



## Legislative Fiscal Bureau

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May 25, 2005

Joint Committee on Finance

Paper #214

### **Transfer from the Petroleum Inspection Fund to the General Fund (Commerce)**

[LFB 2005-07 Budget Summary: Page 117, #22]

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#### **CURRENT LAW**

The segregated petroleum inspection fund receives revenue from the 3¢ per gallon petroleum inspection fee assessed on all petroleum products that enter the state, including gasoline, diesel and heating oil. Approximately 3.9 billion gallons of petroleum are assessed the fee annually. Therefore, each cent of petroleum inspection fee generates revenues of approximately \$39 million annually and the 3¢ fee generates approximately \$117 million annually. The petroleum inspection fund primarily provides funds for the petroleum environmental cleanup fund award (PECFA) program, which reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil tank systems. Owners of certain underground and aboveground petroleum tanks may be reimbursed for 75% to over 99% of eligible cleanup costs, which may be up to \$1,000,000 for the costs of investigation, cleanup and monitoring of environmental contamination.

The first use of petroleum inspection fees is payment of PECFA revenue obligation debt service. In 2003-05, approximately 83% of the appropriated amounts are used for PECFA awards and administration. The remaining petroleum inspection fund appropriations are used for Commerce petroleum inspection programs, Department of Transportation motor vehicle emissions testing programs, Department of Revenue collection of the petroleum inspection fees, petroleum inspection fee refunds to eligible airlines, and brownfields, clean air and environmental programs.

#### **GOVERNOR**

Transfer \$10,860,600 in 2005-06 and \$20,000,000 in 2006-07 from the petroleum inspection fund to the general fund.

## **DISCUSSION POINTS**

### **History of PECFA Program Demand**

1. The PECFA program was created in response to the costs of federal requirements enacted to prevent the release of petroleum and other regulated substances from underground storage tanks into the environment. Federal regulations generally apply to commercially-owned underground storage systems, and farm and residential tanks larger than 1,100 gallons. Federal regulations required owners to: (a) replace or upgrade their tanks by December 22, 1998; (b) have leak detection systems that met new federal requirements; and (c) demonstrate financial responsibility or have pollution insurance for underground storage tank systems. Before sites were cleaned up or upgraded, the PECFA program provided a method for owners or operators of federally-regulated tanks to meet the financial responsibility requirements. If the owner or operator closed the tank instead of upgrading it, they were required to properly close and remove the tank by December 22, 1999. State regulations incorporate the federal requirements and also apply state regulations to certain smaller tanks, such as certain heating oil tanks and small farm and residential tanks, which are not federally-regulated. Some tank owners regulated under state regulations rather than federal regulations (farm and residential tanks of 1,100 gallons or less, heating oil tanks over 4,000 gallons and aboveground storage tanks over 5,000 gallons) were required to upgrade, or to stop using, the tanks by May 1, 2001.

2. The Department of Commerce (Commerce) administers the financial reimbursement portion of the program and cleanup of low- and medium-risk petroleum sites (PECFA-eligible and non-PECFA eligible). The Department of Natural Resources (DNR) administers cleanup of high-risk petroleum sites and sites with petroleum and non-petroleum contamination, and establishes state environmental standards for cleanup of contaminated sites in the state. The two agencies jointly administer provisions related to analyzing the risk of the contamination at PECFA sites, bidding the remedial action activities and maintaining consistency of program administration.

3. In the late 1990s, hundreds of millions of dollars in PECFA claims were received, due, in part, to the efforts of owners with federally-regulated petroleum storage tanks to meet the December 22, 1998, deadline to replace or upgrade the tanks to meet current leak prevention and leak detection standards, or to stop using the tanks. Often, the point in time at which contamination was discovered was during the process of upgrading or removing the tank to comply with the 1998 deadline. A backlog of PECFA claims that had been received and not been paid exceeded \$200 million from June, 1997, through February, 2000. During that time, claimants waited over two years after submittal of a claim for reimbursement of eligible cleanup costs.

4. Issuance of petroleum inspection fee revenue obligations first authorized in 1999 Act 9 allowed the PECFA program to pay the backlog of claims. The PECFA program is authorized \$436 million in petroleum inspection fee revenue obligation authority to fund the payment of claims under the PECFA program. A cumulative total of \$387 million has been issued and was used to pay PECFA claims between 1999-00 and 2003-04. The total amount of outstanding revenue obligations is \$348.5 million, including \$206.2 million in long-term obligations

with a weighted average interest rate of 4.72%, and \$142.3 million in short-term commercial paper with a weighted average rate of 1.65%.

### **Current Status of Demand and Fund Condition**

5. As of May 1, 2005, a total of over \$1.42 billion in PECFA payments have been made for cleanup at 11,934 sites. Of the total payments, \$1.11 billion (78%) has paid for completion of cleanup at 10,247 closed sites (86%). The remaining \$311 million (22%) has paid for partial cleanup at 1,687 open sites (14%). Approximately 6,700 sites have been closed since June, 1999.

6. PECFA payments for commercial underground (gas station) tanks (that had a December 22, 1998 upgrade deadline) have totaled \$1.26 billion (88.3%) of the \$1.42 billion in total payments and 9,456 (79.2%) of the 11,934 sites for which at least one payment has been made. Payments for aboveground tanks (many of which had a May 1, 2001, upgrade deadline) have totaled \$132 million (9.3%) of total payments for 790 (6.6%) of the total sites with at least one payment. Payments for all other tank types (farm, terminal, home heating oil, school district, technical college and tribal trust) have totaled \$34 million (2.4%) of total payments.

7. The amount of PECFA claims received exceeded \$160 million annually in the mid- to late-1990s as remediation work was done at commercial sites as they were upgraded to meet the federal deadline. The amount of claims received declined to \$70 million in 2003-04 and it is anticipated to decline to approximately \$50 million in 2004-05.

8. The number of newly-identified PECFA sites has declined from an average of over 100 sites per month during the mid-1990s to less than 10 sites per month in 2004. The monthly average amount of claims received by the program has declined from over \$15 million in 1997, to \$10 million in 2001, to \$4 million currently.

9. Commerce officials estimate that it will pay approximately \$4.9 million per month in PECFA claims during the 2005-07 biennium, or \$59 million per year, based on the Department's review of the total claims paid from March, 2003, through February, 2005. However, this level of claims would be higher than the recent actual level of claim payments. It can be anticipated that the amount of claims paid will continue to decline. Payments in 2004-05 are expected to decline to approximately \$48.3 million, which is an average of \$4 million per month, or about a 30% decrease from the level of 2003-04. (Actual payments were \$36.6 million through April 30, 2005.) In addition, it is expected that the number of new sites and amount of claims paid may continue to decline during 2005-07. While precise claim levels are difficult to predict, expenditures for PECFA awards could be estimated to decline to approximately \$40.4 million in 2005-06 (\$3.4 million per month, or a decrease of approximately 16%) and \$37.6 million in 2006-07 (\$3.1 million per month, or a decrease of approximately 7%).

10. The following table shows the estimated condition of the petroleum inspection fund under AB 100. During the 2005-07 biennium, the bill would continue base funding of \$68 million

annually for PECFA awards. However, based on estimated expenditures of \$40.4 million in 2005-06 and \$37.6 million in 2006-07, the Committee could delete \$58.0 million in expenditure authority for PECFA awards in the biennium (\$27.6 million in 2005-06 and \$30.4 million in 2006-07). In addition, \$49,076,000 of bonding authority remains available for issuance in the future, but will not be needed, based on estimated level of claim demand, and could be deleted.

**TABLE 1**

**Petroleum Inspection Fund Estimated Condition – 2003-04 Through 2006-07  
AB 100 (\$ In Millions)**

	2003-04 <u>Actual</u>	2004-05 <u>Estimated</u>	2005-06 <u>Estimated</u>	2006-07 <u>Estimated</u>
Opening Balance -- July 1	\$29.4	\$35.3	\$53.1	\$66.1
<b>Revenues</b>				
Petroleum Inspection Fee	\$113.6	\$116.1	\$117.2	\$118.8
Revenue Obligation Proceeds	45.0	0.0	0.0	0.0
Revenue Obligation Debt Service & Issuance	-24.5	-29.6	-32.4	-46.9
Interest Income and Other	0.3	0.8	0.3	0.3
Petroleum Bulk Tank Fees	<u>0.1</u>	<u>0.1</u>	<u>0.2</u>	<u>0.2</u>
Total Revenue	\$134.4	\$87.5	\$85.2	\$72.3
Total Revenue Available	\$163.9	\$122.8	\$138.3	\$138.4
<b>Expenditures and Reserves</b>				
PECFA Awards from Appropriation	\$49.8	\$46.4	\$40.4	\$37.6
PECFA Awards from Revenue Obligations	43.1	1.8	0.0	0.0
PECFA Administration	3.1	3.1	3.0	2.9
Other Programs	11.6	17.9	17.8	17.8
Reserves, Lapses and Encumbrances	<u>0.0</u>	<u>0.3</u>	<u>0.1</u>	<u>0.3</u>
Total Expenditures	\$107.6	\$69.5	\$61.3	\$58.6
Less Transfers to the General Fund	-\$21.0	-\$0.2	-\$10.9	-\$20.0
Closing Balance -- June 30	\$35.3	\$53.1	\$66.1	\$59.8

11. The bill would provide \$3.0 million in 2005-06 and \$2.9 million in 2006-07 for Commerce and DNR PECFA administration. In addition, \$17.8 million annually would be appropriated for: (a) Commerce petroleum tank and inspection programs; (b) Department of Revenue collection of the petroleum inspection fee; (c) petroleum inspection fee refunds to eligible airlines; and (d) brownfields, clean air and environmental programs in the Departments of Commerce, Natural Resources, Transportation, Agriculture, Trade & Consumer Protection, and Military Affairs. The attachment summarizes the appropriations from the petroleum inspection fund under AB 100.

12. The primary reason that the petroleum inspection fund will have an estimated 2004-05 closing balance in excess of \$50 million is that the state issued \$45 million in PECFA revenue obligations in the spring of 2004 to pay anticipated PECFA claims. Subsequently, the monthly amount of claims received decreased and payments from the appropriation are expected to total \$46.4 million in 2004-05, while \$86.2 million is available (\$68 million appropriated for 2004-05 and \$18.2 million carried forward from 2003-04). If the \$45 million in PECFA revenue obligations had not been issued in 2004, the petroleum inspection fund balance would be \$8 million on June 30, 2005, instead of \$53 million.

13. On February 8, 2005, DOA Secretary Marotta forwarded a letter to the Joint Committee on Finance that outlined the administration's proposal to fund the 2004-05 shortfall in the medical assistance and SeniorCare programs. As part of the administration's proposal to address the shortfall, the DOA Secretary recommended that \$50 million be transferred from the petroleum inspection fund to the general fund. The Legislature did not adopt that portion of the administration's recommendation.

14. Any petroleum inspection fee revenues are first allocated for the \$348 million in outstanding revenue obligation debt service. It could be argued that any fund balances not subsequently spent for PECFA claims, other appropriations from the fund, or legislatively designated for transfer to the general fund should be used to retire debt obligations.

15. DOA officials indicate that decisions related to retiring debt early would be based on an analysis of economic conditions and program need. For example, if a long-term predictable balance of excess funds exists, higher-interest rate (more expensive) debt could be retired when due or, in some cases could be called earlier than the due date. For short-term or uncertain balances of excess funds, part of the \$142.3 million in short-term commercial paper could be retired. If needed, it could be reissued. However, despite the significant balance in the fund, the administration has not retired additional debt to date. The Committee could specify that DOA retire PECFA revenue obligation debt with any excess revenues in the petroleum inspection fund.

16. Based on the estimated level of demand for PECFA reimbursement, at least \$55 million of excess funds would be expected to be available that could be used to retire revenue obligation debt in each of the next three biennia. Table 2 shows the estimated debt service costs for the \$348 million in remaining outstanding debt under two scenarios. First, the table shows the current minimum required payment schedule, which includes balloon principal payments of \$15 million in each of 2006-07 and 2007-08. DOA officials indicate that the balloon payments could be refinanced if necessary, depending on the level of PECFA claim demand and fund balance. Under the minimum required payment schedule (including making the balloon principal payments), there would be approximately \$173.2 million in outstanding PECFA revenue obligations at the end of 2010-11. This remainder would be expected to be paid off by fiscal year 2016-17, or perhaps earlier if PECFA claims continue to decline. Second, Table 2 shows that if estimated excess fund balances of approximately \$55 million in each of the next three biennia would be used to retire revenue obligation debt, all PECFA revenue obligations could be retired by June 30, 2011. Again, if PECFA claims continue to decline substantially, additional revenues may be available to retire

debt at an earlier date.

**TABLE 2**

**Petroleum Inspection Fee Revenue Obligation Estimated Debt Service Costs  
(\$ Millions)**

<u>Fiscal Year</u>	<u>Minimum Required Payment*</u>	<u>Use of Excess Balances to Retire Debt**</u>
2005-06	\$32.4	\$88.4
2006-07	46.9	45.5
2007-08	46.2	71.2
2008-09	30.5	55.2
2009-10	30.5	54.9
2010-11	30.6	57.6
2011-12	30.9	0.0
2012-13	31.0	0.0
2013-14	31.0	0.0
2014-15	31.0	0.0
2015-16	31.0	0.0
2016-17	<u>29.2</u>	<u>0.0</u>
Total payments	\$401.2	\$372.7

\*Assumes interest only payments for \$142.3 million in short-term commercial paper until 2011-12. Assumes that the short-term commercial paper principal would be retired beginning in 2012-13.

\*\*Assumes use of an estimated \$50-55 million in excess fund balance in each biennium to retire PIF revenue obligations. Actual debt service payments may differ depending on the timing of retiring long-term higher interest rate debt or lower interest rate short-term debt.

17. A total of \$3.2 million in the 2001-03 biennium and \$21.2 million in the 2003-05 biennium was transferred from the petroleum inspection fund to the general fund. AB 100 includes an additional transfer of \$30.86 million in 2005-07, for a total transfer of \$55.26 million in the three biennia. It could be argued that it is appropriate to transfer available balances from the state fund to support the general fund. Alternatively, it could be argued that any available petroleum inspection fund balance should be used to retire the \$348 million in outstanding PECFA revenue obligation debt as soon as possible.

**Future PECFA Demand**

18. It is unknown how many PECFA-eligible sites will be identified in the next few years. However, it is likely to decrease from the approximately 100 new sites identified in each of 2003 and 2004. The types of sites that might be identified in the future include properties with a transfer of ownership, settlement of an estate, or discovery during a building or road construction

project. In addition, sites might be identified where the responsible party has not been willing or able to begin a remediation, the site has been abandoned, or the owner of a federally-regulated site did not comply with the 1998 deadlines to upgrade or remove tanks.

19. Several program cost control measures have been enacted in statutes or administrative rules since the mid-1990s. It is likely that the measures with the biggest impact on reducing costs have been the requirement to use bidding for the costs of remediation and for certain sites to be closed with the use of natural attenuation as the remediation method. As of December 1, 2004, Commerce had conducted competitive public bidding for 706 sites. Commerce officials believe that bidding has resulted in reductions in the cost of cleanup. As of May 9, 2005, 2,962 PECFA-eligible sites have been closed (generally by relying on natural attenuation to gradually reduce remaining contaminants) and placed on the DNR geographic information system registry of closed sites with groundwater contamination that exceeds the groundwater enforcement standard, or soil contamination that exceeds residual contaminant levels, or both. These sites have incurred lower cleanup costs than if all of the contamination had been removed.

20. 2001 Act 16 included provisions intended to speed the completion of work at PECFA sites and the submittal of claims. The Act specified, as of September 1, 2001, that: (a) if an applicant submits a final claim more than 120 days after receiving notification from DNR or Commerce that no further action is necessary at the site, interest costs incurred more than 60 days after receiving the notice are not eligible for reimbursement; and (b) if an applicant does not complete the site investigation within five years after the applicant notified Commerce about the discharge the applicant is ineligible for reimbursement of interest costs incurred after that date. 2001 Act 16 also authorized an owner or operator to submit a claim annually if the applicant has incurred \$50,000 in unreimbursed eligible PECFA costs and at least one year has elapsed since submission of the last claim. This provision may have decreased the amount of incurred but not submitted costs, and reduced the program costs for reimbursement of loan interest expenses.

21. Commerce officials estimate that a total of approximately \$40 to 60 million in PECFA costs have been incurred but not submitted to the Department for reimbursement. It is also estimated that the remaining liability for PECFA sites beyond the incurred, but unsubmitted costs, is roughly \$150 to \$250 million.

22. Commerce is working on a project to review all open files for sites with petroleum contamination in order to: (a) determine the status and risk classifications of all open petroleum tank sites in the state; (b) determine the potential PECFA eligibility and cost of cleanup at the open petroleum tank sites; and (c) project a time frame for closure of open petroleum tank sites in the state. Commerce is in the process of compiling a final report and database that contains information on almost 4,000 petroleum sites that are potentially eligible for PECFA. Commerce officials indicate that later in 2005, the Department may have more precise information about the remaining number of PECFA sites and amount of PECFA costs to be incurred.

23. Wisconsin is one of three states (Texas and Florida are the other two) that do not provide eligibility for sites that have been upgraded. Upgraded petroleum tank systems are not

eligible for PECFA reimbursement if a petroleum discharge is confirmed after December 31, 1995, and if the confirmation was made after the system met upgrading requirements. The intent of this provision is for the state to provide tanks with federally-required proof of financial responsibility for cleanup costs until the site was cleaned up or upgraded, then for tank owners to obtain private pollution liability insurance. Federal and state governments also believed that upgraded tanks would not leak. Commerce officials and petroleum cleanup fund administrators in other states have indicated that there may be future concerns related to leaks from upgraded tanks, difficulty of the owners of some upgraded tanks to obtain private pollution liability insurance, and the difficulty of differentiating between new and old contamination at some upgraded sites. However, it should be noted that the current law requirement that upgraded and cleaned up sites are no longer eligible under the program has reduced the state liability for future contamination at these sites.

24. The maximum PECFA award decreased for sites where the investigation and remedial activities started on or after December 22, 2001, from \$1,000,000 to \$190,000 for most tank systems. This date was three years after federally-regulated tanks were required to be upgraded, replaced or closed and approximately seven months after state-regulated farm and residential tanks and large heating oil and aboveground tanks were required to be upgraded or closed.

### **Program Sunset Options**

25. Some would suggest that the state should take further actions to phase-out the PECFA program. It can be argued that, since the commercial underground tanks that were the focus of the original program, work should have been completed or be well underway by now. However, some would argue that eligibility should be retained for specific types of tanks that were not subject to earlier upgrade deadlines, such as home heating oil, small farm tanks, school district or technical college tanks.

26. There are several methods and deadlines that could be considered. For example, deadlines could be set for making the initial report of the petroleum release to Commerce or DNR, for beginning the site investigation or remedial activities, for submitting a final claim after Commerce or DNR have determined that no further action is necessary, or for submitting any claim under the program.

27. DNR's 2005-07 biennial budget request to the Governor included several recommendations for beginning to phase-out the PECFA program. The Governor's budget did not include any of these recommendations. DNR's requests included: (a) eliminate eligibility for reimbursement under the PECFA program for any petroleum releases reported after January 1, 2007, except for home heating oil tanks and farm vehicle fuel tanks; (b) require that all eligible costs for investigation and remediation that were incurred prior to January 1, 2006, must be submitted to Commerce by January 1, 2007, in order to be eligible for reimbursement; (c) eliminate reimbursement for interest costs associated with loans for remediation, for interest costs incurred after January 1, 2007; (d) gradually reduce the 3¢ petroleum inspection fee, based on covering debt service costs on outstanding PECFA revenue bonds and the costs for paying claims; and (e) allocate

a portion of the reduced petroleum inspection fee to increase the amount appropriated to the segregated environmental management account of the environmental fund to be used to clean up contamination at petroleum tank sites where the responsible party is unknown or unable to complete the cleanup, and to provide funding for existing DNR remediation and redevelopment staff to provide oversight at petroleum contaminated sites and future brownfields redevelopment sites.

28. Examples of deadlines that could be established include a date by which the owner or operator must notify Commerce of the petroleum release in order to remain eligible for PECFA reimbursement. This is currently the first step in becoming eligible for the program. A deadline of January 1, 2007, could be established to provide approximately 17 months after enactment of the budget for owners to make the initial notification of the release.

29. While a deadline for notification of a release would begin to limit eligibility, it would not set a deadline for starting or finishing cleanup work. (However, as noted earlier, currently, if a site investigation is not completed within five years after the initial notification of the discharge, it is no longer eligible for reimbursement of loan interest costs.) Another alternative would be to establish a June 30, 2007, deadline for beginning an investigation or remedial activities. This would provide at least six months to begin site work if done in addition to the January 1, 2007, notification deadline.

30. It is more difficult to establish deadlines for completing work at sites or for submitting final claims under the program because there is a large variation in the amount of time required to complete cleanups at various sites. A cleanup can take less than one year or several years to complete.

31. A deadline could be established for submitting a final reimbursement claim after DNR or Commerce has determined that no further action is necessary at the site. For example, a provision could be created to require that any claim for reimbursement must be submitted within 180 days after DNR or Commerce determines that no further action is necessary at the site, or the costs would not be eligible for PECFA reimbursement.

32. DNR and Commerce officials indicate that some site owners may have reached the stage of remedial action work where no further action is necessary but they have not requested DNR or Commerce to close the site because the owner does not want to have to add the site to the registry of sites closed with residual groundwater or soil contamination. The statutes could be amended to specify that Commerce and DNR may determine that no further action is necessary at a site, even if the site owner does not request the agency to make the determination, and that no cleanup costs incurred after the date that the agency notifies the owner of the determination would be eligible for PECFA reimbursement.

33. Another possible deadline could be established for submission of eligible costs after the costs have been incurred. A deadline could be established in the PECFA program to require that an owner or operator must submit a claim for reimbursement within 12 months after incurring the eligible costs, or by the first day of the 13<sup>th</sup> month after the effective date of the budget, whichever is

later, if at least \$50,000 in unreimbursed PECFA costs have been incurred, or the costs would no longer be eligible for reimbursement. This type of deadline, in combination with the current authorization for owners or operators to submit a claim annually if the applicant has incurred \$50,000 in unreimbursed eligible PECFA costs in the past year, should decrease the amount of incurred but unsubmitted costs, and decrease interest reimbursement and the unknown future liability costs.

34. Some would argue that a deadline should be established for submitting any claim under the program. A deadline could be established far enough into the future to allow most or all sites where cleanup has just begun sufficient time to complete eligible cleanup activities. For example, as noted earlier, if approximately \$55 million in excess fund balances in each biennium would be used to retire PECFA revenue obligations, the state may be able to retire all PECFA revenue obligation debt by approximately fiscal year 2010-11. A deadline of January 2, 2011, could be established for submittal of claims under the program. After January 2, 2011, no claimed costs would be eligible for reimbursement. This date would provide at least five years after the effective date of the budget for owners to identify the initial discharge, perform the site investigation, complete the cleanup, and submit the final claim for reimbursement.

35. If some of the program sunset provisions are approved, PECFA claims demand would likely be higher in the near-term as owners and consultants seek to maintain eligibility under any deadlines imposed. However, longer-term costs should similarly decline. For example, the PECFA claims appropriation could be maintained at \$50 million annually, and the estimated June 30, 2007, balance of the fund would be approximately \$37.8 million. This balance could either be transferred to the general fund or it could be used to retire revenue obligation debt. This alternative would allow for claims to increase by more than \$20 million for the biennium, over what would be expected under current law.

36. It is probable that if some of the program sunset provisions are approved, sites will subsequently be identified that would no longer be eligible for PECFA reimbursement. Under the state's hazardous substances spills law, the responsible parties are required to clean up the site. At non PECFA-eligible sites, if there is no responsible party able or willing to clean up the contamination, and if the contamination presents a high-enough risk to the environment, when compared with contamination at other sites, DNR can use its state-funded spills response appropriation to take action to clean up the site. Commerce does not have a comparable appropriation but can refer a site to DNR for possible cleanup by DNR under its spills response appropriation.

37. The Legislature may need to consider, at some future date: (a) whether additional state resources should be allocated to pay for cleanup of petroleum contamination at sites that are no longer eligible for the PECFA program; and (b) whether a future allocation of a portion of petroleum inspection fee revenues is appropriate for state-funded cleanup by Commerce and DNR for sites that are identified after PECFA eligibility for the site ends.

## **Petroleum Inspection Fee Decrease Options**

38. Given the transfers to the general fund, some would argue that the state should make statutory changes to decrease or eliminate the petroleum inspection fee. However, it could also be argued that the fee should be maintained at the existing 3¢ as long as is needed to retire the \$348 million in PECFA revenue obligation debt. As shown in Table 2, the 3¢ fee could likely retire all PECFA revenue obligation debt by June 30, 2011, or perhaps earlier, based on the anticipated level of PECFA claims expenditures and current base funding of other appropriations from the fund.

39. If the petroleum inspection fee is reduced while PECFA revenue obligation debt service remains, it would take a longer time to retire the debt, pay expected PECFA claim demand, pay PECFA administrative costs and cover other expenditures from the fund than if the 3¢ fee would be maintained until outstanding PECFA revenue obligation debt is retired.

40. Some have argued that a combination of actions should be taken to reduce the petroleum inspection fee from the current 3¢ per gallon, retire the \$348 million in outstanding PECFA revenue obligation debt, and begin to sunset the program.

41. One scenario for reducing the fee would be to reduce it by 1¢ to 2¢ per gallon on April 1, 2007. This would reduce petroleum inspection fee revenue by approximately \$9.9 million in 2006-07 and by approximately \$40 million annually thereafter. Under this option, there would be sufficient revenues to fund anticipated PECFA claims, and ongoing expenditures in other appropriations in the fund. In addition, in the 2005-07 biennium excess funds of \$35 million would be available, if the \$15 million revenue obligation balloon payment is made that is due in 2006-07, and could either be used to retire additional debt or to transfer to the general fund. However, ongoing revenues under the 2¢ fee (approximately \$80 million annually) may exceed base level expenditures (approximately \$88 million) in 2007-08, unless PECFA claims continue to decline substantially.

42. It should be noted that if the fee would be reduced to 2¢ before the end of 2006-07, it is uncertain whether there would be excess funds available in the 2007-09 biennium to retire revenue obligation debt beyond the minimum required payments. It is also possible that it may be more difficult for the state to reissue short-term commercial paper as it matures, because the fee reduction would provide a ratio of revenues to debt that would be less attractive to potential bond buyers.

## **ALTERNATIVES**

### **A. Program Funding and Fee**

1. Approve the Governor's recommendation to transfer \$10,860,600 in 2005-06 and \$20,000,000 in 2006-07 from the petroleum inspection fund to the general fund.

2. Approve Alternative A1. In addition: (a) transfer \$59,700,000 in 2005-06 from the

petroleum inspection fund to the general fund; and (b) decrease the PECFA awards appropriation by \$27,600,000 in 2005-06 and \$30,400,000 in 2006-07. (This would provide \$40.4 million in 2005-06 and \$37.6 million in 2006-07 for PECFA claims.)

<u>Alternative A2</u>	<u>GPR-REV</u>	<u>SEG</u>
<b>2005-07 REVENUE</b> (Change to Bill)	\$59,700,000	
<b>2005-07 FUNDING</b> (Change to Bill)		- \$58,000,000

3. Approve Alternative A1. Further: (a) transfer an additional \$37,700,000 in 2005-06 to the general fund; and (b) decrease the PECFA awards appropriation by \$18,000,000 in 2005-06 and \$18,000,000 in 2006-07 to provide \$50 million annually for claims. (This alternative could be selected if program sunset options are chosen under "B".)

<u>Alternative A3</u>	<u>GPR-REV</u>	<u>SEG</u>
<b>2005-07 REVENUE</b> (Change to Bill)	\$37,700,000	
<b>2005-07 FUNDING</b> (Change to Bill)		- \$36,000,000

4. Decrease the petroleum inspection fee by 1¢, from 3¢ to 2¢ per gallon effective April 1, 2007. (This alternative could be selected in addition to Alternative A1.)

<u>Alternative A4</u>	<u>SEG-REV</u>
<b>2005-07 REVENUE</b> (Change to Bill)	- \$9,900,000

5. Approve Alternative A4. In addition, transfer \$35,000,000 from the petroleum inspection fund to the general fund in 2005-06.

<u>Alternative A5</u>	<u>GPR-REV</u>
<b>2005-07 REVENUE</b> (Change to Bill)	\$35,000,000

6. Specify that DOA must retire PECFA revenue obligation debt with any excess revenues in the petroleum inspection fund. (This alternative could be selected in addition to any other alternative.)

7. Maintain current law.

<u>Alternative A7</u>	<u>GPR-REV</u>
<b>2005-07 REVENUE</b> (Change to Bill)	- \$30,860,600

**B. Program Sunset**

1. Approve one or more of the following alternatives to begin to phase-out the PECFA program.

a. Require that if the owner or operator does not notify Commerce of the initial petroleum product discharge by January 1, 2007, the site would not be eligible for PECFA reimbursement.

b. Require that if the owner or operator does not begin investigation or remedial activities by June 30, 2007, the site would not be eligible for PECFA reimbursement.

c. Require that any claim for reimbursement must be submitted within 12 months after DNR or Commerce determine that no further action is necessary at the site, or the costs would not be eligible for PECFA reimbursement.

d. Authorize Commerce and DNR to determine that no further action is necessary at a site, even if the site owner does not request the agency to make the determination, and that no cleanup costs incurred after the date that the agency notifies the owner of the determination would be eligible for PECFA reimbursement.

e. Require that an owner or operator must submit a claim for reimbursement within 365 days after incurring the eligible costs, or by the first day of the 13<sup>th</sup> month after the effective date of the budget, whichever is later, if at least \$50,000 in unreimbursed PECFA costs have been incurred, or else those costs would no longer be eligible for reimbursement. (This would not end PECFA eligibility for the site.)

f. Specify that any PECFA claim received by Commerce after January 2, 2011, would not be eligible for reimbursement.

2. Take no action.

**C. Revenue Obligation Authority**

1. Delete \$49,076,000 in currently authorized, but unissued, PECFA revenue obligation bonding authority.

<b>Alternative C1</b>	<b>BR</b>
2005-07 REVENUE (Change to Bill)	- \$49,076,000

2. Take no action.

Prepared by: Kendra Bonderud  
Attachment



## ATTACHMENT

### Appropriations From the Petroleum Inspection Fund, 2005-07 Under AB 100

			2005-06 Appropriated	2006-07 Appropriated	2006-07 Authorized Positions
<b>Petroleum Environmental Cleanup Fund Award Program</b>					
<i>Commerce</i>					
143	(3)(v)	PECFA Awards	\$68,000,000	\$68,000,000	
	(3)(w)	PECFA Administration	2,678,300	2,627,600	24.30
<i>Natural Resources</i>					
370	(2)(dw)	Environmental repair, petroleum spills administration (PECFA)	<u>321,000</u>	<u>321,000</u>	<u>4.00</u>
		(Subtotal)	\$70,999,300	\$70,948,600	28.30
<b>Other Programs</b>					
<i>Agriculture, Trade and Consumer Protection</i>					
115	(1)(r)	Unfair Sales Act	210,700	210,700	2.35
	(1)(s)	Weights and Measures	547,600	547,600	6.00
<i>Commerce</i>					
143	(1)(qa)	Business development center; brownfields activities and staff	200,200	200,200	2.50
	(3)(r)	Safety and buildings - petroleum inspection	4,994,500	4,994,500	43.00
<i>Natural Resources</i>					
370	(2)(bq)	Vapor recovery administration	78,400	78,400	1.00
	(2)(br)	Air management - mobile sources	1,263,800	1,263,800	4.00
	(2)(dw)	Environmental repair, petroleum spills administration (cooperative environmental assistance)	167,900	167,900	2.00
	(2)(mu)	Environmental fund - environmental repair , well compensation	1,049,400	1,049,400	0.00
	(2)(mw)	Environmental fund - Groundwater management	766,900	766,900	0.00
	(3)(ms)	Pollution prevention	84,800	84,800	1.00
	(8)(mq)	Mobile source air pollution	586,100	586,100	0.00
	(9)(mq)	Mobile source air pollution	180,900	180,900	1.00
<i>Transportation</i>					
395	(4)(dq)	Air quality - demand management	337,500	337,500	4.00
<i>Military Affairs</i>					
465	(3)(r)	State emergency response board	466,800	466,800	0.00
<i>Revenue</i>					
566	(1)(s)	Petroleum inspection fee collection	161,800	161,800	2.00
<i>Miscellaneous Appropriations</i>					
855	(4)(r)	Petroleum allowance	420,000	360,000	0.00
	(4)(w)	Transfer to transportation fund (motor vehicles emissions testing)	<u>6,321,700</u>	<u>6,321,700</u>	<u>0.00</u>
		(Subtotal)	\$17,839,000	\$17,779,000	68.85
Total SEG Petroleum Inspection Fund Appropriations			\$88,838,300	\$88,727,600	97.15