

1999 DRAFTING REQUEST

Bill

Received: **01/8/99**

Received By: **traderc**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-1040**

By/Representing: **Schmiedicke**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Topic:

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 01/9/99	gilfokm 01/9/99	lpaasch 01/12/99	_____	lrb_docadmin 01/12/99		State
/2	traderc 01/15/99	gilfokm 01/18/99	lpaasch 01/19/99	_____	lrb_docadmin 01/19/99		State
/3	traderc 01/23/99	gilfokm 01/23/99	lpaasch 01/25/99	_____	lrb_docadmin 01/25/99		State
/4	traderc 02/2/99	gilfokm 02/3/99	jfrantze 02/3/99	_____			State
/5	traderc 02/3/99	ygeller 02/3/99	martykr 02/3/99	_____	lrb_docadmin 02/3/99		State

FE Sent For:

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/2	traderc 01/15/99	gilfokm 01/18/99	lpaasch 01/19/99	_____	lrb_docadmin 01/19/99		State
/3	traderc 01/23/99	gilfokm 01/23/99	lpaasch 01/25/99	_____	lrb_docadmin 01/25/99		State

FE Sent For:

14-2-3-99
Kmg
15 Jg 2-3
Jb/s
Kmg 2/3
Jb/s
<END>
Kmg 2/3

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/1	traderc 01/9/99	gilfokm 01/9/99	lpaasch 01/12/99	_____	lrb_docadmin 01/12/99		State
/2	traderc 01/15/99	gilfokm 01/18/99	lpaasch 01/19/99	_____	lrb_docadmin 01/19/99		State

FE Sent For:

*13-1-23-99
Hmg*

1-25-99

*1-25-99
JF*

<END>

1999 DRAFTING REQUEST

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By/Representing: Schmiedicke

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Alt. Drafters:

Subject: Environment - env. cleanup

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Topic:

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

Instructions:

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 01/9/99	gilfokm 01/9/99	lpaasch 01/12/99	_____	lrb_docadmin 01/12/99		State

FE Sent For: 1-1-18-99 kmg
 1-19-99
 1-19-99
 cmh
 <END>

1999 DRAFTING REQUEST

Bill

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Received By: traderc

Wanted: Soon

Identical to LRB:

For: Administration-Budget 6-1040

By/Representing: Schmiedicke

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Alt. Drafters:

Subject: Environment - env. cleanup

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1/?	traderc	1-1-9 King	1/12LR.	1/12LP. JP			

FE Sent For:

<END>

CORRESPONDENCE MEMORANDUMSTATE OF WISCONSIN
Department of Administration

Date: January 7, 1999

To: Steve Miller
Legislative Reference Bureau

From: David P. Schmiedicke *DP*
State Budget Office

Subject: 1999-01 Budget Drafting Instructions

Please draft the following for inclusion in the Governor's 1999-01 biennial budget:

PECFA**Site Bid Insurance**

- Under Commerce rules for the PECFA program, sites can be let out to bid as a means of establishing a cost limit to remediate a site. The dollar amount associated with the selected bid serves as the maximum cost for a site. As a means of addressing cost overruns, authorize Commerce to charge a fee for submittal of bids to clean up sites under the PECFA program. This fee would be used to support processing costs associated with purchase of insurance by the program. The insurance would offset cleanup costs that exceed the bid amount selected for the site under Commerce rules. Require Commerce to establish the fee through rule and deposit the proceeds of the fee in the Petroleum Inspection Fund.
- Authorize use of the proceeds in the PECFA award appropriation (s. 20.143 (3)(v)) to purchase insurance to support costs in excess of limits determined through bidding.

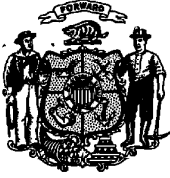
Geographic Information System Registry for Sites with Groundwater**Exceedences**

Authorize the Department of Natural Resources to assess a fee to record a property with contamination above the enforcement standard under Chapter 160 on a database. Provide DNR with emergency rule-making authority to implement this provision.

PECFA Claim Maximums

Set the maximum allowable claim per occurrence for underground petroleum storage systems under s. 101.143 (4)(d)2 a, b, and d at \$100,000 for those sites classified as low and medium priority under s. 101.144 (3m)(a)3. This change should be effective December 1, 1999.

Please feel free to call me at 6-1040 with questions. Thanks.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1669/1

RCT:.....
kmj

SOA

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

DNste

1

*Don't
Gen Cat*
AN ACT...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

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. The owner of a petroleum product storage tank may receive a PECFA award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. The current maximum for underground tanks varies from \$100,000 for small farm tanks to \$1,000,000 for tanks located at a facility at which petroleum is stored for resale and tanks that handle an average of more than 10,000 gallons of petroleum per month.

This bill changes the maximum PECFA award for any underground petroleum product storage tank to \$100,000 if the site of the discharge from the tank is classified as medium priority or low priority under a classification system established in a memorandum of understanding between the department of commerce and the department of natural resources (DNR). The change in the maximum PECFA award applies to PECFA claims that are submitted after November 30, 1999. ✓

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:

SECTION 1. 101.143 (4) (d) 2. a. of the statutes is amended to read:

101.143 (4) (d) 2. a. For an owner or operator of an underground petroleum product storage tank system that is located at a facility at which petroleum is stored for resale or an owner or operator of an underground petroleum product storage tank system that handles an annual average of more than 10,000 gallons of petroleum per month, \$1,000,000, except that if the site is classified as medium priority or low priority under s. 101.144 (3m) (a) 3., \$100,000.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283.

SECTION 2. 101.143 (4) (d) 2. b. of the statutes is amended to read:

101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator under subd. 2. a., c. or d., \$500,000, except that if the site is classified as medium priority or low priority under s. 101.144 (3m) (a) 3., \$100,000.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283.

SECTION 3. 101.143 (4) (d) 2. d. of the statutes is amended to read:

101.143 (4) (d) 2. d. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, \$190,000, except that if the site is classified as medium priority or low priority under s. 101.144 (3m) (a) 3., \$100,000.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283.

SECTION 9310. Initial applicability; commerce.

an award issued under this paragraph may not exceed \$100,000 for each occurrence

1 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM MAXIMUM AWARDS. The
2 treatment of section 101.143 (4) (d) 2. a., b. and c. of the statutes first applies to claims
3 submitted under section 101.143 (3) of the statutes on December 1, 1999. ^{check space}

4

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1669/1dn

RCT.
king

Under current law, the priority system established in the memorandum of understanding under s. 101.144^v determines which department has authority over a cleanup. Under this proposal, the priority system established in the memorandum of understanding is used to determine the maximum reimbursement that a person may receive from PECFA. This greatly expands the substantive significance of the memorandum of understanding. There may be limits on the law-making power that may be exercised using a memorandum of understanding. A memorandum of understanding lacks the procedural safeguards present in legislative action and rule-making. Thus, a challenge to this proposal on the grounds that it is an invalid delegation of legislative power or is a violation of due process might be successful.

Rebecca C. Tradewell
Managing Attorney
266-7290



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1669/1dn
RCT:kmg:lp

January 12, 1999

Under current law, the priority system established in the memorandum of understanding under s. 101.144 determines which department has authority over a cleanup. Under this proposal, the priority system established in the memorandum of understanding is used to determine the maximum reimbursement that a person may receive from PECFA. This greatly expands the substantive significance of the memorandum of understanding. There may be limits on the law-making power that may be exercised using a memorandum of understanding. A memorandum of understanding lacks the procedural safeguards present in legislative action and rule making. Thus, a challenge to this proposal on the grounds that it is an invalid delegation of legislative power or is a violation of due process might be successful.

Rebecca C. Tradewell
Managing Attorney
266-7290

Tradewell, Becky

From: Schmiedicke, David [david.schmiedicke@doa.state.wi.us]
Sent: Tuesday, January 12, 1999 5:35 PM
To: Tradewell, Becky
Subject: FW: LRB Draft: 99-1669/1

Importance: High
Sensitivity: Confidential



99-1669/1



99-1669/1dn

Becky: Good point regarding the MOU. Please modify the draft to require that the low and medium priority ranking be established in rules promulgated by Commerce. Require that an emergency rule be in place no later than December 1, 1999. Thanks.

David P. Schmiedicke
Wisconsin Department of Administration
Voice -- (608) 266-1040
FAX -- (608) 267-0372
E-Mail -- david.schmiedicke@doa.state.wi.us

> -----Original Message-----
> From: Paasch, Lynda [SMTP:Lynda.Paasch@legis.state.wi.us]
> Sent: Tuesday, January 12, 1999 11:37 AM
> To: 'david.schmiedicke@doa.state.wi.us'
> Cc: 'vicky.labelle@doa.state.wi.us'; Hubli, Scott; Haugen, Caroline
> Subject: LRB Draft: 99-1669/1
>
> Following is the PDF version of draft 99-1669/1.
>
>
> <<99-1669/1>> <<99-1669/1dn>>



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRB-1669#2

RCT:kmg:lp

redraft
make
run

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1 AN ACT <sup>Don't
even cat.</sup> relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

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. The owner of a petroleum product storage tank may receive a PECFA award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. The current maximum for underground tanks varies from \$100,000 for small farm tanks to \$1,000,000 for tanks located at a facility at which petroleum is stored for resale and tanks that handle an average of more than 10,000 gallons of petroleum per month.

This bill changes the maximum PECFA award for any underground petroleum product storage tank to \$100,000 if the site of the discharge from the tank is classified as medium priority or low priority under a classification system established in a memorandum of understanding between the department of commerce and the department of natural resources (DNR). The change in the maximum PECFA award applies to PECFA claims that are submitted after November 30, 1999.

* rule that this bill requires

to promulgate

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 (4) (d) 2. a. of the statutes is amended to read:

2 101.143 (4) (d) 2. a. For an owner or operator of an underground petroleum
3 product storage tank system that is located at a facility at which petroleum is stored
4 for resale or an owner or operator of an underground petroleum product storage tank
5 system that handles an annual average of more than 10,000 gallons of petroleum per
6 month, \$1,000,000, except that, if the site is classified as medium priority or low
7 priority under s. 101.144 (3m) (a) 3., an award issued under this paragraph may not
8 exceed \$100,000 for each occurrence.

9 **SECTION 2.** 101.143 (4) (d) 2. b. of the statutes is amended to read:

10 101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator
11 under subd. 2. a., c. or d., \$500,000, except that, if the site is classified as medium
12 priority or low priority under s. 101.144 ^(3m) (a) 3., an award issued under this
13 paragraph may not exceed \$100,000 for each occurrence.



14 **SECTION 3.** 101.143 (4) (d) 2. d. of the statutes is amended to read:

15 101.143 (4) (d) 2. d. For a school district or a technical college district with
16 respect to a discharge from a petroleum product storage system that is used for
17 storing heating oil for consumptive use on the premises where stored, \$190,000,
18 except that, if the site is classified as medium priority or low priority under s. 101.144
19 (3m) (a) 3., an award issued under this paragraph may not exceed \$100,000 for each
20 occurrence.

✓ (19)
Insert
2-2021 →

SECTION 9310. Initial applicability; commerce.

auto ref. "KA"

1 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM MAXIMUM AWARDS. The
2 treatment of section 101.143 (4) (d) 2. a., b. and d. of the statutes first applies to
3 claims submitted under section 101.143 (3) of the statutes on ~~December 1, 1999,~~ *the effective date of this subsection*

Insert →
3-3 ✓

(END)

Insert 2-20, p. 1 ✓

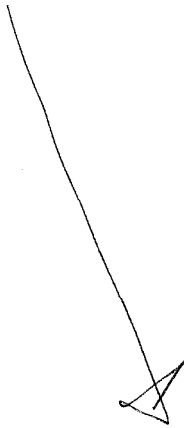
-1669/2

Section #. 101.144 (2) (b) 1. of the statutes is amended to read:

in rules promulgated (3g) ✓

101.144 (2) (b) 1. The site of the discharge is classified, as provided under sub. ~~(3m)~~ (a) 3, as medium priority or low priority, based on the threat that the discharge poses to public health, safety and welfare and to the environment.

History: 1995 a. 27 ss. 3685 and 9116 (5); 1995 a. 227.



Inset 2-20, p. 2

-1699/2

Section #. 101.144 ^(3g) ~~(3m)~~ ^{created} (a) 3. of the statutes is amended to read:

^(b) ~~(3m)~~ ^(3g) The department of commerce, ^{after} consultation with the
101.144 ~~(3m)~~ ^(3g) (a) 3. Establishes ^{and} procedures, standards and schedules for determining whether
the site of a discharge of a petroleum product from a petroleum storage tank is classified as high
priority, medium priority or low priority.

History: 1995 a. 27 ss. 3685 and 9116 (5); 1995 a. 227.

department of natural resources, shall promulgate
rules specifying

Section #. 101.144 (3m) (a) 3. of the statutes is amended to read:

* 101.144 (3m) (a) 3. Establishes ~~procedures, standards and~~ schedules for determining whether the site of a discharge of a petroleum product from a petroleum storage tank is classified as high priority, medium priority or low priority.

History: 1995 a. 27 ss. 3685 and 9116 (5); 1995 a. 227.



1999

Inset 2-20, p. 4

LRB-1699 12

Nonstat File Sequence: **AAA**

NONSTAT SESSLAW

1. In the component bar:

- For the action phrase, execute: create → action: → *NS: → nonstat
- For the budget action phrase, execute: create → action: → *NS: → 91XX
- For a subsection, execute: create → text: → *NS: → sub
- For a paragraph, execute: create → text: → *NS: → par
- For a subdivision, execute: create → text: → *NS: → subd
- For a subdivision paragraph, execute: create → text: → *NS: → subpar

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#a)", etc., is filled in. Below, for the budget, fill in the 9100 department code; and fill in "___" or "()" only if a "frozen" number is needed.

SECTION # 9110 **]. Nonstatutory provisions; ...**

commerce of sites

(#1) ⁽²⁾ Rules for determining priority of petroleum product discharges. Using the procedure under section 227.24 of the statutes, the department of commerce shall promulgate the rules required under section 101.144 (3g) of the statutes, as created by this act, for the period before the effective date of the permanent rules under that provision, but not to exceed the period authorized under section 227.24(1)(c) and (2) of the statutes. Notwithstanding section 227.24(1)(a), (2)(b) and (3) of the statutes, the department is not required to provide evidence that promulgating rules under this subsection is necessary for the preservation of the public peace, health, safety or welfare and is not required to provide a finding of emergency for rules promulgated under this subsection. The department shall promulgate rules under this subsection no later than December 1, 1999.

end of inset

Nonstat File Sequence: **FFF**

EFFECTIVE DATE

- 1. In the component bar: For the action phrase, execute: ... create → action: → *NS: → effdate
For the text, execute: ... create → text: → *NS: → effdateA
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # ____ . **Effective date.**

(#1) () This act takes effect on

- 1. In the component bar: For the action phrase, execute: .. create → action: → *NS: → effdateE
For the text, execute: create → text: → *NS: → effdate
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # ____ . **Effective dates;**

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of sections of the statutes takes effect on

- 1. In the component bar: For the budget action phrase, execute:..create → action: → *NS: → 94XX
For the text, execute: create → text: → *NS: → effdate
- 2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9400 department code; and fill in "()" only if a "frozen" number is needed.

SECTION 94 1 0 . **Effective dates;** commerce

(#1) ^(CS) petroleum storage remedial action program awards The treatment of sections 101.143(4)(d) 2. a., b. and d. and 101.144(2)(b), (c) and (3m)(a) of the statutes takes effect on December 1, 1999 ⁽³⁾

WPO-Adoref. initial app. subsection "KA"

end of insert

Tradewell, Becky

From: Schmiedicke, David
Sent: Friday, January 22, 1999 9:04 AM
To: Tradewell, Becky
Subject: FW: LRB Draft: 99-1669/2 -- Reduction in Deductible for Low and Medium Priority Sites

Sensitivity: Confidential

Becky: Please see Bill's note below to add a statutory change regarding submittal and approval of remedial action plans. Thanks.

David P. Schmiedicke
Wisconsin Department of Administration
Voice -- (608) 266-1040
FAX -- (608) 267-0372
E-Mail -- david.schmiedicke@doa.state.wi.us

> -----Original Message-----

> From: Morrissey, Bill
> Sent: Friday, January 22, 1999 8:09 AM
> To: Schmiedicke, David
> Cc: Keal, Julie
> Subject: RE: LRB Draft: 99-1669/2 -- Reduction in Deductible for Low
> and Medium Priority Sites
> Sensitivity: Confidential

>
> I would probably go with the statutory change to require the remedial
> action plan submittal/approval. We require it in Comm 47 so it would
> match the requirement and the bidding process. I do think that, in most
> cases, tying the changes in coverage, etc to the remedial action approval
> makes the most sense. Thanks

> -----Original Message-----

> From: Schmiedicke, David
> Sent: Thursday, January 21, 1999 8:52 PM
> To: Morrissey, Bill
> Cc: Keal, Julie
> Subject: FW: LRB Draft: 99-1669/2 -- Reduction In Deductible for Low
> and Medium Priority Sites
> Importance: High
> Sensitivity: Confidential

>
> Which way do you want to go on this? I want to take an approach that
> makes the most sense for the program. Please let me know as soon as
> possible. Let me know if we should talk about this further. Thanks.

>
> David P. Schmiedicke
> Wisconsin Department of Administration
> Voice -- (608) 266-1040
> FAX -- (608) 267-0372
> E-Mail -- david.schmiedicke@doa.state.wi.us

> -----Original Message-----

> From: Tradewell, Becky [SMTP:Becky.Tradewell@legis.state.wi.us]
> Sent: Thursday, January 21, 1999 8:25 PM
> To: 'Schmiedicke, David'
> Subject: RE: LRB Draft: 99-1669/2 -- Reduction in Deductible for Low
> and Medium Priority Sites
> Sensitivity: Confidential

>
> Dave,

>
> This is the second request that I have gotten in which Commerce wants to
> tie
> the effective date of a draft to the approval of remedial action plans.
> The
> problem is that the statute does not require an applicant to get approval
> of
> the remedial action plan. We could change the statute to require
> approval
> of the plans (since that is what Commerce appears to be doing already).
> Otherwise, I think that we will have to find another way to handle the
> effective date. For example, we could say that the draft first applies to
> those who file their first claim on the effective date or who begin
> remedial action on the effective date or something like that.
>
> Becky
>
> -----Original Message-----
> From: Schmiedicke, David [mailto:david.schmiedicke@doa.state.wi.us]
> Sent: Wednesday, January 20, 1999 8:50 PM
> To: Tradewell, Becky
> Subject: FW: LRB Draft: 99-1669/2 -- Reduction in Deductible for Low and
> Medium Priority Sites
> Importance: High
> Sensitivity: Confidential
>
>
> Becky: Please modify the draft so that is applied at all sites where a
> remediation plan has not yet been approved by Commerce (see Bill
> Morrissey's
> note below). Please keep the 12/1/99 effective date. Thanks.
>
> David P. Schmiedicke
> Wisconsin Department of Administration
> Voice -- (608) 266-1040
> FAX -- (608) 267-0372
> E-Mail -- david.schmiedicke@doa.state.wi.us
>
> > -----Original Message-----
> > From: Morrissey, Bill
> > Sent: Wednesday, January 20, 1999 1:56 PM
> > To: Schmiedicke, David
> > Cc: Alberts, John; Keal, Julie
> > Subject: RE: LRB Draft: 99-1669/2 -- Reduction in Deductible for Low
> > and Medium Priority Sites
> > Sensitivity: Confidential
> >
> > The only real issue that I see in the draft is the effective date. When
> > it talks about applying to "claims submitted" it is not clear if it
> means
> > the first claim for a site or the third or any/all. The problem is that
> > you can have a site where more than \$100,000 has already been spent and
> > claimed and the site gets classified as low or medium. A couple of
> > alternatives. (1) Set it as applicable to sites where the remedial
> action
> > plan has not yet been approved by Commerce (they will have only
> completed
> > the investigation at that point and costs could not be over 40K or
> > declared as an 80K site where they would be under the cap anyway) or
> (2)
> > Give everybody max of \$100,000 and then make them score out as a high to
> > have any higher coverage.
> >
> > -----Original Message-----

>> From: Schmiedicke, David
>> Sent: Tuesday, January 19, 1999 5:32 PM
>> To: Morrissey, Bill
>> Cc: Wong, Manyee
>> Subject: FW: LRB Draft: 99-1669/2 -- Reduction in Deductible for Low
>> and Medium Priority Sites
>> Importance: High
>> Sensitivity: Confidential
>>
>> Bill: Please review this draft to ensure it's workable from Commerce's
>> perspective. I need comments back by Thursday morning. Thanks.
>>
>> David P. Schmiedicke
>> Wisconsin Department of Administration
>> Voice -- (608) 266-1040
>> FAX -- (608) 267-0372
>> E-Mail -- david.schmiedicke@doa.state.wi.us
>>
>> -----Original Message-----
>> From: Paasch, Lynda [SMTP:Lynda.Paasch@legis.state.wi.us]
>> Sent: Tuesday, January 19, 1999 3:54 PM
>> To: 'david.schmiedicke@doa.state.wi.us'
>> Cc: 'vicky.labelle@doa.state.wi.us'; Hubli, Scott; Haugen, Caroline
>> Subject: LRB Draft: 99-1669/2
>>
>> Following is the PDF version of draft 99-1669/2.
>>
>>
>> << File: 99-1669/2 >>



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRB-1669/3

RCT:kmg:lp

redraft
make
run

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

*Don't
send.*
AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

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. The owner of a petroleum product storage tank may receive a PECFA award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. The current maximum for underground tanks varies from \$100,000 for small farm tanks to \$1,000,000 for tanks located at a facility at which petroleum is stored for resale and tanks that handle an average of more than 10,000 gallons of petroleum per month.

This bill changes the maximum PECFA award for any underground petroleum product storage tank to \$100,000 if the site of the discharge from the tank is classified as medium priority or low priority under a classification system established in a rule that this bill requires the department of commerce to promulgate. The change in the maximum PECFA award applies to PECFA claims ~~that~~ are ~~submitted~~ after November 30, 1999.

approved
for which remedial
action plans

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:

Insert →

1 **SECTION 1.** 101.143 (4) (d) 2. a. of the statutes is amended to read:

2 101.143 (4) (d) 2. a. For an owner or operator of an underground petroleum
3 product storage tank system that is located at a facility at which petroleum is stored
4 for resale or an owner or operator of an underground petroleum product storage tank
5 system that handles an annual average of more than 10,000 gallons of petroleum per
6 month, \$1,000,000, except that, if the site is classified as medium priority or low
7 priority under s. 101.144 (3g), an award issued under this paragraph may not exceed
8 \$100,000 for each occurrence.

9 **SECTION 2.** 101.143 (4) (d) 2. b. of the statutes is amended to read:

10 101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator
11 under subd. 2. a., c. or d., \$500,000, except that, if the site is classified as medium
12 priority or low priority under s. 101.144 (3g), an award issued under this paragraph
13 may not exceed \$100,000 for each occurrence.

14 **SECTION 3.** 101.143 (4) (d) 2. d. of the statutes is amended to read:

15 101.143 (4) (d) 2. d. For a school district or a technical college district with
16 respect to a discharge from a petroleum product storage system that is used for
17 storing heating oil for consumptive use on the premises where stored, \$190,000,
18 except that, if the site is classified as medium priority or low priority under s. 101.144
19 (3g), an award issued under this paragraph may not exceed \$100,000 for each
20 occurrence.

21 **SECTION 4.** 101.144 (2) (b) 1. of the statutes is amended to read:

1 101.144 (2) (b) 1. The site of the discharge is classified, as provided in rules
2 promulgated under sub. ~~(3m) (a) 3. (3g)~~, as medium priority or low priority, based on
3 the threat that the discharge poses to public health, safety and welfare and to the
4 environment.

5 **SECTION 5.** 101.144 (3g) the statutes is created to read:

6 101.144 (3g) The department of commerce, after consultation with the
7 department of natural resources, shall promulgate rules specifying procedures and
8 standards for determining whether the site of a discharge of a petroleum product
9 from a petroleum storage tank is classified as high priority, medium priority or low
10 priority.

11 **SECTION 6.** 101.144 (3m) (a) 3. of the statutes is amended to read:

12 101.144 (3m) (a) 3. Establishes ~~procedures, standards and~~ schedules for
13 determining whether the site of a discharge of a petroleum product from a petroleum
14 storage tank is classified as high priority, medium priority or low priority.

15 **SECTION 9110. Nonstatutory provisions; commerce.**

16 (1) RULES FOR DETERMINING PRIORITY OF SITES OF PETROLEUM PRODUCT DISCHARGES.
17 Using the procedure under section 227.24 of the statutes, the department of
18 commerce shall promulgate the rules required under section 101.144 (3g) of the
19 statutes, as created by this act, for the period before the effective date of the
20 permanent rules under that provision, but not to exceed the period authorized under
21 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),
22 (2) (b) and (3) of the statutes, the department is not required to provide evidence that
23 promulgating rules under this subsection is necessary for the preservation of the
24 public peace, health, safety or welfare and is not required to provide a finding of

1 emergency for rules promulgated under this subsection. The department shall
2 promulgate rules under this subsection no later than December 1, 1999.

3 **SECTION 9310. Initial applicability; commerce.**

4 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM MAXIMUM AWARDS. The
5 treatment of section 101.143 (4) (d) 2. a., b. and d. of the statutes first applies to
6 ~~claims submitted~~ *a claimant whose remedial action plan is approved* under section 101.143 (3) of the statutes on the effective date of this
7 subsection. *(cs) / as created by this act, ✓*

8 **SECTION 9410. Effective dates; commerce.**

9 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM AWARDS. The treatment of
10 sections 101.143 (4) (d) 2. a., b. and d. and 101.144 (2) (b) 1., (3g) and (3m) (a) 3. of
11 the statutes and SECTION 9310 (1) of this act take effect on December 1, 1999.

12 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1669/3ins
RCT:.....

Insert

SECTION 1. 101.143 (3) (c) 2. of the statutes is amended to read:

101.143 (3) (c) 2. Prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted under subd. 3. and submit the remedial action plan to the department for approval.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283.

SECTION 2. 101.143 ⁽³⁾ (cs) of the statutes is created to read:

101.143 ³ (3) (cs) *Review of remedial action plans.* The department shall review and approve or disapprove remedial action plans submitted under par. (c) 2.

SECTION 3. 101.143 (3) (d) of the statutes is amended to read:

101.143 (3) (d) *Review of site investigations, remedial action plans and remedial action activities.* ~~The department of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of commerce shall, at the request of the claimant, review the site investigation and the remedial action plan and advise the claimant on the adequacy of proposed remedial action activities in meeting the requirements of s. 292.11. The advice is not an approval of the remedial action activities.~~ The department of natural resources or, if the discharge is covered under s. 101.144 (2) (b), the department of commerce shall complete a final review of the remedial action activities within 60 days after the claimant notifies the appropriate department that the remedial action activities are completed.

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 301, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1669/34

RCT:kmg:lp/redft
run

SO ON

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Note

1

*Don't
Gen. Cat.*
AN ACT relating to: the budget.

J
Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

*Analysis
insert*

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. The owner of a petroleum product storage tank may receive a PECFA award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. The current maximum for underground tanks varies from \$100,000 for small farm tanks to \$1,000,000 for tanks located at a facility at which petroleum is stored for resale and tanks that handle an average of more than 10,000 gallons of petroleum per month.

the

This bill changes the maximum PECFA award for any underground petroleum product storage tank to \$100,000 if the site of the discharge from the tank is classified as medium priority or low priority under a classification system established in a rule *the* that this bill requires the department of commerce to promulgate. The change in the maximum PECFA award applies to PECFA claims for which remedial action plans are approved after November 30, 1999.

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 (3) (c) 2. of the statutes is amended to read:

2 101.143 (3) (c) 2. Prepare a remedial action plan that identifies specific
3 remedial action activities proposed to be conducted under subd. 3. and submit the
4 remedial action plan to the department for approval.

Ins. A →

5 **SECTION 2.** 101.143 (3) (cs) of the statutes is created to read:

6 101.143 (3) (cs) *Review of remedial action plans.* The department shall review

Ins. B →

7 and approve or disapprove remedial action plans submitted under par. (c) 2.

8 **SECTION 3.** 101.143 (3) (d) of the statutes is amended to read:

9 101.143 (3) (d) *Review of ~~site investigations, remedial action plans and~~*
10 *remedial action activities.* ~~The department of natural resources or, if the discharge~~
11 ~~is covered under s. 101.144 (2) (b), the department of commerce shall, at the request~~
12 ~~of the claimant, review the site investigation and the remedial action plan and advise~~
13 ~~the claimant on the adequacy of proposed remedial action activities in meeting the~~
14 ~~requirements of s. 292.11. The advice is not an approval of the remedial action~~
15 ~~activities.~~ The department of natural resources or, if the discharge is covered under
16 s. 101.144 (2) (b), the department of commerce shall complete a final review of the
17 remedial action activities within 60 days after the claimant notifies the appropriate
18 department that the remedial action activities are completed.

Insert C →

19 **SECTION 4.** 101.143 (4) (d) 2. a. of the statutes is amended to read:

20 101.143 (4) (d) 2. a. For an owner or operator of an underground petroleum
21 product storage tank system that is located at a facility at which petroleum is stored

1 for resale or an owner or operator of an underground petroleum product storage tank
 2 system that handles an annual average of more than 10,000 gallons of petroleum per
 3 month, \$1,000,000, except that, if the site is classified as medium priority or low
 4 priority under s. 101.144 (3g) ^(a) an award issued under this paragraph may not exceed
 5 \$100,000 for each occurrence.

6 SECTION 5. 101.143 (4) (d) 2. b. of the statutes is amended to read:

7 101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator
 8 under subd. 2. a., c. or d., \$500,000, except that, if the site is classified as medium
 9 priority or low priority under s. 101.144 (3g) ^(a) an award issued under this paragraph
 10 may not exceed \$100,000 for each occurrence.

11 SECTION 6. 101.143 (4) (d) 2. d. of the statutes is amended to read:

12 101.143 (4) (d) 2. d. For a school district or a technical college district with
 13 respect to a discharge from a petroleum product storage system that is used for
 14 storing heating oil for consumptive use on the premises where stored, \$190,000,
 15 except that, if the site is classified as medium priority or low priority under s. 101.144
 16 (3g) ^(a) an award issued under this paragraph may not exceed \$100,000 for each
 17 occurrence.

18 SECTION 7. 101.144 (2) (b) 1. of the statutes is amended to read:

19 101.144 (2) (b) 1. The site of the discharge is classified, as provided in rules
 20 promulgated under sub. (3m) (a) 3. (3g) ^(a), as medium priority or low priority, based on
 21 the threat that the discharge poses to public health, safety and welfare and to the
 22 environment subject to sub. (3g) (b)
 23 b

24 SECTION 8. 101.144 (3g) ^(a) the statutes is created to read:

25 101.144 (3g) ^(a) The department of commerce, after consultation with the
 department of natural resources, shall promulgate rules specifying procedures and

Insert →

1 standards for determining whether the site of a discharge of a petroleum product
2 from a petroleum storage tank is classified as high priority, medium priority or low
3 priority.

Insert
4-3 →

4 **SECTION 9.** 101.144 (3m) (a) 3. of the statutes is amended to read:

5 101.144 (3m) (a) 3. Establishes ~~procedures, standards and~~ schedules for
6 determining whether the site of a discharge of a petroleum product from a petroleum
7 storage tank is classified as high priority, medium priority or low priority.

8 **SECTION 9110. Nonstatutory provisions; commerce.**

9 (1) RULES FOR DETERMINING PRIORITY OF SITES OF PETROLEUM PRODUCT DISCHARGES.

10 Using the procedure under section 227.24 of the statutes, the department of
11 commerce shall promulgate the rules required under section 101.144 (3g) of the
12 statutes, as created by this act, for the period before the effective date of the
13 permanent rules under that provision, but not to exceed the period authorized under
14 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),
15 (2) (b) and (3) of the statutes, the department is not required to provide evidence that
16 promulgating rules under this subsection is necessary for the preservation of the
17 public peace, health, safety or welfare and is not required to provide a finding of
18 emergency for rules promulgated under this subsection. The department shall
19 promulgate rules under this subsection no later than December 1, 1999.

20 **SECTION 9310. Initial applicability; commerce.**

21 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM MAXIMUM AWARDS. The
22 treatment of section 101.143 (4) (d) 2. a., b. and d. of the statutes first applies to a
23 claimant whose remedial action plan is approved under section 101.143 (3) (cs) of the
24 statutes, as created by this act, on the effective date of this subsection.

25 **SECTION 9410. Effective dates; commerce.**



Inserts go 1669/4

DOA:.....Schmiedicke - Assignment of PECFA sites

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
ENVIRONMENT

~~HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP~~

Analysis insert

Under current law, the department of natural resources (DNR) generally may order a responsible person to conduct a cleanup of a hazardous substance that has been discharged into the environment and may oversee the cleanup. However, under current law, the department of commerce may order and oversee 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 state's groundwater law, DNR and the department of health and family services (DHFS) set enforcement standards. An enforcement standard represents a concentration of a substance in groundwater. If an activity or facility causes the concentration of a substance in groundwater to reach or exceed the enforcement standard, the state agency that regulates the activity or facility must, generally, prohibit the activity or practice that uses or produces the hazardous substance and implement remedial action.

↓

requires
 This bill ~~prohibits DNR and~~ the department of commerce from providing, in ~~the~~ *these* standards, ~~for~~ categorizing sites of petroleum product discharges, that all sites at which a groundwater enforcement standard has been exceeded are high priority. The bill also requires ~~DNR and~~ the department of commerce to design the standards to classify no more than 50% of sites as high priority.

to establish by rule, rather than by memorandum of understanding. The standards for bill prohibits the department of commerce

end of analysis insert

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

1 **SECTION 1.** 101.144 (2) (b) 1. of the statutes is amended to read:
 2 101.144 (2) (b) 1. The site of the discharge is classified, as provided under sub.
 3 (3m) (a) 3., as medium priority or low priority, based on the threat that the discharge
 4 poses to public health, safety and welfare and to the environment, subject to sub.
 5 (3m) (am).

6 **SECTION 2.** 101.144 (3m) (am) of the statutes is created to read:

Insert 4-3
 7
 8
 9

10 101.144 (3m) (am) ^(b) The department of commerce ~~and~~ the department of natural
 11 resources may not provide, in the ~~standards~~ *rules* under par. (a) ~~that~~, that all sites at which
 12 an enforcement standard, as defined in s. 160.01 (2), is exceeded are classified as high
 13 priority. The department ~~shall~~ *rules* design the ~~standards~~ *standards* under par. (a) ~~to~~ classify no
 more than 50% of sites as high priority. If 6 months after a ~~memorandum of~~
~~understanding~~ *the rules under par. (a) are* under this subsection is in effect more than 50% of sites are classified
 as high priority, the department ~~shall~~ *the rules* revise ~~the memorandum of understanding.~~

Insert 14
 15
 16
 17

SECTION 9110. Nonstatutory provisions; commerce.

(1) **PETROLEUM STORAGE TANK DISCHARGE MEMORANDUM OF UNDERSTANDING.** The department of commerce and the department of natural resources shall submit a revised memorandum under section 101.144 (3m) of the statutes that complies with

1 ~~section 101.144 (3m) (am) of the statutes, as created by this act, to the secretary of~~
2 ~~administration no later than December 1, 1999.~~

3

~~(END)~~

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

Ins. A ✓

101,143(3)(c)2.

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:

~~1358~~ ✓ -1358 and -1669. 1358

Ins. B ✓

101,143(3)(c)5

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:

-1358 and -1669.

Ins. C ✓

101,143(3)(c)2 d

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:

-1358 and -1669.

Ins. D ✓

101,144(2)(b)1.

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:

-1669 and -1583.

Ins. E ✓

101,144(3)(b)

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:

-1669 and -1583.

***NOTE: This is reconciled s. 1. This SECTION has been affected by drafts with the following LRB numbers:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB -1669/4dn
.....
RCT:Kmg

Dave and Mangee

1358 ✓ 1583 ✓ 1669 ✓

This draft reconciles LRB-~~XXXX~~, LRB-~~XXXX~~ and LRB-~~XXXX~~. ~~All of these drafts should continue to appear in the compiled bill.~~ All of these drafts, except LRB-~~XXXX~~, should continue to appear in the compiled bill. LRB-~~XXXX~~ should be dropped from the compile.

1583 ✓

1583

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us

2/3 2:50 p.m. Per Dave Schmiedicke -

Require DNR and Commerce to develop a method for prioritizing sites. Require DOA Secy. to resolve any disagreements between DNR and Commerce

Require emergency rule in effect no more than 30 days after effective date of budget

Retain requirement to change rule if 50% target is not being met in 6 months



State of Wisconsin
1999 - 2000 LEGISLATURE

Today

LRB-1669/5

RCT:kmg:jf

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Note

Do not gen

1

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Under current law, the department of natural resources (DNR) generally may order a responsible person to conduct a cleanup of a hazardous substance that has been discharged into the environment and may oversee the cleanup. However, under current law, the department of commerce may order and oversee 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 state's groundwater law, DNR and the department of health and family services (DHFS) set enforcement standards. An enforcement standard represents a concentration of a substance in groundwater. If an activity or facility causes the concentration of a substance in groundwater to reach or exceed the enforcement standard, the state agency that regulates the activity or facility must, generally, prohibit the activity or practice that uses or produces the hazardous substance and implement remedial action.

Analysis inset I ✓

This bill requires the department of commerce to establish ~~by rule, rather than by memorandum of understanding~~, the standards for categorizing sites of petroleum product discharges. The bill prohibits the department of commerce from providing, in those standards, that all sites at which a groundwater enforcement standard has been exceeded are high priority. The bill also requires the department of commerce to design the standards to classify no more than 50% of sites as high priority.

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. The owner of a petroleum product storage tank may receive a PECFA award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. The current maximum for underground tanks varies from \$100,000 for small farm tanks to \$1,000,000 for tanks located at a facility at which petroleum is stored for resale and tanks that handle an average of more than 10,000 gallons of petroleum per month.

This bill changes the maximum PECFA award for any underground petroleum product storage tank to \$100,000 if the site of the discharge from the tank is classified as medium priority or low priority under the classification system established in the rule that this bill requires the department of commerce to promulgate. The change in the maximum PECFA award applies to PECFA claims for which remedial action plans are approved after November 30, 1999.

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 (3) (c) 2. of the statutes is amended to read:
2 101.143 (3) (c) 2. Prepare a remedial action plan that identifies specific
3 remedial action activities proposed to be conducted under subd. 3. and submit the
4 remedial action plan to the department for approval.

***NOTE: This is reconciled s. 101.143 (3) (c) 2. This SECTION has been affected by drafts with the following LRB numbers: LRB-1358 and LRB-1669.

- 5 **SECTION 2.** 101.143 (3) (cs) of the statutes is created to read:
6 101.143 (3) (cs) *Review of remedial action plans.* The department shall review
7 and approve or disapprove remedial action plans submitted under par. (c) 2.

***NOTE: This is reconciled s. 101.143 (3) (cs). This SECTION has been affected by drafts with the following LRB numbers: LRB-1358 and LRB-1669.

✓
Analysis inset 2

1 **SECTION 3.** 101.143 (3) (d) of the statutes is amended to read:

2 101.143 (3) (d) ~~Review of site investigations, remedial action plans and~~
3 ~~remedial action activities. The department of natural resources or, if the discharge~~
4 ~~is covered under s. 101.144 (2) (b), the department of commerce shall, at the request~~
5 ~~of the claimant, review the site investigation and the remedial action plan and advise~~
6 ~~the claimant on the adequacy of proposed remedial action activities in meeting the~~
7 ~~requirements of s. 292.11. The advice is not an approval of the remedial action~~
8 ~~activities. The department of natural resources or, if the discharge is covered under~~
9 ~~s. 101.144 (2) (b), the department of commerce shall complete a final review of the~~
10 ~~remedial action activities within 60 days after the claimant notifies the appropriate~~
11 ~~department that the remedial action activities are completed.~~

 ****NOTE: This is reconciled s. 101.143 (3) (d). This SECTION has been affected by
drafts with the following LRB numbers: LRB-1358 and LRB-1669.

12 **SECTION 4.** 101.143 (4) (d) 2. a. of the statutes is amended to read:

13 101.143 (4) (d) 2. a. For an owner or operator of an underground petroleum
14 product storage tank system that is located at a facility at which petroleum is stored
15 for resale or an owner or operator of an underground petroleum product storage tank
16 system that handles an annual average of more than 10,000 gallons of petroleum per
17 month, \$1,000,000, except that, if the site is classified as medium priority or low
18 priority under s. 101.144 (3g) (a), an award issued under this paragraph may not
19 exceed \$100,000 for each occurrence.

20 **SECTION 5.** 101.143 (4) (d) 2. b. of the statutes is amended to read:

21 101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator
22 under subd. 2. a., c. or d., \$500,000, except that, if the site is classified as medium

1 priority or low priority under s. 101.144 (3g) (a), an award issued under this
2 paragraph may not exceed \$100,000 for each occurrence.

3 **SECTION 6.** 101.143 (4) (d) 2. d. of the statutes is amended to read:

4 101.143 (4) (d) 2. d. For a school district or a technical college district with
5 respect to a discharge from a petroleum product storage system that is used for
6 storing heating oil for consumptive use on the premises where stored, \$190,000,
7 except that, if the site is classified as medium priority or low priority under s. 101.144
8 (3g) (a), an award issued under this paragraph may not exceed \$100,000 for each
9 occurrence.

10 **SECTION 7.** 101.144 (2) (b) 1. of the statutes is amended to read:

11 101.144 (2) (b) 1. The site of the discharge is classified, as provided in rules
12 promulgated under sub. ~~(3m)(a) 3.~~ (3g) (a), as medium priority or low priority, based
13 on the threat that the discharge poses to public health, safety and welfare and to the
14 environment, subject to sub. (3g) (b).

****NOTE: This is reconciled s. 101.144 (2) (b) 1. This SECTION has been affected by
drafts with the following LRB numbers: LRB-1669 and LRB-1583.

15 **SECTION 8.** 101.144 (3g) of the statutes is created to read:

16 (16) 101.144 (3g) (a) The department of commerce, ^{and} after consultation with the
17 (17) department of natural resources, ^{y attempt to reach an agreement that is consistent} shall promulgate rules specifying procedures and
18 standards for determining whether the site of a discharge of a petroleum product ^{with}
19 from a petroleum storage tank is classified as high priority, medium priority or low ^{par. (b)}
20 (20) priority. ^{and that specific} *Insert 4-20v*

21 (b) The department of commerce may not provide, in the rules under par. (a),
22 that all sites at which an enforcement standard, as defined in s. 160.01 (2), is
23 exceeded are classified as high priority. The department shall design the rules under

1 par. (a) to classify no more than 50% of sites as high priority. If 6 months after the
2 rules under par. (a) are in effect more than 50% of sites are classified as high priority,
3 the department shall revise the rules.

****NOTE: This is reconciled s. 101.144 (3g) (b). This SECTION has been affected by
drafts with the following LRB numbers: LRB-1669 and LRB-1583.

4 **SECTION 9.** 101.144 (3m) (a) 3. of the statutes is amended to read:

5 101.144 (3m) (a) 3. Establishes ~~procedures, standards and~~ schedules for
6 determining whether the site of a discharge of a petroleum product from a petroleum
7 storage tank is classified as high priority, medium priority or low priority.

8 **SECTION 9110. Nonstatutory provisions; commerce.**

9 (1) RULES FOR DETERMINING PRIORITY OF SITES OF PETROLEUM PRODUCT DISCHARGES.

10 Using the procedure under section 227.24 of the statutes, the department of
11 commerce shall promulgate the rules required under section 101.144 (3g) of the
12 statutes, as created by this act, for the period before the effective date of the
13 permanent rules under that provision, but not to exceed the period authorized under
14 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),
15 (2) (b) and (3) of the statutes, the department is not required to provide evidence that
16 promulgating rules under this subsection is necessary for the preservation of the
17 public peace, health, safety or welfare and is not required to provide a finding of
18 emergency for rules promulgated under this subsection. The department shall
19 promulgate rules under this subsection no later than ^{the 30th day after the effective} ~~December 1, 1999.~~ ^{date of}
this subsection

20 **SECTION 9310. Initial applicability; commerce.**

21 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM MAXIMUM AWARDS. The
22 treatment of section 101.143 (4) (d) 2. a., b. and d. of the statutes first applies to a

1 claimant whose remedial action plan is approved under section 101.143 (3) (cs) of the
2 statutes, as created by this act, on the effective date of this subsection.

3 **SECTION 9410. Effective dates; commerce.**

4 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM AWARDS. The treatment of
5 sections 101.143 (4) (d) 2. a., b. and d. and 101.144 (2) (b) 1., (3g) and (3m) (a) 3. of
6 the statutes and SECTION 9310 (1) of this act take effect on December 1, 1999.

7 (END)

Analysis insert 1

~~NO~~ ~~to be established~~ by rule, rather than by memorandum
of understanding. The bill requires the department
of commerce and ^{DNR} ~~the department of natural resources~~
to attempt to agree on the standards _{plain period}

Analysis insert 2

^{not} IF the departments cannot agree on ^{the} standards, the
secretary of administration resolves the disagreement.
Then the department of commerce promulgates the
standards by rule.

Insert 4-20

-1669/5

not

If the department of commerce and the department of natural resources are unable to reach an agreement they shall refer the matters on which they are unable to agree to the secretary of administration for resolution. ~~The secretary of administration shall resolve any~~ The department of commerce shall promulgate rules incorporating any agreement between the department of commerce and the department of natural resources) and any resolutions ^{of disagreements between the departments} by the secretary of administration under this paragraph.

✓
matters on which the departments disagree in a manner that is consistent with par. (b).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1669/5
RCT:kmg:jf

February 3, 1999

Dave and Manye:

This draft reconciles LRB-1358, LRB-1583 and LRB-1669. All of these drafts, except LRB-1583, should continue to appear in the compiled bill. LRB-1583 should be dropped from the compile.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1669/5dn
RCT:kmg:km

February 3, 1999

Dave and Manyee:

This draft reconciles LRB-1358, LRB-1583 and LRB-1669. All of these drafts, except LRB-1583, should continue to appear in the compiled bill. LRB-1583 should be dropped from the compile.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1669/5
RCT:kmg:km

DOA:.....Schmiedicke - PECFA, reduce maximum payments for certain sites
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CLEANUP

Under current law, the department of natural resources (DNR) generally may order a responsible person to conduct a cleanup of a hazardous substance that has been discharged into the environment and may oversee the cleanup. However, under current law, the department of commerce may order and oversee 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 state's groundwater law, DNR and the department of health and family services (DHFS) set enforcement standards. An enforcement standard represents a concentration of a substance in groundwater. If an activity or facility causes the concentration of a substance in groundwater to reach or exceed the enforcement standard, the state agency that regulates the activity or facility must, generally, prohibit the activity or practice that uses or produces the hazardous substance and implement remedial action.

This bill requires the department of commerce to establish the standards for categorizing sites of petroleum product discharges by rule, rather than by memorandum of understanding. The bill requires the department of commerce and DNR to attempt to agree on the standards. The bill prohibits the departments from providing, in those standards, that all sites at which a groundwater enforcement standard has been exceeded are high priority. The bill also requires the departments to design the standards to classify no more than 50% of sites as high priority. If the departments cannot agree on the standards, the secretary of administration resolves the disagreement. Then the department of commerce promulgates the standards by rule.

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. The owner of a petroleum product storage tank may receive a PECFA award for the amount by which the cost of the cleanup exceeds a deductible amount, up to a specified maximum. The current maximum for underground tanks varies from \$100,000 for small farm tanks to \$1,000,000 for tanks located at a facility at which petroleum is stored for resale and tanks that handle an average of more than 10,000 gallons of petroleum per month.

This bill changes the maximum PECFA award for any underground petroleum product storage tank to \$100,000 if the site of the discharge from the tank is classified as medium priority or low priority under the classification system established in the rule that this bill requires the department of commerce to promulgate. The change in the maximum PECFA award applies to PECFA claims for which remedial action plans are approved after November 30, 1999.

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 (3) (c) 2. of the statutes is amended to read:
2 101.143 (3) (c) 2. Prepare a remedial action plan that identifies specific
3 remedial action activities proposed to be conducted under subd. 3. and submit the
4 remedial action plan to the department for approval.

****NOTE: This is reconciled s. 101.143 (3) (c) 2. This SECTION has been affected by drafts with the following LRB numbers: LRB-1358 and LRB-1669.

- 5 **SECTION 2.** 101.143 (3) (cs) of the statutes is created to read:

1 101.143 (3) (cs) *Review of remedial action plans.* The department shall review
2 and approve or disapprove remedial action plans submitted under par. (c) 2.

 ***NOTE: This is reconciled s. 101.143 (3) (cs). This SECTION has been affected by
drafts with the following LRB numbers: LRB-1358 and LRB-1669.

3 **SECTION 3.** 101.143 (3) (d) of the statutes is amended to read:

4 101.143 (3) (d) ~~*Review of site investigations, remedial action plans and*~~
5 ~~*remedial action activities. The department of natural resources or, if the discharge*~~
6 ~~*is covered under s. 101.144 (2) (b), the department of commerce shall, at the request*~~
7 ~~*of the claimant, review the site investigation and the remedial action plan and advise*~~
8 ~~*the claimant on the adequacy of proposed remedial action activities in meeting the*~~
9 ~~*requirements of s. 292.11. The advice is not an approval of the remedial action*~~
10 ~~*activities.*~~ The department of natural resources or, if the discharge is covered under
11 s. 101.144 (2) (b), the department of commerce shall complete a final review of the
12 remedial action activities within 60 days after the claimant notifies the appropriate
13 department that the remedial action activities are completed.

 ***NOTE: This is reconciled s. 101.143 (3) (d). This SECTION has been affected by
drafts with the following LRB numbers: LRB-1358 and LRB-1669.

14 **SECTION 4.** 101.143 (4) (d) 2. a. of the statutes is amended to read:

15 101.143 (4) (d) 2. a. For an owner or operator of an underground petroleum
16 product storage tank system that is located at a facility at which petroleum is stored
17 for resale or an owner or operator of an underground petroleum product storage tank
18 system that handles an annual average of more than 10,000 gallons of petroleum per
19 month, \$1,000,000, except that, if the site is classified as medium priority or low
20 priority under s. 101.144 (3g) (a), an award issued under this paragraph may not
21 exceed \$100,000 for each occurrence.

22 **SECTION 5.** 101.143 (4) (d) 2. b. of the statutes is amended to read:

1 101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator
2 under subd. 2. a., c. or d., \$500,000, except that, if the site is classified as medium
3 priority or low priority under s. 101.144 (3g) (a), an award issued under this
4 paragraph may not exceed \$100,000 for each occurrence.

5 **SECTION 6.** 101.143 (4) (d) 2. d. of the statutes is amended to read:

6 101.143 (4) (d) 2. d. For a school district or a technical college district with
7 respect to a discharge from a petroleum product storage system that is used for
8 storing heating oil for consumptive use on the premises where stored, \$190,000,
9 except that, if the site is classified as medium priority or low priority under s. 101.144
10 (3g) (a), an award issued under this paragraph may not exceed \$100,000 for each
11 occurrence.

12 **SECTION 7.** 101.144 (2) (b) 1. of the statutes is amended to read:

13 101.144 (2) (b) 1. The site of the discharge is classified, as provided in rules
14 promulgated under sub. (3m)(a) 3. (3g) (a), as medium priority or low priority, based
15 on the threat that the discharge poses to public health, safety and welfare and to the
16 environment, subject to sub. (3g) (b).

 ***NOTE: This is reconciled s. 101.144 (2) (b) 1. This SECTION has been affected by
drafts with the following LRB numbers: LRB-1669 and LRB-1583.

17 **SECTION 8.** 101.144 (3g) of the statutes is created to read:

18 101.144 (3g) (a) The department of commerce and the department of natural
19 resource, shall attempt to reach an agreement that is consistent with par. (b) and
20 that specifies procedures and standards for determining whether the site of a
21 discharge of a petroleum product from a petroleum storage tank is classified as high
22 priority, medium priority or low priority. If the department of commerce and the
23 department of natural resources are unable to reach an agreement, they shall refer

1 the matters on which they are unable to agree to the secretary of administration for
2 resolution. The secretary of administration shall resolve any matters on which the
3 departments disagree in a manner that is consistent with par. (b). The department
4 of commerce shall promulgate rules incorporating any agreement between the
5 department of commerce and the department of natural resources under this
6 paragraph and any resolution of disagreements between the departments by the
7 secretary of administration under this paragraph.

8 (b) The department of commerce may not provide, in the rules under par. (a),
9 that all sites at which an enforcement standard, as defined in s. 160.01 (2), is
10 exceeded are classified as high priority. The department shall design the rules under
11 par. (a) to classify no more than 50% of sites as high priority. If 6 months after the
12 rules under par. (a) are in effect more than 50% of sites are classified as high priority,
13 the department shall revise the rules.

****NOTE: This is reconciled s. 101.144 (3g) (b). This SECTION has been affected by
drafts with the following LRB numbers: LRB-1669 and LRB-1583.

14 **SECTION 9.** 101.144 (3m) (a) 3. of the statutes is amended to read:

15 101.144 (3m) (a) 3. Establishes ~~procedures, standards and~~ schedules for
16 determining whether the site of a discharge of a petroleum product from a petroleum
17 storage tank is classified as high priority, medium priority or low priority.

18 **SECTION 9110. Nonstatutory provisions; commerce.**

19 (1) RULES FOR DETERMINING PRIORITY OF SITES OF PETROLEUM PRODUCT DISCHARGES.
20 Using the procedure under section 227.24 of the statutes, the department of
21 commerce shall promulgate the rules required under section 101.144 (3g) of the
22 statutes, as created by this act, for the period before the effective date of the
23 permanent rules under that provision, but not to exceed the period authorized under

1 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),
2 (2) (b) and (3) of the statutes, the department is not required to provide evidence that
3 promulgating rules under this subsection is necessary for the preservation of the
4 public peace, health, safety or welfare and is not required to provide a finding of
5 emergency for rules promulgated under this subsection. The department shall
6 promulgate rules under this subsection no later than the 30th day after the effective
7 date of this subsection.

8 **SECTION 9310. Initial applicability; commerce.**

9 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM MAXIMUM AWARDS. The
10 treatment of section 101.143 (4) (d) 2. a., b. and d. of the statutes first applies to a
11 claimant whose remedial action plan is approved under section 101.143 (3) (cs) of the
12 statutes, as created by this act, on the effective date of this subsection.

13 **SECTION 9410. Effective dates; commerce.**

14 (1) PETROLEUM STORAGE REMEDIAL ACTION PROGRAM AWARDS. The treatment of
15 sections 101.143 (4) (d) 2. a., b. and d. and 101.144 (2) (b) 1., (3g) and (3m) (a) 3. of
16 the statutes and SECTION 9310 (1) of this act take effect on December 1, 1999.

17 (END)