

Petroleum Tank Release Compensation Board

Meeting Minutes

Wednesday, March 11, 2015

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

Absent: Experience in claims adjustment representative Jeanne Hankerson.

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

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

A. Approval of the January 14, 2015 Board Meeting Minutes

Ms. Ludwigson moved, Mr. Hefner seconded, to approve the Petrofund Board meeting minutes. Mr. Kelley asked Ms. Ludwigson to amend her motion by changing the second sentence in the second-to-last paragraph on page three to the following: “Staff had previously indicated to Mr. O’Sullivan that the Abandoned Tank Program did not allow for reimbursement of costs related to tank removal prior to or after entering the program and only provided for the Petrofund to remove abandoned tanks using its own contractors.” Ms. Ludwigson amended her motion, Mr. Hefner seconded the amended motion, to approve the meeting minutes as requested by Mr. Kelley. The motion carried 4-0.

B. MPCA Staff Report and Fund-Financed Summary Report

Sarah Larsen (MPCA) reported that since the January 14, 2015 Board meeting, the MPCA had reviewed 113 reports within the 120-day statutory requirement, but had not reviewed two sites within that time period. Ms. Larsen noted that those two reports were anomalies, that most reports are reviewed within between 30 and 60 days and that efforts were being made to help ensure that all reports would be reviewed within 120 days in the future.

Ms. Larsen responded to Mr. Kelley’s question from the January 14, 2015 Board meeting regarding the eligibility of the ADM Marshall Cooling Tower site as a fund-financed project. Mr. Larsen explained that the site was inadvertently included on the Spills fund-financed project list in the meeting information packet and was not petroleum-related. Ms. Larsen indicated that no Petrofund money has been or will be spent on the project.

Ms. Larsen updated the Fund-Financed Summary Report memo, indicating that work orders had been written for 76.68% of the funds approved by the Board for Petroleum Remediation Program (PRP) work in fiscal year (FY) 2015 and just under 35% of the funds had been invoiced. Ms. Larsen also reported that work orders had been written for 98.79% of the funds approved by the Board for the Emergency Response Program and 60.84% had been invoiced.

Mr. Kelley asked for a description of the work being performed at the Goodwill Industries site included on the Spills fund-financed project list. Jason Moran (MPCA) explained that this was a complex site due to the large number of petroleum and non-petroleum releases in the area. Mr. Moran indicated that investigation work was currently being performed. Mr. Kelley asked for a description of the work being performed at the Former County Humane Society site included on the PRP fund-financed project list. Ms. Larsen indicated that she would look into that project and provide a description of the project at the next Board meeting. Mr. Kelley asked for an update of the Ethanol Policy Sites project included on the PRP fund-financed project list. Ms. Larsen responded that monitoring was still occurring on one of the two spill sites, but that spending on the project was dropping dramatically.

Mr. Kelley moved, Ms. Ludwigson 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 \$500,000 for Emergency Response Program fund-financed projects. Ms. Larsen explained that this amount was in addition to the \$500,000 approved by the Board for fiscal year (FY) 2015 at its May 14, 2014 meeting and was necessary due to a greater-than-expected need for emergency response services. Mr. Hefner moved, Ms. Ludwigson seconded, to approve the MPCA's request. The motion carried 4-0.

Mr. Kanner reported that legislation had been proposed to increase by \$600,000 the MPCA's appropriation from the Petrofund for the Tank Compliance and Assistance Program and the PRP. Mr. Kanner indicated that the increase was necessary due to cuts in federal funding from the Environmental Protection Agency. Ms. Ludwigson asked for the bill numbers. Mr. Kanner indicated that he did not have them on hand, but would provide them.

C. 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 32 applications were received in January and 31 in February. Mr. Fischer provided an updated *Applications Approved for Payment – FY2015* form showing \$6,061.85 in claims approved for payment at the November 12, 2014 Board meeting, \$86,188.31 approved for payment on March 1, 2015, and a total of \$2,406,240.81 in claims approved, to date, in FY2015.

Mr. Fischer announced that Ms. Hankerson had been reappointed by Governor Dayton to her position on the Board as experience in claims adjustment representative, with her term running from February 14, 2015 to January 7, 2019.

Mr. Fischer introduced Paul Shapiro as the new legal analyst on staff assisting with the BP litigation.

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 FY2016 due to inflation or deflation. Mr. Fischer determined that the maximum costs would remain unchanged for FY2016.

Mr. Fischer reported that the proposed legislation to allow for reimbursement of tank removal costs when they have been approved by the MPCA as necessary for corrective action had been introduced as part of House File 843 and Senate File 804. Mr. Fischer noted the Department of Commerce's appropriation from the Petrofund, totaling \$1,052,000 per year, was also included in those bills.

Mr. Fischer indicated that Mr. Kelley and he had been discussing the extent of the Board's latitude in interpreting the Petrofund statute and rules. Mr. Kelley noted that a similar discussion may be scheduled for the Board members at a future meeting.

Mr. Tostengard left the meeting at 10:40 a.m..

Mr. Fischer requested that the Board give Mr. Kelley the authority on behalf of the Board to sign an amendment to the Interagency Agreement between the Petrofund Board and the Attorney General's Office. Mr. Fischer explained that the original agreement was for up to \$25,800 (200 hours of attorney time at \$129.00 per hour), but that additional funding was necessary, mainly due to the BP litigation. Mr. Fischer indicated that the amended agreement for FY2015, based on Attorney General's Office estimates, would

Ms. Ludwigson moved, Mr. Hefner seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$3,227.64 against the leaksite property. The motion carried 4-0.

3. Ms. Kristyne and Mr. Jeffrey Duray Leak # 18318 Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person.

Mr. Fischer noted that Ms. Kristyne Duray sent an email with additional information a few days prior to the Board meeting and asked Colleen Schiltz (Petrofund) to read it to the Board. Ms. Duray indicated in the email that the market value of the leaksite property was \$25,000, with a mortgage of \$28,200. Ms. Duray contended that if a lien was placed on the property, they would not be able to meet their financial obligation to their lender.

Mr. Kelley moved, Ms. Ludwigson seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$16,317.83 against the leaksite property. The motion carried 4-0.

4. Quick Lube and Tune, Inc. Leak # 12415 Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person.

Mr. Fischer explained that when Quick Lube and Tune, Inc. (Quick Lube) ignored staff's letters demanding they pay their share of the corrective action costs incurred by the MPCA, the debt was referred to the Minnesota Department of Revenue (Revenue) for collection. Mr. Fischer indicated that Revenue returned the debt because it was outside the Department's own internal requirements for recovery, though it was not outside the legal statute of limitations. Mr. Fischer stated that, as a result, staff was recommending that an environmental lien be filed.

Mr. Kanner and Ms. Larsen explained that Quick Lube had not cooperated with the MPCA and that the MPCA had sent four letters asking them to perform corrective action work.

Ms. Ludwigson moved, Mr. Kelley seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$10,444.14 against the leaksite property, which included a 25% penalty for failure to cooperate with the MPCA. The motion carried 4-0.

5. Estate of Ms. Tamela Markgraf Leak # 18672 Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person.

Mr. Fischer explained that when Ms. Tamela Markgraf ignored staff's letters demanding they pay their share of the corrective action costs incurred by the MPCA, the debt was referred to Revenue for collection. Mr. Fischer indicated that Revenue returned the debt upon the death of Ms. Markgraf. Mr. Fischer stated that rather than file a claim against Ms. Markgraf's estate, staff was recommending the what was felt to be a less intrusive cost recovery measure, under the circumstances, of filing an environmental lien.

Mr. Hefner moved, Ms. Ludwigson seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$3,053.26 against the leaksite property. The motion carried 4-0.

Mr. Hefner asked if staff had a sense for how often Revenue files environmental liens as part of their cost recovery activities. Mr. Fischer indicated that staff would gather that information for the next Board meeting.

Adjournment – Mr. Kelley adjourned the meeting at 12:00 p.m..