



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

---

May 5, 2015

Joint Committee on Finance

Paper #489

### **PECFA Program Sunset (DNR -- Environmental Quality)**

[LFB 2015-17 Budget Summary: Page 327, #14]

---

#### **CURRENT LAW**

The petroleum environmental cleanup fund award (PECFA) program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage systems (primarily gas stations) and home heating oil systems. The PECFA program was created in response to the costs of federal requirements enacted in the 1980s to prevent the release of petroleum and other regulated substances from underground storage tanks into the environment. The amount of reimbursement varies from 75% to over 99% of eligible costs. Owners of certain underground tanks may receive reimbursement of up to \$1,000,000 of costs of investigation and cleanup of environmental contamination that started before December 22, 2001, or \$190,000 for investigation and cleanup that started on or after that date. The maximum award for other types of tanks varies by tank type.

The state began paying PECFA awards in 1988. Awards are funded from the segregated petroleum inspection fund, which receives revenue from a 2¢ per gallon petroleum inspection fee assessed on all petroleum products that enter the state, including gasoline, diesel, and heating oil. In 2013-14, the Department of Natural Resources (DNR) paid PECFA awards totaling \$4.8 million. Base funding for PECFA awards is \$4,550,000 annually, in a biennial appropriation.

The DNR administers cleanup of contaminated sites, and the financial reimbursement portion of the program. Prior to 2013-14, the Department of Safety and Professional Services (and the former Department of Commerce) administered the financial reimbursement portion and cleanup of medium- and low-risk petroleum sites.

## **GOVERNOR**

Sunset eligibility for the PECFA program by specifying that a person is not eligible for PECFA reimbursement if the person: (a) did not notify DNR of the discharge and the potential for submitting a PECFA claim before February 3, 2015 (the date of introduction of the budget bill); and (b) does not submit a claim for the reimbursement of eligible costs before July 1, 2017. The bill would maintain base funding for PECFA awards of \$4,550,000 annually.

## **DISCUSSION POINTS**

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

1. The PECFA program was created in response to the costs of federal requirements enacted to prevent the release of petroleum and other regulated substances from underground storage tanks into the environment. Federal regulations generally apply to commercially-owned underground storage systems, and farm and residential tanks larger than 1,100 gallons. Federal regulations required owners to: (a) replace or upgrade their tanks by December 22, 1998; (b) have leak detection systems that meet new federal requirements; and (c) demonstrate financial responsibility or have pollution insurance for underground storage tank systems. Before sites were cleaned up or upgraded, the PECFA program provided a method for owners or operators of federally-regulated tanks to meet the financial responsibility (insurance) requirements. If the owner or operator closed the tank instead of upgrading it, they were required to properly close and remove the tank by December 22, 1999.

2. Approximately 78% of occurrences and 88% of payments under the PECFA program have been for commercial underground tank systems regulated under federal requirements. The remaining payments have been for sites regulated under state, but not federal regulations. State regulations and PECFA eligibility apply to tanks such as aboveground, certain home or large heating oil, small farm, school district, technical college, and tribal trust. Some tank owners regulated under state regulations rather than federal regulations (farm and residential tanks of 1,100 gallons or less, heating oil tanks over 4,000 gallons and aboveground storage tanks over 5,000 gallons) were required to upgrade, or to stop using, the tanks by May 1, 2001.

3. In the late 1990s, hundreds of millions of dollars in PECFA claims were received, due, in part, to the efforts of owners with federally-regulated petroleum storage tanks to meet the December 22, 1998, deadline to replace or upgrade the tanks to meet current leak prevention and leak detection standards, or to stop using the tanks. Often, the point in time at which contamination was discovered was during the process of upgrading or removing the tank to comply with the 1998 deadline. A backlog of PECFA claims that had been received and not been paid exceeded \$200 million from June, 1997, through February, 2000. During that time, claimants waited over two years after submittal of a claim for reimbursement of eligible cleanup costs. The amount of PECFA claims received exceeded \$160 million annually in the mid- to late-1990s as remediation work was done at commercial sites as they were upgraded to meet the federal deadline.

4. Issuance of petroleum inspection fee revenue obligations first authorized in 1999 Act 9

allowed the PECFA program to pay the backlog of claims. A cumulative total of \$387 million was issued and used to pay PECFA claims between 2000 and 2008. Since then, repayment of the revenue obligations has been made from petroleum inspection fee revenues. As of April 1, 2015, the total amount of outstanding revenue obligations (principal owed) is \$139.1 million.

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

5. As of April 1, 2015, \$1.54 billion in PECFA payments have been made for cleanup at 13,334 sites. Of the total payments, \$1.43 billion (93%) has paid for completion of cleanup at 12,573 closed sites (94%). The remaining \$110 million (7%) has paid for partial cleanup at 761 open sites (6%). The amount of claims received was \$5.4 million in 2013-14. It is expected that claims totaling approximately \$4 million will be received in 2014-15.

6. Currently, the PECFA program does not have a statutory end date. Cleanup at most federally-regulated sites has been completed in compliance with federal requirements to close or upgrade the tanks by the end of 1998. These sites have been closed, and the last PECFA payments have been made. Sites that are new or were upgraded to meet federal requirements are not eligible for the program. These sites are required to obtain private insurance to meet financial responsibility requirements in the event of a petroleum spill or discharge.

7. Sites that were cleaned up and received reimbursement under the PECFA program are not eligible for reimbursement of costs associated with new discharges of petroleum contamination after completion of cleanup of the old discharge. A small number of these sites have been closed, but then were reopened in a later year after remaining old contamination became a problem and needed to be addressed. The cost of readdressing old contamination at previously closed sites has been eligible for PECFA reimbursement.

8. DNR makes progress payments after the following milestones are completed: (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 one-year cycle of monitoring necessary to show that remediation by natural attenuation will occur; (e) at the end of each one-year cycle of monitoring required for off-site contamination; and (f) after implementation and one year of operation, sampling and monitoring of an active treatment system and every year thereafter. DNR also allows progress payments at sites based on extreme life safety and environmental risk, and where the claimant has demonstrated that he or she does not have the financial means to conduct a remediation without progress payments. In addition, an owner or operator may 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.

9. In each of the last few years, approximately 50 sites annually have established PECFA eligibility. Under current law, DNR estimates that this would continue during 2015 through 2017, and, to a smaller extent, beyond 2017. It is likely that sites identified in recent years mainly included properties where a PECFA-eligible occurrence was discovered during a transfer of ownership, settlement of an estate of a family member, or during a building, road construction, or brownfields redevelopment project. In addition, sites might be identified where the responsible

party has not been willing or able to begin a remediation, the site has been abandoned, or the owner of a federally-regulated site did not comply with the 1998 deadlines to upgrade or remove tanks.

10. DNR officials indicate that 85 sites have established PECFA-eligibility since DNR assumed full responsibility for the PECFA cleanup and financial reimbursement aspects of the program in July, 2013. While the Department does not have information about the situation that prompted discovery of PECFA-eligibility at the sites, DNR determined that, of the 85 sites, 40 are underground storage tanks for marketers (former gas stations), 21 are home heating oil tanks, 14 are underground storage tanks for non-marketers (businesses with tanks for use by the business), seven are aboveground tanks, and three are farm tanks.

11. Some sites have been open for many years without reaching closure. Some of these sites have ongoing active cleanup underway, and are progressing towards completion and closure, although many of them have complex site conditions and extensive contamination that requires several years of remedial action to complete the cleanup. Other open sites have had little or no cleanup activity conducted for several years.

12. Since 2013, DNR has taken the following types of actions to move open sites to closure: (a) increase efforts to find viable responsible parties to undertake site cleanup; (b) provide one DNR project manager for each site as the point of contact for remediation and reimbursement issues; (c) implement a semi-annual electronic reporting by responsible parties to better track open sites; (d) implement a team review of sites where little remediation work is occurring to identify sites that are most likely to be PECFA-eligible; (e) increase use of a streamlined enforcement process at stalled sites; (f) encourage greater use of the uniform and customary cost schedule for work performed at sites; (g) increase active monitoring of sites with phone calls and meetings to move sites toward the next step; and (h) perform reviews of site files to determine the next steps needed to move a site toward closure.

13. Since 2013, DNR has not performed any study of the overall financial liability of the program. As of the fall of 2014, DNR had paid claims for partial cleanup at almost 800 PECFA sites, but did not have information about when they would submit final claims for completion of cleanup. In addition, DNR was unsure of how many additional sites might establish PECFA eligibility and submit claims in the future.

14. In January, 2015, DNR received semi-annual site status reports for 562 PECFA sites, which included estimates of approximately \$13.2 million in additional cleanup costs for the sites. The site status reports do not include information about how long it will take to complete cleanup and submit claims for the site. However, DNR officials indicate approximately 38% of the sites were in the initial phase of site investigation or submittal of the claim for that work, 55% were in the remedial action (cleanup) phase, and 7% were in the final stage of preparing the site for closure (completion) of work, or for closure with conditions.

15. The estimate of potential liability for currently-identified sites would vary depending on the number of, and remaining cleanup costs for, those sites. Under current law, the rate at which PECFA claims are paid would vary depending on the amount of time it takes responsible parties to clean up sites.

16. DNR officials indicate the general length of time it takes to clean up sites varies. Cleanup of contamination from removal of home heating oil tanks takes roughly 18 months from the time of identification of contamination, site investigation, cleanup, performance of final soil testing, submittal of a request to DNR for approval of site closure, and preparation and submittal of the claim for PECFA reimbursement. Sites such as former gas stations of average or complex extent of contamination can take two to four years for cleanup. This can include: (a) one to two years to investigate the amount of contamination and determine how far it has spread from the initial discharge from the tank; (b) one to two years for cleanup of contamination; (c) two years of quarterly sampling at sites with groundwater contamination to determine if contamination in groundwater has been reduced to low enough levels to meet administrative code standards (if not, additional cleanup is required); and (d) five to nine months to submit the site to DNR for approval of closure, and preparation and submittal of the PECFA claim.

17. The petroleum inspection fund provides revenue for DNR payments under the PECFA program and administration of the program, petroleum tank and inspection programs administered by the Department of Agriculture, Trade and Consumer Protection (DATCP), and several other programs in DNR, DATCP and the Departments of Administration, Military Affairs, Revenue, and Transportation.

18. The table shows the condition of the petroleum inspection fund in 2013-14 through 2016-17 under the bill. In 2013-14, revenue from the 2¢ per gallon petroleum inspection fee, bulk tank fees and interest income totaled \$71.3 million. Expenditures totaled \$72.6 million, including: (a) \$30.0 million for revenue obligation debt service costs (shown as a reduction to available revenue); (b) \$26.6 million for expenditures from appropriations; and (c) \$16.0 million for a one-time transfer from the petroleum inspection fund to the transportation fund, under provisions of 2013 Act 20. It is anticipated that in 2014-15, revenue from the petroleum inspection fee will total \$78.0 million, which will include approximately \$5 million in one-time receipts collected from a past-due account. In 2014-15, expenditures are expected to total approximately \$72.9 million, including: (a) \$28.8 million for revenue obligation debt service costs; (b) \$28.1 million for appropriations with 89.8 positions; and (c) \$16.0 million for a one-time transfer to the transportation fund.

19. Under the bill, it is anticipated the petroleum inspection fund will have a June 30, 2017, balance of approximately \$23.7 million. Revenue deposited in the petroleum inspection fund will total approximately \$145.5 million during the 2015-17 biennium. Expenditures from the fund will total approximately \$139.6 million during the 2015-17 biennium, with 89.55 authorized positions. Of this total, approximately 46% (\$64.9 million) of the expenditures, plus 54.3 positions, will be for PECFA awards, DNR administration of the PECFA program, revenue obligation debt service costs, and DATCP petroleum inspection and tank regulation programs. In addition, approximately 40% (\$55.3 million) will be for the Department of Transportation appropriations and the transfer to the transportation fund. The remaining 14% includes \$19.4 million for other programs.

## Petroleum Inspection Fund Condition

	2013-14 <u>Actual</u>	2014-15 <u>Estimated</u>	2015-16 <u>Bill</u>	2016-17 <u>Bill</u>	<u>2016-17 Positions</u>
Opening Balance	\$14,721,200	\$13,530,700	\$17,680,900	\$12,710,800	
<b>Revenues:</b>					
Petroleum Inspection Fee	\$71,119,900	\$78,000,000	\$72,300,000	\$72,800,000	
Revenue Obligation Debt Service	-29,969,500	-29,960,000*	-28,760,000*	-13,310,000*	
Petroleum Bulk Tank Fees and Other	<u>228,200</u>	<u>225,000</u>	<u>225,000</u>	<u>225,000</u>	
<b>Total Revenues</b>	<b>\$41,378,600</b>	<b>\$48,265,000</b>	<b>\$43,765,000</b>	<b>\$59,715,000</b>	
 Total Revenue Available	 \$56,099,800	 \$61,795,700	 \$61,445,900	 \$72,425,800	
<b>Expenditures:</b>					
PECFA Awards	\$4,795,800	\$4,000,000	\$4,550,000	\$4,550,000	
PECFA Administration	1,660,500	2,175,100	2,329,900	2,329,900	20.30
Petroleum Inspection	4,238,700	4,836,100	4,510,500	4,515,200	34.00
Transportation Fund	6,623,500	6,612,600	6,629,000	6,629,000	4.00
Other Programs **	9,250,600	9,421,700	9,715,700	9,743,400	31.25
Expenditure of prior year encumbrances	<u>0</u>	<u>1,069,300</u>	<u>0</u>	<u>0</u>	
<b>Total Expenditures</b>	<b>\$26,569,100</b>	<b>\$28,114,800</b>	<b>\$27,735,100</b>	<b>\$27,767,500</b>	<b>89.55</b>
 Less Transfer to Transportation Fund	 \$16,000,000	 \$16,000,000	 \$21,000,000	 \$21,000,000	
<b>Cash Balance</b>	<b>\$13,530,700</b>	<b>\$17,680,900</b>	<b>\$12,710,800</b>	<b>\$23,658,300</b>	
 Encumbrances, Continuing Balances	 \$1,069,300	 \$0	 \$0	 \$0	
 <b>Available Balance</b>	 <b>\$12,461,400</b>	 <b>\$17,680,900</b>	 <b>\$12,710,800</b>	 <b>\$23,658,300</b>	

\*Reflects minimum debt service estimates. DOA could choose to make additional principal payments to retire outstanding debt. Debt service decreases in 2016-17 because the state will complete making payments on long-term obligations, and will continue to make interest-only payments on short-term debt.

\*\*Other programs include appropriations for transfer to the segregated environmental management account, DNR contaminated land and air management administration, Department of Administration diesel truck idling reduction grants, DATCP weights and measures and unfair sales act, Department of Military Affairs emergency response board and major disaster assistance, Department of Revenue administration of petroleum inspection fee collections, and a reimbursement of the petroleum inspection fee paid on certain purchases of aviation fuel.

### Program Sunset Options

20. Administration officials indicate the rationale for sunsetting the PECFA program according to the schedule established in the bill is that the program has been operational for over two decades, and has accomplished its primary purpose of cleaning contamination at most underground storage tanks. They also indicate that the rationale for denying PECFA eligibility to sites where owners did not notify DNR of the potential eligibility before the date of the introduction of the Governor's budget was that there was concern that, when the closure of the program was announced, there would be a rush of owners who would suddenly decide to submit sites for potential eligibility. The deadline of February 2, 2015, for identification of new sites is intended to prevent that potential rush of new sites.

21. The administration indicates that the bill's requirement to submit claims before July 1, 2017, will prevent the sunset of the program from creating a long-term set of obligations that would

stretch out well into the future, and would instead create a firm end-date for obligations from the program. They do not have an estimate of the amount of PECFA award expenditures that could be anticipated from the \$9.1 million in base funding provided during the 2015-17 biennium.

22. Currently, the first step in becoming eligible for the program is for the site owner to notify DNR of the petroleum release and the potential for submitting a PECFA claim. The bill would require that this must have been done before the budget bill was introduced in order to retain eligibility.

23. DNR indicates that between February 3 and April 6, 2015, eight owners or agents have submitted PECFA eligibility requests to the Department. Three are for home heating oil tanks and the other five are former gas stations. DNR plans to inform them: (a) whether or not they meet PECFA site eligibility requirements; (b) that if the Governor's budget proposal is approved, they would not be eligible for PECFA reimbursement; and (c) they would still be responsible for completing cleanup of the site whether or not PECFA reimbursement is available.

24. Since the commercial underground tanks that were the focus of the original program were required to replace or upgrade their tanks by 1998, all such sites should have been identified and cleaned up by now. It could be argued that owners that have not cleaned up such sites should pay for it themselves. However, not all such sites were cleaned up, and some such sites continue to be discovered by owners who may have had nothing to do with the operation of an old federally-regulated tank. Other new sites that continue to be identified under the program may not have been subject to federal upgrading requirements.

25. It could be argued that site owners should be given some advance notice of the date of termination of initial eligibility. The bill could be amended to modify the deadline for notification of DNR to a future date. For example, a deadline of December 31, 2015, could be established to provide approximately six months after enactment of the budget, including the remainder of the 2015 construction season, for owners to make the initial notification of the release [Alternative 1b]. Another option would be to provide a deadline of December 31, 2016, to provide approximately 18 months, including the two construction seasons of 2015 and 2016, for owners to find potential contamination and notify DNR in order to retain PECFA eligibility [Alternative 1c]. If the Committee wishes to provide a longer time period to end the initial eligibility for PECFA, it could consider a deadline of December 31, 2017 [Alternative 1d] or December 31, 2018 [Alternative 1e].

26. It is more difficult to establish deadlines for submitting final claims under the program because there is a large variation in the amount of time required to complete cleanups at various sites. As noted earlier, cleanup can take between one and many years to complete, depending on the specific situations at the site.

27. The provision in the bill to require that no claims for reimbursement of eligible costs may be submitted after June 30, 2017, means that owners with sites currently undergoing cleanup would have to complete all cleanup work and receive approval of closure from DNR by at least the spring of 2017, in order to have time to assemble and submit a final claim with necessary documentation of expenses. This provision of two years after enactment of the budget may be sufficient for many sites undergoing cleanup to complete the cleanup and submit a claim. However,

it is probable that some site owners would find it difficult to finish a multi-year cleanup of a more complex site in time to meet the deadline in the bill for final submission of a claim.

28. It is possible that some site owners who are in the process of a lengthy cleanup could reach some of the currently allowable milestones (such as investigation, annual cycle of long-term monitoring, or \$50,000 annual costs) in time to submit claims for a portion of eligible costs before the June 30, 2017, deadline under the bill. In addition, DNR may require cleanup work at some sites that will not be completed in time for the owner to submit a final claim before the deadline under the bill. Owners who are not able to complete a cleanup and submit a final claim under the deadline in the bill would have to find other financial resources to complete the cleanup.

29. DNR officials indicate that, under the bill, they would attempt to prioritize oversight of PECFA sites to move them as close to closure as possible. This would hopefully allow time for the site owners to submit reimbursement claims for a larger portion of cleanup costs before the June 30, 2017, claim submittal deadline.

30. In recent years, as the number of active PECFA sites has declined, the number of PECFA consultants has also declined. There are a small number of consultants who do cleanup at PECFA sites for owners. It is unknown whether consultants have the capacity or interest in taking on additional PECFA work for one to two years if sites owners try to speed completion of work before the June 30, 2017, claim submittal deadline.

31. A later deadline for claim submittal could provide additional time for owners to complete cleanup at recently identified PECFA-eligible sites, or at ongoing more complex and time-consuming sites. For example, a deadline of June 30, 2019, instead of June 30, 2017, for submission of a claim, would provide approximately four to five years for owners to complete most or all the cleanup at recently-identified or complex or time-consuming sites [Alternative 2b]. A deadline of June 30, 2021, for submission of a claim, would provide six to seven years for owners to complete the cleanup at more complex or time-consuming sites [Alternative 2c].

32. Given the uncertainty of the length of time required for cleanup at individual sites, consideration could be given to establishing a deadline for incurring eligible costs or submitting a final reimbursement claim that is more dependent on the status of cleanup activities at a specific site rather than tied to a specific date on the calendar. For example, DNR may make a determination that no further remedial action (cleanup) is necessary at a site, meaning an immediate action has been taken in response to a release of a pollutant, and the Department will not require submittal of a full request for closure at the site. At other sites, the site owner needs to request DNR approve closure after a full remediation is conducted in accordance with applicable DNR rules, and the conditions for closure are met, including removing all contamination, or reducing the levels of contamination to below minimum allowable levels. This type of site typically requires multiple years of cleanup, then two or more years of monitoring before the site owner can request DNR to approve final closure.

33. The bill could be amended to authorize DNR to determine that no further remedial action is necessary at a site, even if the site owner does not request the agency to make the determination, and to specify that cleanup costs incurred after the date that the agency notifies the



owner of the determination would not be eligible for PECFA reimbursement [Alternative 3a]. DNR does not track the number of this type of site. DNR officials indicate the number may be minimal because costs would most likely have been below \$10,000, which is lower than the deductible, so a claim might not have been filed.

34. The bill could be amended to require submission of a final claim within a certain amount of time. An example of this would be amending the bill to require that any claim for reimbursement must be submitted within 180 days after DNR determines that no further action is necessary at the site, or within 180 days after DNR approves final closure at the site, or the first day of the seventh month after the effective date of the budget, whichever is later, or the costs would not be eligible for PECFA reimbursement [Alternative 3b]. Provision of at least six months after enactment of the budget could provide applicants time to prepare and submit a claim if the 180-day deadline was reached by the site before the six-month timeframe (for example, if it happened before enactment of the budget).

35. There are 62 sites that have reached the stage of remedial action where the site received approval of conditional closure but have not met the conditions for final closure, such as: (a) completing the proper abandonment of monitoring wells at the site; (b) adding the site to the registry of sites closed with residual groundwater or soil contamination; or (c) recording a deed restriction related to residual contamination that must be done before DNR can convert approval of a conditional closure to a final closure (deed restrictions were used before the registry of sites). The bill could be amended to specify that cleanup costs incurred more than 180 days after the date that the agency notifies the owner of the determination of conditional closure, or the first day of the seventh month after the effective date of the budget, whichever is later, would not be eligible for PECFA reimbursement [Alternative 3c].

36. Another possible deadline could be established for submission of eligible costs after the costs have been incurred. This type of deadline, in combination with the current authorization for owners or operators to submit a claim annually if the applicant has incurred \$50,000 in unreimbursed eligible PECFA costs in the past year, should decrease the amount of incurred but unsubmitted costs, and decrease the unknown future liability costs. A deadline could be established in the PECFA program to require that an owner or operator must submit a claim for reimbursement within 180 days after incurring the eligible costs, or the first day of the seventh month after the effective date of the budget, whichever is later, if at least \$50,000 in unreimbursed PECFA costs have been incurred, or the costs would no longer be eligible for reimbursement [Alternative 3d].

37. There are approximately 162 active PECFA sites with costs reimbursed to date of over \$200,000. Investigation and remedial activities began at all of these sites before December 22, 2001, the sites have not received approval of final closure, and the owners of the sites might submit additional PECFA claims. DNR indicates that reasons these old sites have not reached final closure might include: (a) work may be ongoing at a large and/or complex site; (b) the owner of the site may be unable to finance the former deductible of 2% of eligible costs over \$200,000 for aboveground tanks; (c) work at the site may be slowed by litigation, access agreements or property ownership transfers; (d) work may be complete but the responsible party may not be willing or financially able to pay a fee of \$1,050 associated with submittal of a closure request to DNR; or (e)

the responsible party may have abandoned the property due to death, bankruptcy, or minimal property value. The bill could be amended to place limits on PECFA reimbursement for these old sites. For example, an amendment could require that for sites where the investigation and remedial activities began before December 22, 2001, any eligible costs submitted after June 30, 2016, would be reimbursed at 75% of the eligible amount (rather than up to 98% currently) [Alternative 3e].

38. If any program sunset provisions are approved, PECFA claims demand would likely be higher in the near-term as owners and consultants seek to maintain eligibility under any deadlines imposed. However, longer-term costs should similarly decline. DNR anticipates that, under the claim submittal deadlines of the bill, it is possible there could be a rush of cleanup activity, and resulting PECFA claims, during 2015 and 2016 as consultants try to move sites closer to cleanup. They further anticipate that in late 2016 and 2017, claim submittal might decrease as projects either reach closure or owners decide they have done all the cleanup they can before losing eligibility for state reimbursement.

39. It is likely that some owners of PECFA sites undergoing cleanup in 2015 and 2016 may begin to stop cleanup work in 2017 if they know they will not complete it in time to submit a claim by the June 30, 2017, deadline. It is uncertain what enforcement actions DNR would take to keep these site owners moving towards their statutory responsibilities to complete cleanup.

40. If any program sunset provisions are approved, sites will subsequently be identified that will no longer be eligible for PECFA reimbursement. Imposition of sunset provisions would not change the current hazardous substances spills law requirement that persons who possess, control, or caused the discharge of a hazardous substance must take 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.

41. At non PECFA-eligible sites, if there is no responsible party able or willing to clean up the contamination, and if the contamination presents a high-enough risk to the environment when compared with contamination at other sites, DNR can use its state-funded spills response appropriation through the segregated environmental management account to take action to clean up the site. DNR uses the appropriation for cleanup of contamination at sites where responsible parties are unknown or do not have financial resources to pay for a cleanup. The Department prioritizes use of the appropriation for sites of high environmental priority, such as the state share at certain Superfund site cleanups and highly-contaminated sites. DNR can then recover costs incurred from responsible parties. The bill continues the base-level funding of \$2,292,700 annually for this appropriation. It is unknown whether existing or future PECFA sites that do not complete cleanup under the bill's deadlines would have a high enough environmental priority, or would meet the criteria of having no responsible party able or willing to clean up the contamination, to be funded from the state-funded spills response appropriation. It should also be noted that separate budget papers discuss the funding issues related to the environmental management account budget and reductions made by the bill in appropriations from the account.

42. The Wisconsin Economic Development Corporation (WEDC) administers brownfields grant programs for which some currently-eligible PECFA site owners might be eligible to apply for financial assistance. For example, under a WEDC brownfields grant program, persons who did not

possess or control the environmental contaminant before it was discharged, or who are unable to pay the full cost of the cleanup, may be able to apply for a grant, and would have to provide matching funds of 20% or more of the cleanup cost. Under a WEDC brownfields site assessment grant program, municipalities may apply for a grant for assessment (initial investigation) costs.

43. During the March 2, 2015, DNR budget briefing to the Joint Committee on Finance, the DNR Secretary informed the Committee that owners of sites that become ineligible for PECFA or final reimbursement of cleanup activities under the bill could apply for assistance under other unspecified programs. Administration officials subsequently indicated that owners of sites that become ineligible for PECFA under the bill can follow normal processes for eligibility and assistance for other environmental cleanup programs. DNR officials subsequently indicated that after owners currently eligible for PECFA become ineligible under the bill, responsible parties would be responsible for all cleanup costs like other contaminated sites in the state. They also indicated some sites may be eligible for a small federally-funded program administered by DNR, called the Ready for Reuse loan program if they did not cause the contamination, and compete successfully against other sites for priority use of funds. Finally, they indicated that PECFA sites without responsible parties would be reviewed along with other contaminated sites throughout the state to determine if they pose a great enough threat to human health and the environment to use funds from the spills-response appropriation for cleanup.

44. The Legislature may want to consider whether state resources should be allocated to pay for a portion of the cleanup of petroleum contamination at sites that would no longer be eligible for the PECFA program under the bill. This would include sites that are cleaned up under the program and experience old residual contamination moving or reaching a concentration that becomes a problem again, and sites that have not begun or have not completed, clean up under the existing program.

45. The Committee could consider providing some level of separate funding for selected sites that are currently eligible for PECFA, after PECFA eligibility is no longer available under the bill. For example, \$1,000,000 petroleum inspection fund SEG (or some other amount) could be provided beginning in 2016-17, in a new biennial appropriation, to be used for grants for sites eligible under current law that are discovered after eligibility ends under the bill. It could also be available for sites that are not able to complete cleanup before any deadline date enacted for submitting claims [Alternative 4]. DNR could be directed to promulgate rules to establish a method of prioritizing funding for expenditures under the appropriation. Criteria could include, at a minimum, priority for financial hardship of the applicant and the level of health or environmental hazards posed by the site. A maximum amount of reimbursement could be established. For example, the current maximum awards per occurrence could continue, but not to exceed \$190,000 for commercial tanks (some old commercial sites are subject to a \$1 million maximum). Current maximums could be retained for public school tanks (\$190,000), for farm tanks (\$100,000), and for home heating oil tanks (\$7,500). DNR could be authorized to reimburse 50% of eligible costs. This might encourage some sites that will not become eligible for assistance under other programs when PECFA eligibility ends to complete cleanups that otherwise might not be addressed [Alternative 4].

## ALTERNATIVES

1. Approve one of the following deadlines for persons to notify DNR of the initial discharge and the potential for submitting a PECFA claim. Persons who notify DNR after this date would not be eligible for PECFA reimbursement.

a. Approve the Governor's recommendation to deny PECFA reimbursement if the person did not notify DNR of the discharge and the potential for submitting a PECFA claim before February 3, 2015 (the date of introduction of the biennial budget bill).

b. December 31, 2015.

c. December 31, 2016.

d. December 31, 2017.

e. December 31, 2018.

f. Maintain the current law provision of no deadline for notifying DNR of the initial discharge and the potential for submitting a PECFA claim.

2. Approve one of the following deadlines for persons to submit a PECFA claim.

a. Approve the Governor's recommendation to deny PECFA reimbursement if a person does not submit a claim for the reimbursement of eligible costs before July 1, 2017.

b. Deny PECFA reimbursement if a person does not submit a claim for the reimbursement of eligible costs before July 1, 2019.

c. Deny PECFA reimbursement if a person does not submit a claim for the reimbursement of eligible costs before July 1, 2021.

d. Maintain the current law provision of no deadline for submitting a PECFA claim.

3. In addition to one of the alternatives under #1 and #2, approve one or more of the following alternatives to begin to phase-out claim reimbursement under the PECFA program.

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

b. Require that any claim for reimbursement must be submitted within 180 days after DNR determines that no further action is necessary at the site, or within 180 days after DNR approves final closure at the site, or by the first day of the seventh month after the effective date of the bill, whichever is later, or the costs would not be eligible for PECFA reimbursement.

c. Require that cleanup costs incurred more than 180 days after the date that DNR notifies the owner of the determination of conditional closure, or the first day of the seventh

month after the effective date of the budget, whichever is later, would not be eligible for PECFA reimbursement.

d. Require that an owner or operator must submit a claim for reimbursement within 180 days after incurring the eligible costs, or by the first day of the seventh month after the effective date of the budget, whichever is later, if at least \$50,000 in unreimbursed PECFA costs have been incurred, or else those costs would no longer be eligible for reimbursement. (This would not end PECFA eligibility for the site.)

e. Require that for sites where the investigation and remedial activities began before December 22, 2001, any eligible costs submitted after June 30, 2016, would be reimbursed at 75% of the eligible amount.

4. In addition to Alternative 1a, 1b or 1c, provide \$1,000,000 petroleum inspection fund SEG beginning in 2016-17 in a new biennial appropriation in DNR. Specify that the funds may be used to provide reimbursement grants for sites that were eligible for PECFA before eligibility ended under Alternative 1a, 1b or 1c. Direct DNR to promulgate rules to establish a method of prioritizing funding for expenditures under the appropriation to include, at a minimum, financial hardship of the applicant and the level of health or environmental hazards posed by the site. Establish a maximum amount of reimbursement per site that equals the maximum award per occurrence that the site would have been eligible for under PECFA but not to exceed \$190,000 in total state reimbursement. Specify any payments under the existing PECFA program qualify toward this maximum. Specify that the maximum reimbursement would be 50% of eligible costs incurred.

<b>ALT 4</b>	<b>Change to Bill</b>
SEG	\$1,000,000

Prepared by: Kendra Bonderud