Petroleum Tank Release Compensation Board
Meeting Minutes
Wednesday, September 9, 2015

Present: Board members – Petroleum industry representative Vern Kelley (Chair), Commissioner of the Minnesota Department of Commerce delegate Jan Ludwigson (Vice-Chair), Experience in claims adjustment representative Jeanne Hankerson, Public member representative William Hefner, Commissioner of the Minnesota Pollution Control Agency (MPCA) delegate Michael Kanner; Board Counsel Assistant Attorney General Michael Tostengard; and Director of the Petrofund, Joel Fischer.

Absent: None

Location: Meeting room Lower Level 35, Golden Rule Building, 85 – 7th Place East, Saint Paul, Minnesota.

Mr. Kelley called the meeting to order at 10:00 a.m..

A. Approval of the July 8, 2015 Board Meeting Minutes

Ms. Hankerson moved, Ms. Ludwigson seconded, to approve the July 8, 2015 meeting minutes. Mr. Fischer noted that the word "correction" in the second sentence on page two of the draft minutes should actually have been "corrective." Ms. Hankerson amended her motion, Ms. Ludwigson seconded, to approve the corrected meeting minutes. The motion carried 4-0, with Mr. Hefner abstaining.

B. Consideration of Appealed Reimbursement Determinations

1. Monite Company, LLC Leak #19776 Analyst: Colleen Schiltz

Mr. Robert Mack, of Monite Company, LLC, and his consultant, Mr. Rennie Smith, of AllPhase Companies, Inc., appeared before the Board to appeal the following reductions recommended by Petrofund staff:

- the 15% reduction ($371.52) for failure to comply with leak detection and corrosion protection requirements [Minn. Rule 2890.0065].

Mr. Kelley asked whether the underground storage tank (UST) system at this site did not have leak detection and corrosion protection, or leak detection and corrosion protection were in place, but it was not being used properly. Mr. Mack responded that Monite Company, LLC was the owner of the leaksite property and UST system, but it was operated by another company called Petro Wash.

Mr. Kelley noted that MPCA staff had inspected the UST system in 2006, 2009 and 2013 and asked on which of the inspections the MPCA was basing its reduction recommendation. Mr. Kelley also noted that Monite Company, LLC would have been responsible for complying with the applicable tank regulations after Petro Wash discontinued operation of the tank system in 2010. Kate Lewison (MPCA) responded that the site had a long history of non-compliance issues, culminating in the placement of red tags on the USTs, which prohibit them from being refilled, following the 2013 inspection. Sarah Larsen (MPCA) stated that the reduction recommendation was based on violations identified during all three MPCA inspections.

Ms. Hankerson asked Mr. Mack whether or not he owned other petroleum operations and was aware of the tank regulations. Mr. Mack responded that he had owned 23 to 25 service stations, but sold them approximately 20 years ago. Mr. Mack indicated that he did not entirely know the current UST regulations. Mr. Kelley asked whether or not Mr. Mack still owned any properties that had USTs on them and, if so, whether or not he was complying with the leak detection requirements at those sites. Mr. Mack responded that he did own sites with USTs, but that he was not doing leak detection because they were not hooked up to power, which is needed to run the leak detection systems.

Ms. Hankerson and Ms. Ludwigson asked Mr. Mack whether or not the USTs at this and his other properties had been temporarily closed in accordance with MPCA requirements. Mr. Mack responded that he did not believe so. Ms. Lewison confirmed that the MPCA did not consider the USTs at this site to be properly closed. Mr. Kelley noted that the USTs at this site were red-tagged in 2013, but were still in the ground, and asked whether or not the MPCA had any authority other than red-tagging tanks to compel UST owners to remove tanks that had not met the temporary closure requirements. Mr. Kanner responded that the MPCA did not have the authority to compel UST owners to remove their tanks, indicating that the laws governing temporary closure of USTs are supposed to be enforced by the state's fire marshals, but often are not.

Mr. Hefner asked whether or not, in situations where USTs are owned by one party and operated by another, the MPCA notifies UST owners when enforcement actions are taken against operators. Mr. Mack responded that he never received notice of the citation the MPCA issued to Petro Wash in this case. Ms. Lewison indicated that the correspondence related to the citation was sent to both the applicant and Petro Wash, which share the same address. Mr. Kanner added that when enforcement actions are taken, the MPCA's policy is to send correspondence to both the UST owners and operators.

Ms. Hankerson moved, Ms. Ludwigson seconded, to impose the 15% reduction ($371.52) for failure to comply with leak detection and corrosion protection requirements. The motion carried 5-0.

C. Consideration of Request for Consultant Registration

Mr. Colby Verdegan, president of Chosen Valley Testing, Inc. (CVT), appeared before the Board to request its approval of his company's application for consultant registration.

Mr. Fischer noted that consultant registration applications were not typically brought to the Board for consideration, but indicated that CVT's application was a special situation due to the fact that CVT had recently acquired Omni Environmental, Inc. (Omni). Mr. Fischer reminded the Board that it had chosen to not renew Omni's registration at the July 8, 2015 Board meeting for two reasons: Mr. Matt Gikas, owner and President of Omni, had pled guilty to a felony charge of making and subscribing a false tax return; and Omni was not in good faith carrying on the business of an environmental consultant.

Mr. Fischer indicated that in verbal and written statements to the Board and staff, Mr. Gikas had stated that the transaction between CVT and Omni would be a merger. Mr. Fischer explained that in two meetings, several phone conversations and various correspondence, Mr. Verdegan had clarified that CVT was actually purchasing Omni and that Mr. Gikas would have no ownership stake in the company. Mr. Fischer added that based on the documentation provided by Mr. Verdegan, staff was confident in his assurances that Mr. Gikas would only be an employee of CVT and that controls were in place to help ensure that the Petrofund-related problems discovered at Omni would not be repeated at CVT. Mr. Fischer recommended approval of CVT's application for consultant registration.

Ms. Hankerson asked whether CVT could simply take over Omni's projects or would those applicants need to rebid their projects. Mr. Fischer responded that when one consultant purchases another, the Petrofund has allowed the new consultant to take over the project, as long as they have agreed to abide by the terms of the applicant's contract and proposal with the original consultant. Mr. Fischer noted that if Omni's clients choose to hire a consultant other than Omni, they would need to comply with the applicable competitive proposal requirements, depending on what step of work their project was at. Mr. Fischer added that Omni's clients would be contacted to let them know their options.

Mr. Kanner asked for an assurance from Mr. Verdegan that Mr. Gikas' interactions with MPCA and Petrofund staff and the Board as a CVT employee would be civil. Mr. Verdegan provided those assurances.

Mr. Kelley moved, Mr. Hefner seconded, to approve CVT's consultant registration application. The motion carried 5-0.

D. MPCA Staff Report and Fund-Financed Summary Report

Ms. Larsen updated the FY2015 and FY2016 figures on the Fund-Financed Summary Report memo: for FY2015, approximately 71% of the funds approved by the Board for the Petroleum Remediation Program (PRP) and approximately 73% of the funds for the Emergency Response Program (ERP) had been invoiced; and for FY2016, work orders had been written for both PRP and ERP projects that amounted to approximately 50% of the funds approved by the Board.

Ms. Larsen explained that $5,629,161.42 had been transferred from the Petrofund to MPCA for fund-financed work in FY2015, but that approximately $1 million in unused funds would be transferred back to the Petrofund in the fall.

Mr. Kelley asked why the Moore's Residence site was included on both the PRP and ERP fund-financed project lists. Ms. Larsen explained that because fund-financed dollars were spent by both ERP and PRP in the same fiscal year, the project was included on both lists.

Mr. Kelley asked for a description of the MPCA Preparedness and Equipment project included on the ERP fund-financed project list. Ms. Larsen responded that the project was mistakenly included on the list, but that no Petrofund money had been or would be spent on that item.

Mr. Kanner reported that, with the exception of one report, the MPCA was reviewing reports within the 120-day statutory requirement.

Ms. Ludwigson moved, Ms. Hankerson seconded, to accept the MPCA Staff Report and Fund-Financed Summary Report. The motion carried 5-0.

Mr. Kanner reported on problems at the Minnesota Department of Health's (MDH's) laboratory. Mr. Kanner explained that, in some cases, an MDH employee had not followed the required quality assurance/quality control protocols, casting doubt on the validity of the sampling results. Mr. Kanner indicated that most of the MPCA's sampling work is sent to private laboratories, so the impact to Petrofund projects would be minimal, though some resampling may need to occur.

Ms. Hankerson noted that Minn. Stat. §115C.05 allows the MPCA to use its enforcement authority, including the issuance of civil penalties, to compel responsible persons to take corrective actions, and that any civil penalties must be deposited into the Petrofund. Ms. Hankerson asked whether or not any civil penalties had been collected in the recent past. Mr. Hankerson also asked whether or not tank contractor certification fees were being deposited into the Petrofund, as required by Minn. Stat. §115C.08. Mr. Fischer responded that he had recently received a report that identified the specific dollar amount related to each question and would provide the Board with those figures at its November 12, 2015 meeting.

Mr. Kelley noted that at its July 8, 2015 meeting, the Board had tabled a cost recovery discussion related to the MPCA's vapor intrusion pilot project in order to allow staff to determine what level of discretion the Board had in making cost recovery determinations. Ms. Hankerson expressed concern that making a blanket decision regarding the recovery of a portion of the vapor intrusion pilot project costs could possibly constitute unpromulgated rule-making. Mr. Tostengard indicated that an analysis of the statute dealing with cost recovery, Minn. Stat. §115C.04, allows the Board a fairly significant amount of discretion in deciding whether or not to pursue cost recovery. Mr. Hefner stated that he felt the Board had the discretion

to decide whether or not cost recovery was prudent in the case of vapor intrusion pilot projects. Ms. Hankerson indicated that she could support not pursuing cost recovery for vapor intrusion pilot project work, but expressed concerns that the MPCA's correspondence to the tank and property owners was not clear enough on their fiscal and potential corrective action responsibilities. Mr. Hefner concurred, noting that the correspondence must clearly state the tank and property owners' potential responsibilities. Ms. Hankerson asked that the MPCA prepare a written outline of the scope of the cost recovery process related to the vapor intrusion pilot project and draft new letter templates for corresponding with tank and property owners. Mr. Kanner indicated that the MPCA could have the letters ready within a couple weeks. Mr. Kelley agreed to that timeline and indicated that the Board could review the documents and give final approval of the vapor intrusion pilot project cost recovery plan at a special Board meeting.

Mr. Kelley asked whether or not the Woody's Cenex Vapor Intrusion Site project included on the ERP fund-financed project list for FY2015 was related to the vapor intrusion pilot project. Ms. Lewison responded that it was not part of the vapor intrusion pilot project, and that the vapors were actually reported in the service station building.

E. Petrofund Staff Report and Fund Report

Mr. Fischer notified the Board that Petrofund staff was meeting its statutory requirement to review initial applications within 60 days and supplemental applications within 120 days. Mr. Fischer noted that applications were being reviewed within 21 days of their receipt. Mr. Fischer reported that 27 applications were received in July and 23 were received in August. Mr. Fischer corrected figures given at the July 8, 2015 Board meeting, indicating that 75, rather than 80, applications were actually received in June, resulting in a total of 393 applications actually received in fiscal year (FY) 2015. Mr. Fischer reported that $42,716.13 in reimbursement claims had been approved for payment on September 1, 2015, bringing the total claims approved for payment in FY2016, to date, to $507,609.13.

Mr. Fischer noted that John Houck (Department of Commerce) had prepared a memo for the Board recapping the FY 2015 activities of the Abandoned Underground Storage Tank Removal Program. Ms. Hankerson asked how a UST is determined to have been abandoned. Mr. Houck responded that applicants must document either that the UST(s) to be removed were taken out of service before December 22, 1988 or, if after that date, that they were unaware of the UST(s) at the time they acquired the property where the UST(s) is located.

Mr. Fischer noted that Colleen Schiltz (Department of Commerce) had prepared a memo for the Board recapping the FY 2015 activities related to the recovery of Petrofund dollars from responsible persons for their share or fund-financed costs incurred by the MPCA. Mr. Kelley asked whether or not the Board would be asked to review more environmental liens in the future. Ms. Schiltz responded that the Board would likely be asked to review a small, but steady, number of environmental liens moving forward.

Mr. Fischer reported that the Department of Employment and Economic Development (DEED) had awarded $3,535,058 in Contamination Cleanup and Investigation Grants as part of their May 2015 grant cycle, of which $2,374,536 was Petrofund money.

Mr. Fischer reported that he had submitted two Petrofund-related pieces of legislation for consideration during the 2016 legislative session: similar to legislation proposed in previous years, a provision that would allow for reimbursement of tank removal costs when they are approved by the MPCA as necessary for corrective action; and a provision extending the Petrofund's current 'sunset date' of June 30, 2017 to June 30, 2022. Mr. Fischer indicated that he had not yet heard whether or not the proposals had been approved by the Governor's Office for inclusion in Department of Commerce bills.

Mr. Fischer reminded the Board that during a special meeting on April 29, 2015, it reviewed a proposal by the Minnesota Petroleum Marketers Association (MPMA) to increase the maximum reimbursement per release from $1 million to $2 million. Mr. Fischer noted that the Board took no action on the proposal at that time, with some members indicating that they could possibly support it, but not without additional information. Mr. Fischer provided the Board, in preparation for the upcoming legislative session, with a spreadsheet showing historical reimbursement trends. Mr. Kanner suggested that including MPCA fund-financed payments in the figures might be useful. Mr. Fischer indicated that he would provide updated figures at the Board's November 12, 2015 meeting that included the MPCA's historical fund-financed payments.

Mr. Fischer indicated that a discussion of the extent of the Board's latitude in interpreting the Petrofund statute and rules would be scheduled for the Board at its November 12, 2015 meeting.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was -$981,574 and the Cash Balance was $17,049,175. Mr. Fischer reminded the Board that the Petrofund fee would be imposed from October 1, 2015 to January 31, 2016. Mr. Kelley expressed concerns about the large amount of DEED funds that were carried forward from the previous fiscal year.

Ms. Hankerson moved, Ms. Ludwigson seconded, to approve the Petrofund Staff and Fund Reports. The motion carried 5-0.

Adjournment: Mr. Kelley adjourned the meeting at 11:35 a.m..