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Details: Legislative Audit Bureau Report 07-15: An Audit: Petroleum Inspection Fee Revenue Obligations Program

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

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* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)



STATE OF WISCONSIN

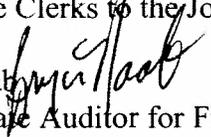
Legislative Audit Bureau

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Janice Mueller
State Auditor

DATE: November 8, 2007

TO: Lewis Rosser and Pamela Matthews
Committee Clerks to the Joint Legislative Audit Committee

FROM: Bryan Naab 
Deputy State Auditor for Financial Audit

SUBJECT: Report 07-15: An Audit of the Petroleum Inspection Fee Revenue
Obligations Program

Enclosed is a report on our audit of the financial statement and notes of the Petroleum Inspection Fee Revenue Obligations Program for fiscal years 2006-07 and 2005-06. The program provides financing for payment of claims under the Wisconsin Petroleum Environmental Cleanup Fund Award (PECFA) program. This financial audit was performed at the request of the Department of Commerce, which audits and pays PECFA claims, along with the Capital Finance Office in the Department of Administration, which issues the program's revenue bonds and extendible municipal commercial paper. In addition, the Department of Revenue is responsible for collecting petroleum inspection fees, which are initially deposited to the Transportation Fund and subsequently transferred to the program's trustee.

The audit was requested to meet certain requirements included in the State's bond covenants. The financial statement is somewhat unique because it is prepared on the cash basis, rather than in accordance with generally accepted accounting principles. The cash basis is used in order to more clearly show the financial resources available to pay debt service. We were able to provide an unqualified auditor's report on the program's Statement of Changes in Program Assets.

Since the inception of the program in January 2000, the State has issued \$387.6 million in revenue obligations to pay PECFA claims and to address a backlog of approved but unpaid PECFA claims. Some of the debt has already been repaid and \$272.6 million in revenue obligations were outstanding as of June 30, 2007. The obligations are not general obligation debt of the State. Instead, the revenue obligations are to be repaid from a fee charged suppliers for petroleum products sold in Wisconsin and collected by the Department of Revenue. That fee was \$0.03 per gallon fee since before the establishment of the revenue obligations program. However, effective April 1, 2006, that fee was reduced to \$0.02 per gallon, as provided for in 2005 Wisconsin Act 25 and 2005 Wisconsin Act 85.

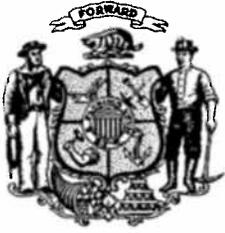
Although not discussed in the report, we note that the 2007 Senate Bill 40, the Biennial Budget Bill, included a provision to sunset the PECFA program through a phase out that would begin

in January 2009. However, this provision was vetoed by the Governor. Even had the provision been enacted, revenue obligations would continue to be outstanding and the \$0.02 per gallon fee would likely need to be continued to meet future debt service requirements. The year the debt will be fully repaid is dependent on the actual amount of petroleum inspection fees collected and whether these fees are used for purposes in addition to paying debt service. For example, 2007 Wisconsin Act 20, the Biennial Budget Act, provides for the transfer of \$20.3 million during FY 2007-08 from the Petroleum Inspection Fund, which is funded primarily from excess petroleum inspection fees, to the Transportation Fund.

The report will be released on Friday, November 9, at 9:00 a.m. If you have any questions, please contact us.

BN/bm

Enclosures

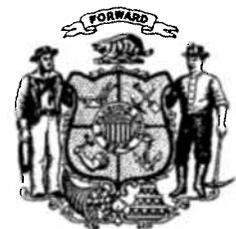


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**Report 07-15
November 2007**

An Audit

Petroleum Inspection Fee Revenue Obligations Program

2007-2008 Joint Legislative Audit Committee Members

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Jim Sullivan, Co-chairperson
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Mark Miller
Alan Lasee
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Assembly Members:

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The Bureau is a nonpartisan legislative service agency responsible for conducting financial and program evaluation audits of state agencies. The Bureau's purpose is to provide assurance to the Legislature that financial transactions and management decisions are made effectively, efficiently, and in compliance with state law and that state agencies carry out the policies of the Legislature and the Governor. Audit Bureau reports typically contain reviews of financial transactions, analyses of agency performance or public policy issues, conclusions regarding the causes of problems found, and recommendations for improvement.

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State Auditor – Janice Mueller

Audit Prepared by

Bryan Naab, *Deputy State Auditor and Contact Person*

Erin Scharlau

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STATE OF WISCONSIN

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Janice Mueller
State Auditor

November 9, 2007

Senator Jim Sullivan and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Sullivan and Representative Jeskewitz:

At the request of the departments of Commerce and Administration, and in accordance with s. 13.94(1s), Wis. Stats., we have completed a financial audit of the State of Wisconsin Petroleum Inspection Fee Revenue Obligations Program for the fiscal years ending June 30, 2007, and June 30, 2006. We express our unqualified audit opinion on the Statement of Changes in Program Assets and related notes.

Under the program, the State has issued revenue obligations, such as bonds and commercial paper, to provide financing for payment of claims under the Wisconsin Petroleum Environmental Cleanup Fund Award (PECFA) program. These revenue obligations are not general obligation debt of the State. Instead, they are to be repaid primarily from petroleum inspection fees established under s. 168.12(1), Wis. Stats., and collected by the Department of Revenue.

During fiscal year 2006-07, the State collected \$75.4 million in petroleum inspection fees and made \$32.5 million in scheduled debt service payments, including \$19.8 million in principal repayment and \$12.7 million in interest. In addition, fees collected during the previous fiscal year were used for the early redemption of \$37.9 million in outstanding petroleum inspection fee revenue bonds. As of June 30, 2007, a total of \$272.6 million in revenue obligations remained outstanding, to be repaid from future petroleum inspection fees.

We appreciate the courtesy and cooperation extended to us during the audit by staff of the departments of Commerce, Administration, and Revenue.

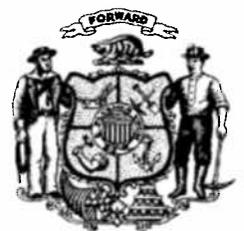
Respectfully submitted,

Janice Mueller
State Auditor

JM/BN/ss



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN

July 25, 2007

Sen. Jim Sullivan, Co-Chair
Joint Committee on Audit
Room 19 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

Rep. Suzanne Jeskewitz, Co-Chair
Joint Committee on Audit
Room 314 North, State Capitol
PO Box 8952
Madison, WI 53708-8952

Dear Senator Sullivan and Representative Jeskewitz:

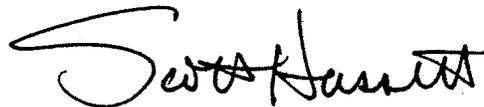
The Department of Natural Resources and the Department of Commerce are pleased to transmit to you the Semi-Annual Status Report on Petroleum Storage Remedial Action; Financial Assistance and Petroleum Storage Tank Discharges (PECFA Program) for the period of January 1st through June 30th, 2007.

As directed in Wisc. Stats. 101.143 (11), the report summarizes the activities completed for the PECFA Program during the second half of FY2006-07. The report provides the results of implementation of the statutory requirements, including a summary of the pertinent demographic information such as the number of sites within the Program, a breakdown of PECFA costs for claims submitted, a description of cost controls implemented within the Program, and progress made in evaluating fraud and other complaints.

If you or your staff have any questions regarding this report, please contact us so that we can provide any needed clarifications. You can reach Mark Giesfeldt, DNR Bureau Director, Remediation and Redevelopment, at 608-267-7562, and Oscar Herrera, Commerce PECFA Bureau Director, at 608-266-7605.

Sincerely,


for Mary P. Burke, Secretary
Department of Commerce


P. Scott Hassett, Secretary
Department of Natural Resources

Cc: Michael L. Morgan, Secretary, Department of Administration
Janice Mueller, State Auditor, Legislative Audit Bureau
Kendra Bonderud, Legislative Fiscal Bureau

**SEMI-ANNUAL REPORT
ON
PETROLEUM STORAGE REMEDIAL ACTION;
FINANCIAL ASSISTANCE**

January 1 through June 30, 2007

Wisconsin Department of Commerce
Division of Environmental & Regulatory Services
Petroleum Environmental Cleanup Fund Award (PECFA) Bureau

Wisconsin Department of Natural Resources
Division of Air & Waste Management
Remediation & Redevelopment Bureau

REPORT ON PETROLEUM STORAGE REMEDIAL ACTION; FINANCIAL ASSISTANCE

January 1 through June 30, 2007

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**SEMI-ANNUAL REPORT
PETROLEUM STORAGE REMEDIAL ACTION;
FINANCIAL ASSISTANCE
(January 1 through June 30, 2007)**

The Departments of Commerce and Natural Resources submit this semi-annual report on the status of activities related to petroleum storage remedial action, financial assistance and petroleum storage tank discharges through the Petroleum Environmental Cleanup Fund (hereinafter referred to as the PECFA Program or Program). As directed in Wisc. Stats. 101.143(11), this report summarizes activities completed within the Program during the six-month reporting period of January through June 2007. Both agencies respectfully submit this report to the Governor, the Joint Legislative Audit Committee, and the Joint Committee on Finance, and to other appropriate committees of the legislature as directed by the Statute.

Status of Remediation of Petroleum Sites

To reduce cost and paper, the DNR and Commerce no longer provide the date of receipt of the Site Investigation Report (SIR), the environmental risk factor(s) identified at the contaminated site and notices received for each petroleum product and home oil tank storage tank system discharge as attachments to this *Semi-annual Report to the Legislature*. However, the DNR and Commerce will have available and will supply upon request, either an electronic or a hard copy of this information.

Risk Classification of Sites

"High-risk site" is defined in the statute to mean the site of a discharge of a petroleum product from a petroleum product storage tank if at least one of the descriptions below applies. High-risk sites are under the jurisdiction of the Department of Natural Resources.

- (a) Discharge has resulted in a concentration of contaminants in a well used to provide water for human consumption that exceeds a preventative action limit.
- (b) Petroleum product present with a thickness of 0.01 feet or more in repeated tests.
- (c) An enforcement standard is exceeded in groundwater within 1000 feet of a well operated by a public utility, or within 100 feet of any other well used for human consumption.
- (d) An enforcement standard is exceeded in bedrock.

"Medium-risk site" is defined in the statute to mean the site of a discharge of a petroleum product from a petroleum storage tank where contaminants have extended beyond the boundary of the source property, or there is confirmed contamination in the groundwater but the site does not meet the high-risk definition. These sites are under the jurisdiction of the Department of Commerce.

"Low-risk site" is defined in the statute to mean the site of a discharge of a petroleum product from a petroleum storage tank where contaminants are contained only within the soil on the source property and there is no confirmed contamination in the groundwater. Low-risk sites are under the jurisdiction of the Department of Commerce.

The following table summarizes the number of active or closed sites classified as high, medium- and low-risk as of June 30, 2007:

The table below displays the site distribution by department, risk classification and status.

Petroleum Tank Sites By Risk Classification as of 06/30/07

	High	Medium	Low	Unknown	Total
Sites In Both Commerce and DNR Databases					
DNR Open Sites	1,039	17	7	353	1,416
DNR Closed Sites	4,239	1,366	1,605	675	7,885
Commerce Open Sites	0	404	147	0	551
Commerce Closed Sites	0	4,304	2,518	0	6,822
Subtotal	5,278	6,091	4,277	1,028	16,674
Sites Only in DNR LUST Database					
DNR Open Sites	208	11	7	435	661
DNR Closed Sites	661	574	2,156	529	3,920
Subtotal	869	585	2163	964	4,581
Total Sites	6,147	6,676	6,440	1,992	21,255

Petroleum Site Closures under the Program

	Closures			Total Closures		
	January 2007 through June 2007			1987 through June 2007		
	COMM	DNR	Total	COMM	DNR	Total
Closures Approved	130	121	251	6,822	11,805	18,627

Open Petroleum Tank Sites, By Risk Classification 06/30/07

	All Open Sites	% of Open Sites	% of Open, Classified Sites	Number of Classified Sites, Excluding sites with Non-Petroleum Related Hazardous Substances	% of Classified Sites, Excluding sites with Non-Petroleum Related Hazardous Substances
High-Risk	1,247	47.5%	67.8%	1010	64.2%
Medium-& Low-Risk	593	22.6%	32.2%	563	35.8%
Unknown	788	30.0%	N/A	N/A	N/A
Total	2,628			1,573	

Charges for Engineering Consulting Services

During the reporting period, approximately \$6,076,209 of the PECFA expenditures submitted to the PECFA Program were costs associated with engineering consulting services for eligible PECFA site activities. The Program continues to demonstrate a significant reduction in spending for engineering consulting services, given recent cost controls.

The total charges for consulting services for petroleum sites claimed during the twenty-year period from 1987 through June 2007 are \$566,851,075.

Total Charges by Providers, Including Engineering Consulting

The charges by service providers, including consultants, for services for which reimbursement is provided under the PECFA Program (including excavating, hauling, laboratory testing, and landfill disposal) are provided below.

	Program Costs 01/01/07 - 06/30/07	Total Program Costs 1987 - June 2007
Backfill Costs*		\$30,073,481
Consulting Costs	\$6,076,209	\$566,851,075
Excavation Costs*		\$40,226,656
Laboratory Analysis*	\$100	\$80,568,181
Interest	\$1,844,898	\$272,425,862
Non-Eligible Amounts	\$1,733,760	\$93,780,344
Other Costs	\$20,495	\$16,852,987
Remedial Equipment*		\$132,301,670
Shipping/Trucking*		\$36,445,433
Soil Boring/Well Drilling*		\$73,640,805
Thermal/ Landfill/ Disposal*		\$143,968,705
Commodity	\$3,181,764	\$7,741,392
U&C - Eligible**	\$636,130	\$809,109
U&C- Non Eligible***	\$49,074	\$55,974
TOTAL:	\$13,542,430	\$1,495,741,674
Eligible Total:	\$11,759,596	\$1,401,905,356
Number of Claims:	508	28,928

* With the implementation of the Usual and Customary Cost Schedule, May 1, 2006, these cost categories are now accounted for in the new category named "Commodity"

U&C - Eligible**-new category as of 5/1/06

U&C - Non Eligible***-new category as of 5/1/06

Dispute Resolution

During the last six months, the Departments of Commerce and Natural Resources have worked together on disputes that have arisen. All interagency disputes have been resolved. The agencies will continue to meet as needed to resolve any future interagency disputes.

Monitoring of Questionable Claims & Complaints, Including Fraud

The PECFA Bureau uses several strategies for identifying possible fraud in the Program. These include fraud evaluation during routine claim audits; targeted internal review by staff; evaluation by Department of Justice of potential fraud; and tracking of complaints against engineering consulting firms, as well as commodity service providers.

Claim review staff continues to watch for evidence of fraud within the Program. Reviews include an evaluation of compliance with bid procedures as well as appropriateness of information provided in submittals. The Department's Field Auditor conducts follow-up audits and, when enough information is available, PECFA refers these cases to the Department of Justice, which then pursues an investigation.

The Department of Commerce no longer funds an investigator; however, the Department of Justice continues to evaluate referrals from Commerce to determine if there have been fraudulent activities that would warrant pursuing criminal charges.

Commerce has not referred any complaints to the Department of Regulation & Licensing during the six-month reporting period of January – June 2007. Commerce disqualified one consulting

firm for four rounds of competitive public bidding and further work on a project due to the consulting firm's failure to complete the remedial work in a timely manner.

Status of PECFA Appeals Backlog and Efforts to Improve the Appeal Process

Appeals	Current Reporting Period	Past Reporting Period
Received	31	21
Amount on Appeal	\$298,939	\$347,532
Hearings	4	2
Closed	35	34
Settled	26	21
Withdrawn	4	10
Dismissed	0	0
Decisions	5	3
Decisions by Circuit Court	1	0

Summary

The Departments of Commerce and Natural Resources continue to work together to improve the delivery of the PECFA Program. Bureau Directors and key staff from both agencies met on a regular basis during this reporting period to work on interagency issues of concern, including consistency. We continue to investigate, remediate, and close properties contaminated by petroleum, implement cost controls, and improve the appeal process. Finally, both departments maintain websites allowing the public to view site-specific details.

Commerce *TRACKER on the Web* http://apps.commerce.state.wi.us/ER_Tracker/GetSites
DNR *BRRTS on the Web* <http://botw.dnr.state.wi.us/botw/Welcome.do>