

ATB - 218



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

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March 10, 1999

Senator Gary R. George and  
Representative Carol Kelso, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, Wisconsin 53702

Dear Senator George and Representative Kelso:

At the direction of the Joint Legislative Audit Committee, a bill has been drafted that incorporates the recommendations contained in the audit report of the PECFA program (98-14), as well as additional requests made by Committee members during the hearing held on the audit on January 27, 1999. Because of the large number of changes the bill (LRB-2110/2) makes to the PECFA program, we have prepared a brief summary of each section.

**A. Sections 1-49**

Sections 1 through 49 relate to bonding to provide funds to reduce the claims backlog and interest payments, which was discussed on page 59 of the audit. The language in sections 1 through 49 is identical to provisions contained in the Governor's budget bills, Assembly Bill 133 and Senate Bill 45.

**B. Sections 50-51**

Sections 50 and 51 provide standard definitions of "enforcement standard" and "natural attenuation".

**C. Section 52**

Section 52 requires quarterly cost reporting by owners to the Department of Commerce. Currently, costs are typically incurred over several years as clean-up progresses, but often are not reported until clean-up is completed. Testimony at the hearing suggested a one-page form could be developed for consultants to complete and would contain information that consultants currently record for their own purposes. This information would be helpful in better estimating overall program costs.

**D. Section 53-54**

Sections 53 and 54 require the development of rules specifying procedures used by staff to evaluate clean-up procedures in order to bring greater consistency to staff actions, which was discussed on pages 40, 41, and 62 of the audit report.

#### **E. Sections 55-57**

Sections 55 through 57 require the Departments of Commerce and Natural Resources to promulgate rules specifying a method for determining the risk a polluted site poses and to establish priorities for clean-up based on risk and availability of funds. The concept of risk-based analysis is discussed on pages 27-30, and 61-63 of the audit report. Further, at the hearing Committee members expressed concern that no distinction is made in the order of current clean-up efforts or the disbursement of funds based on the relative risk a site poses to public health.

#### **F. Section 58**

Section 58 standardizes the use of the phrase "natural attenuation".

#### **G. Section 59**

Section 59 mandates existing discretionary sections of Administrative Code Comm 47 concerning bidding. Section 59 requires the Department to seek bids for remediation work for all PECFA sites where the total estimated cost of investigation and remediation exceeds \$60,000. The requirement for bidding relates to information that indicates that while bidding has proven effective in reducing costs, only 50 percent of sites are currently bid. This section exempts some sites from the bidding requirements, including those that exceed of the enforcement standard for groundwater within 1,000 feet of a municipal well or 100 feet of a private well, those which constitute an emergency, or those specifically waived by the Secretary of the Department of Natural Resources.

#### **H. Section 60**

Section 60 requires that the Departments of Commerce and Natural Resources consider the cost-effectiveness of proposed clean-up methods, and limits the amount the State will reimburse an owner for clean-up based on this assessment. The Department of Natural Resources indicated in its response to the audit, Appendix X, page 3, that it did not have statutory authority to consider the cost effectiveness of proposed clean-up methods and would welcome statutory change providing that authority.

#### **I. Section 61**

Section 61 requires the Departments to conduct annual reviews of all PECFA sites. This is intended to ensure that existing sites that initiated remedial action without a determination of cost effectiveness will be reevaluated. This section relates to discussions on pages 36-39, and the recommendation on page 39 of the audit report. It is intended to prevent unnecessary future costs, but not affect repayment of eligible costs already incurred.

#### **J. Section 62**

Section 62 requires the Departments to complete their reviews of an owner's request for closure within 60 days of receiving the request.

**K. Section 63**

Section 63 allows owners to proceed with clean-up activity in emergency situations, notwithstanding the prior approval requirements contained in Section 57.

**L. Sections 64-70**

Sections 64 through 70 require the Department of Commerce to establish a schedule of usual and customary costs for consultant and other costs. These costs were discussed on pages 48-50 of the audit, and included in the recommendation on page 50. A schedule of usual and customary costs would be required for sites that are not bid and would be discretionary for sites that are bid. The requirements for the use of a schedule of usual and customary costs would sunset after two years.

**M. Section 71**

Section 71 makes changes to the deductible paid by owners of commercial underground tanks and is related to pages 30-31 of the audit. No changes to current law are made to the deductibles of owners of other PECFA eligible tanks, such as farm tanks or home or school heating oil tanks. Section 71 makes no change to the current maximum deductible amount of \$7,500, but restructures how the deductible is applied to commercial underground tanks owners to increase the financial incentive to monitor costs.

**N. Section 72**

Section 72 relates to the bonding provisions.

**O. Section 73**

Section 73 establishes various annual reporting requirements for the Departments and relates to recommendations on pages 53 and 55 of the audit report. The requirements are intended to ensure the Departments gather and analyze program information to enable better program management and that the information is shared with the Legislature.

**P. Section 74**

Section 74 relates to the bonding provisions.

**Q. Section 75**

Section 75 relates to the recommendation on page 52 of the audit report and requires the Department of Commerce to make recommended improvements to its financial system within six months of the effective date of the legislation.

Senator George and Representative Kelso

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Also enclosed is a comparison of the major provisions of LRB 2110/2 to the PECFA-related provisions contained in the Governor's 1999-01 biennial budget.

I hope you find this information helpful. If you have any questions, please feel free to contact me or Don Bezruki, the Program Evaluation Director who led the PECFA audit.

Sincerely,

A handwritten signature in cursive script that reads "Janice Mueller".

Janice Mueller  
State Auditor

JM/DB/ao

Enclosure

Attachment  
PECFA Bill Comparisons

The following summarizes the major changes to the PECFA program contained in the LRB-2110/2 and the Governor's 1999-01 biennial budget bills (AB 133 and SB45)

LRB-2110/2	AB 133/SB 45
1. Provides \$450 million in bonding to eliminate claims backlog and reduce interest costs. Debt would be repaid from petroleum inspection fee revenue.	1. Same provision.
2. Deductibles: retain current law for all owners except for those owning commercial underground storage tanks. Commercial underground tank owners would retain the current \$7,500 maximum deductible, but would have payment schedules changed to 2% of first \$40,000 of eligible costs, plus 10% of costs between \$40,000 and \$60,000, plus 15% of costs in excess of \$60,000.	2. Deductibles: modify deductible for most underground tanks that handle an annual average of more than 10,000 gallons/month to \$10,000 for first \$50,000 in eligible costs, \$12,500 for costs between \$50,000 and \$80,000, \$15,000 for costs between \$80,000 and \$150,000, and an additional \$10,000 for each \$100,000 in costs above \$150,000. Also increase the deductible for above ground storage tanks at terminals to \$15,000, plus 15% for all costs above \$200,000.
3. Requires an assessment of risk and a consideration of the use of natural attenuation in selecting clean-up methods for all PECFA sites.	3. Requires Commerce and DNR to report semi-annually to the Legislature on site clean-up, including risk factors being addressed.
4. Requires Commerce and DNR to establish priorities for the commencement of remedial action based on an assessment of risk and availability of funds. Exempted are small farm tanks and home and school heating oil tanks.	4. Authorizes Commerce to promulgate rules to set priorities for clean-up. Exempted are small farm tanks and home and school heating oil tanks.
5. Bidding: Increases the use of competitive bidding by requiring bidding for all sites where costs are estimated to exceed \$60,000, except where high risk or emergency factors require a more prompt response than is possible under bidding.	5. Makes no change to current law.

<p>6. Requires the use of cost “caps” for consultant and other costs on sites where work is not bid, and authorizes the use of cost caps on site that are bid.</p>	<p>6. Makes no change to current law.</p>
<p>7. Establishes statutory authority and responsibility for DNR to consider cost effectiveness of proposed remediation plans for sites it manages.</p>	<p>7. Makes no change to current law.</p>
<p>8. Requires the establishment of procedures to ensure the consistency of DNR and Commerce staff decisions in reviewing consultant plans, reports, and requests for site closure.</p>	<p>8. Makes no change to current law.</p>
<p>9. Requires annual reports on the program, including: number of sites opened and closed in the prior year; percentage of sites classified as high priority and managed by the DNR; names of consulting firms and their number of PECFA clients; charges for consulting services, as well as other services, including excavating, hauling, laboratory testing and landfill disposal; and strategies for recording and investigating complaints of fraud in the program.</p>	<p>9. Requires Commerce and DNR to report semi-annually on site clean-up, including risk factors being addressed and time to closure.</p>
<p>10. Makes no change to current law.</p>	<p>10. Eliminates reimbursement of interest costs if applicant had annual gross revenues in excess of \$20 million, as determined by the Department of Commerce, and limits interest reimbursement to 5% of all other claims.</p>
<p>11. Makes no change to current law.</p>	<p>11. Authorizes the Department of Commerce to promulgate rules limiting the maximum award for underground petroleum tanks to \$100,000 if the site is classified as a low or medium priority.</p>

12. Makes no change to current law.	12. Requires DNR and Commerce to devise a site allocation methodology that classifies no more than 50% of all sites as high priority. Currently, high priority sites are managed by DNR and low and medium sites by Commerce.
13. Makes no change to current law.	13. Provides \$390,800 SEG in FY1999-00 and \$290,800 SEG in FY2000-01 to develop a geographic information system-based registry for sites with groundwater contamination above the enforcement standard, and to make improvements in electronic tracking of PECFA sites.
14. Makes no change to current law.	14. Provides 3.0 full-time-equivalent SEG hydrogeologist positions to the Department of Commerce.