

STATE OF WISCONSIN  
**Senate Journal**  
Ninety–Third Regular Session

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WEDNESDAY, October 14, 1998

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The Chief Clerk makes the following entries under the above date.

**PETITIONS AND COMMUNICATIONS**

**State of Wisconsin  
Legislative Audit Bureau**

October 8, 1998

The Honorable, The Legislature:

We have completed an evaluation of the Petroleum Environmental Cleanup Fund Award (PECFA) program, which is jointly administered by the Department of Commerce and the Department of

Natural Resources (DNR). PECFA was established in 1988 to reimburse property owners for costs associated with required cleanup of discharges from eligible petroleum product storage systems. As

of June 30, 1998, PECFA had reimbursed owners \$541.3 million and had a backlog of \$95.4 million in claims approved for payment; an additional \$185.4 million in claims had been submitted to Commerce but not yet reviewed. The program is funded by a \$0.03 per gallon fee on petroleum products at the wholesale level.

Wisconsin's cleanup costs are among the highest in the nation. The State ranks third nationally in total cleanup expenditures; it has stringent cleanup standards, applies them to all sites, and expects all contamination to be cleaned as soon as practicable following discovery. In contrast, some other states, including states with similarly stringent numeric enforcement standards, have adopted a risk–based approach to assessing petroleum–contaminated sites and prioritizing cleanup, so that sites posing the greatest risk to human health, sensitive environments, development, or other policy priorities are addressed first.

The Legislature, Commerce, and DNR have all taken steps to expedite the closure of sites and to control costs at new and existing sites. However, both continued cooperation between the agencies and a more coordinated approach to cleanup efforts are needed. We have made a number of recommendations to improve the efficiency and cost–effectiveness of the site cleanup process, including that DNR move aggressively to monitor sites for which it is responsible. We also recommend Commerce issue a schedule of usual and customary costs, as required by administrative rule, to eliminate unwarranted variations in costs for similar services.

However, it is unlikely that recently adopted cost–control efforts and better program management alone will be sufficient to bring the demand for reimbursements into balance with existing program revenues. We identify a series of questions that warrant consideration by the Legislature as it deliberates the future of the PECFA program.

We appreciate the courtesy and cooperation extended to us by Commerce and DNR staff. Responses from the two agencies are included as Appendices IX and X.

Sincerely,  
JANICE MUELLER  
State Auditor

**State of Wisconsin  
Department of Health and Family Services**

October 1, 1998

The Honorable, The Senate:

As required in Section [227.485\(9\)](#) and [814.245\(10\)](#) of the Wis. Stats., I am submitting the report concerning decisions and resulting payments of Attorney fees and related legal costs. Attorney fees and other legal costs are to be paid whenever the opposing party to an agency's Chapter [227](#) hearing prevails and it is determined the agency's position was not substantially justified. Payments for SFY 1998 are shown on the attached schedule.

In addition, the Department is required to report any awards granted to the Department regarding frivolous motions brought against this Department. If the hearing examiner determines that the motion of the opposing party in any Chapter [227](#) contested case is frivolous, the examiner may award the state agency all reasonable costs in responding to the motion. In SFY 1998, no motions of opposing parties were found to be frivolous. Consequently, the Department has no awards to report.

Sincerely,  
JOE LEEAN  
Secretary

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**REFERRALS AND RECEIPT OF  
COMMITTEE REPORTS CONCERNING  
PROPOSED ADMINISTRATIVE RULES**

**Senate Clearinghouse Rule 98–031**

Relating to accommodating utility facilities on state–owned railroad corridors.

Submitted by Department of Transportation.

Report received from Agency, October 7, 1998.

Referred to committee on **Transportation, Agriculture and Rural Affairs**, October 14, 1998.

**Senate Clearinghouse Rule 98–099**

Relating to rental unit energy efficiency standards.

Submitted by Department of Commerce.

Report received from Agency, October 13, 1998.

Referred to committee on **Business, Economic Development and Urban Affairs**, October 14, 1998.

**Senate Clearinghouse Rule 98-105**

Relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Submitted by Department of Transportation.

Report received from Agency, October 7, 1998.

Referred to committee on **Transportation, Agriculture and Rural Affairs**, October 14, 1998.