnke, Department of Natural Resources, 3911 Fish Hatchery Road, Fitchburg, WI 53711. Unless otherwise requested, please send only one copy of all plans and reports. Correspondence should be identified with the site name and address which is listed in the subject of this letter.

I have enclosed a list of environmental consultants and some important tips on selecting one. If you are eligible for Wisconsin's PECFA program (see end of letter), you will need to compare at least three consultant's proposals before making your selection. Also enclosed are materials on controlling costs, understanding the cleanup process, and choosing a site cleanup method. Please read this information carefully.

Reimbursement from the Petroleum Environmental Cleanup Fund (PECFA) is available for the costs of cleaning up the contamination from eligible petroleum storage tanks. The fund is administered by the Department of Industry, Labor and Human Relations (DILHR). Please contact DILHR at (608) 267-3753 for more information on eligibility and regulations for this program.

If you have any questions about this letter or your responsibilities, please call me at the number shown below.

Sincerely,


Mark F. Putra
Hydrogeologist
Telephone: (414) 387-7867

cc: City of Beaver Dam Fire Dept.
Kurt Jacobson, 37th, 3118 Watford Way, Madison, WI 53713