

D. Consideration of Environmental Lien Filings

1. Mr. Tom and Ms. Elizabeth Pearson Leak #13178 Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person (RP).

Ms. Ludwigson moved, Ms. Ebertz seconded, to approve the Department of Commerce to file an amended environmental lien against the leaksite property, adding \$7,542.26 to the original lien amount of \$18,374.05, which was approved at the July 24, 2014 Board meeting. The amended lien amounts to 10% of the eligible costs incurred by the MPCA. The motion carried 4-0.

2. Ms. Vielmina Borg Leak #13208 Analyst: Colleen Schiltz

Nobody was present on behalf of the RP.

Mr. Kelley moved, Ms. Ludwigson seconded, to approve the Department of Commerce to file an amended environmental lien against the leaksite property, adding \$1,387.70 to the original lien amount of \$8,382.85, which was approved at the May 14, 2014 Board meeting. The amended lien amounts to 10% of the eligible costs incurred by the MPCA. The motion carried 4-0.

3. Mr. Jon Mead Leak #18633 Analyst: Colleen Schiltz

Nobody was present on behalf of the RP.

Ms. Ebertz moved, Ms. Ludwigson seconded, to approve the Department of Commerce to file an amended environmental lien against the leaksite property, adding \$454.35 to the original lien amount of \$14,592.94, which was approved at the November 12, 2014 Board meeting. The amended lien amounts to 10% of the eligible costs incurred by the MPCA. The motion carried 4-0.

4. Mr. Robert and Ms. Rose Doyle Leak #15546 Analyst: Colleen Schiltz

Nobody was present on behalf of the RP.

Mr. Kelley and Ms. Ludwigson noted that the value of the leaksite property was \$1,400.00, only slightly higher than the original lien amount of \$1,376.58, which was approved at the July 8, 2015 Board meeting.

Ms. Ludwigson moved, Ms. Ebertz seconded, to not approve the Department of Commerce to file an amended environmental lien against the leaksite property, which would have added \$5,983.00 to the original lien amount of \$1,376.58. The motion failed 2-2, with Mr. Kelley and Mr. Hefner voting against.

Mr. Hefner and Mr. Kelley expressed concerns about Ms. Doyle having to maintain the property, with dim prospects for selling it with the lien attached. Ms. Ebertz indicated that she approved of not increasing the lien amount, but was concerned that removing the original lien was inconsistent with previous lien decisions. Mr. Hefner noted that this case differed from previous ones in that it was the first time during his tenure on the Board where the lien amount exceeded the value of the property.

Mr. Hefner moved, Mr. Kelley seconded, to not approve the Department of Commerce to file an amended environmental lien against the leaksite property and to remove the original lien amount of \$1,376.58. The motion carried 3-0, with Ms. Ebertz abstaining.

5. Mr. Kenneth & Ms. Alice Ristinen Leak #19332 Analyst: Colleen Schiltz

Mr. Ristinen appeared before the Board to request that an environmental lien in the amount of \$3,434.46 not be placed on his property. Mr. Ristinen indicated that he was not responsible for the release from the rusted above ground home heating oil tank at his residence because the fuel oil delivery company should have checked it before delivering fuel. Mr. Ristinen also stated that there was minimal contamination and that the MPCA's contractors went overboard in investigating the release. Ms. Ludwigson asked how large the tank was. Mr. Ristinen responded that he had a 250-gallon tank that was full before the release. Mr. Kelley noted that fuel delivery companies in these types of situations are generally not responsible for inspecting tanks before fuel delivery.

Mr. Ristinen stated that he was unaware of what corrective action work had been performed at his property. Mr. Kelley asked MPCA staff to gather additional information about the work that was done and the costs billed by the MPCA's Emergency Response (ER) and Petroleum Remediation Program (PRP) contractors and provide that information to the Board at its next regular meeting. Ms. Ebertz responded that MPCA staff would do so.

Mr. Hefner moved, Ms. Ebertz seconded, to table the consideration of this environmental lien until the Board meeting scheduled for May 11, 2016. The motion carried 4-0.

6. Mr. Cho Lo Leak #18995 Analyst: Colleen Schiltz

Nobody was present on behalf of the RP.

Mr. Kelley noted that the proposed \$5,037.63 environmental lien included the RP's 10% share of corrective action costs incurred by the MPCA, as well as a 15% penalty for failure to comply with tank leak detection and corrosion protection requirements and a \$1,000.00 penalty to failure to report the release immediately to the MPCA. Mr. Fischer noted that in appeal situations, staff has provided the Board with detailed descriptions of these items, but had inadvertently failed to do so in this lien case. Mr. Fischer apologized for not doing so and indicated that such descriptions would be provided in the future.

Mr. Hefner expressed reservations about making a lien determination without more detailed information about the case. Mr. Kelley asked that Petrofund and MPCA staff gather more specific additional information about the two penalties and provide that information to the Board at its next regular meeting.

In response to Colleen Schiltz's (Petrofund) statement that Mr. Lo had indicated to her that attending the Board meeting in person would be difficult, Mr. Hefner asked staff to look into opportunities for meeting attendees to participate remotely. Mr. Fischer responded that staff would do so.

Ms. Ludwigson moved, Mr. Hefner seconded, to table the consideration of this environmental lien until the Board meeting scheduled for May 11, 2016. The motion carried 4-0.

7. Mr. Robert J. Totleben Leak #18412 Analyst: Colleen Schiltz

Mr. Totleben appeared before the Board to request that an environmental lien in the amount of \$2,991.98 not be placed on his property. Mr. Totleben indicated that his tanks were removed in 2008 and that they had not leaked. Brittney Schuller (MPCA) responded that MPCA records indicated that a leak was discovered when tanks were removed in 2011.

Mr. Totleben stated that he was unaware of what corrective action work had been performed at his property. Noting the discrepancies in some of the information provided by Mr. Totleben and the MPCA and Mr. Totleben's apparent lack of knowledge of the corrective action work performed at his property by the

Ms. Larsen noted that the fiscal year (FY) 2016 figures on the Fund-Financed Summary Report memo were generally unchanged since the memo had been prepared on February 26, 2016.

Mr. Kelley asked for confirmation of whether or not there were any viable RPs for the Java Detour/Former Gas Station project included on the PRP fund-financed project list. Ms. Larsen indicated that she would gather that information and provide it to the Board at its next meeting.

Mr. Kelley asked for an explanation of the circumstances that led to the L F Knutson & Sons, Inc. project becoming a fund-financed project. Ms. Larsen indicated that she would gather that information and provide it to the Board at its next meeting.

Ms. Larsen introduced Kevin Mustonen (MPCA) as the new ER contact for the Board.

Ms. Ludwigson moved, Mr. Hefner seconded, to approve the MPCA Staff and Fund-Financed Summary Reports. The motion carried 4-0.

Ms. Larsen presented a request by the MPCA for an additional \$500,000 for fund-financed projects in FY 2016. Ms. Larsen noted that this amount was in addition to the \$7 million approved by the Board for the fiscal year at its May 13, 2015 meeting. Ms. Larsen and Chris McLain (MPCA) explained that the additional funds would be used to cover unexpected ER work, additional vapor intrusion project work and for a few large projects with previously unknown or higher than anticipated costs.

Mr. Hefner moved, Ms. Ludwigson seconded, to approve the MPCA request for an additional \$500,000. The motion carried 4-0.

F. 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 11 days of their receipt. Mr. Fischer reported that the following numbers of applications were received since the last Board meeting: 29 in November, 30 in December, 28 in January and 24 in February. Mr. Fischer reported that \$67,247.12 and \$63,187.61 in reimbursement claims had been approved for payment on March 1 and March 8, respectively, bringing the total claims approved for payment in FY2016, to date, to \$3,772,080.08.

Mr. Fischer informed the Board that the proposed legislation to extend the Petrofund 'sunset date' from June 30, 2017 to June 30, 2022 had been included in the Governor's budget, but that the proposed legislation that would allow for reimbursement of tank removal costs when approved by the MPCA as necessary for corrective action did not make the cut. Mr. Hefner asked whether or not the MPMA was planning on pursuing legislation to increase the \$1 million per release reimbursement cap. Mr. Kelley responded that the MPMA would likely attempt to get such legislation passed. Ms. Ludwigson asked whether or not insurance coverage was available to cover costs in excess of the \$1 million reimbursed by the Petrofund. Mr. Kelley responded that he was not aware of such coverage.

Mr. Fischer reported that the litigation against BP had concluded, indicating that the District Court had ruled in favor of BP's motion for summary judgement and that the Board had not appealed the ruling.

Mr. Fischer noted that Meredith Udoibok (Minnesota Department of Employment and Economic Development) would be present at the May 11, 2016 Board meeting to answer questions and provide information about the Contamination Cleanup and Investigation Program's most recent round of grants.

Mr. Fischer reported that as required by Minn. Rule 2890, he conducted his annual analysis of the Implicit Price Deflator for the Gross Domestic Product to determine whether or not the maximum costs specified in the Petrofund rules would need to be increased or decreased in FY 2017 due to inflation or deflation. Mr. Fischer determined that the maximum costs would remain unchanged for FY 2017.

Mr. Fischer reported that Greg Wiese (Petrofund) had completed an audit of WCEC Environmental Consultants' costs submitted as part of Petrofund reimbursement applications and found no issues of concern.

Mr. Fischer noted that Mr. Wiese had been invited to speak about enforcement techniques at the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) conference in Pittsburg in April. Mr. Fischer indicated that John Houck (Petrofund) would be joining Mr. Wiese at the conference and that all of their costs to attend would be reimbursed by ASTSWMO.

Mr. Fischer noted the documents in the meeting information packet summarizing the steps in the state rulemaking process and explained that past efforts to revisit the Petrofund rules since they were last revised in 2003 were thwarted mainly due to a lack of staff resources. Mr. Hefner suggested that a comprehensive study of the rules should be done to determine whether or not there are enough significant changes to be made that a rule revision is advisable. Mr. Fischer indicated that staff would work with other interested parties (e.g. the MPCA, environmental consultants, etc.) to identify a list of potential rule changes and present those findings to the Board at a future meeting.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was \$8,007,354 and the Cash Balance was \$24,880,960. Mr. Fischer noted that these figures included the revenue generated by the Petrofund fee in October 2015 (\$7,398,390), November 2015 (\$6,374,397) and December 2015 (\$6,473,597), but not January 2016 (\$6,175,410).

Ms. Ludwigson moved, Mr. Hefner seconded, to approve the Petrofund Staff Report and Fund Report. The motion carried 4-0.

Mr. Hefner moved, Ms. Ludwigson seconded, to adjourn the meeting. The motion carried 4-0.

Adjournment – Mr. Kelley adjourned the meeting at 12:10 p.m.