

Petroleum Tank Release Compensation Board  
Meeting Minutes  
Wednesday, March 12, 2014

**Present:** Board members – Petroleum industry representative Vern Kelley (Chair), Commissioner of the Minnesota Department of Commerce (Department) delegate Jan Ludwigson (Vice-Chair), public member representative Bonnie Wilhelm, Commissioner of the Minnesota Pollution Control Agency (MPCA) delegate Michael Kanner, and experience in claims adjustment representative Jeanne Hankerson (via telephone); and Director of the Petrofund, Joel Fischer.

**Absent:** Board Counsel Assistant Attorney General Michael Tostengard

**Location:** Meeting room LL 35, Golden Rule Building, 85 – 7<sup>th</sup> Place East, Saint Paul, Minnesota.

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

**A. Approval of the November 13, 2013 Board Meeting Minutes**

Ms. Ludwigson moved, Mr. Kanner seconded, to approve the November 13, 2013 Board meeting minutes. The motion carried 5-0.

**B. Election of Vice-Chair**

Ms. Hankerson moved, Ms. Wilhelm seconded, to re-elect Ms. Ludwigson as Vice-Chair of the Board for calendar year 2014. The motion carried 5-0.

**C. MPCA Staff Report and Fund-Financed Summary Report**

Sarah Larson (MPCA) reported that of the \$6,500,000 approved by the Board for fund-financed projects in fiscal year (FY) 2014, approximately 82% of those funds had been encumbered and approximately 39% had been invoiced, to date.

Ms. Ludwigson asked if the MPCA was concerned about possible petroleum storage tank-related flooding issues around the state this spring. Dorene Fier-Tucker (MPCA) responded that the MPCA was not aware of any forecasts calling for severe flooding, but the Agency would be prepared to handle those situations if they arose.

Ms. Larsen reported that the MPCA was reviewing reports within the 120-day statutory requirement.

Ms. Larsen indicated that \$906,899.18 of the funds encumbered by the MPCA for fund-financed projects in FY 2013 had not been spent and, therefore, had been returned to the Petrofund account.

Ms. Larsen responded to Ms. Hankerson's request from the November 13, 2013 Board meeting for a description of the approximately \$25,000.00 in historical costs attributed to "PRP Sponsored Training Tracking" on the Fund-Financed Summary Report. Ms. Larsen indicated that this category on the Report was paid for with federal funding, rather than Petrofund dollars, and that the Fund-Financed Summary Report includes funding sources other than just the Petrofund.

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

#### **D. Staff Report/ Fund Report**

Mr. Fischer acknowledged that Governor Mark Dayton had appointed Mr. Kelley as the new Chair of the Board. Mr. Fischer also informed the Board that the public member representative position was open and that Ms. Wilhelm had agreed to continue serving in that role until an appointment was made by the Governor's Office.

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 14 days of their receipt. Mr. Fischer reported that 19 applications were received in November, 34 applications were received in December, 32 applications were received in January, and 31 applications were received in February. Mr. Fischer indicated that, to date, the total claims approved for payment for FY 2014 came to \$2,793,456.44.

Mr. Fischer reported that the Department of Employment and Economic Development (DEED) had issued approximately \$3.3 million in Contamination Cleanup and Investigation Grants as part of their November 2013 grant cycle. Mr. Fischer noted that approximately \$2 million of the grants used Petrofund dollars.

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 need to be increased or decreased in FY 2015 due to inflation or deflation. Mr. Fischer determined that the maximum costs will remain unchanged for FY 2015.

Mr. Fischer informed the Board that as part of a Department initiative, Petrofund staff would be converting the program's closed reimbursement application files from paper to an electronic format. As part of the project, staff would also review the files retrieved from the state archives to confirm the accuracy of the Petrofund database. Mr. Fischer indicated that the initial estimated cost of the project was approximately \$75,000. Ms. Wilhelm asked why the old files needed to be kept. Mr. Fischer responded that the Petrofund has a 30-year retention schedule for reimbursement application files and that staff has needed to review old files to make certain costs are not requested for reimbursement more than once. Mr. Fischer indicated, though, that he would research Ms. Wilhelm's question and report back to the Board.

Mr. Fischer indicated that staff was continuing its work on the project to identify leak numbers where reimbursement applications had not been submitted and to determine why potential applicants had not yet done so.

Mr. Fischer reported that the proposed environmental lien documents had been reviewed and approved by the Department legal staff, and that staff planned on having some environmental liens ready for the Board to review at its May meeting.

Mr. Fischer explained that the Petrofund was in the process of receiving its annual fund soundness review from the Environmental Protection Agency (EPA). Mr. Fischer noted that in a conference call that included Ms. Larsen, EPA staff announced that they would likely publish their findings in April, but that in the meantime: "The Fund looks great."

Mr. Fischer reported that two Petrofund-related bills had been introduced at the Legislature by the Department. House File (HF) 2853/Senate File (SF) 2347 included three provisions: (a) setting a deadline for applying for reimbursement at seven years from the date work was performed, (b) allowing for reimbursement of tank removal costs when the removal is performed as part of a corrective action approved by the MPCA and the MPCA determines that the release was not from the removed tank(s), and (c) clarifying the 'tanks in transport' provision in Minn. Stat. §115C. As part of Governor Dayton's 'Unsession' initiative, the Department introduced HF 2854/SF2446, which includes a provision to repeal Minn. Stat. §115C.111, an outdated section for imposing consultant sanctions. Mr. Fischer noted that neither bill had yet been scheduled for a hearing.

Mr. Fischer reported the status of the contested case involving Leak #17998 – GH Holdings, LLC, which was originally reviewed by the Board at its March 2012 meeting. Mr. Fischer explained that as part of GH Holdings' contested case being reviewed by the Office of Administrative Hearings (OAH), they had filed suit with the Minnesota Court of Appeals (Court) arguing that Minn. Rule 2890.4600, subp. 2, which limits the OAH's review of Board determinations to the evidence submitted to the Board, was invalid because it was in conflict with OAH's review process in Minn. Stat. §14. Mr. Fischer indicated that the Court had ruled in GH Holdings' favor, so the OAH was allowing GH Holdings to obtain additional evidence for its review.

Mr. Fischer noted that on February 10, 2014, the Attorney General's Office had filed a complaint on behalf of the Board against "BP PLC, BP Holdings North America Ltd., BP America, Inc., and BP Products North America, Inc." for approximately \$25 million. Mr. Fischer indicated that the charges were related to obtaining reimbursement from the Petrofund while allegedly also having insurance coverage. Mr. Fischer noted that the case would be discussed in more detail at the closed portion of the meeting.

Mr. Fischer announced that staff Legal Analyst Kyle Fisher had left the program and that if and when the position would be refilled depended on the progression of oil company investigation.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was -\$4,351,229 and the Cash Balance was \$20,772,260. Mr. Fischer reminded the Board that the Petrofund fee would be imposed from April 1 to July 31, 2014.

Mr. Fischer noted that the MPCA Tank Compliance and Assistance (Tanks) Program was in the process of formulating policies regarding the storage of higher blends of biofuels (e.g. E15, E85, B10, etc.), and that at some point in the future the Board would need to consider whether or not to impose reductions against applicants for failure to comply with tank compatibility requirements. Mr. Kelley indicated that it was probably too early in the process for the Board to make any final decisions, but asked whether or not the MPCA planned on taking enforcement actions against tank owners who stored incompatible product in their tanks. Nate Blasing (MPCA) stated that this early in the process, the MPCA was working with tank owners to get them in compliance, rather than taking enforcement actions, but that it was possible the MPCA would take enforcement actions in the future, if needed. Mr. Blasing indicated that the Tanks Program supported the idea of the Board ultimately imposing reductions for failure to comply with tank compatibility requirements, though it would depend on what type of biofuel blend was being stored. Ms. Ludwigson noted that the Board would rely heavily on MPCA staff to provide information on this emerging issue. Mr. Kelley advised that the Board revisit this question once the MPCA has come closer to finalizing its biofuels compatibility processes and the MPCA identifies situations where it believes reductions in reimbursement may be warranted.

Ms. Wilhelm moved, Mr. Kanner seconded, to approve the Petrofund Staff Report and Fund Report. The motion carried 5-0.

#### **E. Consideration of Appealed Reimbursement Determinations**

There were no appealed reimbursement determinations for Board review at this meeting.

#### **F. MPCA Staff Presentations**

Tom Higgins (MPCA) and Chris McLain (MPCA) gave a presentation titled *MPCA Vapor Intrusion Update*. Mr. Higgins explained that the MPCA would be using approximately \$100,000 in fund-financed dollars to conduct vapor intrusion assessments at nine leaksites that were closed prior to 2005, when the MPCA revised its vapor intrusion assessment requirements. Mr. McLain indicated that the project would be paid for with fund-financed money already approved by the Board for FY 2014. Mr. McLain noted that if the original results led to further work and additional funding was necessary, it would be requested as part of the MPCA's fund-financed project request for FY 2015.

Kit Grayson (MPCA) and Ms. Fier-Tucker gave a presentation titled *J & D Site, Aurora*. Mr. Grayson and Ms. Fier-Tucker notified the Board that significant fund-financed dollars would be spent on emergency response work at the J & D site in Aurora, MN. Ms. Fier-Tucker noted, though, that the costs would be split between the MPCA's Superfund Program and the Petrofund, according to the products and contaminants identified during the investigation and cleanup work.

Because of time constraints and the availability of the meeting room, the MPCA's presentation titled *MPCA Review of Leaksites Over 10 Years Old* was postponed until the May Board meeting.

**Adjournment** – Mr. Kelley called for a motion to adjourn. Ms. Ludwigson moved, Ms. Wilhelm seconded, to adjourn the meeting. The motion passed 5-0. The meeting adjourned at 12:15 p.m..