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PETROLEUM ENVIRONMENTAL CLEANUP FUND (PECFA)

The Petroleum Environmental Cleanup Fund (PECFA) assists businesses and individuals in dealing with the costs of cleaning up pollution from leaking petroleum storage tanks. The program, which is administered by the Department of Commerce (Commerce) and the Department of Natural Resources (DNR), is funded from the state's petroleum inspection fee of 3 cents per gallon. The 1999 Wisconsin Legislature enacted 1999 Wisconsin Act 9 which modified the program to reduce state costs.

Background. PECFA had its origins in federal Environmental Protection Agency rules promulgated in 1988 that required businesses that used underground petroleum storage tanks to replace their existing storage systems with more durable tanks that would be less likely to leak. They were also required to carry insurance policies for at least \$1 million to pay for cleanup in the event of contamination from their storage systems. Many businesses, particularly small gas stations, worried that the new regulations would force them out of business. The \$1 million insurance requirement was viewed as particularly burdensome.

In response to these concerns, the legislature created PECFA as a part of 1987 Wisconsin Act 399, the budget adjustment act. The program was designed to satisfy the federal insurance requirement, so that businesses with underground petroleum tanks would not have to secure costly private coverage. PECFA has been broadened to include aboveground petroleum tanks, which are not subject to federal requirements, but it does not cover new and upgraded tanks, presumably because they can be covered by private insurance at reasonable rates. Commerce administers the financial awards portion of the PECFA program by issuing reimbursements to individuals who have incurred certain costs related to cleanup of petroleum leaks from underground or above-ground storage tanks.

It is estimated that there originally were 15,000 to 16,000 potential PECFA sites in Wisconsin. Of these, reimbursements have been paid on over 6,700 sites, and claims are anticipated in 5,000 to 7,000 cases, leaving anywhere from 1,000 to 4,000 potential claims.

DNR and Commerce rank PECFA claims as high-, medium-, or low-priority. DNR sets environmental standards for all cleanup efforts and oversees cleanup at high-priority PECFA sites, while Commerce oversees low- and medium-priority site cleanups. In 1999 Wisconsin Act 9, the legislature established criteria that must be met for a site to be designated high priority, and it authorized the departments to create additional criteria if more than 35% of the sites are determined to be high priority using Act 9 criteria. Under the act, a site may be designated high-priority only if at least one of the following applies: 1) repeated tests show contamination of a potable well to a level exceeding state standards; 2) a residue of undissolved petroleum exists with a thickness of 0.01 feet or more; 3) contamination of groundwater exists in excess of state standards for drinking water within 1,000 feet of a public utility well or 100 feet of any other well; or 4) contamination in fractured bedrock exists in excess of state standards.

Remediation Planning and Activities. Before submitting an application for reimbursement under the PECFA program, the owner of a leaking petroleum tank must complete certain site cleanup activities. The first step is to conduct an investigation of the site to determine the

extent of the environmental damage from the leaking tank. The owner must then prepare an action plan specifying remedies for the contamination found in the investigation. Depending on priority ranking, Commerce or DNR next reviews the plan and advises the owner on the least costly method to achieve state cleanup standards. The cost of this method will constitute the highest possible award the applicant can receive. The owner next must complete the required remedial action and have the activities approved by Commerce or DNR. Act 9 also requires DNR or Commerce to assess the risks each leak poses for public health, safety and welfare, and the environment.

PECFA Reimbursement. By law, PECFA funds may only be used to compensate applicants for certain approved activities related to petroleum product cleanup or to reimburse compensation paid to a third party for damages caused by the petroleum discharge. Cleanup costs include: 1) testing of tanks and lines; 2) removal of petroleum products from water or soil; 3) investigation and assessment of contamination; 4) preparation of remedial action plans; 5) treatment and disposal of contaminated soil; 6) environmental monitoring; 7) laboratory services; 8) equipment maintenance; 9) restoration or replacement of water systems; 10) restoration of environmental quality; 11) inspection or supervision; or 12) other costs deemed necessary by Commerce.

Certain expenditures are expressly excluded from consideration for PECFA reimbursement: 1) costs incurred before August 1, 1987; 2) costs of retrofitting or replacing a petroleum storage system; 3) costs not integral to eligible activities; 4) costs determined to be unreasonable or unnecessary; 5) costs of investigations or remediation outside Wisconsin; 6) costs covered by the federal government; 7) costs realized after November 1, 1991, for eliminating and disposing of tanks; 8) interest costs exceeding the prime rate minus 1% for applicants with a gross income of under \$25 million for the most recent tax year or interest costs exceeding 4% for all other applicants; and 9) loan fees exceeding 2% of the loan amount.

Leaking underground tanks are not eligible for the PECFA program if the tank was installed after December 22, 1998, and the discharge is reported after December 31, 1995. Leaking aboveground tanks are ineligible if installed after April 30, 1991, and the discharge is reported after December 22, 2001.

Funding. The PECFA program is funded by revenue from the Petroleum Inspection Fund, a segregated fund that consists of fees charged for inspecting the quality of oil products brought into Wisconsin. The inspection program, which dates back to 1880, requires Commerce to insure that these products meet state and national standards for grade and quality. Commerce currently inspects around 3.6 billion gallons of petroleum every year, which generates approximately \$108 million per year at 3 cents per gallon. About 90% of this amount is available for PECFA, while the remainder is used to fund petroleum inspection activities and a variety of other programs.

Although a 1994 opinion by Attorney General James Doyle concluded that it would be constitutional to fund PECFA through state bonding, it was not until passage of 1999 Wisconsin Act 9 that the State of Wisconsin Building Commission was authorized to issue \$270 million in revenue bonds, backed by petroleum inspection fees. The commission was instructed to issue the bonds for the PECFA program as soon as possible if the revenues from the fees would support debt repayment.

As the total number of PECFA awards has increased to cover 6,700 sites, the amount of PECFA dollars awarded grew from \$312,000 in 1988-89 to a high of \$106 million in 1995-96.

In recent years, the program has awarded around \$95 million annually. Nearly 80% of the sites receiving PECFA grants are commercial underground storage tanks, accounting for over 90% of the total funds awarded since 1988. The second most common type of recipient were home heating tanks, totaling nearly 14% of the sites. Most sites received awards of less than \$50,000.

In recent years, PECFA has encountered a backlog in its awards program, due to the fact the petroleum inspection fee was not generating sufficient funding for timely payment of claims. In fact, the Legislative Fiscal Bureau reported a claim submitted in 1999 would have to wait approximately three years for reimbursement. The legislature enacted the Act 9 bonding authority as a response to the problem. By creating a more reliable source of funds, the state expects to settle claims sooner, thereby avoiding the need to reimburse interest costs incurred by PECFA claimants who had to take out private loans to cover their costs while they waited years to get their awards.

Other Changes to PECFA by Act 9. Act 9 continued the legislature's recent trend towards limiting the costs of the PECFA program. In addition to modifying deductibles and reducing the amount of interest costs eligible for reimbursement, Act 9 required Commerce to create a public bidding process for remedial action at PECFA sites if the department determines that the total cost of work at a site will exceed \$60,000. Commerce may establish a fee to be paid by anyone bidding for PECFA work, to be deposited in the petroleum inspection fund. Commerce may purchase insurance to cover costs in excess of the amount of the successful bid. Another cost control measure established by Act 9 is the requirement that Commerce create a schedule of usual and customary costs for activities commonly associated with PECFA claims. Generally, this schedule must be used to limit reimbursement for sites at which bidding is not used.

Maximum Awards and Deductibles. PECFA awards are determined by several factors, including whether the tank in question is aboveground or below ground; holds petroleum for resale or private use; is located on a farm, school, or technical college property; or is part of a home heating system. Maximum awards range from \$7,500 per occurrence for residential home heating oil tanks to \$1 million per instance for containers associated with oil pipeline systems. The program also sets a deductible amount that an applicant must pay for cleanup costs before becoming eligible for program funding. It varies depending on the circumstances of the site. The tables on page 4 detail the maximum awards and deductibles for various types of PECFA sites, based on the date the costs were incurred.

Additional Information. Statutory references for the PECFA program are included in Section 101.143, Wisconsin Statutes ("petroleum storage remedial action"). For a copy of Section 101.143, see the Wisconsin Legislature's Internet website at: <http://www.legis.state.wi.us/billtext/acts/99acts.html> or contact the Legislative Reference Bureau at (608) 266-0342. For further information on the PECFA program, contact the Department of Commerce, Bureau of Petroleum Environmental Cleanup Fund Administration at (608) 267-3753.

**MAXIMUM AWARDS, ANNUAL LIMITS, AND DEDUCTIBLES
for costs incurred from August 1, 1987 to December 21, 2001**

Tank	Maximum Award	Annual Reimbursement Limit ¹	Deductible ²
Home heating	\$7,500	----	25% of eligible costs ³
Underground/Onsite use <10,000 gallons/month	\$500,000	\$1,000,000	\$2,500 plus 5% eligible costs
Underground/Resale or onsite use with >10,000 gallons/month	\$1,000,000	\$1,000,000	\$2,500 plus 5% eligible costs
Aboveground	\$500,000 ⁴	\$1,000,000	\$15,000 plus 5% eligible costs
Petroleum terminal	\$500,000	\$1,000,000	\$15,000 plus 10% eligible costs exceeding \$200,000
Farm vehicle fuel systems, 1,100 gallons or less	\$100,000	\$1,000,000	\$2,500 plus 5% of eligible costs
Public school or Technical College District	\$190,000	\$1,000,000	25% of eligible costs

¹Maximum annual reimbursement is \$2 million if claimant owns more than 100 storage tank systems.

²Commerce may waive deductible if owner unable to pay and file a lien against the property in the amount of the deductible.

³Nonprofit housing organizations that assist low-income persons are exempt from deductible on tanks they own.

⁴Maximum annual reimbursement is \$1,000,000 for facilities handling an annual average of more than 10,000 gallons per month.

**MAXIMUM AWARDS, ANNUAL LIMITS, AND DEDUCTIBLES
for costs incurred on or after December 22, 2001**

Tank	Maximum Award	Annual Reimbursement Limit	Deductible ¹
Home heating	\$7,500	----	25% of eligible costs ²
Underground/Onsite use <10,000 gallons/month	\$190,000	\$190,000	\$10,000 per occurrence
Underground/Resale or onsite use with >10,000 gallons/month	\$190,000	\$190,000	\$10,000 per occurrence
Aboveground	\$190,000	\$190,000	\$10,000 per occurrence
Petroleum terminal	\$190,000	\$190,000	\$10,000 per occurrence
Farm vehicle fuel systems, 1,100 gallons or less	\$100,000	\$190,000	\$2,500 plus 5% of eligible costs; max. \$7,500
Public school or Technical College District	\$190,000	\$190,000	25% of eligible costs

¹Commerce may waive deductible if owner unable to pay and file a lien against the property in the amount of the deductible.

²Nonprofit housing organizations that assist low-income persons are exempt from deductible on tanks they own.

Source: Legislative Fiscal Bureau; 1999 Wisconsin Act 9; and Section 101.143, Wisconsin Statutes.