ORDER OF THE
DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal and recreate a schedule of usual and customary costs, as referenced in section Comm 47.325, relating to petroleum environmental cleanup fund awards, and affecting small businesses.

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Rule Summary

1. Statutes Interpreted

Section 101.143 (4) (cm).

2. Statutory Authority

Sections 101.143 and 227.11 (2) (a).

3. Explanation of Agency Authority

Under sections 101.143 and 227.11 (2) (a) of the Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund Award (PECFA) program. The purpose of the PECFA program is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Under section 101.143 (4) (cm) of the Statutes, the Department is required to utilize and maintain a usual-and-customary-cost schedule for items that are commonly associated with claims for reimbursement.

4. Related Statute or Rule

None.

5. Plain Language Analysis

This proposal consists of (1) updating the Department's current schedule of usual and customary PECFA costs to include two additional tasks that have become commonly associated with PECFA claims, (2) establishing maximum reimbursement rates for those tasks, and (3) refining how the schedule addresses the tasks and corresponding rates which it currently includes.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations

The PECFA program was originally created in response to a requirement from the federal Environmental Protection Agency that all underground storage tank system owners have the

financial means to clean up any contamination caused by a leak from those systems. However, the PECFA program no longer provides that financial protection for newly installed tank systems, and therefore there are no existing federal regulations which impact on how the PECFA program operates. No proposed federal regulations are known that would likewise impact the PECFA program.

7. Comparison With Rules in Adjacent States

Of the four adjacent states, only Minnesota has a program that publishes maximum reimbursement rates for specific remediation tasks.

8. Summary of Factual Data and Analytical Methodologies

The methods and data used for the proposed update included (1) solicitation of input during Departmental training sessions conducted earlier this year in Wausau, Eau Claire, Neenah, Brookfield, and Madison, for 135 PECFA consultants, commodity service providers, lenders, and site owners; (2) substantiated requests for variances relating to the current cost schedule; and (3) telephone and e-mail inquiries and data from PECFA consultants and commodity service providers.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The Department derived the following anticipated cost impacts by analyzing submitted variance requests and other input relating to the current schedule of usual and customary PECFA costs.

10. Anticipated Costs Incurred by Private Sector

No significant impacts on the private sector are expected.

11. Effect on Small Business

No significant impacts on small business are expected.

12. Agency Contact Information

Sam Rockweiler, Wisconsin Department of Commerce, P.O. Box 14427, Madison, WI, 53708-0427; telephone (608) 266-0797; e-mail srockweiler@commerce.state.wi.us.

13. Place Where Comments Are to Be Submitted, and Deadline for Submission

Comments on the proposed rules may be submitted by e-mail to srockweiler@commerce.state.wi.us, no later than June 30, 2007. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 47 – '07/rules analysis LC review