

## 2007 DRAFTING REQUEST

### Bill

Received: **09/20/2006**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Submit via email: **NO**

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### Pre Topic:

DOA:.....Miner, BB0034 -

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### Topic:

Allow PECFA payment directly to contractors for owners unable to obtain financing

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### Instructions:

See Attached

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### 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> |
|--------------|------------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           |                        |                        |                        |                |                       |                 |                 |
| /P1          | btradewe<br>11/21/2006 | kfollett<br>11/21/2006 | pgreensl<br>11/22/2006 | _____          | cduerst<br>11/22/2006 |                 |                 |
| /1           | btradewe<br>01/25/2007 | kfollett<br>01/25/2007 | sherritz<br>01/25/2007 | _____          | cduerst<br>01/25/2007 |                 |                 |

FE Sent For:

<END>

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|-----|------------------------|------------------------|------------------------|-------|-----------------------|--|--|
| /?  |                        |                        |                        |       |                       |  |  |
| /P1 | btradewe<br>11/21/2006 | kfollett<br>11/21/2006 | pgreensl<br>11/22/2006 | _____ | cduerst<br>11/22/2006 |  |  |

FE Sent For:

*1/1/07*  
*1/25*

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*sh - 00*  
*1/25*

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## 2007 DRAFTING REQUEST

### Bill

Received: **09/20/2006**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 266-1103**

By/Representing: **Miner**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - env. cleanup**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **lcornelius@commerce.state.wi.us**

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### Pre Topic:

DOA:.....Miner, BB0034 -

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### Topic:

Allow PECFA payment directly to contractors for owners unable to obtain financing

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### Instructions:

See Attached

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### 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> |
|--------------|------------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           |                        |                        |                        |                |                       |                 |                 |
| /P1          | btradewe<br>11/21/2006 | kfollett<br>11/21/2006 | pgreensl<br>11/22/2006 | _____          | cduerst<br>11/22/2006 |                 |                 |

FE Sent For:

<END>

## 2007 DRAFTING REQUEST

### Bill

Received: 09/20/2006

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 266-1103

By/Representing: Miner

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to: lcornelius@commerce.state.wi.us

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### Pre Topic:

DOA:.....Miner, BB0034 -

---

### Topic:

Allow PECFA payment directly to contractors for owners unable to obtain financing

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### Instructions:

See Attached

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### 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> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|

|    |          |                   |          |  |  |  |  |
|----|----------|-------------------|----------|--|--|--|--|
| /? | btradewe | 1P/11Gjf<br>11/24 | 11<br>BB | 11<br>BB<br>11/24<br>11/24<br>11/24<br>11/24 |  |  |  |
|----|----------|-------------------|----------|--|--|--|--|

FE Sent For:

<END>

# Bill Request Form

Legislative Reference Bureau  
100 N. Hamilton Street  
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 9/12/00

Legislator, agency, or other person requesting this draft Dept. of Commerce

Person submitting request (name and phone number) Louie Cornelius - 6-8629

Persons to contact for questions about this draft (names and phone numbers) Oscar Herrera: 6-7605; Laura Varralob:

Describe the problem, including any helpful examples. How do you want to solve the problem? 261-2180  
See attached

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999 AB-67).

Requests are confidential, unless stated otherwise. May we tell others that we are working on this for you? YES  NO

If yes: Anyone who asks? YES NO  
Any legislator? YES NO

Only the following persons only DOA Budget Shop

Do you consider this request urgent? YES NO If yes, please indicate why Budget

Should we give this request priority over any pending request of this legislator, agency, or person? YES NO

*Medium priority*

## Budget Initiative PECFA

### Proposal for Instituting Direct Pay in PECFA-Eligible Clean-up Sites

#### What

The Department of Commerce proposes modifying s. 101.143, Stats., to institute an alternative payment method. Currently, the PECFA program can only reimburse the claimant. The alternative payment method would allow the PECFA program to pay the contractor/consultant involved in the clean-up of the site directly where traditional financing is not an option, the claimant elects to have the PECFA program directly pay or the PECFA program dictates the direct pay method.

#### Why

Currently, a PECFA claimant must either obtain conventional financing through a bank or pay environmental clean-up costs out-of-pocket. The PECFA program then reimburses claimant for eligible expenses paid. The inability to obtain conventional financing by some claimants has resulted in many sites in need of a clean-up and no means to move forward without financing.

#### When

2007-2009 biennium budget beginning July 1, 2007.

#### Where

The direct payment of eligible clean-up costs would be handled through existing staff in the Bureau of PECFA, Claims Review Section, in Madison.

#### How

##### *Proposed Statutory Change:*

Establish Wis. Stats. s. 101.143(4f) DIRECT PAYMENT:

a) Notwithstanding the requirements to only reimburse eligible costs after they have been incurred under s. 101.143(3)(a) and (4)(a)(1), the department may contract with and provide direct payments to consultants and contractors for performing necessary investigation and remediation activities in accordance with the provisions of this section. The costs that may be awarded under this section are subject to the same rules and restrictions as found under s. 101.143(4).

b) Eligible Claims:

1. If the department determines that an owner or operator is unable to pay or secure financing for clean-up of a petroleum product storage system and related

petroleum discharge, the claimant elects to have the PECFA program directly pay or the PECFA program dictates the direct pay method, the department may contract and provide direct payments to the consultants and/or contractors as well as waive the deductible as provided in s. 101.143(4)(ee).

2. Claims which are not eligible for direct payment of costs associated with investigation and remediation remain the same as provided in s. 101.143(3).

The Department of Commerce would promulgate code language in COMM 47 that would implement the proposed statutory language above.

### **Justification**

The PECFA program is currently a reimbursement program. Under the existing rules, a claimant must either obtain conventional financing through a bank or pay remediation costs out-of-pocket to be eligible to participate in the program. As the remedial work is performed by the contractor, invoices are paid by the claimant or the bank handling the loan. A claim is submitted to and reimbursed by PECFA to the bank or the claimant when a progress payment milestone is reached or the work is completed.

Many owners or operators of existing eligible sites cannot obtain traditional financing from a bank, nor do they have the funds to pay the invoiced work themselves. Since PECFA is a reimbursement program, they are not able to participate in the program as it exists even though their systems are eligible for funding. Without the environmental remediation work continuing, their property remains contaminated and continues to threaten the environment. Some of these sites have been abandoned completely due to the financial hardship of the owner and no other party wants to take responsibility to clean up the contaminated site.

This problem is exacerbated by Wis. Stats. S. 101.143(4)(cc) 1. c., which disallows interest reimbursement if an applicant does not complete the site investigation of the petroleum discharge within five years after they notified the department of the contamination. This provision was introduced to encourage the clean-up of sites in a timely manner. However, in many cases the claimants notified the department of their contaminated sites years ago and have not proceeded with a clean-up. Because these sites have been inactive for more than five years, the interest is now ineligible, and banks are unwilling to make PECFA loans for fear they will not be paid the interest owed. Claimants typically are unable to afford these interest costs, so clean-up activities stall on these sites.

Instituting a direct payment of claims will enable the Department of Commerce to facilitate environmental remediation for the many claimants that may otherwise be unable to obtain conventional financing.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0313/P1

RCT. kjf

In 11/24

DOA:.....Miner, BB0034 - Allow PECFA payment directly to contractors for owners unable to obtain financing

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Note

Don't Gen

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

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

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

3 101.143 (4) (a) 2. (intro.) The department may not issue an award under this  
4 paragraph before all eligible costs have been incurred and written approval is  
5 received under sub. (3) (c) 4., except as follows:

History: 1987 a. 399; 1989 a. 31, 254, 255; 1991 a. 39, 82, 269; 1993 a. 16, 201, 416, 491; 1995 a. 27 ss. 3665 to 3683m, 9116 (5); 1995 a. 227, 247, 378, 417; 1997 a. 27, 35, 237, 252, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

6 SECTION 2. 101.143 (4s) of the statutes is created to read:

7 101.143 (4s) DIRECT PAYMENT OF AWARDS. (a) *Application*. Subject to sub. (3)  
8 (ae), (ah), (am), and (ap), an owner or operator or a person owning a home oil tank



1 system may submit an application to the department for an award to be paid by the  
 2 department directly to service providers with whom the department contracts to  
 3 conduct an investigation to determine the extent of environmental damage caused  
 4 by a petroleum products discharge from a petroleum product storage system or home  
 5 oil tank system, prepare a remedial action plan that identifies specific remedial  
 6 action activities proposed to be conducted, and conduct remedial action activities at  
 7 the site of the discharge from the petroleum product storage system or home oil tank  
 8 system as necessary to restore the environment to the extent practicable and  
 9 minimize the harmful effects from the discharge as required under s. 292.11 if all of  
 10 the following apply:

\*\*\*\*NOTE: Are the references to sub. (3) (ae), (ah), (am), and (ap) appropriate?

11 1. The owner or operator or the person is unable to pay for the investigation,  
 12 planning, and remedial action activities.

13 2. The owner or operator or the person is unable to obtain financing for the  
 14 investigation, planning, and remedial action activities.

15 3. The owner or operator or the person is able to document that the source of  
 16 a discharge is from a petroleum product storage system or home oil tank system.

17 4. The petroleum product storage system or home oil tank system is registered  
 18 with the department under s. 101.09.

19 5. The owner or operator or the person reports the discharge in a timely manner  
 20 to the division of emergency management in the department of military affairs or to  
 21 the department of natural resources, according to the requirements under s. 292.11.

\*\*\*\*NOTE: Subdivisions 3. to 5. are based on s. 101.143 (3) (a) 1. to 4. Are they  
 wanted? Should there be any other conditions?

22 (b) *Approval of application.* Subject to par. (e), if the department determines  
 23 that a claimant is eligible under this subsection, the department shall approve the

*an owner or operator or person owning a home oil tank system*

1 application; contract with service providers to conduct the investigation, prepare the  
2 remedial action plan, and conduct remedial action activities; and pay the award to  
3 the service providers for eligible costs incurred.

4 (c) *Eligible costs.* Except as provided in par. (d), eligible costs for an award  
5 under par. (a) include actual costs or, if the department establishes a usual and  
6 customary cost under sub. (3) (cm) for an item, usual and customary costs for the  
7 items specified in sub. (3) (b) 1. to 14.

X \*\*\*NOTE: Please review s. 101.143 (3) (b) to determine whether this identifies the  
right costs. Is it appropriate to limit this to usual and customary costs?

8 (d) *Exclusions from eligible costs.* Eligible costs for an award under par. (a) do  
9 not include the costs specified in sub. (3) (c) 1. to 11.

X \*\*\*NOTE: Please review s. 101.143 (3) (c) to determine whether this appropriately  
identifies ineligible costs.

10 (e) *Denial of claims.* The department shall deny a claim under par. (a) if sub.  
11 (4) (g) 1., 2., 3., 4., 5., 6., or 7. applies.

\*\*\*NOTE: Is this consistent with the department's intent?

12 (f) *Amount of awards.*

X \*\*\*NOTE: How should the amount of awards be determined? Should there be  
maximums? If so, what would happen if a cleanup cost more than the maximum? Note  
that currently awards for home heating oil tanks generally are limited to 75% of costs.

(END)

percent  
ONote

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0313/P1dn

RCT: kif

Date

This is a preliminary version of the proposal to authorize the Department of Commerce to directly pay contractors in situations in which the owner of a petroleum storage tank is unable to obtain financing.

The instructions indicated that the department should be able to require the use of the direct pay method. It is not clear to me how that would work. Are there owners who apply for PECFA in the normal way (having incurred some costs), but who are unable to get all of the work financed? Or is the idea that the department becomes aware of problem tanks and would order the owner to apply to use the direct pay method? Or is there some other idea?

The PECFA statute is complex and the program is designed to reimburse owners for costs that the owners incur in cleaning up petroleum discharges. Some provisions in the PECFA statute refer to claims and awards "under this section," these will apply to this new kind of claim unless this draft provides otherwise. Some provisions are much narrower. For example, the introduction of s. 101.143 (b) refers to "awards under par. (a)." These will not apply to the new kind of claim unless the draft provides otherwise.

It is important that the draft be clear about which provisions of the current PECFA statute apply to the new kind of claim and which do not. I do not know which provisions should apply and which should not, so this draft and the existing statute must be reviewed very carefully. I have included some notes in the draft raising specific issues.

Questions that have occurred to me include: Should written approval of a cleanup be required as under s. 101.143 (3) (c) 4.? If so, when must that approval be obtained? Should competitive bidding be required as under s. 101.143 (3) (cp)? The determination of least costly method of remedial action under s. 101.143 (3) (cs)? Annual reviews (see s. 101.143 (2) (i) and (3) (cw)?

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.wisconsin.gov

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

LRB-0313/P1dn  
RCT:kjf:pg

November 22, 2006

This is a preliminary version of the proposal to authorize the Department of Commerce to directly pay contractors in situations in which the owner of a petroleum storage tank is unable to obtain financing.

The instructions indicated that the department should be able to require the use of the direct pay method. It is not clear to me how that would work. Are there owners who apply for PECFA in the normal way (having incurred some costs), but who are unable to get all of the work financed? Or is the idea that if the department becomes aware of a problem tank it would order the owner to apply requesting use of the direct pay method? Or is there some other idea?

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Please contact me with any questions and redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.wisconsin.gov](mailto:becky.tradewell@legis.wisconsin.gov)

**Tradewell, Becky**

---

**From:** Miner, Andrew - DOA  
**Sent:** Wednesday, December 13, 2006 12:20 PM  
**To:** Tradewell, Becky  
**Subject:** FW: Direct Pay  
**Attachments:** Direct pay.doc

Hi Becky,

I'm sending you the Department of Commerce's suggested revisions to the direct pay draft for your examination. They do not want to limit this to claimants unable to obtain conventional financing. They want direct pay to be another option for paying a PECFA claim in addition to reimbursement. Everything else—eligibility, bidding process, cost controls, etc—they want to keep the same. A couple of questions for you regarding their insertion in the draft of 101.143 (4h): Would "direct payment" need to be more specifically defined? When they state "remedial activities," are those properly defined by the list of eligible costs under 101.143 (4) (b)? Commerce has indicated they could put forth administrative rules regarding the implementation of this revision and how a claimant would go about choosing the direct pay option. Do you see anything else that would be needed statutorily in that regard?

In a separate email I will send their abandoned tank removal draft. Thanks,  
 Andrew

---

**From:** Cornelius, Louie - COMM [mailto:lcornelius@commerce.state.wi.us]  
**Sent:** Wednesday, November 29, 2006 4:57 PM  
**To:** Miner, Andrew - DOA  
**Cc:** Mattsson, Berni - COMMERCE; Herrera, Oscar - COMMERCE; Rockweiler, Sam - COMMERCE; Gahan-Hunter, Tarna - COMMERCE; Craney, Terry - COMMERCE; Storey, David K - COMMERCE  
**Subject:** FW: Direct Pay

Andrew,

As you requested, I am submitting our requested revisions to you for a discussion with Kirsten. I understand that you will then transmit them to the drafter. Attached is a draft that reflects our response to the "direct pay" draft. Berni Mattsson's note below reflects our suggested intent. We appreciate the complexity of the PECFA statutes. All we really want to do is to add another payment option, which as Berni notes below "that is subject to the same eligibility rules" as currently exists in paying a claim to an owner or lender.

As Berni suggests, we would welcome a conference call or meeting that includes you, the bill drafter (Rebecca Tradewell), and the Division to discuss any issues or intent. Although I will be happy to assist in facilitating any discussions, please also feel welcome to contact Berni at 266-9403.

---

**From:** Mattsson, Berni - COMM  
**Sent:** Tuesday, November 28, 2006 3:33 PM  
**To:** Cornelius, Louie - COMM  
**Cc:** Herrera, Oscar; Legler, Dennis; Scott, Eric; Varriale, Laura  
**Subject:** FW: Direct Pay

Louie, here are our suggested corrections to the direct pay draft. There are quite a few and we wonder if a conference call between us, you Andrew Miner and the drafter, Rebecca Tradewell might be in order. It might be helpful if we could explain to Andrew and Rebecca that all the proposal would do is add another payment option that is subject to the same eligibility rules as currently paying a claim to and owner or lender.

Berni

---

**From:** Rockweiler, Sam  
**Sent:** Tuesday, November 28, 2006 1:31 PM  
**To:** Mattsson, Berni - COMM  
**Cc:** Herrera, Oscar; Legler, Dennis; Scott, Eric; Varriale, Laura  
**Subject:** Direct Pay

The revised draft is attached, as we discussed. (Although all of SECTION 1 has been added -- and therefore has red font -- only the amended portions have underscores or strike-thrus.)

DOA:.....Miner, BB0034 - Allow PECFA payment directly to consultants and contractors.

**Deleted:** for owners unable to obtain financing

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

SECTION 1. 20.143 (3) (v) of the statutes is amended to read:

20.143 (3) (v) *Petroleum storage environmental remedial action; awards.* Biennially, from the petroleum inspection fund, the amounts in the schedule to pay awards under s. 101.143, costs incurred under s. 101.143 (4h), legal costs incurred under s. 101.143 (7m), amounts to reduce principal of outstanding revenue obligations issued pursuant to s. 101.143 (9m) and, if the department promulgates rules under s. 101.143 (2) (§ em) 1., to purchase, or provide funding to purchase, insurance described in s. 101.143 (2) (§ em) 2.

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

101.143 (4) (a) 2. (intro.) The department may not issue an award under this paragraph before all eligible costs have been incurred and written approval is received under sub. (3) (c) 4., except as follows:

SECTION 3. 101.143 (4h) of the statutes is created to read:

101.143 (4h) DIRECT PAYMENTS TO CONSULTANTS AND CONTRACTORS. (a) The department may contract with and provide direct payments to consultants and contractors for performing necessary investigation and remedial activities in accordance with this section. The costs that may be paid under this subsection are subject to the same rules and restrictions as under sub. (4), except costs specified in sub. (4) (b) 15. are excluded from eligibility.

(b) The department shall pay the costs incurred under par. (a) from the appropriation under s. 20.143 (3) (v).

(END)

- Deleted: 1
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- Deleted: s
- Deleted: OF AWARDS
- Deleted: Application. Subject to sub. (3) (ae), (ah), (am), and (ap), an owner or operator or a person owning a home oil tank system may submit an application to the department for an award to be paid by t
- Deleted: directly to
- Deleted: service providers with whom the department contracts to conduct an
- Deleted: to determine the extent of environmental damage caused by a petroleum products discharge from a petroleum product storage system or home oil tank system, prepare a remedial action plan that identifies specific remedial action activities proposed to be conducted, and conduct remedial action activities at the site of the discharge from the petroleum product storage system or home oil tank system as necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge as required under s. 292.11 if all of the following apply:
- Deleted: \*\*\*\*NOTE: Are the references to sub. (3) (ae), (ah), (am), and (ap) appropriate? ¶
- 1. The owner or operator or the person is unable to pay for the investigation, 12 planning, and remedial action activities. ¶
- 2. The owner or operator or the person is unable to obtain financing for the 14 investigation, planning, and remedial action activities. ¶
- 3. The owner or operator or the person is able to document that the source of a discharge is from a petroleum product storage system or home oil tank system. ¶
- 4. The petroleum product storage system or home oil tank system is registered with the department under s. 101.09. ¶
- 5. The owner or operator or the person reports the discharge in a timely manner to the division of emergency management in the department of military affairs or to the department of natural resources, according to the requirements under s. 292.11. ¶
- \*\*\*\*NOTE: Subdivisions 3. to 5. are based on s. 101.143 (3) (a) 1. to 4. Are they wanted? Should there be any other conditions? ¶
- (b) Approval of application. S... [1]



\*\*\*\*NOTE: Are the references to sub. (3) (ae), (ah), (am), and (ap) appropriate?

1. The owner or operator or the person is unable to pay for the investigation, 12 planning, and remedial action activities.
2. The owner or operator or the person is unable to obtain financing for the 14 investigation, planning, and remedial action activities.
3. The owner or operator or the person is able to document that the source of a discharge is from a petroleum product storage system or home oil tank system.
4. The petroleum product storage system or home oil tank system is registered with the department under s. 101.09.
5. The owner or operator or the person reports the discharge in a timely manner to the division of emergency management in the department of military affairs or to the department of natural resources, according to the requirements under s. 292.11.

\*\*\*\*NOTE: Subdivisions 3. to 5. are based on s. 101.143 (3) (a) 1.

to 4. Are they wanted? Should there be any other conditions?

(b) *Approval of application.* Subject to par. (e), if the department determines that an owner or operator or person owning a home oil tank system is eligible under this subsection, the department shall approve the application; contract with service providers to conduct the investigation, prepare the remedial action plan, and conduct remedial action activities; and pay the award to the service providers for eligible costs incurred.

(c) *Eligible costs.* Except as provided in par. (d), eligible costs for an award under par. (a) include actual costs or, if the department establishes a usual and customary cost under sub. (4) (cm) for an item, usual and customary costs for the items specified in sub. (4) (b) 1. to 14.

\*\*\*\*NOTE: Please review s. 101.143 (4) (b) to determine whether this identifies the

right costs. Is it appropriate to limit this to usual and customary costs?

(d) *Exclusions from eligible costs.* Eligible costs for an award under par. (a) do not include the costs specified in sub. (4) (c) 1. to 11.

\*\*\*\*NOTE: Please review s. 101.143 (4) (c) to determine whether this appropriately identifies ineligible costs.

(e) *Denial of claims.* The department shall deny a claim under par. (a) if sub. (4) (g) 1., 2., 3., 4., 5., 6., or 7. applies.

**Tradewell, Becky**

---

**From:** Tradewell, Becky  
**Sent:** Wednesday, December 13, 2006 4:32 PM  
**To:** Miner, Andrew - DOA  
**Subject:** RE: Direct Pay

Andrew,

I will review the Department of Commerce's comments more carefully, but want to give you my initial impression.

I can understand why Commerce would like to have a very simple draft that allows this new payment method under PECFA. However, if this is going to be part of PECFA, the PECFA statute must be clear about how this new payment method fits in and which parts of the current law apply to claims that are handled this new way. You would need to be able to read all of s. 101.143 and tell which parts of it apply and which don't. I don't think that can be done in the manner that Commerce is proposing. It is not just a matter of eligibility, but also of the applicability of procedures that are set out in current law. It is all well and good to say that Commerce can promulgate rules, but rules cannot say that parts of a statute that by their terms apply to a situation don't really apply, for example, or that parts of a statute that don't by their terms apply to a situation really do.

I can certainly eliminate the language in the draft that limits this to those who cannot obtain conventional financing. That is not a drafting problem, although it may raise policy questions.

I will not be in the office tomorrow, but will have a more complete response soon.

Becky

---

**From:** Miner, Andrew - DOA  
**Sent:** Wednesday, December 13, 2006 12:20 PM  
**To:** Tradewell, Becky  
**Subject:** FW: Direct Pay

Hi Becky,

I'm sending you the Department of Commerce's suggested revisions to the direct pay draft for your examination. They do not want to limit this to claimants unable to obtain conventional financing. They want direct pay to be another option for paying a PECFA claim in addition to reimbursement. Everything else—eligibility, bidding process, cost controls, etc—they want to keep the same. A couple of questions for you regarding their insertion in the draft of 101.143 (4h): Would "direct payment" need to be more specifically defined? When they state "remedial activities," are those properly defined by the list of eligible costs under 101.143 (4) (b)? Commerce has indicated they could put forth administrative rules regarding the implementation of this revision and how a claimant would go about choosing the direct pay option. Do you see anything else that would be needed statutorily in that regard?

In a separate email I will send their abandoned tank removal draft. Thanks,  
Andrew

---

**From:** Cornelius, Louie - COMM [mailto:lcornelius@commerce.state.wi.us]  
**Sent:** Wednesday, November 29, 2006 4:57 PM  
**To:** Miner, Andrew - DOA  
**Cc:** Mattsson, Berni - COMMERCE; Herrera, Oscar - COMMERCE; Rockweiler, Sam - COMMERCE; Gahan-Hunter, Tarna - COMMERCE; Craney, Terry - COMMERCE; Storey, David K - COMMERCE  
**Subject:** FW: Direct Pay

Andrew,

12/19/2006

As you requested, I am submitting our requested revisions to you for a discussion with Kirsten. I understand that you will then transmit them to the drafter. Attached is a draft that reflects our response to the "direct pay" draft. Berni Mattson's note below reflects our suggested intent. We appreciate the complexity of the PECFA statutes. All we really want to do is to add another payment option, which as Berni notes below "that is subject to the same eligibility rules" as currently exists in paying a claim to an owner or lender.

As Berni suggests, we would welcome a conference call or meeting that includes you, the bill drafter (Rebecca Tradewell), and the Division to discuss any issues or intent. Although I will be happy to assist in facilitating any discussions, please also feel welcome to contact Berni at 266-9403.

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**From:** Mattsson, Berni - COMM  
**Sent:** Tuesday, November 28, 2006 3:33 PM  
**To:** Cornelius, Louie - COMM  
**Cc:** Herrera, Oscar; Legler, Dennis; Scott, Eric; Varriale, Laura  
**Subject:** FW: Direct Pay

Louie, here are our suggested corrections to the direct pay draft. There are quite a few and we wonder if a conference call between us, you Andrew Miner and the drafter, Rebecca Tradewell might be in order. It might be helpful if we could explain to Andrew and Rebecca that all the proposal would do is add another payment option that is subject to the same eligibility rules as currently paying a claim to and owner or lender.

Berni

---

**From:** Rockweiler, Sam  
**Sent:** Tuesday, November 28, 2006 1:31 PM  
**To:** Mattsson, Berni - COMM  
**Cc:** Herrera, Oscar; Legler, Dennis; Scott, Eric; Varriale, Laura  
**Subject:** Direct Pay

The revised draft is attached, as we discussed. (Although all of SECTION 1 has been added -- and therefore has red font -- only the amended portions have underscores or strike-thrus.)

**Tradewell, Becky**

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**To:** Miner, Andrew - DOA

**Subject:** RE: Direct Pay

Andrew,

I am sorry for the delay in getting back to you about this draft. I have been giving it a lot of thought (in between working on other things).

One technical preliminary matter: the Department seems to not want the draft to use the term "service providers." That term is defined in s. 101.143 (1) (gs) as follows "a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service ...". That seems to me to cover the kinds of entities with which they want to be able to contract, so I do not understand why the term should not be used. See, for example, the use of the term in s. 101.143 (2) (em) 1.

As for the main issue, if the Department's intent is to have all of the existing provisions of the PECFA statute apply to cleanups for which direct payment is made, except for the way payment is made, that must be clear from the statute as it would exist after the direct pay provision becomes law. I do not think that would be the case with the language that the Department has proposed. It is not enough that the department knows what is intended by the language. Aside from our policy of drafting as clearly as we can, if the language is not clear to others, the Department may end up being challenged on its application of the statute. For example, the owner of a tank might challenge the application of some requirement in another part of s. 101.143 to the owner because the direct payment method is being used.

There are certain terms, including "claim," "award," and "applicant," that are used in the existing statute and that must apply to direct pay situations in order for the provisions that use those terms to clearly apply in direct pay situations. If the owner or operator will be required to apply, if applying will be considered to be making a claim, and if the payment will be considered an award, I can use those terms in the new subsection created in the draft and that should help solve the problem.

The PECFA statute also frequently uses the terms "reimburse" and "reimbursement." See, for example, s. 101.143 (2) (em) 1., (3) (cs) 1. and 2., (cw) 1. and 2., (4) (a) 1., (cm), and (e) 1. b. and c., (9) (b), and (11) (e). Would payment under the direct pay method always be made after the service provider provides the service? If not, I do not think that one can say that the payment is reimbursement. Even if so, it seems as though the department is providing payment, rather than providing reimbursement (which is defined as repayment). Some of the uses of "reimbursement" in s. 101.143 could easily be changed to "payment." That will need to be done if the Department intends in any cases to pay contractors in advance of services being rendered. If the Department intends to always pay after services are rendered, I might be able to use "reimburse" or "reimbursement" in the new subsection in order to clarify that provisions in existing s. 101.143 that refer to reimbursement apply to situations using the direct pay method (except that the money goes to the service provider rather than to the owner), but that is not an ideal resolution of the problem. I ran the issue past a drafting colleague and her opinion was that it would not be appropriate to use "reimbursement" to describe direct payment to a contractor.

I will gladly participate in a meeting or conference call to discuss the Department's intent for this draft. But I wanted to get this out first, in order to explain my concerns and allow them to be considered before a meeting or call.

Becky

---

**From:** Miner, Andrew - DOA

**Sent:** Wednesday, December 13, 2006 12:20 PM

**To:** Tradewell, Becky

**Subject:** FW: Direct Pay

12/27/2006

Hi Becky,

I'm sending you the Department of Commerce's suggested revisions to the direct pay draft for your examination. They do not want to limit this to claimants unable to obtain conventional financing. They want direct pay to be another option for paying a PECFA claim in addition to reimbursement. Everything else—eligibility, bidding process, cost controls, etc—they want to keep the same. A couple of questions for you regarding their insertion in the draft of 101.143 (4h): Would "direct payment" need to be more specifically defined? When they state "remedial activities," are those properly defined by the list of eligible costs under 101.143 (4) (b)? Commerce has indicated they could put forth administrative rules regarding the implementation of this revision and how a claimant would go about choosing the direct pay option. Do you see anything else that would be needed statutorily in that regard?

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**Sent:** Wednesday, November 29, 2006 4:57 PM

**To:** Miner, Andrew - DOA

**Cc:** Mattsson, Berni - COMMERCE; Herrera, Oscar - COMMERCE; Rockweiler, Sam - COMMERCE; Gahan-Hunter, Tarna - COMMERCE; Craney, Terry - COMMERCE; Storey, David K - COMMERCE

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As Berni suggests, we would welcome a conference call or meeting that includes you, the bill drafter (Rebecca Tradewell), and the Division to discuss any issues or intent. Although I will be happy to assist in facilitating any discussions, please also feel welcome to contact Berni at 266-9403.

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**Sent:** Tuesday, November 28, 2006 3:33 PM

**To:** Cornelius, Louie - COMM

**Cc:** Herrera, Oscar; Legler, Dennis; Scott, Eric; Varriale, Laura

**Subject:** FW: Direct Pay

Louie, here are our suggested corrections to the direct pay draft. There are quite a few and we wonder if a conference call between us, you Andrew Miner and the drafter, Rebecca Tradewell might be in order. It might be helpful if we could explain to Andrew and Rebecca that all the proposal would do is add another payment option that is subject to the same eligibility rules as currently paying a claim to and owner or lender.

Berni

**From:** Rockweiler, Sam

**Sent:** Tuesday, November 28, 2006 1:31 PM

**To:** Mattsson, Berni - COMM

**Cc:** Herrera, Oscar; Legler, Dennis; Scott, Eric; Varriale, Laura

**Subject:** Direct Pay

The revised draft is attached, as we discussed. (Although all of SECTION 1 has been added -- and therefore has red font -- only the amended portions have underscores or strike-thrus.)

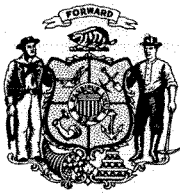
12/27/2006

1/24 Per Andrew-

They think that Commerce may be uneasy about using the term "service provider" because it is desired to include lenders.

DOs want this to be just an alternative payment method with all of the same requirements as currently under PECFA.

They believe that the terms "applicant" and "award" can be applied. They are uneasy about "claims." They agree that this would not really be "reimbursement." He did indicate that Commerce will only pay after services are rendered.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0313/P1

RCT:kj: [initials]

YMY

Today

DOA:.....Miner, BB0034 - Allow PECFA payment directly to contractors for owners unable to obtain financing

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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

*Analysis by the Legislative Reference Bureau*

Analysis insert

This is a preliminary draft. An analysis will be provided in a later version.

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

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

3 101.143 (4) (a) 2. (intro.) The department may not issue an award under this  
4 paragraph before all eligible costs have been incurred and written approval is  
5 received under sub. (3) (c) 4., except as follows:

Insert 1-5

6 SECTION 2. 101.143 (4s) of the statutes is created to read:

7 101.143 (4s) DIRECT PAYMENT OF AWARDS. (a) *Application*. Subject to sub. (3)

8 (ae), (ah), (am), and (ap), an owner or operator or a person owning a home oil tank

Insert 1-8



1 system <sup>to</sup> ~~may~~ <sup>↓</sup> submit an application <sup>of claim</sup> to the department for an award to be paid by the  
 2 department directly to ~~service providers~~ <sup>consultants and contractors</sup> with whom the department contracts to  
 3 conduct an investigation to determine the extent of environmental damage caused  
 4 by a petroleum products discharge from a petroleum product storage system or home  
 5 oil tank system, prepare a remedial action plan that identifies specific remedial  
 6 action activities proposed to be conducted, and conduct remedial action activities at  
 7 the site of the discharge from the petroleum product storage system or home oil tank  
 8 system <sup>\*</sup> as necessary to restore the environment to the extent practicable and  
 9 minimize the harmful effects from the discharge as required under s. 292.11 if all of  
 10 the following apply:

\*\*\*\*NOTE: Are the references to sub. (3) (ae), (ah), (am), and (ap) appropriate?

11 1. The owner or operator or the person is unable to pay for the investigation,  
 12 planning, and remedial action activities.

13 2. The owner or operator or the person is unable to obtain financing for the  
 14 investigation, planning, and remedial action activities.

15 3. The owner or operator or the person is able to document that the source of  
 16 a discharge is from a petroleum product storage system or home oil tank system.

17 4. The petroleum product storage system or home oil tank system is registered  
 18 with the department under s. 101.09.

19 5. The owner or operator or the person reports the discharge in a timely manner  
 20 to the division of emergency management in the department of military affairs or to  
 21 the department of natural resources, according to the requirements under s. 292.11.

\*\*\*\*NOTE: Subdivisions 3. to 5. are based on s. 101.143 (3) (a) 1. to 4. Are they  
 wanted? Should there be any other conditions?

22 (b) *Approval of application.* Subject to par. (e), if the department determines  
 23 that an owner or operator or person owning a home oil tank system is eligible under

*who submit a claim under par. (a)*

1 this subsection, the department shall approve the application; contract with service  
 2 providers to conduct the investigation, prepare the remedial action plan, and conduct  
 3 remedial action activities; and pay the award to the service providers for eligible  
 4 costs incurred in amounts determined under sub. (4), subject to par. (c).

5 ~~(c) Eligible costs.~~ Except as provided in par. (d), eligible costs for an award  
 6 under par. (a) include actual costs or, if the department establishes a usual and  
 7 customary cost under sub. (4) (cm) for an item, usual and customary costs for the  
 8 items specified in sub. (4) (b) 1. to 14.

\*\*\*NOTE: Please review s. 101.143 (4) (b) to determine whether this identifies the right costs. Is it appropriate to limit this to usual and customary costs?

9 (d) Exclusions from eligible costs. Eligible costs for an award under par. (a) do  
 10 not include the costs specified in sub. (4) (c) 1 to 11.

\*\*\*NOTE: Please review s. 101.143 (4) (c) to determine whether this appropriately identifies ineligible costs.

11 (e) Denial of claims. The department shall deny a claim under par. (a) if sub.  
 12 (4) (g) 1., 2., 3., 4., 5., 6., or 7. applies.

\*\*\*NOTE: Is this consistent with the department's intent?

13 (f) Amount of awards.

\*\*\*NOTE: How should the amount of awards be determined? Should there be maximums? If so, what would happen if a cleanup cost more than the maximum? Note that currently awards for home heating oil tanks generally are limited to 75 percent of costs.

14  
 Insert  
 3-13

(END)

**Analysis insert**

**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 some of the costs they incur in cleaning up discharges from those tanks. This program is commonly known as PECFA.

This bill modifies PECFA so that the Department of Commerce may choose to contract with consultants and contractors to perform the cleanup of a discharge from a petroleum product storage tank and to pay the consultants and contractors directly.

**Insert 1-5**

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

101.143 (1) (gs) "Service provider" means a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for which a claim for reimbursement payment has been or will be filed under this section, or a subcontractor of such a person.

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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

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

101.143 (2) (em) 1. The department may promulgate rules that specify a fee that must be paid by a service provider as a condition of submitting a bid to conduct an activity under sub. (3) (c) for which a claim for reimbursement payment under this section will be submitted. Any fees collected under the rules shall be deposited into the petroleum inspection fund.

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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

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

101.143 (3) (c) *Investigations, remedial action plans and remedial action activities.* (intro.) Before submitting an application under par. (f), except as provided under par. (g) and sub. (4s), an owner or operator or the person shall do all of the following:

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**SECTION 4.** 101.143 (3) (cs) 1. of the statutes is amended to read:

101.143 (3) (cs) 1. The department of commerce shall review the remedial action plan for a site that is classified as low or medium risk under s. 101.144 and shall determine the least costly method of complying with par. (c) 3. and with enforcement standards. The department shall notify the owner or operator of its determination of the least costly method and shall notify the owner or operator that ~~reimbursement reimbursement~~ <sup>payment</sup> for remedial action under this section is limited to the amount necessary to implement that method.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

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

101.143 (3) (cs) 2. The department of natural resources and the department of commerce shall review the remedial action plan for a site that is classified as high risk under s. 101.144 and shall jointly determine the least costly method of complying with par. (c) 3. and with enforcement standards. The departments shall notify the owner or operator of their determination of the least costly method and shall notify the owner or operator that ~~reimbursement~~ <sup>payment</sup> for remedial action under this section is limited to the amount necessary to implement that method.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**SECTION 6.** 101.143 (4) (a) 1. of the statutes is amended to read:

101.143 (4) (a) 1. If the department finds that the claimant meets all of the requirements of this section and any rules promulgated under this section, the

department shall issue an award to reimburse a claimant pay for eligible costs incurred because of a petroleum products discharge from a petroleum product storage system or home oil tank system.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**SECTION 7.** 101.143 (4) (a) 2. c. of the statutes is created to read:

X 101.143 (4) (a) 2. c. The department may issue an award before all eligible costs have been incurred as provided under sub. (4s).

**SECTION 8.** 101.143 (4) (cm) of the statutes is amended to read:

101.143 (4) (cm) *Usual and customary costs.* The department shall establish a schedule of usual and customary costs for items under par. (b) that are commonly associated with claims under this section. The department shall use that schedule to determine the amount of eligible costs for an occurrence for which a competitive bidding process is not used, except in circumstances under which higher costs must be incurred to comply with sub. (3) (c) 3. and with enforcement standards. For an occurrence for which a competitive bidding process is used, the department may not use the schedule. In the schedule, the department shall specify the maximum number of reimbursable compensable hours for particular tasks and the maximum reimbursable compensable hourly rates for those tasks. The department shall use methods of data collection and analysis that enable the schedule to be revised to reflect changes in actual costs.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**SECTION 9.** 101.143 (4) (e) 1. b. of the statutes is amended to read:

101.143 (4) (e) 1. b. Eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of a petroleum product storage system that is not

an underground petroleum product storage system if those costs are not reimbursable payable under par. (dm) 1.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75

**SECTION 10.** 101.143 (4) (e) 1. c. of the statutes is amended to read:

101.143 (4) (e) 1. c. Eligible costs, under par. (b), incurred on or after December 22, 2001, by the owner or operator of an underground petroleum product storage tank system if those costs are not reimbursable payable under par. (d) 1.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**Insert 1-8**

*Not*

Notwithstanding the requirement in sub. (3) (a) (intro.) that a claim be submitted to reimburse an owner or operator or person owning a home oil tank system for costs that the owner or operator or person incurs and notwithstanding the documentation requirements under sub. (3) (f), the department may authorize

**Insert 3-4**

*Not*

. If the department approves a claim under this paragraph, the requirements in sub. (3) (a) 6. to 9. apply to the consultants and contractors, rather than the claimant

**Insert 3-13**

**SECTION 11.** 101.143 (9) (b) of the statutes is amended to read:

101.143 (9) (b) The department may inspect any document in the possession of an owner or operator, person owning a home oil tank system or service provider or any other person if the document is relevant to a claim for reimbursement payment under this section.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**SECTION 12.** 101.143 (10) (b) of the statutes is amended to read:

101.143 (10) (b) Any owner or operator, person owning a home oil tank system or service provider who intentionally destroys a document that is relevant to a claim for ~~reimbursement~~ payment under this section is guilty of a Class G felony.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.

**SECTION 13.** 101.143 (11) (e) of the statutes is amended to read:

101.143 (11) (e) The charges by service providers other than engineering consultants for services for which ~~reimbursement~~ payment is provided under this section, including excavating, hauling, laboratory testing and landfill disposal.

**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; 1999 a. 9, 185; 2001 a. 16, 109; 2003 a. 33; 2005 a. 75.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0313/1  
RCT:kjf:sh

DOA:.....Miner, BB0034 - Allow PECFA payment directly to contractors for owners unable to obtain financing

FOR 2007-09 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 Commerce administers a program to reimburse owners of certain petroleum product storage tanks for some of the costs they incur in cleaning up discharges from those tanks. This program is commonly known as PECFA.

This bill modifies PECFA so that the Department of Commerce may choose to contract with consultants and contractors to perform the cleanup of a discharge from a petroleum product storage tank and to pay the consultants and contractors directly.

---

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4 monitoring well installer, soil boring contractor, other contractor, lender or any other



1 person who provides a product or service for which a claim for reimbursement  
2 payment has been or will be filed under this section, or a subcontractor of such a  
3 person.

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

5 101.143 (2) (em) 1. The department may promulgate rules that specify a fee  
6 that must be paid by a service provider as a condition of submitting a bid to conduct  
7 an activity under sub. (3) (c) for which a claim for reimbursement payment under this  
8 section will be submitted. Any fees collected under the rules shall be deposited into  
9 the petroleum inspection fund.

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11 101.143 (3) (c) *Investigations, remedial action plans and remedial action*  
12 *activities.* (intro.) Before submitting an application under par. (f), except as provided  
13 under par. (g) and sub. (4s), an owner or operator or the person shall do all of the  
14 following:

15 **SECTION 4.** 101.143 (3) (cs) 1. of the statutes is amended to read:

16 101.143 (3) (cs) 1. The department of commerce shall review the remedial  
17 action plan for a site that is classified as low or medium risk under s. 101.144 and  
18 shall determine the least costly method of complying with par. (c) 3. and with  
19 enforcement standards. The department shall notify the owner or operator of its  
20 determination of the least costly method and shall notify the owner or operator that  
21 reimbursement payment for remedial action under this section is limited to the  
22 amount necessary to implement that method.

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

24 101.143 (3) (cs) 2. The department of natural resources and the department of  
25 commerce shall review the remedial action plan for a site that is classified as high

1 risk under s. 101.144 and shall jointly determine the least costly method of  
2 complying with par. (c) 3. and with enforcement standards. The departments shall  
3 notify the owner or operator of their determination of the least costly method and  
4 shall notify the owner or operator that reimbursement payment for remedial action  
5 under this section is limited to the amount necessary to implement that method.

6 **SECTION 6.** 101.143 (4) (a) 1. of the statutes is amended to read:

7 101.143 (4) (a) 1. If the department finds that the claimant meets all of the  
8 requirements of this section and any rules promulgated under this section, the  
9 department shall issue an award to reimburse a claimant pay for eligible costs  
10 incurred because of a petroleum products discharge from a petroleum product  
11 storage system or home oil tank system.

12 **SECTION 7.** 101.143 (4) (a) 2. (intro.) of the statutes is amended to read:

13 101.143 (4) (a) 2. (intro.) The department may not issue an award under this  
14 paragraph before all eligible costs have been incurred and written approval is  
15 received under sub. (3) (c) 4., except as follows:

16 **SECTION 8.** 101.143 (4) (a) 2. c. of the statutes is created to read:

17 101.143 (4) (a) 2. c. The department may issue an award before all eligible costs  
18 have been incurred as provided under sub. (4s).

19 **SECTION 9.** 101.143 (4) (cm) of the statutes is amended to read:

20 101.143 (4) (cm) *Usual and customary costs.* The department shall establish  
21 a schedule of usual and customary costs for items under par. (b) that are commonly  
22 associated with claims under this section. The department shall use that schedule  
23 to determine the amount of eligible costs for an occurrence for which a competitive  
24 bidding process is not used, except in circumstances under which higher costs must  
25 be incurred to comply with sub. (3) (c) 3. and with enforcement standards. For an

1 occurrence for which a competitive bidding process is used, the department may not  
2 use the schedule. In the schedule, the department shall specify the maximum  
3 number of reimbursable compensable hours for particular tasks and the maximum  
4 reimbursable compensable hourly rates for those tasks. The department shall use  
5 methods of data collection and analysis that enable the schedule to be revised to  
6 reflect changes in actual costs.

7 **SECTION 10.** 101.143 (4) (e) 1. b. of the statutes is amended to read:

8 101.143 (4) (e) 1. b. Eligible costs, under par. (b), incurred on or after December  
9 22, 2001, by the owner or operator of a petroleum product storage system that is not  
10 an underground petroleum product storage system if those costs are not  
11 reimbursable payable under par. (dm) 1.

12 **SECTION 11.** 101.143 (4) (e) 1. c. of the statutes is amended to read:

13 101.143 (4) (e) 1. c. Eligible costs, under par. (b), incurred on or after December  
14 22, 2001, by the owner or operator of an underground petroleum product storage tank  
15 system if those costs are not reimbursable payable under par. (d) 1.

16 **SECTION 12.** 101.143 (4s) of the statutes is created to read:

17 101.143 (4s) DIRECT PAYMENT OF AWARDS. (a) *Application.* Notwithstanding the  
18 requirement in sub. (3) (a) (intro.) that a claim be submitted to reimburse an owner  
19 or operator or person owning a home oil tank system for costs that the owner or  
20 operator or person incurs and notwithstanding the documentation requirements  
21 under sub. (3) (f), the department may authorize an owner or operator or a person  
22 owning a home oil tank system to submit a claim to the department for an award to  
23 be paid by the department directly to consultants and contractors with whom the  
24 department contracts to conduct an investigation to determine the extent of  
25 environmental damage caused by a petroleum products discharge from a petroleum

1 product storage system or home oil tank system, prepare a remedial action plan that  
2 identifies specific remedial action activities proposed to be conducted, and conduct  
3 remedial action activities at the site of the discharge from the petroleum product  
4 storage system or home oil tank system.

5 (b) *Approval of application.* If the department determines that an owner or  
6 operator or person owning a home oil tank system who submits a claim under par.  
7 (a) is eligible under this section, the department may approve the claim; contract  
8 with consultants and contractors to conduct the investigation, prepare the remedial  
9 action plan, and conduct remedial action activities; and pay the award to the service  
10 providers in amounts determined under sub. (4), subject to par. (c). If the department  
11 approves a claim under this paragraph, the requirements in sub. (3) (a) 6. to 9. apply  
12 to the consultants and contractors, rather than the claimant.

13 (c) *Exclusion from eligible costs.* Eligible costs for an award under par. (b) do  
14 not include the costs specified in sub. (4) (b) 15.

15 **SECTION 13.** 101.143 (9) (b) of the statutes is amended to read:

16 101.143 (9) (b) The department may inspect any document in the possession  
17 of an owner or operator, person owning a home oil tank system or service provider  
18 or any other person if the document is relevant to a claim for reimbursement  
19 payment under this section.

20 **SECTION 14.** 101.143 (10) (b) of the statutes is amended to read:

21 101.143 (10) (b) Any owner or operator, person owning a home oil tank system  
22 or service provider who intentionally destroys a document that is relevant to a claim  
23 for reimbursement payment under this section is guilty of a Class G felony.

24 **SECTION 15.** 101.143 (11) (e) of the statutes is amended to read:

