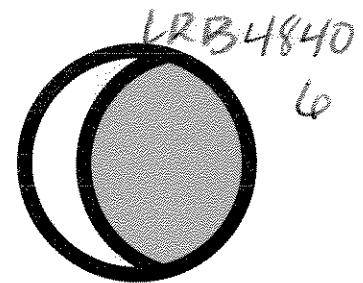


PMAW



WACS

TO: MEMBERS OF THE ASSEMBLY ENVIRONMENT COMMITTEE
FROM: JENNIFER BADEAU
DATE: FEBRUARY 16, 1998
RE: PECFA — LRB 4840
HEARING: TUESDAY, FEBRUARY 17, AT 1:00 P.M.

POSITION: SUPPORT

The Petroleum Marketers Association of Wisconsin / Wisconsin Association of Convenience Stores represents over 500 independent businesses. Our members market the majority of petroleum products in the state and own the majority of petroleum storage tanks. We request your support of LRB 4840.

With **Representative DuWayne Johnsrud** as its lead assembly author, this bill saves the PECFA program money by clarifying what are high and low priority sites, capping the cost of low-priority cleanup sites and implementing competitive bidding for high priority sites. Most importantly, this bill would eliminate the current \$250 million PECFA backlog by authorizing state bonding.

The PECFA program has probably done more to clean Wisconsin's environment than any other state program. However, because the cost of petroleum cleanups continue to skyrocket -- and because there is currently a tremendous PECFA backlog -- the fund is in serious danger. As the backlog increases, more of fund money goes toward paying bank interest than toward cleanup costs. And, as the backlog increases, tank owners are having a harder and harder time financing additional cleanups.

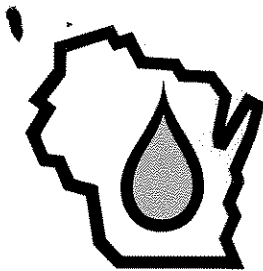
Several of our members have been denied additional bank loans because of their outstanding PECFA debts and because of the uncertainty of PECFA's future. At your committee hearing on Tuesday, you will hear from a number of petroleum marketers about how the backlog is hurting them. Those who testify will be speaking for hundreds of others.

We believe that LRB 4840 would help alleviate the current PECFA problems. Please support it.

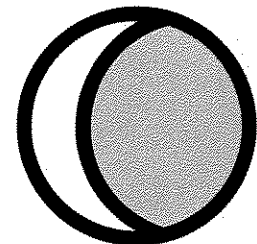
**PETROLEUM MARKETERS
ASSOCIATION OF WISCONSIN**

**WISCONSIN ASSOCIATION
OF CONVENIENCE STORES**

Representing Independent Businesses



PMAW



WACS

SAVING PECFA MONEY!

**Proposed Changes To The Wisconsin PECFA Program
February, 1998**

by

**Petroleum Marketers Association of Wisconsin (PMAW)
Wisconsin Association of Convenience Stores (WACS)**

Wisconsin's Petroleum Environmental Cleanup Fund (PECFA) is one of the most comprehensive and effective funds of its kind in the United States. The PECFA program has helped clean Wisconsin's environment while allowing small, locally owned, independent retailers to stay in business. It is an important, necessary program worth preserving.

Unfortunately, the PECFA program is in serious trouble. It is approximately two years behind in its reimbursement payments and the costs of cleanups are continuing to skyrocket. Every month that "backlog" increases so that by the end of the biennium, it will likely take between three and five years for owners to be reimbursed for their claims. This means that more and more of the fund is being spent on interest payments, while less and less money is available for actual cleanup costs. This also means that the fund is in danger of collapsing.

We have a proposal that would drastically change the cost of cleanups thus providing significant cost savings to the PECFA program. We propose prioritizing cleanups so that those that threaten human health and safety are cleaned through a public-bidding process with the cleanup performed by the low bidder. Those that are little or no threat to human life or safety can be cleaned via natural attenuation under a cost limit of no more than \$80,000 per site.

Implementing a cost effective priority system, cost caps, and a public bidding system will significantly cut the cost of cleanups. As a result, the PECFA program can remain within its budget and serve more PECFA claimants more effectively. In other words, the revenue PECFA receives — via the 3¢ per gallon petroleum inspection fee — will be able to cover the great number of reimbursement claims submitted to the program.

However, cutting cleanup costs will not eliminate the current PECFA backlog. This backlog is driving up interest costs and reducing overall funds available for cleanups. Therefore, it is necessary to eliminate this backlog. Doing so will require bonding. We propose authorizing the use of state revenue bonds for PECFA awards and pledging repayment of the bonds with a portion of the petroleum inspection fee revenues.

Also, in 1994, the Attorney General issued an opinion stating that bonding is allowed by the state constitution as a program to improve land or waters for the public purpose of mitigating environmental threats. But the most compelling argument for bonding is that state bonds are currently being issued at below 6% while the program currently reimburses private loans at 10.5%

Please support this proposal, being offered by Representative DuWayne Johnsrud as well as several others, and help save the PECFA fund money so that the remaining 10,000 petroleum sites can be cleaned.

**PETROLEUM MARKETERS
ASSOCIATION OF WISCONSIN**

**WISCONSIN ASSOCIATION
OF CONVENIENCE STORES**

Representing Independent Businesses

SPECIFIC PROPOSAL

PECFA must be drastically changed to allow for remediation of the remaining 10,000 tank sites. Costs must be significantly reduced to maintain the program within its budget. And, bonding should be authorized to consolidate the existing backlog; thus, bringing PECFA again within its budget. This can be accomplished with four specific changes.

1. Assess Risk of Sites: Low vs. High

We propose a priority system so sites which have high risk factors (such as contaminated potable wells) and thus threaten human health and safety, are allowed to use the more expensive, engineered, cleanup methods. These sites would be assigned a "high risk" classification. Sites which pose no health or environmental risk would be cleaned by a natural attenuation process and be assigned a "low risk" classification. The USEPA has recommended a similar risk based approach for petroleum contaminated sites. The recommendation is called RBCA, which stands for risk-based corrective action. Many states have already adopted RBCA including California, Iowa and Illinois.

2. Cap Costs on Low Priority Sites

Those sites that do not threaten human health or safety can be cleaned via natural attenuation at a cost limit of no more than \$80,000 per site. Natural attenuation has been specifically approved by the USEPA as an acceptable method of dealing with non-threatening petroleum sites. The current PECFA rules provide that remediations which will cost less than \$80,000 do not require Department of Commerce approval. Thus, this \$80,000 cost limit for natural attenuation sites can easily be worked into the existing rules.

3. Require Public Bidding on High Priority Sites

A bidding process for high risk sites would change the incentives for consultants. First, if consultants keep a site under \$80,000 they are not required to go to public bidding. Therefore, the consultant will try to keep costs down. Second, in those situations where the site must be declared a "high" priority, the consultant's incentive is to propose the lowest cleanup plan - the low cost bid - to be allowed to keep the remediation work.

Competitive bidding has already saved money in other areas of PECFA. Lab costs and other commodity costs have been reduced substantially by the use of competitive bidding. At the same time, initial investigation costs have been controlled by the implementation of a \$40,000 cost cap.

Thus, the next logical area to use bidding to reduce costs is in remediation (the actual cleanup) and long term monitoring. Further, long-term monitoring should be competitively bid as already approved by recent budget actions.

4. Authorize Bonding

Once the above cost controls are implemented, PECFA could again exist within its budget *if the backlog is eliminated*. The backlog is currently estimated at more than \$200 million and will likely reach \$385 million by the end of the 1999.

This backlog keeps claimants from being reimbursed for between two and four years after filing their claims. In turn, this delay drives up interest costs for the program. For example, for the 600 PECFA claims processed from November 1, 1996 through February 28, 1997, 10.7% (\$4.9 million) of the \$45.8 million in PECFA claims processed was for interest costs.

Because state bonds are currently being issued at below 6% — while the program is reimbursing private loans at 10.5% — using revenue bonds is a more appropriate and cost effective method of financing PECFA interest. Further, the bond could be authorized based on a portion of the existing petroleum inspection fee revenues.

PECFA ACCOUNTING AS OF 12/31/97

PECFA Chapter 20 Allotment Authority for FY8 (7/1/97-6/30/98)	\$91,131,700.00
FY8 Expenditures	44,319,721.19,
Remaining PECFA FY8 Spending Authority	46,811,978.81
Month End Expenditures	7,552,681.92
Month End Payments	106
Total FY 8 Payments	828

Breakdown of Claims Paid:

Commercial UST	4180	\$461,690,174.54
Home Heating	755	4,288,145.16
State Order	7	282,541.66
Aboveground	166	21,554,426.59
Terminal	1	196,210.46
VTAE	2	144,091.61
School	110	2,462,639.89
Farm (under 1,100 gallon)	36	834,355.41
Tribal Trust Lands	1	16,321.19

Total PECFA Awards Paid	5259	*\$491,468,906.51
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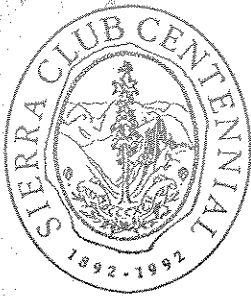
Total Number of PECFA Sites (including those not paid)	11,444
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Dept of Commerce Site Closures (7/1/96-Month Ended)	867
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Open Sites - Closed Sites Month Ending 12/31/97						
COST RANGE	#SITES	OPEN		CLOSED		
		AMOUNT PAID	AVERAGE	#SITES	AMOUNT PAID	AVERAGE
1-50,000	1035	\$ 27,203,716.80	\$ 26,283.78	1933	\$ 28,663,610.08	\$ 14,382.14
50,001-100,000	561	\$ 40,471,910.54	\$ 72,142.44	228	\$ 16,289,573.00	\$ 71,445.50
100,001-150,000	298	\$ 37,105,426.49	\$ 124,514.85	97	\$ 11,544,458.73	\$ 119,015.04
150,001-200,000	202	\$ 34,863,544.72	\$ 172,591.81	46	\$ 8,028,215.96	\$ 174,526.43
200,001 >	684	\$ 246,405,481.30	\$ 360,241.93	95	\$ 41,954,314.42	\$ 441,624.36
TOTAL	2780	\$ 386,050,079.85	\$ 138,866.94	2459	\$ 106,480,172.19	\$ 43,302.23

*A discrepancy exists between Total PECFA Awards Paid and the table Dollars Paid on PECFA Sites. Total PECFA Awards Paid reflects actual expenditures as reported by DOA. Dollars Paid On PECFA Sites is generated from the PECFA Database and is not used to produce the Accounting Report.

Prepared By: Carol Klewin



SIERRA CLUB - John Muir Chapter

222 S. Hamilton Street, Suite #1
Madison, WI 53703-3201

Tel: 608-256-0565
Fax: 608-256-4JMC

Opposition to LRB 4981/1, regarding Bonding and other Changes to PECFA Petroleum Environmental Cleanup Fund Award

Before the Assembly Environmental Resources Committee

**by Caryl Terrell, Legislative Coordinator, Sierra Club
Feb. 17, 1998**

The John Muir Chapter - Sierra Club is concerned that contamination, particularly of groundwater, be promptly and adequately cleaned up both to protect public health and the environment as well as to return land and water resources to productive use. We support parts of LRB 4981/1 but must express our concern that this bill will not, as advertised, stem the money flow into PECFA cleanups and, furthermore, will undermine groundwater quality.

The Petroleum Environmental Cleanup Fund Award (PECFA) program was established in the 1980's as a self-financing cleanup program to reimburse owners for a portion of the cleanup costs of petroleum product discharges from leaking underground storage tanks (LUST) and home heating oil tank systems.

The Legislative Fiscal Bureau has summarized the need for this program as follows:

"Thousands of petroleum storage tanks throughout the state have discharged petroleum products into the soil of the state that have contaminated the soil and have contaminated or threaten to contaminate the groundwater of the state. The discharges of petroleum products from petroleum product storage tanks damage the environment and public health, safety and welfare. The problem of petroleum product discharges arose largely because of actions taken years ago, without knowledge either of the likelihood that discharges would occur as a result of those actions or of the seriousness of the consequences of petroleum product discharges. The damage caused by discharges of petroleum products becomes more serious the longer the petroleum products remain in the environment. Remedying the contamination of the soil and groundwater by petroleum product discharges and preventing further contamination will benefit future generations. The current source of funding is inadequate to meet the need under the PECFA program." (emphasis added)

Every legislative session has involved some tinkering with this program. Most recently, the greatest concerns are project cost overruns and the interest costs related to the inability to provide timely reimbursements for legitimate costs.

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What we like about this bill are bidding, bundling of similarly contaminated sites and caps for cost control. Sites are not uniform so technical review must also be available and adequate to ensure that these remedies fit the actual situation. The Department of Commerce has testified that these cost controls will not save enough money to balance expected costs.

This bill does not address a key problem with PECFA - co-payments. The Legislature needs to include incentives to property owners/responsible parties to clean up sites while controlling costs. Without incentives to the owner, the major decision-maker in these situations, you will not be breaking the cycle that drives up costs. We ask the Legislature to consider as a model the requirements of the Agrichemical Cleanup Fund which reimburses at a percentage of the eligible costs above a deductible. Thus the responsible party maintains a keen interest in cost control.

PECFA is based on a cash flow from a 3 cent oil inspection fee. Bonding is a way to leverage this cash into a larger source of immediate funding. The Department of Commerce has testified that this additional money may deal with the backlog of payments. But what about the expected future obligations? The Legislature is fully aware of the other costs involved with general obligation bonding, especially debt service. If bonding is approved, the legislature should ensure that no GPR debt service costs be incurred by specifying that the bonds and debt service would be repaid solely from dedicated petroleum inspection fees. Future needs and costs such as debt service are considerations that must be weighed before committing to a bonding program for PECFA.

Yes there are budget concerns about PECFA that should be addressed but these are not the only costs that need to be discussed. Use of the land is important to the current property owner of the LUST site but the groundwater may be even more valuable to the current and especially the future owners of that and neighboring properties. There are social, economic and foregone opportunity costs associated with how well or poorly we clean up these sites. Future use of the land and groundwater at these sites will be limited due to the continuing presence of unhealthy levels of pollution.

This bill is unacceptable because it steps outside the framework of the Groundwater Protection Law. This bill ignores most of what we have learned about how groundwater gets polluted and how it can be cleaned up, if it ever can be restored. For instance, the high priority site factors (section 6 at p. 5 lines 6-16) do not address the full range of legitimate public health and environmental concerns. A polluted potable well is a red flag, a symptom of high levels of contamination, probably moving in a plume underground across the site. This bill says, at p.5 line 19 and p. 13 lines 8-10, that when you have dealt with the symptoms --such as dig a deeper well or add well casing -- you have removed the high priority factor. But you and I know that this has not dealt with the pollution in the groundwater and at the site. This bill does not even ensure that the source of the contamination is removed. This bill will not return that property to a usable condition. This bill will write off the groundwater resource.