Petroleum Tank Release Compensation Board
Special Meeting Minutes
Wednesday April 29, 2015

Present: Board members – Petroleum industry representative, Vern Kelley (Chair), experience in claims adjustment representative Jeanne Hankerson, public member representative William Hefner, and Commissioner of the Minnesota Pollution Control Agency (MPCA) delegate Michael Kanner; and Petrofund Executive Director Joel Fischer. Ms. Hankerson and Mr. Hefner participated in the meeting via conference call.

Absent: Commissioner of the Minnesota Department of Commerce delegate Jan Ludwigson (Vice-Chair); and Board Counsel Assistant Attorney General Michael Tostengard.

Location: Summit Conference Room, Golden Rule Building, 85 – 7th Place East, Saint Paul, Minnesota.

Mr. Kelley called the meeting to order at 1:00 p.m..

A. Consideration of Proposed Changes to Minn. Stat. §115C.09, Subd. 3(a)

Mr. Kelley explained that the special meeting was called to discuss the Board's position on possible legislation being moved by the Minnesota Petroleum Marketers Association (MPMA) that would amend Minn. Stat. §115C.09, Subd. 3(a) by increasing the maximum reimbursement for a single release from $1 million to $2 million.

Mr. Kelley noted that the $1 million per release cap comes from the Environmental Protection Agency regulation first implemented in the late 1980s that requires all regulated tank owners to have that amount of financial assurance to cover the costs of addressing tank releases. Mr. Kelley stated that the Petrofund was created to provide funding for corrective actions so people would not be afraid to report releases and that the intent of setting the $1 million maximum was not to cause tank owners financial hardship or force them into bankruptcy by having to cover all of the costs in excess of the maximum reimbursable amount. Mr. Kelley added that part of the reason the higher maximum reimbursement amount is necessary is because the cost to perform corrective actions has increased over time.

Mr. Kelley indicated that the Petrofund is tank owners' insurance for contamination cleanups and coverage is not available for costs in excess of $1 million. Mr. Kelley also noted that the current $1 million maximum may provide insufficient coverage for tank owners that have a large volume of petroleum moving through their tank systems, which increases the chances of larger releases and more expensive cleanups.

Mr. Hefner asked whether or not the maximum reimbursement amount had ever previously been adjusted and indicated that, if not, then perhaps an increase after almost 30 years was needed. Mr. Hefner also asked whether or not the legislation would be retroactive to cover releases that previously exceeded $1 million. Mr. Kelley responded that the legislation would only apply to currently open leaksites.

Ms. Hankerson asked whether or not any legislative language was available for the Board to review. Mr. Kelley indicated that specific language had not yet been drafted, but that it would likely entail either amending "$1 million" to "$2 million" in the statute or simply removing the $1 million figure and allowing for reimbursement of up to $2 million per single tank facility. Mr. Kelley noted that the legislators considering this possible legislation had indicated that it would not move forward without the support of the Board.

Ms. Hankerson and Mr. Hefner expressed reservations about supporting the legislation without seeing specific language that addressed how the amended statute would be applied to past and present cases.

Ms. Hankerson disagreed with Mr. Kelley that greater throughputs equated to higher potential cleanup costs, indicating that leaks and expensive cleanups were more likely when tank owners had fewer tanks and resources to monitor their tank systems and ensure compliance with tank regulations. Ms. Hankerson expressed concern that there would be sufficient time to get this legislation passed at the end of the current legislative session, especially considering the significant amount of work that the Legislature needed to accomplish on other more pressing budgetary issues. Ms. Hankerson expressed further concerns about raising the maximum reimbursement amount when it appeared that the change would assist only one entity. Mr. Kelley responded that a corrective action exceeding $1 million could potentially impact any tank owner.

Ms. Hankerson and Mr. Hefner indicated they could possibly support the proposed legislation in the future, but not without more details and additional study of the proposal.

Mr. Kanner indicated that the MPCA would not be taking an official position until after first conferring with the Department of Commerce and the Department of Employment and Economic Development. Mr. Kanner expressed concerns, though, that the legislative proposal had been brought forward at the end of the legislative session, rather than the beginning. Mr. Kanner stated that the one release that is currently open and has reached $1 million in reimbursement, Leak #18596 - Speedway Northway, would not have been so expensive had the responsible person done a better job of tracking their inventory, making this a bad example on which to base the proposed statute change. Mr. Kanner indicated that the MPCA does not see on the horizon any other corrective actions currently being led by responsible persons that will exceed $1 million.

Mr. Kanner suggested that if the parties interested in this legislation wanted to move forward with the proposal, it should be studied further, perhaps even to determine whether some figure other than $2 million or a different reimbursement rate for costs exceeding $1 million would be appropriate, and then brought forward for consideration at the next legislative session.

Mr. Kelley acknowledged that it would have been best if the proposal had been brought forward at the beginning of the legislative session, but that it had not been identified as issue at that time.

Mr. Kelley thanked the Board members for the discussion and indicated that he would report the Board's comments back to the interested parties.

Adjournment – Mr. Kelley adjourned the meeting at 1:40 p.m..