



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #222

Transfer from the Petroleum Inspection Fund to the General Fund and PECFA Awards (Commerce -- Housing, Buildings, and Environmental Regulation)

Base Agency

[LFB 2007-09 Budget Summary: Page 100, #4 and #5]

CURRENT LAW

The segregated petroleum inspection fund receives revenue from the 2¢ per gallon (3¢ per gallon prior to April 1, 2006) petroleum inspection fee assessed on all petroleum products that enter the state, including gasoline, diesel and heating oil. Approximately 3.8 billion gallons of petroleum are assessed the fee annually. Therefore, each cent of petroleum inspection fee generates revenues of approximately \$38 million annually and the 2¢ fee generates approximately \$76 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 2005-07, approximately 50% of the appropriated amounts are used for PECFA awards and administration by the Department of Commerce (Commerce) and the Department of Natural Resources (DNR). The remaining petroleum inspection fund appropriations are used for Commerce petroleum inspection and tank regulation 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 \$4,000,000 in 2007-08 from the petroleum inspection fund to the general fund.

Decrease the PECFA program awards appropriation by \$17,600,000 SEG annually to provide \$20.0 million each year in the biennial appropriation for PECFA claims.

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. Commerce administers the financial reimbursement portion of the program and cleanup of low- and medium-risk petroleum sites (PECFA-eligible and non-PECFA eligible). 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. As of December 1, 2006, the total amount of outstanding revenue obligations is \$272.6 million, including \$130.3 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 4.11% (compared to approximately 1.65% in 2005). The outstanding principal balance will decrease to \$252.3 million on July 1, 2007.

Current Status of Demand and Fund Condition

5. As of May 1, 2007, almost \$1.47 billion in PECFA payments have been made for cleanup at 12,441 sites. Of the total payments, \$1.22 billion (83%) has paid for completion of cleanup at 11,046 closed sites (89%). The remaining \$249 million (17%) has paid for partial cleanup at 1,395 open sites (17%). Approximately 7,500 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 \$1.29 billion (87.8%) of the \$1.47 billion in total payments and 9,803 (78.8%) of the 12,441 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 \$139.8 million (9.5%) of total payments for 869 (7.0%) 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 \$37 million (2.5%) 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 \$25 million in 2005-06 and it is anticipated to total approximately \$22 million in 2006-07.

8. The number of newly-identified PECFA sites has declined from an average of over 100 sites per month during the mid-1990s to an average of seven sites per month in 2006. The monthly average amount of claims received by the program has declined from over \$15 million in 1997, to \$4 million in 2005, to under \$2 million currently.

9. Table 1 shows the estimated petroleum inspection fund balance of \$13.1 million on June 30, 2009. The revenue obligation debt service amounts are shown as a reduction to revenues. These amounts are transferred, in monthly amounts, to be held for payment by a trustee. The state paid revenue obligation debt service of \$70.5 million in 2005-06, which included: (a) making \$30.1 million in early balloon payments on July 1, 2006, that would have otherwise been due in 2007 and 2008; (b) retiring \$7.9 million in long-term higher interest rate debt on July 1, 2006, that would otherwise have matured on July 1, 2012; and (c) paying \$32.5 million for the minimum required principal and interest payments for long-term obligations and interest only payments on short-term obligations.

TABLE 1

**Petroleum Inspection Fund Estimated Condition – 2005-06 Through 2008-09
SB 40 (\$ In Millions)**

	2005-06 <u>Actual</u>	2006-07 <u>Estimated</u>	2007-08 <u>Estimated</u>	2008-09 <u>Estimated</u>
Opening Balance -- July 1	\$59.3	\$44.4	\$18.3	\$13.8
Revenues				
Petroleum Inspection Fee	\$111.6	\$73.9	\$75.6	\$75.7
Revenue Obligation Debt Service	-70.5	-33.5	-33.6	-33.7
Interest Income and Other	2.2	1.4	0.8	0.8
Petroleum Bulk Tank Fees	<u>0.2</u>	<u>0.2</u>	<u>0.2</u>	<u>0.2</u>
Total Revenue	\$43.6	\$42.0	\$43.0	\$43.0
Total Revenue Available	\$102.9	\$86.4	\$61.3	\$56.8
Expenditures and Reserves				
PECFA Awards	\$21.3	\$21.7	\$20.0	\$20.0
PECFA Administration	2.6	2.9	3.2	3.2
Other Programs	23.7	22.1	20.1	20.1
Expenditure of Prior Encumbrances	0.0	1.1	0.0	0.0
Reserves and Lapses	<u>0.0</u>	<u>0.3</u>	<u>0.2</u>	<u>0.4</u>
Total Expenditures	\$47.6	\$48.1	\$43.5	\$43.7
Less Transfers to the General Fund	-\$10.9	-\$20.0	-\$4.0	\$0.0
June 30 Balance	\$44.4	\$18.3	\$13.8	13.1

10. Commerce paid \$21.3 million in PECFA claims in 2005-06 (for 11 months of payments), and will pay approximately \$21.7 million in 2006-07 (for 13 months of payments). Commerce officials estimate approximately \$20 million per year in PECFA payments during the 2007-09 biennium. The bill would reduce the PECFA awards appropriation by \$17.6 million in each year to reflect the \$20 million estimated payment level. It can be anticipated that, in the 2007-09 and subsequent biennia, the amount of claims paid will continue to decline from current levels as fewer sites enter the program, and as sites undergoing cleanup complete the process. However, it is also possible that the PECFA eligibility and payment changes discussed in separate budget papers could, at least temporarily, increase PECFA claim demand above the level otherwise anticipated. Table 1 reflects the \$20 million payment level under the bill.

11. The bill would provide \$3.2 million in each of 2007-08 and 2008-09 for Commerce and DNR PECFA administration. In addition, \$20.1 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 SB 40.

12. Any petroleum inspection fee revenues are first allocated for the \$252 million in outstanding revenue obligation debt service. Table 2 shows the estimated remaining annual petroleum inspection fee revenue obligation debt service amounts for the \$252 million in remaining outstanding debt as of July 1, 2007. The debt service amounts are based on an assumption that the state will continue to make the minimum required principal and interest payments for long-term obligations and interest only payments on short-term obligations (at current rates). Minimum revenue obligation debt service payments will require approximately 45% of annual revenues through at least 2010-11. The remaining principal balance amount would be \$142.3 million on July 1, 2012.

TABLE 2

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

<u>Fiscal Year</u>	<u>Minimum Payment Amount*</u>	<u>Principal Balance**</u>
2006-07	\$33.5	\$252.3
2007-08	33.6	231.0
2008-09	33.7	208.7
2009-10	33.7	185.2
2010-11	33.7	160.6
2011-12	26.2	142.3

* Does not include any principal payment on \$142.3 million in short-term commercial paper.

** June 30 outstanding principal balance after making required payments.

13. Department of Administration (DOA) officials responsible for managing the state's debt obligations have indicated that while it is uncertain what actions may be taken over the next several biennia in relation to petroleum inspection fee revenue obligations, in general the following principles would be considered in managing debt risk: (a) the state would attempt to maintain a prudent balance between short-term and longer-term debt instruments; (b) as excess revenues are available, retiring additional callable long-term bonds (particularly higher interest debt) or short-term debt would be considered; and (c) the state would monitor estimated PECFA claim demand to maintain a balance between the amount of funds needed to pay future claims and the amount of funds available for debt service costs. In relation to debt structure, officials indicate that they generally prefer to maintain short-term debt at less than one-half of obligations (primarily due to potential volatility in interest rates). Short-term debt (with terms generally less than 90 days) currently represents over one-half of outstanding revenue obligations under the program, and the program has not retired any short-term debt since it was originally issued in 1999 through 2001 (the state has made interest payments, and renewed the principal balances every two or three months).

DOA may consider retiring short-term debt to the extent available revenue may allow and/or converting a portion to longer-term instruments. The actions the state takes to manage overall petroleum inspection fund debt will impact the amount of revenues that must be set-aside by the trustee to meet required payments. This, in turn, will affect the remaining revenues available for appropriation from the fund. Therefore, while Table 1 shows an expected June 30, 2009, balance of \$13 million, all or a portion of that balance could be utilized to retire outstanding debt.

14. In addition to the issued revenue obligations, \$49,076,000 of bonding authority remains available for issuance in the future, but will not be needed, based on the estimated level of claim demand. The 2005-07 biennial budget, as passed by the Legislature, would have deleted this unused bonding authority. However, the Governor item-vetoed the deletion of the bonding authority, and it remains available for issuance by the program if needed. If this bonding authority is issued for future payment of PECFA claims, it would increase PECFA revenue obligation debt service. The Committee could choose to delete the unneeded bonding authority.

15. Any undesignated petroleum inspection fund balances can be used to pay additional debt service beyond the minimum required amounts, can be appropriated for other purposes, or can be used for transfers to another fund. If petroleum inspection fee revenues in excess of the minimum required payments would be used to retire short-term debt, and if debt service payments would be increased from the current \$33.6 million annual level to approximately \$50 million per year, all petroleum inspection fee revenue obligations could likely be retired by June 30, 2013. However, under the bill, it is anticipated that there would be only \$13 million in excess revenues that could be used for this purpose (up to \$17 million if the transfer to the general fund under the bill is not adopted). If the current rate of approximately \$34 million in annual debt service is maintained, all debt would be retired by approximately 2016.

16. A total of \$55.2 million was transferred from the petroleum inspection fund to the general fund between 2001-02 and 2006-07. This is shown in Table 3. SB 40 includes an additional transfer of \$4 million in 2007-08, for a total cumulative transfer of \$59.2 million.

17. The bill would transfer \$4.0 million in 2007-08 from the segregated petroleum inspection fund to support the general fund. Alternatively, it could be argued that any available petroleum inspection fund balance should be used to retire the \$252 million in outstanding PECFA revenue obligation debt as soon as possible. Any fund balances not otherwise appropriated should be used to retire debt obligations.

TABLE 3

Transfers from the Petroleum Inspection Fund to the General Fund

<u>Fiscal Year</u>	<u>Amount</u>
2001-02	\$1,187,800
2002-03	2,028,900
2003-04	20,954,200
2004-05	209,900
2005-06	10,860,600
2006-07	<u>20,000,000</u>
Total	\$55,241,400

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 80 new sites identified in 2005 and 67 identified in 2006. Federally-regulated (gas station) sites were required to close or upgrade by the end of 1998. It is likely that sites identified in recent years, and likely to be identified in the next few years, mainly include properties where a PECFA-eligible occurrence was discovered during 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 May 14, 2007, Commerce had conducted competitive public bidding for 974 sites. Commerce officials believe that bidding has resulted in reductions in the cost of cleanup. As of May 14, 2007, 4,025 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 greater amounts of the contamination had been removed during active cleanup.

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 promulgated administrative rule changes with a schedule of usual and customary costs which applies to all work performed after May 1, 2006, with certain exceptions. Reimbursement is limited to the actual costs, or the maximum amount for the task in the usual and customary cost schedule, whichever is less. The rule changes also specified several additional ineligible costs, such as costs for work performed prior to obtaining certain approvals from Commerce, or that exceeds the maximum reimbursable amount determined by a public bidding process. The rule changes also required PECFA site owners to submit an occurrence classification form with information about the site. Commerce is using the forms to do one or more of the following: (a) limit reimbursement to the costs listed in the usual and customary cost schedule; (b) specify a reimbursement cap for costs that are not listed in the schedule; (c) specify a scope of work and a corresponding reimbursement cap; and (d) specify a period of time during which the public bidding process will be deferred. The administrative rule specifies that Commerce may not reimburse costs for any work performed between May 1, 2006, and the date the Department receives the occurrence classification form. It is anticipated that these rule changes will move additional sites towards closure and provide additional cost controls.

22. In 2005 and 2006, Commerce used a \$40,000 EPA grant to study the estimated future financial liability of the PECFA program for petroleum-contaminated sites. The Department estimated that, as of July, 2006, there were 3,171 sites with petroleum contamination that could potentially seek future PECFA reimbursement totaling \$387.9 million. The Department estimated that perhaps \$40 million of these costs have been incurred but not submitted for reimbursement, and that the remaining \$347.9 million in costs have not been incurred. The \$387.9 million in estimated potential future PECFA costs is net of costs that have been reimbursed by the PECFA program. Under the Commerce estimate of potential remaining PECFA reimbursement costs totaling \$387.9 million, this means the total cumulative cost of the program could range from \$1.8 to \$1.9 billion. The 1,523 active PECFA occurrences that received at least one PECFA payment as of June 30, 2006, but have not been closed, are a subset of the 3,171 sites with potential PECFA liability that were identified in the Commerce study. This means there may be approximately 1,650 sites that are potentially eligible for PECFA but have not submitted a claim for reimbursement. Commerce estimates that cleanup at several hundred of these sites might not be happening because the owner is unable to obtain financing to complete the cleanup.

23. The remaining potential PECFA costs included in Commerce's estimate would approximately equal claims received and payments made under the program in the five years from 2001-02 to 2005-06. PECFA payments have declined from \$105.0 million in 2001-02 to \$44.5 million in 2004-05 and \$21.3 million in 2005-06. In addition, at the current rate of receipt of claims, it might take 10 to 20 years for \$387.9 million in potential remaining costs to be submitted to

Commerce for reimbursement.

24. Commerce and DNR submit semi-annual reports to the Legislature identifying the number of petroleum-contaminated sites administered by each agency. In February, 2007, Commerce and DNR submitted the report that provided data through December 31, 2006. The agencies identified 16,544 petroleum-contaminated sites that were included in the databases of both agencies. As of December 31, 2006, open (active) sites represented 12.5% (2,064) of the 16,544 reconciled sites and closed sites represented the remaining 87.5% (14,480) of reconciled sites.

25. Commerce and DNR plan to continue to review the status of open contaminated sites to determine the number of sites with remaining PECFA liability and the potential costs at those sites. Each agency has contacted owners of sites where no cleanup activities have occurred in recent years to attempt to find ways for work to resume and for sites to be closed.

26. 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.

27. Commerce officials have indicated that there may be future concerns related to leaks from upgraded tanks, the difficulty owners of some upgraded tanks may face 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. Commerce officials believe that, in the future, some may be interested in providing state resources for cleanup at sites that were previously cleaned up under PECFA, are no longer eligible under the program, and may experience subsequent contamination. Commerce has discussed potential issues related to contamination at these sites with officials at the U.S. Environmental Protection Agency and petroleum tank cleanup fund administrators in other states. However, Commerce has not submitted any budget recommendations related to this issue.

28. 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

29. The state could 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 were required to replace or upgrade their tanks by 1998, 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.

30. The 2005-07 biennial budget enacted by the Legislature included a provision directing Commerce to submit, with the Department's 2007-09 biennial budget request, a proposal to phase out the PECFA program. The Governor vetoed the provision, and the Commerce 2007-09 budget request did not include any phase-out provisions.

31. There are several methods and deadlines that could be considered as ways to phase-out the program. 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, or for submitting a final claim after Commerce or DNR have determined that no further action is necessary.

32. 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, 2009, could be established to provide approximately 17 months after enactment of the budget for owners to make the initial notification of the release.

33. 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 December 30, 2009, deadline for beginning an investigation or remedial activities. This would provide at least 12 months to begin site work if done in addition to the January 1, 2009, notification deadline.

34. 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.

35. 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.

36. DNR and Commerce officials indicate that some site owners may have reached the stage of remedial action work where no further action is necessary, and the site may have received conditional closure but not final closure, because of one or more of the following: (a) the owner might not want to have to add the site to the registry of sites closed with residual groundwater or soil contamination; (b) the owner might not have recorded a deed restriction related to residual contamination that must be done before Commerce or DNR can convert approval of a conditional closure to a final closure (deed restrictions were used before the registry of sites); or (c) the owner might not have met all conditions for final closure, such as completing the proper abandonment of monitoring wells at the site. There are up to 50 DNR sites that have been conditionally closed but the owners have not filed a deed restriction. There are up to 165 Commerce sites that have been conditionally closed but the owners have not completed the conditions required for final closure, such as filing a deed restriction or abandoning wells.

37. 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.

38. 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 13th 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.

39. 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.

40. 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. DNR can then recover costs incurred from responsible parties. Commerce does not have a comparable appropriation but can refer a site to DNR for possible cleanup under its spills response appropriation.

41. 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.

ALTERNATIVES TO BASE

A. Transfer to the General Fund

1. Approve the Governor’s recommendation to transfer \$4,000,000 in 2007-08 from the petroleum inspection fund to the general fund.

ALT A1	Change to Bill Revenue	Change to Base Revenue
GPR-REV	\$0	\$4,000,000

2. Maintain current law.

ALT A2	Change to Bill Revenue	Change to Base Revenue
GPR	-\$4,000,000	\$0

B. PECFA Awards Appropriation

1. Approve the Governor’s recommendation to reestimate the PECFA program awards appropriation by deleting \$17,600,000 SEG annually, to provide \$20,000,000 each year in the biennial appropriation for PECFA claims.

ALT B1	Change to Bill Funding	Change to Base Funding
SEG	\$0	-\$35,200,000

2. Maintain current law.

ALT B2	Change to Bill Funding	Change to Base Funding
SEG	-\$35,200,000	\$0

C. Revenue Obligation Authority

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

ALT C1	Change to Bill Revenue	Change to Base Revenue
BR	- \$49,076,000	- \$49,076,000

2. Maintain current law.

D. 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, 2009, 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 December 30, 2009, 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 13th 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.)

2. Maintain current law.

Prepared by: Kendra Bonderud
Attachment

ATTACHMENT

Appropriations Funded from the Segregated Petroleum Inspection Fund Under SB 40

	2007-08 <u>Appropriated</u>	2008-09 <u>Appropriated</u>	2008-09 <u>Authorized Positions</u>
Petroleum Environmental Cleanup Fund Award Program			
Commerce (143)			
(3)(v) PECFA Awards	\$20,000,000	\$20,000,000	
(3)(w) PECFA Administration	2,824,300	2,824,300	24.30
Natural Resources (370)			
(2)(dw) Environmental repair, petroleum spills administration (PECFA)	<u>366,500</u>	<u>366,900</u>	<u>4.00</u>
Subtotal	\$23,190,800	\$23,191,200	28.30
Other Programs			
Agriculture, Trade and Consumer Protection (115)			
(1)(r) Unfair Sales Act	224,300	224,300	2.35
(1)(s) Weights and Measures	644,900	644,900	6.00
Commerce (143)			
(1)(qa) Business development center; brownfields activities and staff	216,000	216,000	2.50
(3)(r) Petroleum inspection administration	5,547,400	5,547,400	43.00
(3)(sm) Diesel truck idling reduction grants	1,000,000	1,000,000	0.00
(3)(sn) Diesel truck idling reduction grant administration	70,400	70,400	1.00
Natural Resources (370)			
(2)(bq) Vapor recovery administration	92,100	92,300	1.00
(2)(br) Air management - mobile sources	1,318,400	1,338,700	4.00
(2)(dw) Environmental repair, petroleum spills administration (cooperative environmental assistance)	187,500	187,500	2.00
(2)(mu) Environmental fund - environmental repair, well compensation	1,049,400	1,049,400	0.00
(3)(ms) Pollution prevention	92,400	92,400	1.00
(4)(mw) Environmental fund - Groundwater management	766,900	766,900	0.00
(8)(mq) Mobile source air pollution	764,900	764,900	0.00
(9)(mq) Mobile source air pollution	178,300	178,300	1.00
Transportation (395)			
(4)(dq) Air quality - demand management	357,600	357,600	4.00
Military Affairs (465)			
(3)(r) State emergency response board	466,800	466,800	0.00
(3)(s) Major disaster assistance *	0	0	1.00
Revenue (566)			
(1)(s) Petroleum inspection fee collection	163,700	163,700	2.00
Miscellaneous Appropriations (855)			
(4)(r) Petroleum allowance **	600,000	600,000	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	\$20,062,700	\$20,083,200	70.85
TOTAL FUND APPROPRIATIONS	\$43,253,500	\$43,274,400	99.15

ATTACHMENT (continued)

Appropriations Funded from the Segregated Petroleum Inspection Fund Under SB 40

	2007-08 <u>Appropriated</u>	2008-09 <u>Appropriated</u>	2008-09 <u>Authorized Positions</u>
Transfer to the General Fund	\$4,000,000	\$0	
Minimum PECFA Revenue Obligation Debt Service	\$33,585,600	\$33,646,100	
TOTAL FUND EXPENDITURES / TRANSFERS	\$80,839,100	\$76,920,500	

* The bill would eliminate base level funding of \$3,000,000 for the major disaster assistance appropriation, provide that the dollar amount for the appropriation be increased in 2007-08 by an amount equal to the unencumbered balance in the appropriation immediately before the lapse of any money remaining in the appropriation on June 30, 2007, and provide 1.0 position under the appropriation to administer the program. On May 8, 2007, the Joint Committee on Finance modified the bill to specify that up to \$1,000,000 in unencumbered balances would be available to the appropriation in 2007-08 (instead of the \$3,000,000 estimated under the bill), and deleted the proposed position.

** Appropriation is sum sufficient and shows the currently estimated expenditures rather than the Chapter 20 amount.