



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #306

### **PECFA -- Farm Tank Eligibility (Commerce -- Building and Environmental Regulation)**

[LFB 2001-03 Budget Summary: Page 192, #5]

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#### **CURRENT LAW**

Farm petroleum product storage tanks of 1,100 gallons or less capacity are eligible for reimbursement of cleanup costs under the PECFA program if the owner or operator owns at least 35 acres of contiguous land devoted primarily to agricultural use that produced gross farm profits of at least \$6,000 in the year before the owner or operator submits a claim for PECFA reimbursement or gross farm profits of at least \$18,000 during the three years before application, and if the owner or operator received a letter from DNR or Commerce indicating that the owner must conduct a cleanup. The maximum award for farm tanks is \$100,000, with a deductible of \$2,500 plus 5% of eligible costs.

#### **GOVERNOR**

Specify that: (a) an owner or operator who formerly owned at least 35 acres of contiguous land devoted primarily to agricultural use would be eligible to submit a PECFA claim if the owner or operator submits a PECFA claim within one year after he or she transferred ownership of the land, and the land produced gross farm profits of at least \$6,000 in the year before the owner or operator transferred ownership or gross farm profits of at least \$18,000 during the three years before the transfer of ownership; and (b) the current or former owner or operator of the farm tank, whichever is applying for PECFA reimbursement under the bill, is eligible only if the farm tank is located on the parcel that meets the gross profits eligibility test.

#### **DISCUSSION POINTS**

1. The current PECFA coverage for small farm tanks is intended to cover active farms

that meet specific criteria related to farm acreage and farm income. Farm tank claimants must own the required 35 contiguous acres at the time of submittal of the PECFA claim and must have met the farm income test in the year (\$6,000 of farm profits) or three years (\$18,000 of farm profits) before submitting the claim. The criteria have the general effect of prohibiting PECFA eligibility for farms that are being subdivided or have been taken out of agricultural use.

2. As of April 1, 2001, Commerce had paid 139 farm tank claims totaling \$5,334,771. Commerce recently performed a field audit of 120 farm tank claims, including 111 claims paid totaling \$4,581,170 and nine claims disqualified before payment of \$282,834 in submitted costs. The Department found that 46 of the 111 paid claims (41%) were ineligible but that PECFA payments of \$1,850,836 had been made for these claims. Under current law, Commerce would have to seek cost recovery of the ineligible amounts.

3. Commerce officials indicate that 44 of the 46 paid but ineligible claims are ineligible because the owner transferred ownership of the property before submitting the PECFA claim. Commerce paid \$1,813,398 for these claims and may have to seek cost recovery of this amount. Commerce also disqualified six claims before payment of \$264,128 because the claimants transferred ownership of the property before submitting the claim. If the ownership provision were modified to make some or all of these claims eligible, Commerce would need to check additional information for some of these claims to determine whether other program criteria were met, such as related to the 35 contiguous acre and farm income requirements.

4. Commerce officials indicate that there has been confusion among owners, consultants and PECFA staff about the specific ownership criteria required for farm tank eligibility. In addition, several claims were processed without having all ownership documents in possession of Commerce at the time of the claim review. Apparently, there may also be sites where all remedial action activities were done in accordance with PECFA requirements but the claim was not submitted before the property was sold.

5. Commerce audit data shows that 15 of the paid but ineligible farm tank claims, with \$444,613 in paid PECFA costs, might become eligible under the bill's provision to allow submittal of the claim within one year of transfer of ownership. If the bill would be amended to allow submittal of the claim within two years of transfer of ownership, 19 additional paid but ineligible claims, with \$830,082 in paid costs, might become eligible (34 total for \$1.3 million). If the bill would be amended to allow submittal of the claim within three years of transfer of ownership, seven additional paid but ineligible claims, with \$274,575 in paid costs, might become eligible (41 total for \$1.5 million). If the bill would be amended to allow submittal of the claim anytime after the transfer of ownership, three additional paid but ineligible claims, with \$264,128 in paid cost could become eligible (44 total for \$1.8 million). The actual number and amount of claims that would become eligible would depend on the results of additional Commerce review of acreage and farm income requirements.

6. Most of the 44 paid but ineligible farm tank claims and six denied claims would be eligible if the ownership eligibility standard would be amended to allow PECFA eligibility if the

owner and property met the program definition of farm tank at the time the claimant notified the Commerce of the discharge. It is likely that there are potential claims that have not been submitted because of the ownership criteria but could be submitted and paid if the statute would be amended.

7. In its 2001-03 budget request, Commerce suggested that farm tank eligibility be changed to allow submittal of a claim within three years of the ownership transfer or if the owner met the eligibility criteria at the time of the initial eligibility determination (at the time of notification of the discharge). Industry representatives have recommended that the bill allow PECFA eligibility if the owner and property met the program definition of farm tank at the time of the initial notification of the discharge. While amending the bill to do this would be an expansion of coverage beyond current law and the bill, it would allow a number of paid claims to be restored to eligibility and would provide eligibility to farm tank owners who did not submit claims because they are currently ineligible.

8. Under current law, Commerce will have to undertake cost recovery of 44 paid farm tank claims. Under the bill, some, but not all of these claims will become eligible, and Commerce will have to undertake cost recovery of other paid but ineligible claims. It is likely that the provision in the bill would allow payment of a few claims that had been submitted and denied before being paid, and payment of claims that have not been submitted because they are ineligible under current law.

9. The bill's requirement that the farm tank be located on the parcel of 35 or more contiguous land that meets the gross profits eligibility test appears to be a reasonable clarification. Thus, the tank would have to be located on the eligible land rather than other land. Commerce officials indicate that change would simplify and clarify coverage.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendation to: (a) allow an owner or operator who formerly owned a PECFA-eligible farm tank to submit a PECFA claim within one year after he or she transferred ownership of the land, and the land met the gross farm profits test in the year (\$6,000 of gross farm profits) or three years (\$18,000) before the transfer of ownership; and (b) specify that a farm tank must be located on the parcel that meets the gross profits eligibility test, in order for the current or former owner or operator to be eligible for PECFA reimbursement.

2. Modify the Governor's recommendation to allow an owner or operator who formerly owned a PECFA-eligible farm tank to submit a PECFA claim within two years after he or she transferred ownership of the land, if the land met the acreage test and the gross farm profits test before the transfer of ownership.

3. Modify the Governor's recommendation to allow an owner or operator who formerly owned a PECFA-eligible farm tank to submit a PECFA claim within three years after he or she transferred ownership of the land, if the land met the acreage test and the gross farm profits test before the transfer of ownership.

4. Modify the Governor's recommendation to allow an owner or operator who formerly owned a PECFA-eligible farm tank to submit a PECFA claim at any time after he or she transferred ownership of the land, if the land meets other program criteria, including the acreage test and the gross farm profits test on the date of the initial notification of the discharge.

5. Maintain current law.

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