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PECFA

The biennial state budget act (2001 Wisconsin Act 16), passed by the legislature and signed by Governor Scott McCallum on August 30, 2001, makes changes to the Wisconsin environmental remediation initiative, known as the Petroleum Environmental Cleanup Fund (PECFA).

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 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. The Department of Commerce (Commerce) administers the financial awards portion of the PECFA program by issuing reimbursements to individuals who incur certain costs related to cleanup of petroleum leaks from underground or above-ground storage tanks and the removal of the tanks.

Program Details. The program is funded by revenue from the state's Petroleum Inspection Fund, a segregated fund that consists of fees charged for inspecting the quality of oil product brought into Wisconsin. To expedite payment and reduce interest costs, 1999 Wisconsin Act 9 authorized the state of Wisconsin Building Commission to issue \$270 million in revenue bonding for PECFA if revenue from the fees would support repayment. (Act 16 increases the maximum allowable obligation to \$342 million.)

The Department of Natural Resources (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. The legislature established criteria that must be met for a site to be designated high priority and authorized the departments to create additional criteria if more than 35% of the sites were determined to be high priority. 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.

REIMBURSEMENT PRIOR TO COMPLETION OF CLEANUP

Prior to the passage of Act 16, no compensation could be given to a tank owner before all costs associated with a project had been realized unless there was a finding of hardship by Commerce. Act 16 requires Commerce to make an award to an applicant who is otherwise eligible before all costs are realized if the owner has incurred \$50,000 or more in unreimbursed costs and has not submitted a claim during the previous 12 months.

REIMBURSEMENT FOR INTEREST COSTS

Act 16 limited the circumstances under which tank owners can be reimbursed for interest costs. If a claim is submitted more than 120 days after the claimant has been notified that no further remedial action is required, interest costs incurred more than 60 days after such notification will not be reimbursed. Act 16 eliminates interest reimbursement if the claimant's investigation of the property is not completed within 61 months of initial notification to Commerce of a potential claim or if the investigation is not completed before September 1, 2003, whichever is later. In addition, Act 16 eliminates reimbursement for interest costs incurred after December 30, 2001, if the owner received written notification that no further remedial action was required before September 1, 2001, and the claim was filed after December 30, 2001. The new limitations do not apply to local units of government receiving PECFA funds if they also receive state or federal assistance other than PECFA or to other applicants who receive assistance under state or federal brownfields programs.

FARM TANK PROVISIONS

The PECFA program provides reimbursement for expenses relating to cleanup of certain farm petroleum tanks. Act 16 specifies that the tank must actually be located on an eligible farm site to be covered under the program, rather than merely owned by a farmer who otherwise meets the criteria for reimbursement. Act 16 also extends PECFA reimbursement to individuals who were eligible farm owners at the time they reported the contamination to Commerce, but have subsequently sold their interest in the farm after having incurred reimbursable cleanup costs.

ARBITRATION

The PECFA program includes an arbitration procedure for claimants who disagree with a decision of Commerce relating to their claims. Act 16 increases the minimum amount of a dispute eligible for the arbitration procedure from \$20,000 to \$100,000.