



October 1998

PETROLEUM ENVIRONMENTAL CLEANUP FUND

The Petroleum Environmental Cleanup Fund Award (PECFA) program reimburses owners who clean up soil and groundwater contamination from petroleum storage tanks, including those at commercial operations such as gasoline stations, as well as farm tanks and home and school heating oil tanks. As of June 30, 1998, the State had reimbursed \$541.3 million in cleanup costs at 5,655 sites and had a backlog of \$271 million in claims. Because revenue generated by the program's funding source—a \$0.03 per gallon fee on petroleum imports to the State—is approximately \$94 million per year, owners will wait approximately three years to receive reimbursements. To date, it is estimated that fewer than one-half of the sites that are eligible for reimbursement have submitted claims, indicating future program costs will be substantial.

Because the interest that owners pay on loans to complete cleanup is a reimbursable program expense, the growing claims backlog diverts increasing amounts of PECFA funding from paying cleanup costs to paying interest on unpaid claims. Interest costs have increased from 7.0 percent of program payments in 1994 to 13.5 percent in 1998, and they could grow to at least 32 percent of program payments by June 30, 2000. While most states have programs to reimburse cleanup costs, Wisconsin's total expenditures are third-highest in the nation. Several factors distinguish Wisconsin's program and its management efforts from those of most other states, and these factors contribute to cost differences.

More Aggressive Cost-Control Efforts Are Needed

The Department of Natural Resources (DNR) manages cleanup activity at sites with groundwater contamination, which are the majority of sites in the state, and establishes environmental regulations for all sites. The Department of Commerce manages cleanup at sites with soil contamination and manages the PECFA fund, including reviewing claims and making reimbursements for all sites.

Commerce has traditionally attempted to control costs by defining eligible and ineligible expenditures and reviewing claims for compliance. New administrative rules adopted in April 1998 expand Commerce's authority to require bidding for cleanup contracts and to review proposed cleanup methods for cost-effectiveness. To further control costs, we recommend that Commerce also take steps to set usual and customary cost guidelines for cleanup activities; more aggressively analyze differences in consultant charges, and thereby identify those who may be charging unreasonably high rates; and target its auditing resources to identify potential fraud.

DNR is responsible for managing cleanup at most sites, and it has adopted a policy it describes as self-regulation. Under this policy, owners and their environmental consultants are required to submit proposed cleanup plans and regular status reports to DNR, but in most cases DNR staff review the reports only after costs have been incurred and cleanup is completed, which is typically several years later. DNR believes it does not have the statutory authority or responsibility to ensure the cost-effectiveness of cleanup.

Both DNR and Commerce have agreed in the past to cooperate and coordinate their efforts to manage PECFA, and they entered into a revised formal agreement in May 1998. Nevertheless, it would appear that unless both agencies are statutorily accountable for the cost-effectiveness of cleanup, differences in their goals will be a barrier to complete cooperation. Our report contains five specific recommendations for more aggressive site management by DNR, including prompt review of cleanup proposals and active monitoring of cleanup activity.

Owners Have Limited Incentives to Control Program Costs

Owners select consultants and the cleanup methods used and are responsible for a maximum deductible of \$7,500 per site. The level of owner financial responsibility in Wisconsin is the lowest among all midwestern states except North Dakota, and among the lowest in the nation. Because the State pays, on average, 95 percent of cleanup costs in Wisconsin, and cleanup can result in significant increases in property value, some have argued that Wisconsin owners actually have a financial incentive to conduct cleanup beyond the level needed to ensure protection of human health.

The Way in Which Environmental Standards Are Applied Increases Costs

To control the costs of petroleum cleanup programs nationally, the federal Environmental Protection Agency has encouraged, and most states have adopted, a risk-based approach to applying environmental standards and conducting petroleum cleanup. Under a risk-based approach, a state's response to contamination is influenced by the degree of risk the contaminated site poses to human health, sensitive environments, or other factors identified by the state. Sites that pose a risk are addressed with aggressive action, such as soil removal or methods to pump and treat groundwater; sites that pose no risk may be left undisturbed to allow the petroleum contaminants to biodegrade naturally.

Wisconsin's administrative code currently contains some elements of a risk-based approach, such as addressing high-risk sites, but does not contain other risk-based concepts, such as ensuring that low- or no- cost alternatives will be used when contaminated groundwater poses no risk to human health or sensitive environments. In addition, while DNR administrative rules allow owners some flexibility to choose among cleanup methods if the methods will be effective in meeting cleanup goals within the time allowed by DNR, risk-based systems employed by other states include flexibility in ordering cleanup efforts, so that available resources are first used at high-risk rather than low-risk sites. Finally, DNR staff interpret and apply Wisconsin cleanup requirements differently. It is, therefore, questionable whether the flexibility allowed in administrative code is actually available to owners and consultants in practice.

To bring PECFA program costs in line with available revenues, the Legislature will be faced with difficult policy considerations, including financial changes to the program, such as developing different financial incentives or funding alternatives, or changes to the application of environmental standards.

[full report](#)