

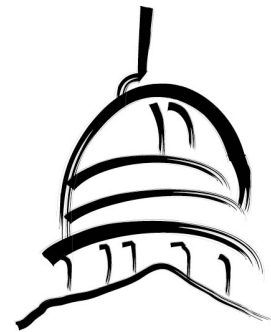
*Petroleum Environmental Cleanup Fund  
Award (PECFA) Program*



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# *Petroleum Environmental Cleanup Fund Award (PECFA) Program*



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# *Petroleum Environmental Cleanup Fund Award (PECFA) Program*

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## **Introduction**

The petroleum environmental cleanup fund award (PECFA) program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage systems and home heating oil systems. The amount of reimbursement varies from a minimum of 75% to over 99% of eligible cleanup costs. Owners of certain underground and aboveground tanks may receive up to \$1,000,000 for the costs of investigation, cleanup and monitoring of environmental contamination.

The program is funded from a portion of a 3¢ per gallon petroleum inspection fee. PECFA awards have grown from \$312,000 in 1988-89 to a high of \$296.6 million in 1999-00. A total of \$342 million in revenue obligations was authorized by 1999 Wisconsin Act 9 and 2001 Act 16 for payment of PECFA claims and has been used for claim payments. The revenue obligation debt service is being paid from petroleum inspection fee revenues that would have otherwise been used for PECFA awards.

There are approximately 16,000 sites at which a cleanup has been, or is expected to be, funded by PECFA. As of January 1, 2003, over \$1.2 billion in PECFA awards have been made for partial or full cleanup at 10,463 of these sites. Of the total payments, \$868.4 million (69.2%) has paid for completion of cleanup of 8,289 sites (79.2%).

PECFA 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; and (c) demonstrate financial responsibility or have pollution insurance for underground storage systems. 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.

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.

This paper describes the following aspects of the PECFA program: (a) program eligibility criteria and claim requirements; (b) award guidelines; (c) the number of PECFA sites; (d) program administration; (e) program costs; (f) the

petroleum inspection fee; and (g) revenue obligation authority. A series of appendices are included which contain additional information about program requirements, legislative history, program costs and the petroleum inspection fund.

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### Eligibility Criteria

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Eligibility for the PECFA program is defined in section 101.143 of the statutes. Owners of the following types of petroleum product storage tanks are eligible: (a) commercial underground and aboveground tanks of 110 gallons or more in capacity; (b) farm and residential vehicle fuel tanks storing more than 1,100 gallons of petroleum products that are not for resale; (c) home heating oil systems; (d) farm vehicle fuel tanks storing 1,100 or less gallons if the system is on a parcel of 35 or more acres of contiguous land devoted primarily to agricultural use which produces certain minimum farm income; (e) public school district and technical college district heating oil tanks used to store heating oil for consumptive use on the premises where stored; and (f) tanks located on trust lands of an American Indian tribe if the owner or operator otherwise complies with Commerce administrative rules concerning petroleum product storage systems (Chapter COMM 10) and PECFA (Chapter COMM 47).

The petroleum product storage system or home heating oil system must have been previously registered with Commerce. Petroleum products are defined as gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil. Appendix I lists the major federal and state storage tank requirements affecting potential PECFA sites.

In order to be eligible for a PECFA award, the owner must do the following:

1. Report the petroleum discharge to DNR or the Department of Military Affairs, Division of Emergency Government, in a timely manner;
2. Notify Commerce of the discharge and of the possibility of submitting a PECFA claim, prior to conducting a site investigation or remedial action;
3. Register the petroleum tank system with Commerce;
4. Complete an investigation to determine the degree and extent of environmental damage caused by the petroleum discharge;
5. Prepare a remedial action plan that identifies the specific activities proposed to be conducted;
6. Conduct all remedial action activities at the site to restore the environment to the extent practicable and minimize the harmful effects of the discharge, which may include monitoring to ensure the effectiveness of the natural process of degradation of petroleum product contamination if approved by DNR (for high-risk sites) or Commerce (for low- or medium-risk sites); and
7. Receive approval from DNR or Commerce that the remedial activities meet cleanup standards.

In an emergency situation, an owner of a petroleum product storage system, or a person owning a home heating oil system, may submit a claim to Commerce without completing a site investigation or remedial action plan if: (a) an emergency existed that made the investigation or plan inappropriate; and (b) the owner notified Commerce and DNR of the emergency before conducting the emergency action and DNR and Commerce jointly authorized emergency action.

Persons who become owners of an eligible site who were not the owners when the discharge

occurred are also eligible to submit a PECFA claim unless they should have known that a discharge occurred. Further, if Commerce approves, an owner of an eligible system or person owning a home heating oil system may enter into a written agreement with another person (including insurance companies, banks and consulting firms) to serve as their agent in order to submit a PECFA claim. If an agent is involved, payments are made jointly to the agent and owner. The state Department of Transportation (DOT) may also serve as an agent if the PECFA site affects a transportation project and DOT's participation is approved by Commerce.

### **Farm Tanks**

Underground and aboveground farm vehicle fuel tanks of 1,100 gallons or less capacity are eligible for PECFA if the petroleum product storage system stores petroleum products that are not for resale and if certain criteria are met. Eligibility criteria for these farm tanks include the following:

1. The petroleum storage system must be on:  
(a) a parcel of 35 or more acres of contiguous land devoted primarily to agricultural use, including land designated by DNR as part of the Ice Age Trail, which produced gross farm profits of not less than \$6,000 during the preceding year, or not less than \$18,000 during the three preceding years; or  
(b) a parcel of 35 or more acres of which at least 35 acres, during part or all of the preceding year, were enrolled in the conservation reserve program.

2. The owner of the farm tank must receive a letter or notice from DNR or Commerce indicating that the owner must conduct a site investigation or remedial action because of a discharge from the farm tank or an order to conduct such an investigation or remedial action.

An owner or operator who formerly owned a PECFA-eligible farm tank may 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.

### **Eligibility for New, Cleaned and Upgraded Sites**

Federal and state laws require owners or operators of petroleum underground storage tanks to provide proof of financial responsibility for cleanup of contamination at the sites and for compensation of third parties for bodily injury and property damage caused by accidental releases from the sites. Underground systems that are owned or operated by marketers are required to provide proof of financial responsibility of \$1,000,000 per occurrence. Before sites were cleaned up or upgraded, the PECFA program provided a method for owners or operators to meet the financial responsibility requirements.

PECFA eligibility is generally not available to new or upgraded underground petroleum storage tank systems that meet administrative rule COMM 10 and federal standards. Upgraded tank systems are not eligible if a petroleum discharge is confirmed after December 31, 1995, and that confirmation was made after the system met upgrading requirements. Tank systems that complete upgrading to federal and state standards after December 31, 1993, are eligible for PECFA for 90 days after upgrading is completed, if the site owner or operator applies for private pollution liability insurance within 30 days after upgrading is completed.

PECFA eligibility was not available after December 22, 2001, for: (a) new aboveground petroleum tank systems that are installed after April 30, 1991, and that meet state upgrading standards; and (b) aboveground petroleum tank systems that are upgraded to state standards if a petroleum discharge is confirmed after December 22, 2001, and that confirmation is made after the tank system met upgrading requirements. Aboveground petroleum storage tanks over 5,000

gallons were required to meet state upgrading requirements by May 1, 2001, but do not have to meet any federal upgrading requirements. There are no federal or state upgrade requirements for aboveground tanks storing 5,000 or fewer gallons. Non-upgraded sites that have been cleaned up retain PECFA eligibility until they meet federal and state upgrading standards.

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### **DNR and Commerce Jurisdiction of Cleanup**

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DNR administers remedial actions and completion of cleanup at high-risk petroleum storage tank discharge sites and at sites with contamination from petroleum and non-petroleum hazardous substances. Commerce administers remedial actions and completion of cleanup at low- and medium-risk petroleum storage tank discharge sites.

1995 Act 27 directed DNR and Commerce to enter into a memorandum of understanding (MOU) that established: (a) the respective functions of the two agencies in the administration of cleanup at PECFA sites; (b) procedures to ensure that cleanups at Commerce-administered sites are consistent with the hazardous substances spills law; and (c) procedures, standards and schedules for determining which sites are classified as high, medium or low priority. The requirements related to the division of authority for cleanup at petroleum-contaminated sites between Commerce and DNR and administration of the MOU are contained in section 101.144 of the statutes. Commerce and DNR entered into an initial agreement in December, 1995, and revised the agreement in May, 1998.

In September, 1998, the Joint Committee for Review of Administrative Rules (JCRAR) directed Commerce and DNR to promulgate a joint emergency rule codifying those portions of the

MOU relating to the classification of contaminated sites, the disbursement of funds and all other statements of policy. During 1999 and 2000, Commerce and DNR promulgated joint emergency rules COMM 46 and NR 746 to comply with the directives of JCRAR and JCRAR held several meetings to oversee the promulgation of the rules. In 2001 the rules became permanent.

Under current law, 1999 Act 9 classifies a petroleum site as high-risk if it meets one or more of the following criteria: (a) repeated tests show that the discharge has resulted in a concentration of contaminants in a private or public potable well that exceeds a preventive action limit, as defined in s. 160.01(6); (b) petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements; (c) there is a groundwater enforcement standard exceedence within 1,000 feet of a public drinking water well or within 100 feet of any other well used to provide water for human consumption; or (d) there is a groundwater enforcement standard exceedence in fractured bedrock. DNR has jurisdiction for administering the cleanup at high-risk petroleum storage tank discharge sites. In addition, DNR has jurisdiction for medium- and low-risk petroleum storage tank discharge sites that also have contamination from non-petroleum hazardous substances. All other petroleum sites, excluding unranked sites, are medium- or low-risk under the jurisdiction of Commerce. A site with contamination solely from petroleum products and additives to petroleum products (such as lead or oxygenates) is categorized as a site with contamination solely from petroleum products.

Act 9 directed DNR to transfer sites to Commerce based on the new classification of sites by December 1, 1999. The Act further directed that if the definition of high-risk sites resulted in classifying more than 35% of sites as high-risk on December 1, 1999, Commerce would be required to promulgate rules that incorporate any agreement between DNR and Commerce, that would establish



standards for categorizing sites of petroleum product discharges that does not provide that all sites at which a groundwater enforcement standard is exceeded be classified as high-risk, classifies no more than 35% of petroleum sites as high-risk, excluding unranked sites and sites that also have contamination from non-petroleum hazardous substances (co-contaminated sites).

In December, 1999, DNR, Commerce and DOA notified the Joint Committee on Finance that the statutory redefinition of high-risk sites resulted in a split of sites that met the Act 9 test of having no more than 35% of active sites with only petroleum contamination ranked as high-risk. As of December 1, 1999, out of the 3,864 active ranked sites, 30% (1,176) were high-risk sites under the jurisdiction of DNR and 70% (2,688) were medium- and low-risk sites under the jurisdiction of Commerce. In addition, there were 491 active co-contaminated sites and 2,561 active unranked sites (representing 35% of all active sites). The unranked sites receive a site categorization when sufficient information to make a classification decision is submitted by the site consultant to DNR or Commerce. The Act 9 redefinition of site classification resulted in the transfer of approximately 1,800 petroleum-contaminated sites from the jurisdiction of DNR to Commerce.

Permanent rules COMM 46 (effective March 1, 2001) and NR 746 (effective February 1, 2001) codify the procedures for transfer of sites to Commerce as they are classified if they are not high-risk or co-contaminated and for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available. The rules also include provisions related to joint administration of requirements related to: (a) selecting bids for remedial action at PECFA sites and setting remediation targets for sites that are competitively bid or bundled with another site or sites; (b) determining when sites may close; (c) determining when remediation by natural attenuation may be approved as the final remedial action for a

petroleum-contaminated site; (d) tracking the achievement of remediation progress and success; and (e) reporting of program activities.

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## Cleanup Requirements

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Section 292.11 of the statutes requires that persons who possess or control a hazardous substance which is discharged or who cause the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state. DNR is responsible for establishing environmental cleanup standards for groundwater and soil. DNR promulgated the NR 700 administrative rule series to cover responses to discharges of hazardous substances at PECFA-eligible and non-PECFA eligible sites. NR 700 allows responsible parties to choose an appropriate cleanup method for their properties. DNR provides rules and technical guidance on a variety of methods.

### Groundwater

Contaminated groundwater affects human health and drinking water supplies. Cleanup standards for groundwater contamination at PECFA sites and other sites are established under Chapter 160 of the statutes and Chapter NR 140 of the administrative code. The statutes require DNR to establish enforcement standards for substances of public health concern and public welfare concern. The enforcement standard is a numerical value for the concentration of a contaminant in groundwater. It is based on federally-determined contaminant limits for specific compounds, including consideration of health risk and other factors. If no federal contaminant limit has been established for a specific compound the state may calculate an enforcement standard. Petroleum contamination occurs primarily from compounds

that have federally-established limits.

Chapter 160 requires DNR to establish by administrative rule a preventive action limit (PAL) for each substance for which an enforcement standard is established. The PAL is a contamination limit that is more stringent than the groundwater enforcement standard and is intended as a warning level to allow action to be taken prior to violation of the enforcement standard. Each state agency that regulates activities that may affect the groundwater is required to promulgate rules that establish the range of responses that the agency may take or require the party responsible for the contamination to take if the PAL is exceeded.

The DNR administrative rule chapters NR 140 and the NR 700 series include a cleanup goal of the PAL. DNR allows cleanups, including PECFA cleanups, to achieve a standard less stringent than the PAL if achieving the PAL is determined not to be technically or economically feasible. DNR does this by granting an exemption to NR 140 for contamination above the PAL but below the enforcement standard.

In addition, DNR administrative rules NR 140 and NR 726 allow flexible closure of contaminated sites. Flexible closure means that cleanup activities can be stopped and the site closed when groundwater contamination levels exceed enforcement standards if the following conditions are met: (a) the source of contamination has been adequately cleaned up; (b) groundwater contamination exceeding NR 140 PALs will not migrate across the property line of any property for which a groundwater use restriction has been recorded; (c) natural processes will break down the contamination in a reasonable amount of time to meet state groundwater standards; (d) there is no threat to human health and the environment as a result of selecting natural attenuation as the remedial option; and (e) a groundwater use restriction has been placed on the deeds of all

properties where groundwater contamination exceeds the enforcement standards. Natural attenuation means allowing naturally-occurring physical, chemical or biological processes to degrade contamination over a period of time. DNR has published technical guidance regarding use of natural attenuation for cleanup of petroleum contamination in groundwater.

## **Soil**

Contaminated soil can affect human health if a person has direct contact with contaminated soil or if the contamination degrades groundwater quality. Soil remediation standards are contained in Chapter NR 720, which includes numerical values for specific compounds that represent concentrations of contaminants that can remain in soil at a site and not cause groundwater to become contaminated above groundwater quality standards in NR 140. NR 720 also includes numerical values for compounds that represent the amount of contaminants that can remain at a site and not cause a risk to human health through eating or breathing contaminated soil particles. NR 720 also allows consultants to develop site specific soil cleanup standards, which are based on conditions at the site and can allow most or all of the contaminated soil to remain in place at certain sites. DNR administrative rules also include standards for the one-time landspreading of petroleum-contaminated soils at certain suitable locations, with natural degradation of the contaminants by soil microorganisms.

## **COMM 46 and NR 746 Cleanup Requirements**

Identical administrative rules COMM 46 and NR 746 include requirements for standards to be applied by both agencies for administration of cleanup at petroleum-contaminated sites. The rules codify the 1999 Act 9 requirement that the agencies promulgate by rules methods for determining the risk to public health, safety and welfare and to the environment posed by petroleum discharges.

COMM 46 and NR 746 establish risk criteria for screening sites to determine whether a remedial action will be required, to set remediation targets and to determine whether the site may be closed after completion of the site investigation or after remedial action. A remediation target is a goal that may be set for a site to establish the contaminant concentration in groundwater or soil, or both, that when achieved will result in the granting of site closure by the administering agency. The risk criteria include:

1. None of the following environmental factors are present at the site: (a) documented expansion of the contaminant plume; (b) verified contaminant concentration in a private or public potable well that attains or exceeds the preventive action limit established in chapter 160 of the Statutes; (c) contamination within bedrock or within one meter of bedrock; (d) petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, (floating product) and has been verified by more than one sampling event; and (e) documented contamination discharges to a surface water or wetland.

2. No soil contamination is present at the site that exceeds specified numeric soil screening levels.

3. There is no soil contamination within four feet of the ground surface that exceeds any of specified numeric levels for direct contact soil contaminant concentrations.

4. Any potential human health risk from direct contact has been addressed for other substances within four feet of the ground surface that have been identified by the administering agency as contaminants of concern.

5. If there are petroleum-product contaminants in soil or groundwater, the most recent release that caused or contributed to the contamination is more than ten years old.

6. There is no evidence of migration of petroleum product contamination within a utility corridor or within other specified permeable material or soil.

7. There is no evidence of migration or imminent migration of petroleum product contamination to building foundation drain tile, sumps or other points of entry into a basement or structure.

8. No enforcement standard is attained or exceeded in groundwater within 1,000 feet of a public well or within 100 feet of any other drinking water well.

Sites that meet all of the risk screening criteria may be closed after the completion of an acceptable site investigation if specified conditions are met. If the site has groundwater contamination that exceeds the preventive action limits but is below the enforcement standards, or exceeds the enforcement standards, the site may be closed when it meets certain conditions. NR 726 flexible closure requirements must be met. Any required groundwater use deed restriction must be recorded if the site is closed with contaminant levels that exceed groundwater enforcement standards, and other specified conditions must be met. The rules also specify procedures for Commerce and DNR site closure decisions after remedial action is taken at the site to address one or more of the risk screening criteria.

DNR promulgated an administrative rule, effective November 1, 2001, that created a geographic information system (GIS) registry that includes information about contaminated sites that have been closed with a groundwater enforcement standard exceedence. The rule requires that sites with residual groundwater contamination in excess of the NR 140 enforcement standard be placed on a GIS registry, instead of recording a groundwater use restriction on each property, as was the previous requirement for flexible closure. The

information is available on the DNR Internet web site. DNR also promulgated a rule, effective August 1, 2002, that requires inclusion on the GIS registry of all sites approved for closure with residual soil contamination.

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### **PECFA Award Payments**

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Commerce is responsible for issuing PECFA awards, after eligible costs have been incurred and DNR (for high-risk sites) or Commerce (for medium- and low-risk sites) has approved all remedial action. Reimbursement procedures are established in s. 101.143 of the statutes and administrative code chapter COMM 47. The procedures related to submittal of PECFA claims changed for claims submitted after the April 21, 1998, effective date of changes made in rule COMM 47.

A PECFA claim must contain all of the following: (a) for a claim covering a site investigation and preparation of a remedial action plan, a copy of the site investigation report and a departmental letter indicating that remedial action plan submittal requirements have been complied with; (b) a copy of the Commerce tank inventory form for each petroleum tank system at the site; (c) bid specifications and bids for commodity services; (d) documentation of actual costs incurred in the cleanup; (e) proof of payment including accounts, invoices, sales receipts or records documenting actual eligible costs; (f) written approval from DNR (for high-risk sites) or Commerce (for low- or medium-risk sites) for completed remedial activities; and (g) other records and statements that Commerce determines are necessary to complete the application.

### **Eligible Costs**

In general, eligible costs include the costs of investigating, cleaning and remediating discharges from petroleum product storage tanks, monitoring costs, compensation of third parties for damages caused by underground tank discharges and other costs determined to be necessary by Commerce. Appendix II provides a list of the statutory eligible and ineligible costs. Commerce is required to establish usual and customary cost schedules for these costs and is currently developing administrative rules to do so. There are exclusions from eligible costs, including any cost incurred before August 1, 1987 (the date PECFA began), costs for activities conducted outside Wisconsin and costs determined by Commerce to be unreasonable or unnecessary. Administrative rule COMM 47 includes an additional description of ineligible costs.

Commerce is required to promulgate an administrative rule identifying ineligible costs to which a penalty would apply. The Department is in the process of promulgating the rule. If a claimant submits a PECFA claim that includes the specified ineligible costs, Commerce is required to reduce the PECFA award by an amount equal to half of the ineligible costs after removal of the ineligible costs from the claim. If a consultant submits the ineligible costs, the consultant is required to pay a penalty to Commerce equal to half the ineligible costs.

### **Progress Payments**

PECFA claims are paid on a first-in first-out basis for completed cleanup actions, with the claim date established as the date that the complete claim package and all necessary approvals are received by Commerce. However, Commerce may provide a progress payment prior to all costs being incurred under certain circumstances and provide priority processing of certain claims.

As of September 1, 2002, 2001 Act 16 allows an owner or operator to submit a claim annually if the owner or operator has incurred \$50,000 in unreimbursed eligible PECFA costs and at least one year has elapsed since submission of the last claim.

All home heating oil and farm tank claims are processed and paid as soon as they are received. Commerce provides priority processing to claims where the site can be investigated and cleaned up to the point of closure for \$60,000 or less, excluding interest.

Commerce makes progress payments after the following milestones are completed (except to claimants who self-insure their petroleum product storage tank systems): (a) completion of an emergency action; (b) completion of a site investigation and remedial action plan; (c) completion of remedial action activities; (d) approval of natural attenuation as a final remedial response or at the end of each two year cycle of monitoring necessary to show that remediation by natural attenuation will occur; (e) at the end of each two year cycle of monitoring required for off-site contamination; and (f) after implementation and two years of operation, sampling and monitoring of an active treatment system and every two years thereafter.

### **Cost Containment Provisions**

COMM 47 provides cost guidelines for various cleanups, bid requirements, requirements for consultants and other items intended to promote cost containment under PECFA. Sites are subject to a maximum allowable cost for a site investigation of \$40,000 unless Commerce pre-approves additional costs.

If a claimant can achieve a closed remedial action with total costs of \$60,000 or less, excluding interest costs, the claimant or consultant must notify Commerce in advance. (Between April 21, 1998, and October 28, 1999, the cost threshold was

\$80,000.) The site would not be subject to the requirements to develop and submit investigation and other interim environmental reports, to be potentially subject to caps, bundling and public bidding and to adhere to the \$40,000 cap on investigation costs. If the attempt to achieve a cleanup within the \$60,000 limit is not successful, no additional expenses can be incurred without prior Commerce approval. If any expenses above \$60,000 are incurred without prior Commerce approval, the expenses will be the sole responsibility of the consultant and will not be reimbursed under PECFA. If a consultant exhibits a pattern of attempting and failing to complete remediations under this provision, Commerce can restrict the consultant from attempting cleanups for \$60,000 or less or could disqualify the consultant from performing all PECFA work.

For sites where a remedial alternative was received by Commerce before April 21, 1998, a remedial action plan had to be submitted to Commerce that included consideration of at least three alternatives and the cost of each. One of the alternatives had to be passive bioremediation with long-term monitoring unless this alternative is not feasible at the site. PECFA provides reimbursement for the lowest cost remediation alternative that is approvable by DNR or Commerce.

The procedures for sites where a remedial alternative was received by Commerce on or after April 21, 1998, vary depending on whether any of a group of five defined environmental factors are present. Environmental factors would determine the risk of a site. Sites that do not have a specified environmental factor would not be allowed to use an active treatment system that uses mechanical, engineered or chemical approaches to cleanup the site. Instead, sites without specified environmental factors would be limited to use of non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. As part of the site investigation, consultants must determine whether any of the environmental factors described earlier under the COMM 46

cleanup requirements are present.

Under COMM 47, Commerce may review the remedial performance and costs associated with any existing site. Commerce may deny any or all funding after July 1, 1998, if a claimant failed to carry out site recommendations developed by DNR in its "PECFA Efficiency Project," (a study conducted by DNR in 1998 on the use of engineered remedial systems) and/or deny any or all funding if a claimant fails to provide information required by Commerce as part of its review. Commerce can establish a maximum reimbursable cost for the cleanup, excluding interest, approve system enhancements, bundle the site with other sites or require a public bidding process to establish a lower site cost. If a claimant chooses to select another, higher cost remedial strategy, the claimant would have to notify Commerce in writing, including an agreement to not submit costs for reimbursement in excess of the maximum reimbursable amount approved by Commerce.

### **Site Bidding**

For remedial action activities that begin on or after November 1, 1999, DNR or Commerce, whichever agency has jurisdiction over the site, are required to estimate the cost to complete a site investigation and remedial action for an occurrence. If that estimate exceeds \$60,000, Commerce is required to implement a competitive public bidding process to assist in determining the least costly method of remedial action. Commerce may not implement the bidding process if: (a) Commerce and DNR choose to waive the use of the bidding requirement if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility or within 100 feet of any other well used to provide water for human consumption; or (b) Commerce or DNR waives the requirement after providing notice to the other agency.

Commerce may disqualify a public bid for remedial action activities at a PECFA site if, based on information available to the Department and experience with remedial actions at other PECFA projects, the bid is unlikely to establish a maximum reimbursement amount that will sufficiently fund a cleanup necessary to meet applicable site closure requirements. Commerce may also disqualify a public bidder from submitting a bid for remedial action activities at a PECFA site if, based on past performance of the bidder, the bidder has demonstrated an inability to finish remedial actions within previously established cost limits.

Prior to November 1, 1999, Commerce had conducted competitive bidding of the remediation at 65 sites. The initial remedial action plans proposed costs totaling \$12.9 million. The winning bids included costs of \$3.9 million to complete the remediation, for a potential cost savings of \$9.0 million.

Since the 1999 Act 9 changes related to bidding went into effect on November 1, 1999, Commerce has conducted competitive bidding for 255 sites with low bids totaling \$14.9 million. (There is no potential cost savings data comparable to bids before November 1, 1999, because there is no longer an initial remedial action plan to establish an original cost estimate.)

Commerce and DNR are using a joint decision-making process for the selection of remedial bids and the setting of remediation targets. The agencies have implemented the bidding requirements contained in Act 9 by requiring all sites that have not committed to completing the site investigation and remediation for \$60,000 or less to be bid, unless the site meets the requirements for bidding to be waived. Since 1999, the two agencies have discussed how to set remediation targets but have not further defined the process. The agencies anticipate that use of the bidding process will replace the need for establishing remediation targets.

1999 Act 9 authorizes Commerce to promulgate rules that require a person to pay a fee as a condition of submitting a bid to provide a service for a cleanup under the PECFA program. If Commerce imposes a fee, the Department is authorized to use the PECFA awards appropriation to purchase, or provide funding for the purchase of insurance to cover the amount by which the costs of conducting the cleanup service exceed the amount bid to conduct the cleanup service. A Commerce work group reviewed issues associated with creating this "cap insurance" and determined that cap insurance would not be feasible for the program, based on the costs for insurance coverage and the inability of the state to self-insure for this type of coverage.

### **Consultants and Service Providers**

Consultants and consulting firms must register with Commerce for admission to participate in the PECFA program. Consultants would include, but not be limited to, engineers, hydrogeologists and environmental scientists or specialists. Commerce may disqualify consultants or consulting firms from participating in PECFA for non-compliance with PECFA program requirements. Consultants may not provide cleanup services. Consulting firms, laboratories and drillers must maintain insurance coverage of at least \$1,000,000 per claim.

Commerce is authorized to promulgate rules under which it would select service providers to provide investigation or remedial action services in specified areas. Commerce is allowed to: (a) deny PECFA reimbursement to an owner or operator who uses a service provider other than the one approved for the area; or (b) limit PECFA reimbursement to the amount that the selected service provider would have charged for the service. Commerce has been developing the rule since 2000.

Under 1999 Act 9, Commerce is required to collect information from consultants that annually estimates the additional costs that must be incurred

to complete the remedial action activities in compliance with the groundwater enforcement standard. In the fall of 2000, Commerce implemented an Internet-based method for collecting information about past costs from lenders. As of June 30, 2002, responses from lenders revealed \$153 million in outstanding PECFA liabilities. However, not all lenders are believed to have reported and Commerce estimated that the total outstanding PECFA liabilities at all lending institutions was approximately \$170 million. Commerce implemented an Internet-based method for collecting information from consultants about future costs and the status of site remediations in August, 2002. In December, 2002, Commerce was analyzing the submitted data to estimate the total future costs of bringing sites to closure.

### **Interest Cost Reimbursement**

Reimbursement for interest costs associated with loans for remediation is limited to an interest rate of 2% above the prime rate for loans secured after January 31, 1993, and before October 15, 1997. The maximum reimbursable interest costs are 1% above the prime rate for loans secured on or after October 15, 1997, and before November 1, 1999.

For loans secured on or after November 1, 1999, reimbursement for interest costs is limited based on the applicant's gross revenues in the most recent tax year as follows: (a) if gross revenues are up to \$25 million, interest reimbursement is limited to the prime rate minus 1%; and (b) if gross revenues are over \$25 million, interest reimbursement is limited to 4%.

Loan origination fees are reimbursable at no more than two points of the loan principal. Annual loan renewal fees charged before April 21, 1998, are reimbursable at no more than 1% of the unreimbursed amount and remaining loan balance. Annual loan renewal fees charged on or after April 21, 1998, are reimbursable at no more than 1% of the outstanding unreimbursed loan amount.

2001 Act 16, created other interest cost reimbursement limits. Effective September 1, 2001, 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. If an applicant received written notification from DNR or Commerce before September 1, 2001, that no further action is necessary, and the applicant submits a final claim more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120<sup>th</sup> day after September 1, 2001, are not eligible costs. If an applicant does not complete the site investigation within five years after the applicant notified Commerce or DNR about the discharge, or by October 1, 2003, whichever is later, the applicant is ineligible for reimbursement of interest costs incurred after the later of those two dates.

### **Award Limits and Deductibles**

The law establishes maximum awards per occurrence, total annual award levels and deductibles that vary depending on the type of petroleum storage tank, the number of tanks and when the costs were incurred. The law also establishes deductibles, which are the amounts the owner must pay for the cleanup. Table 1 indicates award limits according to the date costs were incurred, type of tank, number of tanks and type of owner, and the deductibles for the types of tanks.

Award amounts decrease for aboveground and underground tanks for costs incurred on or after December 22, 2001, but the maximum award in effect before December 22, 2001, applies to all eligible costs for investigations and remedial activities started before December 22, 2001. 1999 Act 9 specifies that, in addition to the overall maximum award, the maximum award for individual claims is limited to the amount determined by Commerce and DNR to be necessary to implement the least costly method of

completing remedial action and complying with groundwater enforcement standards.

The maximum award for eligible farm tanks of 1,100 gallons or less is \$100,000 before and after December 22, 2001. Farm tanks are subject to a limitation that in any fiscal year, not more than 5% of the amounts appropriated for PECFA awards may be used for these tanks.

The maximum award for tanks owned by public school districts and technical college districts that store heating oil for consumptive use on the premises is \$190,000. Public school tanks are subject to a separate limit of 5% of the amounts appropriated for PECFA awards.

Award amounts distinguish between marketers and non-marketers of petroleum products. A "marketer" is a facility at which petroleum is sold (gas stations, truckstops or convenience stores). A "non-marketer" is a facility at which petroleum products are stored not for sale, but for use by the business (trucking and construction firms). For non-marketers, maximum PECFA awards differ depending on the annual average monthly volume a facility handles. Facilities handling more than 10,000 gallons per month have a higher maximum award amount than those with volumes under 10,000 gallons a month.

When there is an intermingled plume of contamination that contains discharges from both aboveground and underground petroleum storage tank systems, Commerce calculates the deductible according to the predominant method of storage at the site, measured in gallons. For example, if the site primarily used aboveground petroleum storage tank systems, then the deductible for aboveground systems would apply.

Effective for remedial action activities that begin on or after November 1, 1999, Commerce is required to notify the owner or operator of a low- or medium-risk site, and DNR and Commerce are



**Table 1: Petroleum Environmental Cleanup Fund Award (PECFA) Program--Maximum Awards, Total Annual Awards and Deductibles**

Type of Tank	Owner	Costs Incurred Beginning 8-1-87 and Before 12-22-01		Costs Incurred Beginning 12-22-01 <sup>1</sup>		
		Maximum Award Per Occurrence	Total Annual Awards	Maximum Award per Occurrence	Total Annual Awards	Deductible <sup>2</sup>
Home Heating Oil	All	\$7,500	N/A	No Change	No Change	No Change
Underground	Non-Marketer (the system does not store products for resale and handles 10,000 or less gallons per month)	\$500,000 <sup>4</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Underground	Marketer (the system stores products for resale) or Non-Marketer with system that handles more than 10,000 gallons per month	\$1,000,000 <sup>4</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	Non-Marketer (the system does not store products for resale and handles 10,000 or less gallons per month)	\$500,000 <sup>4</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	Marketer (the system stores products for resale) or Non-Marketer with system that handles more than 10,000 gallons per month	\$1,000,000 <sup>4</sup>	\$1,000,000 <sup>5</sup>	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	Terminal (a petroleum product storage system that is connected to a pipeline facility)	\$1,000,000 <sup>4</sup>	\$1,000,000 <sup>5</sup>	\$190,000	190,000	\$10,000 per occurrence
Farm <sup>6</sup>	Underground and aboveground vehicle fuel systems of 1,100 gallons or less storing products not for resale	\$100,000 <sup>4</sup>	\$1,000,000 <sup>5</sup>	No Change	\$190,000	No Change
Public School District <sup>7</sup> And Technical College District	Heating oil for consumptive use on the premises	\$190,000 <sup>4</sup>	\$1,000,000	No Change	\$190,000	No Change

(1) Maximum award in effect before December 22, 2001, applies to all eligible costs for investigations and remedial activities started before December 22, 2001.

(2) Commerce may waive the deductible if it determines that the owner or operator is unable to pay. If Commerce waives the deductible, it shall file a lien against the property until the deductible is paid.

(3) Nonprofit housing organizations are exempt from paying the deductible for tanks owned by the organization if they assist low-income persons with housing-related problems.

(4) For individual claims, the maximum award is limited to the amount determined by Commerce and DNR to be necessary to implement the least costly method of completing remedial action and complying with groundwater enforcement standards.

(5) \$2,000,000 maximum annual award if the claimant owns or operates more than 100 petroleum product storage tank systems.

(6) In any fiscal year, not more than 5% of amounts appropriated for PECFA awards may be used for farm tanks.

(7) In any fiscal year, not more than 5% of amounts appropriated for PECFA awards may be used for school district tanks.

required to notify the owner or operator of a high-risk site, of their determination of the least costly method of completing the remedial action activities and complying with groundwater enforcement standards and that reimbursement for remedial action is limited to the amount necessary to implement that method. While the general maximum award did not change from prior law, the maximum reimbursement for individual sites could be limited under the provision.

Under 1999 Act 9, Commerce is required to conduct an annual review for low- or medium-risk sites, and Commerce and DNR are required to jointly conduct an annual review for high-risk sites and make the same determinations of the least costly method, use of natural attenuation and limit on maximum reimbursement. Commerce and DNR are authorized to review and modify established maximum reimbursement amounts for remedial action activities if the Departments determine that new circumstances, including newly discovered contamination at a site, warrant the review. As of the fall of 2002, Commerce planned to use the information reported by consultants related to estimated future costs of sites to develop baseline data for annual review of sites by the two agencies. Commerce is also beginning to review the costs of existing active sites under administrative rule Comm 47.338.

### **Additional Award Requirements**

Appendix III indicates other provisions that affect PECFA awards. These include acts of negligence or fraud, compensation claims from third-party suits and involvement of lending institutions.

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### **Total Potential PECFA Sites**

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Potential PECFA sites are regulated under federal and state storage tank requirements.

Commerce regulates approximately 176,200 former and existing underground petroleum product storage tank systems under federal and state requirements and 24,300 aboveground petroleum product storage tank systems under state requirements. Approximately 78,800 of the 176,200 underground tanks regulated by Commerce are regulated under the federal leaking underground storage tank (LUST) program. Of the 78,800 federally-regulated tank systems, approximately 12,700 are active in-use systems. Commerce believes that all of the active, in-use federally-regulated tanks have been upgraded to meet 1998 requirements. The Department has inspected systems in 2001 and 2002 to determine compliance.

There are approximately 16,000 potential PECFA sites. This includes 9,884 sites for which Commerce has paid at least one PECFA award as of June 30, 2002 (discussed in the later section on PECFA program costs). There are approximately 4,600 additional known sites where no PECFA claim has been submitted but where Commerce anticipates a claim will be filed in the future. Agency officials estimate that there may be at least 1,500 additional potential PECFA sites that have not been identified.

As part of DNR and Commerce implementation of the 1999 Act 9 provisions related to the administration of site cleanup, the two agencies have submitted reports to the Legislature identifying the number of sites administered by each agency. On December 17, 2002, Commerce and DNR submitted the report that provided data through June 30, 2002. The agencies identified 15,428 petroleum tank sites that were included in the databases of both agencies as of June 30, 2002. In addition to the reconciled sites, 4,531 sites (including 3,558 closed sites) were included in the DNR database but have not yet been matched to a site in the Commerce database. There are 66 sites on the Commerce database that have not been matched with sites on the DNR database. The Commerce database indicates that all 66 sites are

under the jurisdiction of DNR.

Table 2 shows the number of active and closed potential PECFA sites administered by DNR and Commerce that have been reconciled in the databases of both agencies. As of June 30, 2002, open (active) sites represented 26.7% (4,126) of the 15,428 reconciled sites and closed sites represented the remaining 73.3% (11,302) of reconciled sites.

**Table 2: Potential PECFA Sites Under DNR and Commerce Jurisdiction, June 30, 2002 -- Sites in Both Commerce and DNR Databases**

	Open	Closed	Total
<b>DNR-Administered Sites</b>			
High-Risk	1,470	3,209	4,679
Medium-Risk	14	1,322	1,336
Low-Risk	9	1,553	1,562
Unranked	<u>1,144</u>	<u>509</u>	<u>1,653</u>
Subtotal DNR	2,637	6,593	9,230
<b>Commerce-Administered</b>			
High-Risk	0	0	0
Medium- or Low-Risk	1,489	4,709	6,198
Unranked	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal Commerce	1,489	4,709	6,198
<b>Total DNR and Commerce Reconciled Sites</b>			
	4,126	11,302	15,428

As of June 30, 2002, DNR administered 63.9% (2,637) of the reconciled open sites and Commerce administered the remaining 36.1% (1,489). Of the open sites, 35.6% (1,470 of 4,126) are high-risk sites, 36.7% (1,512 sites) are medium- or low-risk sites and 27.7% (1,144 sites) have not been ranked and are under the jurisdiction of DNR until a ranking process determines whether the sites should be classified as medium- or low-risk. DNR and Commerce data for June 30, 2002, also indicates that there are 5,099 open sites that are either on the databases of both agencies or just on the DNR database. Of these sites, 2,761 have been ranked, have contamination solely from petroleum and do not include sites with contamination from non-petroleum hazardous substances. Of the 2,761

active, ranked, petroleum-only sites, 46.1% (1,272) are high-risk and 53.9% (1,489) are medium- or low-risk sites.

The number of potential PECFA sites in the reconciled databases of both agencies increased from 10,916 in September, 1998, to 13,663 sites in August, 2000, to 15,428 in June, 2002, as listed in Table 2. The number of closed sites increased from 4,946 in September, 1998, which was 45% of the 10,916 reconciled sites, to 8,132 in August, 2000 (almost 60% of the 13,663 reconciled sites) to 11,302 in June, 2002 (73% of the 15,528 reconciled sites).

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## PECFA Administration

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Commerce has primary responsibility for the financial management of the PECFA program, which includes issuing the award payments, and for the review of remedial action work completed at low- and medium-risk sites. DNR is responsible for development of and enforcement of cleanup standards and review of remedial action work completed at high-risk sites. Before Commerce can issue a PECFA award, DNR (for high-risk sites) or Commerce (for low- and medium-risk sites) is required to provide written approval that the investigation and cleanup of environmental contamination is conducted according to state environmental standards and that the harmful effects from the discharge are minimized according to the hazardous substance spills law. Appendix IV summarizes this process.

### Department of Commerce

In 2002-03, Commerce is authorized \$3,799,600 and 48.8 positions to administer its responsibilities related to claim processing and payment and cleanup of medium- and low-risk sites. Commerce funding includes: (a) \$3,036,200 segregated revenues (SEG) and 36.8 SEG positions (2.0 of

which are project) from the petroleum inspection fund; and (b) \$763,400 federal revenues (FED) and 12.0 PR positions from the federal LUST program grant received from the U.S. Environmental Protection Agency.

Commerce staff review claims, make PECFA payments, answer PECFA-related inquiries, monitor PECFA claims in progress, conduct the bid process for certain claims, construct bid "bundles" of sites to be cleaned up as one action, administer the bid process for sites with estimated remedial costs above \$60,000, issue orders to proceed for low- and medium-risk sites, estimate the least costly method of completing remedial action activities, conduct an annual review of low- and medium-risk sites and jointly conduct an annual review of high-risk sites with DNR, conduct a limited number of pre-reviews for larger claims and perform other duties related to program administration. Commerce also administers the cleanups at 6,198 low- and medium-risk sites, of which 1,489 were open sites as of June, 2002. Other program administration responsibilities include reviewing requests to approve increases in site investigation costs above the \$40,000 cap, approving remedial alternatives, conducting appeals made by PECFA claimants, conducting audits, reviewing engineered remedial systems, taking enforcement actions and regulating consultants who perform PECFA work.

### **Department of Natural Resources**

In 2002-03, DNR is authorized \$955,000 and 16.0 positions to administer its responsibilities related to cleanup at high-risk sites. This includes: (a) federal (FED) LUST program funding of \$661,000 FED and 12.0 FED hydrogeologist and engineer positions; and (b) \$294,000 SEG with 4.0 SEG positions from the petroleum inspection fund.

DNR administers cleanup at 9,230 high-risk sites, including 2,637 open sites. The sites under DNR jurisdiction are high-risk sites with petroleum

contamination, are unranked or have petroleum and non-petroleum contamination. DNR participates in the review and selection of bids for sites with estimated remedial costs above \$60,000, issues orders to proceed for high-risk sites, estimates the least costly method of completing remedial action activities at high-risk sites and jointly conducts an annual review of high-risk sites with Commerce. DNR issues notices to proceed for cases that are not actively managed and consultants rely on written DNR guidance to conduct appropriate cleanups.

### **Fee Revenue**

Effective September 8, 1998, DNR began to charge fees under administrative rule NR 749 to persons who request DNR actions such as case close-out letters (\$750) or no further action letters (\$250) for PECFA and non-PECFA sites. The fees, authorized under 1997 Act 27, are collected as program revenue and offset the costs of providing several types of assistance related to brownfields redevelopment. These fees generated \$497,400 in 2001-02.

1999 Act 9 authorized Commerce to promulgate rules to assess and collect fees to recover its costs of approving requests by owners or operators for case closure and providing other assistance requested by claimants at petroleum sites. Commerce has not promulgated rules under the provision. Act 9 also directed that any fees charged by Commerce or DNR on or after October 29, 1999, for the approval of case closures and other requested assistance not be reimbursable expenses under the PECFA program.

### **Department of Justice**

In 2002-03, the Department of Justice is authorized \$202,700 PR and 2.0 PR positions funded through an interagency transfer of Commerce petroleum inspection fund monies. The two special agents investigate PECFA fraud by owners, con-

sultants and service providers.

### PECFA Council

The statutorily-created PECFA Council is required to advise the Secretary of Commerce on any rule developed for PECFA, and advise the Secretaries of Commerce and DNR on the implementation of PECFA. The Council is composed of seven members: five public members appointed by the Governor for four-year terms, and the Secretaries of Commerce and DNR or their designees. The five public members are chosen from names submitted from the Secretaries of DNR and Commerce. The Secretaries are required to consider representatives from petroleum product transporters, manufacturers, suppliers, retailers, wholesalers, hydrogeologists, environmental scientists, consultants, contractors and engineers.

The Council met last in December of 1996. Since then, some of the Council members have served as members of the COMM 47 advisory committee that developed the administrative rule.

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### PECFA Program Costs

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Table 3 is a summary, by fiscal year, of PECFA program expenditures from 1988-89 through 2001-02 and the budgeted amounts in 2002-03. The PECFA program will pay awards totaling \$1,292 million by the end of 2002-03. The program has paid awards through the end of 2001-02 totaling \$1,161 million (\$880.3 million cash allotment from petroleum inspection fees and \$281.1 million from revenue obligations proceeds) for partial or final

**Table 3: PECFA Program Costs Paid from the Petroleum Inspection Fund by Fiscal Year**

	PECFA Awards	Awards Rev. Bond	Rev. Bond Debt Pyt.	Commerce Admin.*	DNR Admin.*	Total
1988-89	\$312,000	\$0	\$0	\$40,300	\$33,800	\$386,100
1989-90	7,249,100	0	0	80,000	81,500	7,410,600
1990-91	22,802,900	0	0	193,900	94,300	23,091,100
1991-92	24,621,500	0	0	209,600	99,900	24,931,000
1992-93	43,531,700	0	0	419,900	544,200	44,495,800
1993-94	64,871,900	0	0	585,200	428,100	65,885,200
1994-95	80,891,500	0	0	943,000	441,800	82,276,300
1995-96	106,960,700	0	0	1,073,900	796,500	108,831,100
1996-97	95,902,700	0	0	1,645,300	680,600	98,228,600
1997-98	94,131,700	0	0	2,222,800	235,900	96,590,400
1998-99	94,131,700	0	0	2,139,100	255,200	96,526,000
1999-00	89,219,100	207,394,400	6,879,300	2,246,900	233,000	305,972,700
2000-01	80,680,400	43,711,500	13,790,300	2,701,200	250,900	141,134,300
2001-02	74,999,900	30,008,300	22,536,300	2,971,000	287,800	130,803,300
2002-03 **	<u>68,000,100</u>	<u>62,275,000</u>	<u>27,208,600</u>	<u>3,036,200</u>	<u>294,000</u>	<u>160,813,900</u>
TOTAL	\$948,306,900	\$343,389,200	\$70,414,500	\$20,508,300	\$4,757,500	\$1,387,376,400
Percent	68.35%	24.75%	5.08%	1.48%	0.34%	100.00%

\* Excludes federally-funded staff paid through the Leaking Underground Storage Tank program and staff funded from program revenue.

\*\* Estimated.

cleanups at 9,884 sites. Administrative costs for Commerce (\$20.5 million) and DNR administration (\$4.8 million) will total 1.82% of cumulative program expenditures at the end of 2002-03.

### Type of Tank System

The majority of PECFA sites for which at least one payment has been made had contamination from federally-regulated commercial underground petroleum storage tank systems, such as found at gasoline stations. Table 4 shows the distribution of PECFA sites and awards by the type of petroleum tank system for PECFA payments made as of June 30, 2002. The distribution of payments includes PECFA payments for sites that had been finalized and sites where payments have partially reimbursed remedial action. Commercial underground petroleum product storage tank sites represented 80% of the PECFA sites where at least one payment has been made and 90% of PECFA payments made as of June 30, 2002. Home heating oil tanks were the second largest group of sites,

representing 11% of PECFA sites, but less than 1% of PECFA payments.

### Payments Per Site

Table 5 shows the distribution of PECFA sites and awards by the amount paid per site for the \$1,161 million in PECFA payments for 9,884 sites made as of June 30, 2002. While 50% of the sites had received less than \$50,000 each, this category of sites comprised 8% of the total payments. Conversely, 4.2% of the sites had received more than \$500,000 each, and this category of sites comprised 25% of the total payments. The average PECFA payment per site (including closed sites and sites with cleanups in process) was \$117,500. This represented an increase in the average PECFA payment from the \$86,700 for the 4,056 sites for which a payment had been made by June 30, 1996, from the \$95,600 average for the 5,658 sites for which a payment had been made by June 30, 1998, and from the \$109,500 for the 8,514 sites for which a payment had been made by June 30, 2000.

Of the 9,884 sites for which at least one PECFA payment had been made, final payments had been made for completed cleanup at 7,814 sites (79%). This is shown in Table 6. The \$804.8 million in PECFA payments for the closed sites represented 69% of PECFA payments made as of June 30, 2002. In comparison, as of June 30, 1998, \$143.6 million had been paid for completed cleanup at 2,880 sites and as of June 30, 2000, \$411.0 million had been paid for completed cleanup at 5,246 sites.

Almost 54% of closed sites received payments that totaled less than \$50,000 per site and this category of sites represented 9% of final PECFA payments. Only 3% of sites with final payments received over \$500,000 per site, but this category

**Table 4: Distribution of PECFA Payments by Type of Tank (as of June 30, 2002)**

Tank Type	Number of Sites	Percent of Sites	Total Payments	Percent of Payments	Average Payment Per Site
Commercial					
Underground	7,923	80.2%	\$1,044,598,505	89.9%	\$131,844
Aboveground	484	4.9	92,494,853	8.0	191,105
Farm under 1,100 gal	163	1.7	6,819,533	0.6	41,838
Terminal	13	0.1	6,646,862	0.6	511,297
Home Heating Oil	1,097	11.1	6,006,343	0.5	5,475
School District	199	2.0	4,812,160	0.4	24,182
Technical College	4	0.0	152,016	0.0	38,004
Tribal Trust	1	0.0	16,321	0.0	16,321
<b>Total</b>	<b>9,884</b>	<b>100.0%</b>	<b>\$1,161,546,593</b>	<b>100.0%</b>	<b>\$117,518</b>

Note: includes 7 state order tanks with \$179,607 within commercial underground.

**Table 5: Distribution of PECFA Payments – All Sites (as of June 30, 2002)**

Amount Per Site	Number of Sites	Percent of Sites	Total Payments	Percent of Payments	Average Payment Per Site
\$50,000 and less	4,913	49.7%	\$93,315,414	8.0%	\$18,994
\$50,001 to \$100,000	1,787	18.1	129,288,047	11.1	72,349
\$100,001 to \$150,000	802	8.1	97,877,072	8.4	122,041
\$150,001 to \$200,000	556	5.6	96,919,313	8.3	174,315
\$200,001 to \$250,000	401	4.1	89,566,854	7.7	223,359
\$250,001 to \$300,000	257	2.6	70,449,952	6.1	274,124
\$300,001 to \$350,000	236	2.4	76,988,954	6.6	326,224
\$350,001 to \$400,000	181	1.8	67,578,199	5.8	373,360
\$400,001 to \$450,000	166	1.7	70,264,866	6.0	423,282
\$450,001 to \$500,000	167	1.7	79,968,470	6.9	478,853
Over \$500,000	418	4.2	289,329,453	24.9	692,176
<b>Total</b>	<b>9,884</b>	<b>100.0%</b>	<b>\$1,161,546,593</b>	<b>100.0%</b>	<b>\$117,518</b>

represented 22% of final payments. The average PECFA payment for completed sites was \$103,000. This average represented an increase from the \$36,200 average payment for 1,784 final sites by June 30, 1996, the \$49,900 average payment for 2,880 sites by June 30, 1998, and the \$78,400 average payment for 5,246 final sites by June 30, 2000.

As of June 30, 2002, partial PECFA payments had been made for \$356.8 million at 2,070 sites, which represented 31% of all payments and 21% of

**Table 6: Distribution of PECFA Payments -- Closed Sites (as of June 30, 2002)**

Amount Per Site	Number of Sites	Percent of Sites	Total Payments	Percent of Payments	Average Payment Per Site
\$50,000 and less	4,190	53.6%	\$75,053,530	9.3%	\$17,913
\$50,001 to \$100,000	1,382	17.7	100,447,470	12.5	72,683
\$100,001 to \$150,000	622	7.9	75,697,047	9.4	121,699
\$150,001 to \$200,000	414	5.3	72,038,723	8.9	174,007
\$200,001 to \$250,000	288	3.7	64,546,498	8.0	224,120
\$250,001 to \$300,000	178	2.3	48,874,159	6.1	274,574
\$300,001 to \$350,000	155	2.0	50,519,283	6.3	325,931
\$350,001 to \$400,000	121	1.5	45,163,493	5.6	373,252
\$400,001 to \$450,000	95	1.2	40,298,719	5.0	424,197
\$450,001 to \$500,000	115	1.5	55,432,334	6.9	482,020
Over \$500,000	254	3.3	176,724,232	22.0	695,765
Total	7,814	100.0%	\$804,795,488	100.0%	\$102,994

**Table 7: Distribution of PECFA Payments -- Active Sites (as of June 30, 2002)**

Amount Per Site	Number of Sites	Percent of Sites	Total Payments	Percent of Payments	Average Payment Per Site
\$50,000 and less	723	34.9%	\$18,261,884	5.1%	\$25,258
\$50,001 to \$100,000	405	19.6	28,840,577	8.1	71,211
\$100,001 to \$150,000	180	8.7	22,180,025	6.2	123,222
\$150,001 to \$200,000	142	6.9	24,880,589	7.0	175,215
\$200,001 to \$250,000	113	5.5	25,020,356	7.0	221,419
\$250,001 to \$300,000	79	3.8	21,575,793	6.0	273,111
\$300,001 to \$350,000	81	3.9	26,469,671	7.4	326,786
\$350,001 to \$400,000	60	2.9	22,414,706	6.3	373,578
\$400,001 to \$450,000	71	3.4	29,966,147	8.4	422,058
\$450,001 to \$500,000	52	2.5	24,536,135	6.9	471,849
Over \$500,000	164	7.9	112,605,221	31.6	686,617
Total	2,070	100.0%	\$356,751,106	100.0%	\$172,344

sites. Table 7 shows the payments made at active sites by the payment amount per site. While 35% of partial payment sites had received less than \$50,000 per site as of June 30, 2002, they represented 5% of total partial payments. Approximately 8% of partial payment sites received over \$500,000 in PECFA payments as of June 30, 2002, and the payments for these sites represented 32% of PECFA partial payments.

The average PECFA payment for partially reimbursed sites was \$172,300. Additional PECFA payments can be expected at these sites before they

are closed. Higher-cost sites generally take a longer time to complete cleanup. Therefore, as work at more sites is finalized and more of the higher-cost sites are completed, the average PECFA payment for final sites is expected to continue to increase.

PECFA payments have been made in all 72 counties. Milwaukee County sites have received the largest amount of PECFA payments, including 1,751 sites and \$172.2 million, representing 17.7% of total sites and 14.8% of total payments made as of June 30, 2002. Dane County sites received the second highest level of total payments (8.0% of payments) and Waukesha County was third at 5.0% of payments. Appendix V summarizes PECFA payments made by county.

### Distribution of PECFA Costs

Information is available about the components of PECFA costs for claims paid after January 1, 1994. Table 8 indicates the distribution of PECFA costs for all PECFA claims processed between January 1, 1994, and June 30, 2002. This included claims totaling \$976.9 million for 9,084 occurrences. Commerce data on PECFA claims indicates that consultant services is the largest category of PECFA payments, accounting for 37.8% of total costs. The four cost categories of consultant services, loan interest (20.1%), thermal or landfill soil treatment (11.8%) and remedial equipment costs (9.6%) together represented over 79.3% of PECFA costs, or \$774.8 million.

Of the \$976.9 million of PECFA payments considered in Table 8, 20.1% or \$196.4 million, were for loan interest and other loan-related expenses for loans secured to cleanup PECFA sites. An increasing percentage of PECFA payments is for

**Table 8: Distribution of PECFA Award Payments (January 1, 1994 Through June 30, 2002)\***

Description of Cost Component	Total Claim Amount	% of Awards
<b>Consulting.</b> Consultant staff costs such as pump tests, pilot tests, bioremediation evaluation, meals, travel, lodging, remediation system checks, survey fees, operation and maintenance fees.	\$368,758,076	37.8%
<b>Loan Interest.</b> Loan origination fees, loan renewal fees, other interest expenses associated with loans secured for site remediation.	196,393,499	20.1
<b>Soil Treatment.</b> Payments to landfills for disposal of contaminated soil, thermal treatment of soil, disposal of noncontaminated soils.	115,616,917	11.8
<b>Remedial Equipment.</b> Costs associated with renting or purchasing remedial equipment such as remediation buildings, remediation system components, valves, pumps, pipes, plumbing, construction, control panel components, installation fees, maintenance of remedial equipment.	93,993,816	9.6
<b>Laboratory Tests.</b> Laboratory tests and analysis of soils and water, sample handling and shipping, disposal of samples.	57,140,977	5.9
<b>Monitoring.</b> Monitoring of remediation progress such as drilling wells, supplies and materials for well installation, soil boring costs, well abandonment fees, geoprobes.	51,738,126	5.3
<b>Excavation.</b> Costs associated with the excavation of contaminated soil such as equipment and labor.	31,970,213	3.3
<b>Trucking.</b> Hauling contaminated soils and backfill, transporting water for treatment, delivering remedial equipment to the site, truck rental.	29,484,260	3.0
<b>Backfill.</b> Sand, gravel, stone or other materials that backfill the remediated site.	24,801,026	2.5
<b>Other.</b> General costs not elsewhere classified such as PECFA claim preparation fees if prepared by someone other than a consultant, replacement of potable wells.	7,046,176	0.7
<b>Total</b>	<b>\$976,943,087</b>	<b>100.0%</b>

\*Based on claims paid for \$976.9 million for 9,084 occurrences. There were also non-eligible costs of \$60,696,690.

loan interest costs. For example, during the two and one-half years between January 1, 1994 and June 30, 1996 (the first two and one-half years shown in Table 8), loan interest costs represented 7.1% of total PECFA payments.

### Claims Awaiting Payments

As of January 1, 2003, Commerce had received 412 PECFA award applications totaling

\$31.3 million that had not been paid. The backlog consisted of two components, claims that have not been reviewed and claims that have been reviewed but are awaiting payment. The first component consisted of 308 claims for \$26.5 million that were waiting to be assigned to staff for review. The second component of the backlog consisted of 104 claims for \$4.8 million that had been reviewed and would be paid within approximately three months.



The backlog of PECFA claims that had been received and had not been paid exceeded \$200 million during the months of June, 1997, through February, 2000. By February, 2000, Commerce had reviewed but not paid almost \$210 million in claims. Issuance of revenue obligations under 1999 Act 9 authorization allowed the backlog of claims to be paid.

Claims are generally reviewed and paid in the order the complete claim is received and any necessary approvals have been made by Commerce or DNR. However, claims are reviewed immediately if they are for home heating oil or farm tank cleanups or if the investigation and cleanup can be completed for equal to or less than \$60,000. Home heating oil and farm tank claims are paid as soon as they are approved and claims for \$60,000 or less are placed in line to be paid when funds are available.

### **Estimated Total Program Cost**

In 1991, the Department of Industry, Labor and Human Relations (which administered the PECFA program prior to the July 1, 1996, transfer of the program to Commerce) and DNR submitted a report on PECFA to the Joint Committee on Finance in which the agencies estimated total potential PECFA cost at approximately \$970 million if various programmatic changes and cost containment measures would be adopted. Most of the changes were implemented in 1991 through 1994. Program expansions enacted in 1993 Act 416 were estimated to increase total program cost by approximately \$315 million, for a total program cost of approximately \$1.3 billion.

The growing costs of operating and maintaining engineered remedial systems were not factored into earlier estimates of the cumulative costs of the program. This includes systems that require power, usually electrical, to continuously pump petroleum products and other contamination out of the groundwater or to extract petroleum vapors from

the soil. In the fall of 1996, estimates of the cumulative cost of the PECFA program had increased to \$1.4 to \$1.8 billion.

Commerce and DNR began to implement program changes included in 1999 Act 9 and COMM 47 and COMM 46 in 1999 and 2000. In the fall of 2000, Commerce officials updated the estimate of the cumulative cost of the program to approximately \$1.8 billion to clean up approximately 16,000 sites. In the fall of 2002, Commerce officials continued to estimate that cumulative program costs could reach approximately \$1.8 billion.

The state is expected to have paid approximately \$1.26 billion in PECFA claims by June, 2003. There remains uncertainty about the potential number of PECFA sites, potential costs of engineered remedial systems, extent to which less costly types of remediation can be used, and the extent that the statutory and administrative rule changes in 1999 and 2000 will decrease the costs at individual sites.

### **Bonding to Fund PECFA**

On March 14, 1994, the Attorney General issued a legal opinion that the state may use the proceeds from general obligation bonds to fund an expansion of the PECFA program. The opinion stated that PECFA is a program to improve land or waters for the public purpose of mitigating environmental threats caused by past practices, and that bonding for PECFA would not violate the constitutional prohibition against contracting debt for works of internal improvements.

1999 Act 9 authorized the Building Commission to issue revenue obligations of up to \$270 million in principal amount (typically long-term bonds or short-term notes), to be paid from petroleum inspection fees, to fund the payment of claims under the PECFA program. The PECFA revenue obligations were created as a special fund in an

account maintained by a trustee. Act 9 specified that the Legislature finds that a nexus exists between the PECFA program and the petroleum inspection fund in that fees imposed on users of petroleum are used to remedy environmental damage caused by petroleum storage. The act also contained a moral obligation pledge whereby the Legislature expressed its expectation and aspiration that, if the Legislature reduces the rate of the petroleum inspection fee and if the funds in the petroleum inspection fund are insufficient to pay the principal and interest on the revenue obligations, the Legislature would make an appropriation from the general fund sufficient to pay the principal and interest on the revenue obligations.

As of December, 2002, the entire cumulative authorized \$342 million in revenue obligations had been issued and used to pay PECFA claims. A cumulative total of \$200 million in long-term revenue obligations have been issued with a weighted average interest cost of 5.33%. The remaining \$142 million in issued obligations consists of short-term commercial paper, with a weighted average interest rate of 1.6%.

The Building Commission authorized the \$270 million in revenue obligations in February and May of 2000. Between March and December of 2000, \$250 million of revenue obligation proceeds had been issued and the proceeds were subsequently used to pay PECFA claims. In 2001 Act 16, an additional \$72 million in revenue obligations were authorized, for total authorization of \$342 million. The additional revenue obligations were issued in the fall of 2001 and in 2002.

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### **Petroleum Inspection Fund**

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The PECFA program is funded from the segregated petroleum inspection fund. Revenue for

the fund is generated from the petroleum inspection fee. Under Chapter 168 of the statutes, Commerce is responsible for inspecting petroleum products brought in to the state to assure that the product meets minimum product grade and environmental specifications. The grade specifications are established by administrative rule and are based on nationally recognized standards, specifications and classifications. A petroleum inspection fee is imposed on all of the inspected petroleum products. The Department of Revenue (DOR) collects the fee at the same time it collects the motor vehicle fuel tax at petroleum company terminals.

Approximately 3.7 billion gallons of petroleum are inspected annually (including gasoline, diesel and heating oil). Each one cent of petroleum inspection fee generate revenues of approximately \$37 million annually. Therefore, the current 3¢ per gallon fee is estimated to generate approximately \$111 million annually.

Although a petroleum inspection fee existed since at least 1880, it has been used as a funding source for cleanup of petroleum contamination only since the creation of the PECFA program in 1988. In 1993, the fee was increased from 2¢ to the current rate of 3¢ per gallon.

The petroleum inspection fund provides funds for PECFA, Commerce's petroleum tank and inspection programs and several other programs. The appropriations funded from the petroleum inspection fund are summarized in Table 9 and are listed in Appendix VI. Approximately 85% (\$149.7 million) of the total expenditures from the petroleum inspection fund in 2001-03 will be for PECFA awards and Commerce and DNR administration of the PECFA program, including 40.8 positions. (In addition, the state will spend approximately \$142 million for PECFA awards from revenue obligation proceeds and revenue obligation debt service. An additional 7% (\$12.9 million) of expenditures will be for Commerce

**Table 9: Petroleum Inspection Fund, Appropriations 2001-03\***

	2001-02	2002-03
PECFA Awards	\$75,000,000	\$68,000,000
PECFA Administration	3,380,500	3,330,200
Commerce --		
Petroleum Inspection	6,577,200	6,277,700
Other Programs	<u>6,473,000</u>	<u>6,471,800</u>
Total Appropriations	\$91,430,700	\$84,079,700

\*Excludes expenditures for PECFA awards from revenue obligations and revenue obligation debt service.

**Table 10: Petroleum Inspection Fund Condition-2001-03 (\$ millions)**

	2001-02 Actual	2002-03 Estimated
<b>Revenues</b>		
Opening Balance, July 1	\$18.4	\$18.0
Petroleum Inspection Fee	113.0	110.5
Revenue Obligation Proceeds	30.0	62.2
Revenue Obligation Debt Service		
And Issuance Costs	-22.5	-27.2
Interest on Revenue Obligations	0.1	0.1
Petroleum Bulk Tank Inspection Fees	0.9	0.9
Interest Income on Fund		
and Other	<u>0.5</u>	<u>0.4</u>
Total Revenue	\$122.0	\$146.9
Total Revenue Available	\$140.4	\$164.9
<b>Expenditures</b>		
PECFA Awards and Administration	\$78.3	\$71.3
PECFA Awards from Revenue Obligations	30.0	62.3
Other Expenditures	12.8	12.8
Encumbrances and Continuing Balances	<u>0.1</u>	<u>---</u>
Total Expenditures	\$121.2	\$146.4
Less Lapse to the General Fund Required by Act 16 and 109	-1.2	-1.5
Closing Balance, June 30	\$18.0	\$17.0

petroleum inspection programs with 57.4 positions, which includes staff at 14 petroleum laboratories that inspect petroleum products that enter the state (and are subject to the fee), gas stations and other petroleum tank locations. The remaining 7% (\$12.9 million) funds other programs and 25.85 positions which include: (a) DOR's collection of the petroleum inspection fee; (b) petroleum inspection fee refunds to eligible airlines; and (c) brownfields, clean air and environmental programs in Commerce, DNR, the Department of Transportation, the Department of Agriculture, Trade and Consumer Protection and the Department of Military Affairs.

The estimated condition of the petroleum inspection fund, including estimated fund revenues and appropriations, is shown in Table 10. The petroleum inspection fund will have a closing unencumbered balance of approximately \$17.0 million at the end of 2002-03.

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### Legislative Audit

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In October, 1998, the Legislative Audit Bureau (LAB) published an evaluation of the PECFA program, which reviewed program costs, cleanup standards, financial responsibility of site owners and program management by DNR and Commerce. The LAB report discussed several features of the PECFA program's design that contributed to relatively high costs. The report made several recommendations related to program management, primarily targeted toward improving cost-effectiveness, consistency and financial oversight. Many of the recommendations were incorporated into program modifications in 1999 Act 9.

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## Appendices

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Several appendices provide additional information about the PECFA program. These include:

- Appendix I describes the major federal and state storage tank requirements affecting PECFA.
- Appendix II lists eligible and ineligible costs under PECFA, based on requirements in Section 101.143 of the Statutes and Chapter COMM 47 of the Administrative Code.
- Appendix III summarizes additional requirements affecting PECFA awards.
- Appendix IV illustrates the PECFA program process from the time of discovery of a petroleum discharge, through cleanup and payment of a PECFA award.
- Appendix V lists the number of PECFA sites and total PECFA payments by county as of June 30, 2002.
- Appendix VI lists appropriations from the petroleum inspection fund during 2001-03.
- Appendix VII summarizes the major provisions of legislation that created and subsequently modified the PECFA program.

## APPENDIX I

### Major Federal and State Storage Tank Requirements Affecting PECFA

Requirement	Federal Regulations	State Regulations	PECFA
Tanks Included	(a) Commercial underground petroleum product storage tanks larger than 110 gallons, (b) commercial underground hazardous chemical storage tanks larger than 110 gallons, and (c) underground farm and residential vehicle fuel tanks larger than 1,100 gallons.	(a) All federally regulated tanks, (b) heating oil tanks where the petroleum products are not for resale, (c) farm and residential tanks of 1,100 gallons or less, (d) aboveground tanks, and (e) tanks with product having a flash point of 200°F or less. (The flash point is the temperature at which the substance can be ignited.)	Tanks storing petroleum products only. (a) Commercial underground and aboveground tanks larger than 110 gallons, (b) farm and residential vehicle fuel tanks larger than 1,100 gallons, (c) home heating oil tanks, (d) farm tanks of 1,100 gallons or less that meet certain eligibility criteria, and (e) public school district and technical college district heating oil tanks used to store heating oil for consumptive use on the premises where stored.
Tanks Excluded	(a) Underground heating oil tank systems where the petroleum products are not for resale, (b) farm and residential tanks 1,100 gallons or less, (c) aboveground tank systems, (d) commercial tanks of 110 gallons or less, and (e) tanks containing nonhazardous chemicals and/or substances meeting certain federal exemptions.	Tanks with product having a flash point above 200°F.	(a) Commercial tanks of 110 gallons or less capacity, (b) residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, (c) farm tanks of 1,100 gallons or less if they don't meet the eligibility criteria for inclusion, (d) nonresidential heating oil tanks for consumptive use on the premises where stored unless included above as public school district or technical college district tanks, (e) tanks owned by this state or the federal government, and (f) pipeline facilities.
Deadline for Release Detection System	Required by December 22, 1993, for all federally regulated tanks regardless of age.	For federally regulated tanks, required by December 22, 1993, same as federal regulations. For new and existing underground heating oil tanks over 4,000 gallons, requirement phased in by May 1, 1995. For new and existing underground heating oil tanks of 4,000 gallons or less, required by May 1, 2001. For aboveground systems over 5,000 gallons, required by May 1, 2001 to have diking or a system of release detection. For underground farm and residential tanks of 1,100 gallons or less, must upgrade by May 1, 2001.	Maximum awards for underground and aboveground tanks decrease from either \$1,000,000 or \$500,000 to \$190,000 on December 22, 2001. Investigations and remedial activities started before December 22, 2001, would continue to be eligible for the higher awards. The maximum award for eligible farm tanks is \$100,000. The maximum award for eligible public school district and technical college district tanks is \$190,000. In any fiscal year, not more than 5% of amounts appropriated for PECFA awards may be used for farm tanks and not more than 5% may be used for school district tanks.
Deadline for Upgrading or Removal of Tanks	Required by December 22, 1998.	For federally regulated tanks, required by December 22, 1998, same as federal regulations. Required by May 1, 2001, for farm and residential tanks, heating oil tanks over 4,000 gallons and aboveground storage tanks over 5,000 gallons.	
Other Site Requirements	New tank systems must meet design and installation standards. Closure assessment is required when tank is closed. Hazardous substance tanks also require secondary containment.	For federally regulated tanks, same requirements as federal regulations. For underground heating oil tanks over 4,000 gallons, closure assessment is required at tank closure.	

**APPENDIX I (continued)**

**Major Federal and State Storage Tank Requirements Affecting PECFA**

<b>Requirement</b>	<b>Federal Regulations</b>	<b>State Regulations</b>	<b>PECFA</b>
<p>Financial Responsibility (Insurance) Requirement</p>	<p>Proof of financial responsibility for covering the costs of corrective actions and third-party claims.</p> <p>Owners of petroleum underground storage tanks (UST) systems engaged in petroleum production, or owners with an average annual monthly volume of 10,000 gallons or more: \$1,000,000 per occurrence.</p> <p>Owners of petroleum UST systems not engaged in petroleum production, or owners with an average annual monthly volume of less than 10,000 gallons: \$500,000 per occurrence.</p> <p>In addition, owners of 1 to 100 USTs must have annual aggregate insurance of \$1,000,000; owners of 101 or more USTs, \$2,000,000. However, requirement is deferred until December, 1993, for owners of 1 to 12 underground tanks or owners of 100 or fewer tanks at a single facility.</p>	<p>For federally regulated tanks, same requirements as federal regulations. Not required for non-federally regulated tanks.</p>	<p>Provides award amounts for federally regulated underground petroleum product tanks that are equivalent to the federal financial responsibility requirements.</p> <p>PECFA eligibility is denied effective January 1, 1994, if a tank: (a) meets state or federal standards for new tanks or existing tank upgrades; or (b) is located on property on which cleanup was previously conducted for which a PECFA award was issued, and within the area on which those remedial action activities were conducted. However, certain sites with new or upgraded tanks would continue to be eligible for PECFA for specified time periods if they meet certain criteria.</p> <p>Owners of underground tanks are required to provide proof of financial responsibility for the first \$5,000 of eligible costs incurred because of a petroleum products discharge.</p>

## APPENDIX II

### Eligible and Ineligible Costs Under PECFA Section 101.143, Wisconsin Statutes (See COMM 47 for Additional Ineligible Costs)

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#### Eligible Costs

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1. Investigation of potential sources of contamination by testing to determine the tightness of tanks and lines, if the method is approved by Commerce.
2. Removal of petroleum products from surface water, groundwater or soil.
3. Investigation and assessment of contamination caused by a petroleum product storage tank system or home heating oil system.
4. Preparation of remedial action plans.
5. Removal of contaminated soils.
6. Soil treatment and disposal.
7. Environmental monitoring, including monitoring of natural bioremediation progress.
8. Laboratory testing of covered petroleum products.
9. Maintenance of equipment for petroleum product recovery or remedial action activities.
10. State or municipal permits for installation of remedial equipment.
11. Actual costs for the purchase or rental of temporary building structures to house remedial equipment.
12. Restoration or replacement of a private or public potable water supply.
13. Contractor or subcontractor costs for remedial action activities.
14. Actual travel and lodging costs that are not in excess of state travel rates.
15. Other costs identified by Commerce as necessary for proper investigation, remedial action planning and remedial action activities.
16. Compensation of third parties for bodily injury and property damage, excluding the loss of fair market value, caused by petroleum products discharged from an underground storage system.
17. Certain interest expenses if a loan is specifically secured for a remediation. The maximum reimbursable interest rate for loans secured after January 31, 1993, and before October 15, 1997, is 2% above the prime rate. For loans secured on or after October 15, 1997 and before November 1, 1999, the maximum reimbursable interest rate is 1% above the prime rate. For loans secured on or after November 1, 1999, the maximum reimbursable interest rate is the prime rate minus 1% if the applicant's gross revenues are up to \$25 million and 4% if the applicant's gross revenues are over \$25 million. Loan origination fees are reimbursable at no more than two points of the loan principal. Annual loan renewal fees charged before April 21, 1998, are reimbursable at no more than 1% of the unreimbursed amount and remaining loan balance, and annual loan renewal fees charged on or after April 21, 1998, are reimbursable at no more than 1% of the

outstanding unreimbursed loan amount.

18. Claim preparation fees up to \$500 for a certified public accountant, contractor, or other independent preparer.

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### **Ineligible Costs**

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1. Costs incurred before August 1, 1987 (the date PECFA began).

2. Costs of retrofitting or replacing a petroleum product storage system or home heating oil system.

3. Other costs Commerce determines are associated with, but not integral to, the eligible costs.

4. Costs, other than certain third party compensation, which Commerce determines are unreasonable or unnecessary to carry out the remedial action activities as specified in the remedial action plan.

5. Costs or remedial action activities conducted outside of Wisconsin.

6. Cost for remedial actions funded under the federal LUST program.

7. After November 1, 1991, costs of emptying, cleaning and disposing of a tank and other costs normally associated with closing and removing any petroleum product storage system or home heating oil system.

8. Fees charged by DNR or Commerce on or after October 29, 1999, to recover their costs for providing approval of investigation or remedial action or for providing other assistance requested by claim applicants.

9. Costs that exceed the amount necessary to comply with the requirements to complete an investigation and remedial action and with enforcement standards using the least costly method.

10. Effective September 1, 2001, 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. If an applicant received written notification from DNR or Commerce that no further action is necessary before September 1, 2001, and the applicant submits a final claim more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120<sup>th</sup> day after September 1, 2001, are not eligible costs.

11. If an applicant does not complete the site investigation within five years after the applicant notified Commerce or DNR about the discharge, or by October 1, 2003, whichever is later, the applicant is ineligible for reimbursement of interest costs incurred after the later of those two dates.

12. See COMM 47 of the Administrative Code for additional ineligible costs that are unreasonable or unnecessary to complete the remedial action activities.



## APPENDIX III

### Additional PECFA Award Requirements

In addition to award limits and deductibles, the following provisions affect awards described under the "PECFA Award Payments" section of this paper.

**State-Ordered Investigations.** Commerce is required to make awards for claims filed after August 9, 1989, for eligible costs incurred after August 1, 1987, for investigating the existence of a discharge or presence of petroleum products in soil or groundwater, if the investigation is ordered by Commerce or DNR and no discharge or contamination is found. Awards for these costs require no deductible. If a discharge or contamination from an underground or aboveground storage tank is subsequently discovered, Commerce is required to reduce the award by the amount provided for the investigation. Awards made for the finding of a subsequent discharge from a home heating oil system are not reduced.

**Negligence.** Contributory negligence of a claimant does not prohibit an individual from submitting a claim and no award may be diminished as a result of negligence attributed to an eligible claimant. Contributory negligence is an act or omission amounting to a lack of ordinary care on the part of an individual, which contributes to an injury to the individual or property damage.

**Improper Storage.** Commerce can deny any claim if there has been fraud or willful disregard for the laws concerning the proper storage of petroleum products on the part of the owner.

**Lending Institutions.** Awards can be assigned to a lending institution by a PECFA claimant, if a loan has been made to the claimant for a PECFA cleanup. As a result of the assignment, a lien, which secures all principal, interest, fees, costs and

expenses of the lending institution, is created. This lien has priority over any preexisting or subsequent lien, security interest or other interest in the PECFA award.

**Third-Party Actions.** Owners of underground storage tanks who are eligible for PECFA awards are required to notify Commerce of any action by a third-party for compensation for bodily injury or property damage caused by a petroleum discharge. Property damage specifically excludes the loss of fair market value resulting from contamination. Commerce is allowed to intervene in any third-party action, in order to represent PECFA in any injury or property claim.

**Lenders Hold Harmless Provisions.** Lenders are held harmless for the full amount of otherwise eligible expenses relating to PECFA loans made by a lender regardless of any willful misconduct, gross negligence or fraud on the part of an owner or operator, the amount of which would be paid to the lender at the time that the award would otherwise be made, provided that certain conditions are met. The lender must assign to Commerce an interest in the collateral pledged by the owner or operator to secure the loan. Commerce may recover its costs from an owner or operator for any payments the Department makes to a lender under this provision.

**Fraudulent Claims.** Commerce has the right to recover any award made to an owner of a petroleum product storage system, or a person owning a home heating oil system, if the claim is determined to be fraudulent or requirements of PECFA are not followed. In these cases, Commerce is required to request that the state Attorney General take action to recover the award and the Attorney General is required to take appropriate action. Net proceeds from recovered awards are

deposited into the petroleum inspection fund.

**Discharges Caused by Service Providers.** Commerce is required to deny any PECFA claim where the petroleum product discharge was caused by a person who provided services or products to the claimant or to a prior owner or operator of the petroleum product storage system or home oil tank system.

**Personal Liability.** If a person conducts a remedial action activity, whether or not a PECFA claim is filed, the claim and remedial action are not evidence of liability or an admission of liability for any potential or actual environmental pollution. However, PECFA does not limit a person's liability for damages resulting from a petroleum product storage system or home heating oil tank. All the authority, powers and remedies provided for under PECFA are in addition to any authority, power or remedy provided in statute or common law.

**Certification of Consultants.** COMM 47 includes requirements for the certification or registration of persons who provide consulting services to owners and operators who file PECFA claims. The rule authorizes revocation or suspension of the certification or registration if the consultant or consulting firm fails to comply with the requirements of COMM 47. The rule established procedures for certification and revocation or suspension of certification.

**Waiver of Deductible.** Commerce may defer

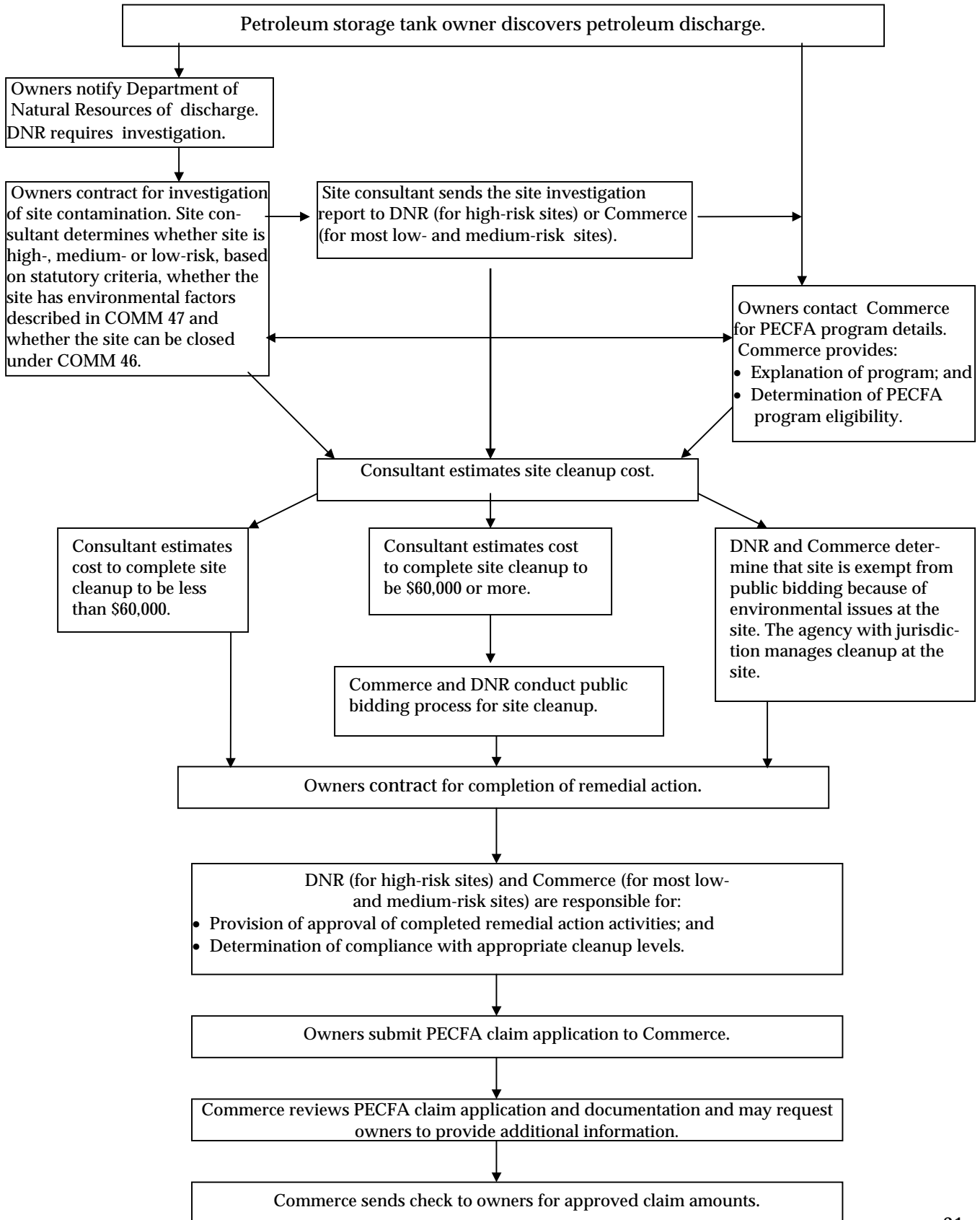
the deductible if Commerce determines that the owner or operator is unable to pay. If Commerce waives the deductible, it shall record a lien against the property until the deductible is paid in full.

**Proof of Financial Responsibility.** An owner or operator of an underground petroleum product storage system shall provide proof of financial responsibility for the first \$5,000 of eligible costs.

**Sale of Remedial Equipment.** When a person sells any remedial equipment or supplies that were purchased with PECFA funds, the person must pay the proceeds of the sale to Commerce. Commerce is required to deposit the proceeds into the petroleum inspection fund. The amount of any proceeds of the sale of equipment would not change the reimbursement entitlement amount to an owner, operator or home heating oil tank owner.

**Appeals.** Under 2001 Act 16, a person files an appeal of a decision of Commerce concerning a PECFA claim, and if the amount at issue is \$100,000 or less, the person may request arbitration rather than appeal. The arbitrator would be a person designated by Commerce under rules promulgated by the Department. As of January 1, 2003, Commerce has not promulgated rules to implement the provision. If a person chooses arbitration, the arbitrator would hold a hearing and issue a decision within five business days after the conclusion of the hearing. The decision of the arbitrator would be final and stand as the decision of the Department.

**APPENDIX IV**  
**PECFA Program Process**



**APPENDIX V**

**PECFA Payments by County, as of June 30, 2002**

County	Number of Sites	Total Payments	County	Number of Sites	Total Payments
Adams	22	\$4,277,783	Manitowoc	155	\$20,600,682
Ashland	56	7,359,308	Marathon	195	21,216,810
Barron	63	6,360,111	Marinette	84	7,746,482
Bayfield	69	5,011,282	Marquette	48	4,646,237
Brown	361	48,053,353	Menominee	4	1,008,830
Buffalo	36	3,523,609	Milwaukee	1,751	172,177,001
Burnett	34	4,057,274	Monroe	93	13,779,179
Calumet	66	8,228,547	Oconto	63	9,858,109
Chippewa	137	9,565,449	Oneida	127	22,211,207
Clark	87	8,558,628	Outagamie	344	44,896,735
Columbia	150	16,328,929	Ozaukee	183	19,771,729
Crawford	28	3,092,422	Pepin	9	545,214
Dane	648	93,383,252	Pierce	52	4,461,862
Dodge	143	19,606,901	Polk	64	5,079,188
Door	68	5,990,621	Portage	108	11,900,472
Douglas	123	15,159,964	Price	56	8,300,847
Dunn	51	4,611,069	Racine	315	35,670,104
Eau Claire	149	9,489,488	Richland	56	5,237,970
Florence	13	2,042,943	Rock	169	19,718,233
Fond du Lac	238	31,579,768	Rusk	31	3,775,980
Forest	22	2,145,088	Sauk	142	16,394,487
Grant	82	9,677,370	Sawyer	66	5,944,103
Green	41	5,524,311	Shawano	88	11,198,092
Green Lake	72	9,411,324	Sheboygan	217	31,130,697
Iowa	32	3,711,370	St. Croix	78	7,564,878
Iron	18	2,664,381	Taylor	52	8,561,636
Jackson	43	5,328,772	Trempealeau	64	7,154,492
Jefferson	159	19,254,822	Vernon	70	8,363,242
Juneau	65	8,335,157	Vilas	100	13,753,574
Kenosha	185	29,302,791	Walworth	139	17,399,667
Kewaunee	49	3,759,305	Washburn	26	1,646,305
La Crosse	140	15,232,934	Washington	181	28,392,840
Lafayette	30	4,479,511	Waukesha	575	58,169,181
Langlade	51	7,463,149	Waupaca	95	8,946,028
Lincoln	53	6,588,198	Waushara	56	7,380,430
			Winnebago	286	36,070,190
			Wood	<u>158</u>	<u>21,714,694</u>
			<b>TOTAL</b>	<b>9,884</b>	<b>\$1,161,546,593</b>

## APPENDIX VI

### Appropriations From the Petroleum Inspection Fund, 2001-03

		2001-02 Appropriated	2002-03 Appropriated	2002-03 Authorized Positions
<b>Petroleum Environmental Cleanup Fund Award Program (PECFA)</b>				
<i>Commerce</i>				
143	(3)(v)	PECFA Awards	\$75,000,000	\$68,000,000
	(3)(w)	PECFA Administration	3,086,500	3,036,200
				36.80
<i>DNR</i>				
370	(2)(dw)	Environmental repair, petroleum spills administration (PECFA)	<u>294,000</u>	<u>294,000</u>
		(Subtotal)	\$78,380,500	\$71,330,200
				40.80
<b>Other Programs</b>				
<i>Agriculture, Trade and Consumer Protection</i>				
115	(1)(r)	Unfair Sales Act	160,300	160,300
	(1)(s)	Weights and Measures	481,600	481,600
				2.35
				6.00
<i>Commerce</i>				
143	(1)(qa)	Business development center; activities and staff	273,200	273,200
	(3)(r)	Safety and buildings - petroleum inspection	6,577,200	6,277,700
				2.00
				57.40
<i>Natural Resources</i>				
370	(2)(bq)	Vapor recovery administration	71,000	71,000
	(2)(br)	Air management - mobile sources	1,302,900	1,302,900
	(2)(mu)	Environmental fund - environmental repair	969,400	969,400
	(2)(mu)	Environmental fund - Well compensation	80,000	80,000
	(2)(mw)	Environmental fund - Groundwater management	766,900	766,900
	(3)(ms)	Pollution prevention	58,800	58,800
	(8)(mq)	Mobile source air pollution	491,700	490,500
	(9)(mq)	Mobile source air pollution	163,900	163,900
	(9)(ms)	Cooperative environmental assistance	133,000	133,000
				1.00
				0.50
				1.00
				2.00
<i>Transportation</i>				
395	(4)(dq)	Air quality - demand management	306,400	306,400
				4.00
<i>Military Affairs</i>				
465	(3)(r)	State emergency response board	465,700	465,700
<i>Revenue</i>				
566	(1)(s)	Petroleum inspection fee collection	148,200	148,200
				2.00
<i>Miscellaneous Appropriations</i>				
855	(4)(r)	Petroleum allowance	<u>600,000</u>	<u>600,000</u>
		(Subtotal)	\$13,050,200	\$12,749,500
				83.25
Total SEG Petroleum Inspection Fund Appropriations			\$91,430,700	\$84,079,700
				124.05

## APPENDIX VII

### PECFA Legislative History Major Provisions

PECFA was created during the 1987-89 legislative session and has been modified in subsequent legislative sessions. The Appendix identifies legislative changes made to: (a) tanks which are eligible; (b) deductible and award amounts; (c) the inspection fee revenue limitation; (d) the awards appropriation (this does not include funding for Commerce and DNR administration); (e) eligible costs; (f) program termination date; (g) reports that have been required regarding PECFA; (h) eligibility criteria; (i) administrative rule requirements; and (j) administration.

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#### 1987-89 Legislative Session

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Act	Description
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27	Create PECFA, segregated fund, additional petroleum inspection fee and require DNR to pay claims for the investigation and cleanup of petroleum from leaking underground storage tanks. Funding and positions in DNR vetoed by Governor (program not implemented).
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399	Repeal program created in 1987 Act 27. Create similar program in DILHR. Create eligibility criteria, eligible and ineligible costs, claimant requirements, the PECFA Council and other administrative provisions. Require DNR to review investigations, and proposed and final remedial activities.
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*Eligible Tanks.* Commercial underground, underground tanks storing products for resale and home heating oil.

*Deductible and Award Limit.* For commercial tanks: \$5,000 deductible, maximum award \$146,250 or 75% of costs, whichever is less, between August 1, 1987, and August 1, 1989. After August 1, 1989, maximum lowered to \$97,500 or 50% of costs, whichever is less. For home heating oil tanks: 25% deductible, maximum award of \$7,500. If the award appropriation is insufficient to fund all awards, awards may be made based on priority.

*Inspection Fee Revenue Limit.* Generate no more than \$7.5 million annually.

*Awards Appropriation.* \$7.4 million in 1988-89.

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## 1989-91 Legislative Session

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- 31 *Eligible Tanks.* All underground petroleum product storage tanks except: (a) tanks under 110 gallons; (b) farm and residential tanks under 1,100 gallons storing petroleum products not for resale; (c) nonresidential heating oil tanks; and (d) tanks owned by the state or federal government.

*Eligible Costs.* Third-party claims added to list of previously eligible costs.

*Deductible and Award Limit.* For owners of 100 to 999 tanks meeting certain criteria, for costs incurred after August 9, 1989, and before October 26, 1990: \$50,000 deductible and \$950,000 maximum award. All other owners: \$5,000 deductible and maximum award of \$195,000 before July 1, 1993. After July 1, 1993, and before July 1, 1995, \$10,000 deductible and maximum award of \$190,000. DILHR required to recalculate awards based on 100% of eligible costs rather than 75% or 50%. Eliminate provision allowing awards to be made based on priority.

*Inspection Fee Revenue Limit.* Generate no more than \$25.0 million annually.

*Awards Appropriation.* \$7.5 million in 1989-90 and 1990-91.

*Program Termination.* Make no awards for costs incurred after June 30, 1995.

- 254 *Eligible Tanks.* Aboveground tanks included.

- 255 *Deductible and Award Limit.* Decrease \$50,000 deductible created in Act 31 to \$5,000. Create a maximum award of \$1,000,000 for marketers of petroleum products and facilities handling more than an annual average 10,000 gallons per month. For all others establish a \$500,000 maximum. Create annual aggregate amount of \$2,000,000 for owners and operators of 101 or more tanks and \$1,000,000 for owners of 100 or less tanks. Decrease the maximum award to \$190,000 on July 1, 1995.

*Termination Date.* Eliminate termination date.

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## 1991-93 Legislative Session

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- 39 *Deductible and Award Amount.* Modify deductible to \$5,000 or 5% copayment, whichever is greater. Allow DILHR to defer the deductible in certain cases.

*Eligible Costs.* Disallow costs normally associated with replacement or closure of a petroleum product storage system. Discontinue PECFA eligibility for sites that are cleaned up. Allow DILHR to become a party to a third-party law suit. Allow DILHR to establish a usual and customary cost schedule.

*Inspection Fee Revenue Limit.* \$57 million for 1991-92 only. Revenue could only exceed \$25 million with the approval of the Joint Committee on Finance.

*Awards Appropriation.* \$24.7 million in 1991-92 and in 1992-93.

*Report.* Require DNR and DILHR to prepare a report on PECFA to be submitted to the Legislature and the Joint Committee on Finance.

82 *Deductible and Award Amounts.* Modify deductible to \$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence.

*Eligible Costs.* Allow a claimant to assign an award to a lending institution. Include costs of bioremediation as an eligible cost. Reinstate PECFA eligibility for sites that are cleaned up. Allow the Department of Transportation to become an agent for an owner, with the prior approval of DILHR.

*Report.* Require DILHR and the Office of the Commissioner of Insurance to report to the Legislature and the Joint Committee on Finance regarding private pollution liability insurance.

269 *Inspection Fee Revenue Limit.* Eliminate the revenue limitation. Create a statutory petroleum inspection fee of 2¢ per gallon of petroleum inspected, of which 1.4¢ would support PECFA awards and administration.

*Awards Appropriation.* \$43.5 million in 1992-93.

*Reports.* Require DNR to provide reports on: (a) economic costs of the soil cleanup standards; and (b) feasibility of modifying the groundwater health risk standards.

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### 1993-95 Legislative Session

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16 *Inspection Fee.* Increase the petroleum inspection fee to 3¢ per gallon until July 1, 1995, or the day after publication of the 1995-97 biennial budget act, whichever is later. After that date, the fee would decrease to 1.74¢ per gallon. Create a segregated petroleum inspection fund in which all petroleum inspection revenues are deposited. Convert all appropriations funded from the fee to segregated appropriations.

*Awards Appropriation.* \$70.5 million in 1993-94. \$75.5 million in 1994-95. Convert the appropriation from annual to biennial.

*Award Limit.* Delay the decrease in the maximum award for underground tanks from July 1, 1995, to July 1, 1998. Specify that the higher awards apply to all eligible costs for investigations and remedial activities started before July 1, 1998.



*Eligibility Criteria.* Effective January 1, 1994, deny PECFA eligibility for certain new, upgraded, or previously cleaned up sites.

*Report.* Provide \$30,000 SEG in 1993-94 to contract with a consultant to develop a standardized project cost accounting system.

416 *Inspection Fee.* Delete the decrease in the petroleum inspection fee, so that the fee will remain at 3¢ per gallon after June 30, 1995.

*Awards Appropriation.* Direct that annual funding be increased by \$8.5 million beginning in 1995-96.

*Eligible Tanks.* Expand eligibility to: (a) farm tanks of 1,100 gallons or less storing petroleum products not for resale that meet certain farm size, use and income criteria; (b) public school district and technical college district heating oil tanks for consumptive use on the premises; and (c) Indian trust land tanks if the owner or operator complies with DILHR rules regarding petroleum product storage systems. Modify the eligibility for new, upgraded or previously cleaned up sites to provide eligibility for certain tanks until January 1, 1996.

*Deductible and Award Amounts.* Increase the maximum award for aboveground tanks to be the same as for underground tanks for costs incurred beginning May 7, 1994, (\$500,000 or \$1,000,000 per occurrence). Modify the deductible for aboveground tanks for costs incurred beginning May 7, 1994, to \$15,000 plus 2% of eligible costs over \$200,000 for nonterminals and \$15,000 plus 5% of eligible costs over \$200,000 for terminals. Effective July 1, 1998, decrease the maximum award for aboveground tanks to \$190,000 and the deductible to \$10,000. Provide a maximum award for small farm tanks of \$100,000 with a deductible of \$2,500 plus 5% of eligible costs, but not more than \$7,500 per occurrence. Limit farm tanks to no more than 5% of the total PECFA awards appropriation in any fiscal year. Provide a maximum award for public school district and technical college district tanks of \$190,000 per occurrence with a deductible of 25% of eligible costs. Limit public school district tanks to no more than 5% of the total PECFA awards appropriation in any fiscal year. Exempt nonprofit housing organizations that assist low-income persons with housing-related problems from paying the deductible for home heating oil tanks that the organizations own.

*Rules.* Direct DILHR to promulgate rules to take effect by January 1, 1996, that identify the petroleum product storage system or home oil tank system which discharged a petroleum product and when a petroleum product discharge that caused a contamination occurred. The rule shall permit a clear determination of what petroleum contamination is eligible for an award after December 31, 1995. Direct DILHR to promulgate a rule establishing a priority system for paying awards for small farm tanks and for school district tanks. Authorize DILHR to promulgate a rule with requirements for the certification or registration of persons who provide consulting services to owners and operators, and revocation or suspension of the certification or registration.

*Report.* Require DILHR to report to the Joint Committee on Finance by September 1, 1994, on the feasibility of establishing a toll-free telephone number to answer PECFA questions.

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## 1995-97 Legislative Session

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Act	Description
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27	<i>Awards Appropriation.</i> \$84.0 million in 1995-96 and in 1996-97.
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*Inspection Fee Collection.* Transfer collection of the petroleum inspection fee from DILHR to the Department of Revenue (DOR) as of January 1, 1996. DOR would collect the fee at petroleum company terminals at the same time it collects the motor vehicle fuel tax.

*Administration.* Transfer DILHR's Safety and Buildings Division, including PECFA administration to the new Department of Commerce (formerly Development) effective on July 1, 1996. Transfer jurisdiction over cleanup of low and medium priority petroleum storage tank site cleanups (PECFA-eligible and non-PECFA eligible) from DNR to Commerce effective on July 1, 1996, and transfer 12.0 SEG positions from DNR to Commerce. Retain jurisdiction over cleanup of high priority sites within DNR. Direct DOD and DNR to prepare a memorandum of understanding establishing the division of responsibilities, functions of the two agencies, procedures that would be implemented to ensure that actions are consistent with the hazardous substances spills law and procedures for determining which sites are high, medium and low priority sites.

*Award Limit.* Apply the maximum PECFA award provisions for aboveground tanks for costs incurred on or after May 7, 1994, and before July 1, 1998, retroactively to costs incurred on or after August 1, 1987 (the effective date of the program). This retroactively increased maximum PECFA awards for aboveground tanks from \$195,000 to \$500,000 or \$1,000,000.

*Lender Hold Harmless Provisions.* Hold lenders harmless for the full amount of otherwise eligible expenses relating to PECFA loans made by a lender regardless of any willful misconduct, gross negligence or fraud on the part of an owner or operator, the amount of which would be paid to the lender at the time that the award would otherwise be issued under the PECFA program, provided that certain conditions are met. Authorize DILHR to recover any costs from an owner for DILHR payments made to a lender under the provision. Direct DILHR to deposit any cost recoveries into the petroleum inspection fund.

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## 1997-99 Legislative Session

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Act	Description
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27	<i>Awards Appropriation.</i> \$91.1 million in 1997-98 and in 1998-99. (The Joint Committee on Finance took action in December, 1997 under s. 13.10 of the statutes to increase the appropriation by \$3.0 million annually to \$94.1 million in each year of the 1997-99 biennium).
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*Eligible Tanks.* Eliminate eligibility for new and upgraded aboveground tanks after December 22, 2001. Provide eligibility for sites that have been cleaned up under PECFA until they meet federal

and state upgrading standards. Provide eligibility for new and upgraded underground tanks for contamination identified by January 1, 1996. Deny eligibility for discharges that are caused by individuals or organizations who provided services or products to the current or prior owner or operator of the site.

*Award Limit.* Eliminate the \$500,000 annual maximum allocation for home heating oil tank awards, and instead, review and pay such claims as soon as they are received. Delay the decrease in the maximum award for underground and aboveground tanks from July 1, 1998, to December 22, 2001.

*Deductible.* Calculate the deductible for an intermingled plume of contamination from aboveground and underground petroleum storage tank systems, according to the predominant method of storage at the site, measured in gallons.

*Interest Cost Reimbursement.* Limit PECFA reimbursement for interest costs for loans secured on or after the effective date of the Act to the prime rate plus 1% and limit reimbursement of loan origination fees to no more than 2% of the loan principal.

*Eligible Costs.* Authorize Commerce to make additional PECFA payments for certain costs to enhance the approved remedial action activities or implement new remedial action activities. Authorize Commerce to promulgate administrative rules under which the Department would select service providers to provide investigation or remedial action services in specified areas. Require a claimant or consultant who submits a PECFA claim that includes certain ineligible costs, as identified in administrative rule, to pay a penalty equal to half the ineligible costs. Require that the owner pay the proceeds of any sales of remedial equipment or supplies purchased with PECFA funds to Commerce for deposit into the petroleum inspection fund. Specify that third party compensation for "property damage" does not include the loss of fair market value resulting from the contamination.

237 *Report.* Direct DNR, Commerce and DOA to submit reports to the Joint Committee on Finance at the Committee's September, 1998, and March, 1999, s. 13.10 meetings that document the progress of the agencies towards meeting the requirements of the memorandum of understanding (MOU) for administration of petroleum-contaminated sites.

*Appeals.* Allow a person to appeal a decision of Commerce related to PECFA by choosing arbitration, rather than an administrative hearing if the amount at issue is \$20,000 or less.

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### 1999-01 Legislative Session

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Act	Description
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9	<i>Awards Appropriation.</i> \$94.1 million in 1999-00 and in 2000-01.
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*Revenue Obligations.* Authorize the Building Commission to issue revenue obligations of up to \$270 million, to be repaid from petroleum inspection fees, to fund the payment of PECFA claims.

*Administration.* Authorize Commerce to promulgate rules to assess and collect fees to recover its costs of approving requests by owners or operators for case closure and providing other assistance requested by claimants at petroleum sites. Direct that any fees charged by Commerce and DNR on or after the effective date of the Act for the approval of case closures and other requested assistance not be reimbursable expenses under the PECFA program.

Direct the Secretary of the Department of Administration to determine how federal LUST funding should be allocated to DNR and Commerce, and to submit a report of its determination to the Joint Committee on Finance for approval at its December, 1999, s. 13.10 meeting.

Classify a petroleum site as high-risk (instead of high priority previously) if it meets one or more of the following criteria: (a) repeated tests show that the discharge has resulted in a concentration of contaminants in a private or public potable well that exceeds a preventive action limit, as defined in s. 160.01(6); (b) petroleum product that is not in dissolved phase is present with a thickness of 0.01 feet or more, as shown by repeated measurements; (c) there is a groundwater enforcement standard exceedence within 1,000 feet of a public drinking water well or within 100 feet of any other well used to provide water for human consumption; or (d) there is a groundwater enforcement standard exceedence in fractured bedrock. Provide DNR with jurisdiction for administering the cleanup at high-risk petroleum sites, and also all sites with contamination from non-petroleum hazardous substances. Classify all other petroleum sites, excluding unranked sites, as medium- or low-risk under the jurisdiction of Commerce. Categorize a site with contamination solely from petroleum products and additives to petroleum products (such as lead or oxygenates) as a site with contamination solely from petroleum products. Direct that DNR transfer sites to Commerce based on the new classification of sites by December 1, 1999. If the definition of high-risk sites results in classifying more than 35% of sites as high-risk by December 1, 1999, direct Commerce to promulgate emergency rules that establish standards that classify no more than 35% of petroleum sites as high-risk, excluding unranked sites and sites with contamination from non-petroleum hazardous substances.

*Award Prioritization.* Review and pay claims related to eligible farm tanks as soon as they are received.

*Deductible.* Changes the deductible for underground petroleum product storage tank systems and farm tanks to retain the prior \$2,500 plus 5% of eligible costs, but eliminate the \$7,500 maximum deductible. Increase the deductible for aboveground storage tanks located at terminals to \$15,000 plus 10% of the amount by which eligible costs exceed \$200,000. Apply the changes in deductible beginning with remedial action plans that are submitted on or after November 1, 1999. Authorize Commerce to promulgate rules describing a class of owners or operators for whom the deductible is based on financial hardship.

*Risk-Based Analysis.* Direct Commerce and DNR to jointly promulgate rules specifying a method for determining the risk to public health, safety and welfare and to the environment posed by discharges of petroleum products. Require that the method include individualized consideration of the routes for migration of petroleum product contamination at each site. Direct DNR and Commerce to apply the method to determine the risk posed by a discharge for which the Departments receive notification, effective with remedial action activities that began on or after

November 1, 1999. Commerce and DNR were required to submit permanent rules to the Legislature under s. 227.19 no later than June 1, 2000. (Administrative rules COMM 46 and NR 746 contain these provisions.)

*Remedial Action Plans and Maximum Award.* Require Commerce to review the remedial action plan for a low- or medium-risk site, and DNR and Commerce to jointly review the remedial action plan for a high-risk site, and determine the least costly method of completing the remedial action activities and complying with groundwater enforcement standards. Require the agencies (Commerce at a low- or medium-risk site or DNR and Commerce at a high-risk site) to determine whether natural attenuation will complete the remedial action activities in compliance with groundwater enforcement standards. Require Commerce to notify the owner or operator of a low- or medium-risk site, and DNR and Commerce to notify the owner or operator of a high-risk site, of their determination of the least costly method of completing the remedial action activities and complying with groundwater enforcement standards and that reimbursement for remedial action is limited to the amount necessary to implement that method. Require Commerce to conduct an annual review for low- or medium-risk sites, and Commerce and DNR to jointly conduct an annual review for high-risk sites and make the same determinations of the least costly method, use of natural attenuation and limit on maximum reimbursement. Commerce and DNR are authorized to review and modify established maximum reimbursement amounts for remedial action activities if the Departments determine that new circumstances, including newly discovered contamination at a site, warrant the review. Establish an effective date for the maximum award provisions of November 1, 1999, for remedial action activities that begin on or after that date.

*Interest Cost Reimbursement.* Limit PECFA reimbursement for interest costs for loans secured on or after November 1, 1999, based on the applicant's gross revenues in the most recent tax year, to be: (a) the prime rate minus 1% if gross revenues are up to \$25 million; and (b) 4% if gross revenues are over \$25 million.

*Site Bidding and Insurance.* Authorize Commerce to promulgate rules that require a person to pay a specified fee as a condition of submitting a bid to provide a service for a cleanup under the PECFA program. Deposit any fees collected in the petroleum inspection fund. Authorize Commerce, if it imposes a fee, to use the PECFA awards appropriation to purchase insurance to cover the amount by which the costs of conducting the cleanup service exceed the amount bid to conduct the cleanup service.

Require DNR or Commerce, whichever agency has jurisdiction over the site, to estimate the cost to complete a site investigation, remedial action plan and remedial action for an occurrence. If that estimate exceeds \$60,000, direct Commerce to implement a competitive public bidding process to assist in determining the least costly method of remedial action. Require that Commerce may not implement the bidding process if: (1) Commerce and DNR choose to waive the use of the bidding requirement if an enforcement standard is exceeded in groundwater within 1,000 feet of a well operated by a public utility or within 100 feet of any other well used to provide water for human consumption; or (2) Commerce or DNR waives the requirement after providing notice to the other agency.

Authorize Commerce to disqualify a public bid for remedial action activities at a PECFA site if, based on information available to the Department and experience with remedial actions at other PECFA projects, the bid is unlikely to establish a maximum reimbursement amount that will sufficiently fund a cleanup necessary to meet applicable site closure requirements.

Authorize Commerce to disqualify a public bidder from submitting a bid for remedial action activities at a PECFA site if, based on past performance of the bidder, the bidder has demonstrated an inability to finish remedial actions within previously established cost limits.

*Report.* Require Commerce and DNR to submit a report to the Governor, appropriate standing committees of the Legislature, the Joint Audit Committee and the Joint Committee on Finance every January 1 and July 1 that relates to petroleum storage tank cleanups that are in progress. Require that the report provide information for each petroleum cleanup that is underway, and other information about the program. Direct Commerce to submit a report to the Joint Committee on Finance and the Joint Committee for Review of Administrative Rules, by March 1, 2000, that recommends actions Commerce could take to reduce interest costs incurred by claimants, including a review of the schedule for progress payments for claims submitted under the program. (Commerce anticipates that it will submit the report in January, 2001.)

*Usual and Customary Costs.* Require Commerce to establish a schedule of usual and customary costs for items that are commonly associated with PECFA claims and to use it in certain situations. Require Commerce to evaluate the operation of the usual and customary cost schedule and report on the results of the evaluation to the Joint Audit Committee, the Joint Committee on Finance and the appropriate standing committees of the Legislature by December 1, 2000.

*Administrative Rules.* Require Commerce and DNR are required to promulgate joint rules related to procedures, cost-effective administration and inter-agency training practices and submit permanent rules to the Legislature by June 1, 2000. Require DNR to submit any changes required in its rules necessary to implement the joint DNR and Commerce rules by June 1, 2000. Commerce and DNR included some of the changes in COMM 46 and 47 and NR 746.

*Financial Management.* Require Commerce to make specified improvements to its financial management of the PECFA program, primarily related to reconciling its financial database with state accounts maintained by DOA.

*Emergency Situation.* Require that in order to submit a PECFA claim for an emergency situation, the owner or operator must have notified DNR and Commerce of the emergency before conducting the remedial action and DNR and Commerce must have jointly authorized emergency action. Repeal the portion of the definition of emergency as a situation where the owner or operator acted in good faith in conducting the remedial action activities and did not willfully avoid conducting the investigation or preparing the remedial action plan.

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**2001-03 Legislative Session**

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**Act      Description**

16      *Awards Appropriation.* \$75.0 million in 2001-02 and \$68.0 million in 2002-03.

*Revenue Obligations.* Increase authorization for revenue obligations from \$270 million by \$72 million to \$342 million, to fund the payment of PECFA claims.

*Interest Cost Reimbursement.* Effective September 1, 2001, 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. If an applicant received written notification from DNR or Commerce before September 1, 2001, that no further action is necessary, and the applicant submits a final claim more than 120 days after September 1, 2001, interest costs incurred by the applicant after the 120<sup>th</sup> day after September 1, 2001, are not eligible costs. If an applicant does not complete the site investigation within five years after the applicant notified Commerce or DNR about the discharge, or by October 1, 2003, whichever is later, the applicant is ineligible for reimbursement of interest costs incurred after the later of those two dates.

*Appeals Process.* If a person files an appeal of a decision of Commerce concerning a PECFA claim, and if the amount at issue is \$100,000 or less, the person may request arbitration rather than appeal. The arbitrator would be a person designated by the Department under rules promulgated by the Department. If a person chooses arbitration, the arbitrator would hold a hearing and issue a decision within five business days after the conclusion of the hearing. The decision of the arbitrator would be final and stand as the decision of the Department.

*Farm Tank Eligibility.* 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.

*Annual Progress Payments.* Allow an owner or operator to submit a claim annually if the owner or operator has incurred \$50,000 or more in unreimbursed eligible PECFA costs and at least one year has elapsed since submission of the last claim.