

Petroleum Tank Release Compensation Board
Meeting Minutes
Wednesday, May 14, 2014

Present: Board members – Petroleum industry representative Vern Kelley (Chair), Commissioner of the Minnesota Department of Commerce (Department) delegate Jan Ludwigson (Vice-Chair), experience in claims adjustment representative Jeanne Hankerson; public member representative Bonnie Wilhelm, and 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.

Location: Lower Level Room 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 March 12, 2014 Petrofund Board Meeting Minutes

Ms. Hankerson moved, Ms. Ludwigson seconded, to make the following correction to the March 12, 2014 Board meeting minutes: Under “B. Election of the Vice Chair,” change “Mr. Wilhelm” to “Ms. Wilhelm.” The motion carried 5-0. Ms. Wilhelm moved, Ms. Ludwigson seconded, to approve the amended meeting minutes. The motion carried 5-0.

B. MPCA Staff Report and Fund-Financed Summary Report

Sarah Larsen (MPCA) reported that the MPCA was reviewing reports within the 120-day statutory requirement.

Ms. Larsen noted a correction on the Fund-Financed Summary Report memo, indicating that the MPCA’s February 6, 2014 request to the Petrofund of \$486,911 for fund-financed project invoices received was never actually made. Ms. Larsen indicated, though, that a \$492,000 request had been made since that time, so the total amount requested for fiscal year (FY) 2014, to date, was \$3,634,392, rather than the \$3,629,304 amount noted on the memo.

Ms. Larsen updated the following figures on the Fund-Financed Summary Report memo: 97% of the funds approved by the Board for Petroleum Remediation Program (PRP) work in FY 2014 had been encumbered and just under 49% had been invoiced; and 69% of the funds approved for Emergency Response Program (ER) fund-financed work had been encumbered, with just under 49% invoiced.

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

C. Staff Report/ 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 18 days of their receipt. Mr. Fischer reported that 28 applications were received in March and 36 applications were received in April. Mr. Fischer indicated that, to date, the total applications approved for payment for FY 2014 was \$3,198,450.55.

Mr. Fischer reported that the Public Member position on the Board had not yet been filled, but that Ms. Wilhelm had agreed to continue serving based on the provision in statute that allows Board members to continue serving for up to six months past the expiration of their term.

Mr. Fischer requested that the Board approve the Petrofund forms for FY 2015, indicating that all of the forms were substantially similar to those approved by the Board for previous fiscal years. Ms. Hankerson moved, Ms. Wilhelm seconded, to approve the forms for FY 2015. The motion carried 5-0.

Mr. Fischer reported that two Petrofund-related bills had been passed into law. Mr. Fischer noted that as part of Governor Dayton's 'Unsession' initiative, Minnesota Session Laws 2014 Chapter 222 included a provision repealing Minn. Stat. §115C.111, an outdated section for imposing consultant sanctions. Mr. Fischer also noted that Minnesota Session Laws 2014 Chapter 198 included provisions setting a deadline for applying for reimbursement at seven years from the date work was performed, starting with applications received on July 1, 2015, and clarifying the 'tanks in transport' provision in Minn. Stat. §115C.

Mr. Fischer updated the Board on the project to electronically scan the historical Petrofund reimbursement applications. In response to Ms. Wilhelm's question from the May 14, 2014 Board meeting of why the old application forms needed to be retained, Mr. Fischer indicated that his research showed that the Petrofund's current 30-year application retention schedule may be longer than necessary, especially considering the change in statute limiting reimbursement to within seven years of the work being performed. Mr. Fischer indicated that he would continue working with Department of Commerce legal staff, the Attorney General's Office, the Office of the Legislative Auditor, and the MPCA to determine the feasibility of appropriately amending the Petrofund's retention schedule. Mr. Fischer noted that a benefit of amending the retention schedule could be eliminating the need to scan the historical reimbursement applications, possibly saving the program approximately \$75,000 in scanning costs.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was -\$6,939,624 and the Cash Balance was \$18,700,976. Mr. Fischer reminded the Board that the Petrofund fee would be imposed from April 1 to July 31, 2014.

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

D. Consideration of Appealed Reimbursement Determinations

1. Elgin Milk Service, Inc.

Leak # 18666

Analyst: Colleen Schiltz

Mr. Matt Gikas, Omni Environmental, Inc., attended the meeting representing the applicant, which was appealing a 15% reduction (\$2,597.20) for failure to comply with leak detection, overfill protection and aboveground storage tank safeguard requirements (pursuant to Minn. Rule 2890.0065).

Mr. Gikas stated that the applicant had already been fined and paid \$3,700 for the alleged leak detection violation as part of an administrative penalty order (APO) imposed by the MPCA, so the continued imposition of a reduction by the Petrofund is "double jeopardy". Mr. Gikas also maintained

that the release at this site was not caused by the applicant's failure to comply with tank regulations, but because of overfills from the numerous tanker trucks utilized on this property.

Mr. Fischer clarified that the total tank violation reductions, to date, amounted to \$6,088.59 if the reduction in the current application was imposed and \$3,391.39 if it was not, based on the following figures: a \$2,179.17 reduction was imposed on the applicant's first application; a \$1,292.22 reduction was imposed on the applicant's second application; a \$2,597.20 reduction was imposed on the application under review by the Board; a \$2,200.00 penalty was imposed as part of the APO; and a \$2,180.00 credit related to the reduction in the first Petrofund application was included in the APO.

Mr. Kelley asked that in the future the MPCA provide additional information about whether applicants' failure to comply with leak detection and other tank regulation requirements are due to not having the required equipment or having the equipment, but not operating it properly. Mr. Kanner responded that the MPCA would do so moving forward. Specific to this case, Zach Klaus (MPCA) reported that the applicant had the required leak detection equipment, but did not operate it properly, meaning the necessary leak detection was not performed.

Ms. Hankerson moved, Ms. Ludwigson seconded, to impose the 15% reduction (\$2,597.20) on this application, but not impose it on any future applications. The motion carried 5-0.

2. DC Airport, Inc. dba Airport BP Leak # 19053 Analyst: Katherine Roelke

Nobody was present on behalf of the applicant, which was appealing a 15% reduction (\$1,045.13) for failure to comply with leak detection and spill prevention/overfill protection requirements (pursuant to Minn. Rule 2890.0065).

Ms. Hankerson asked for clarification of whether or not a release occurred. Ms. Larsen responded that a release was discovered during a phase II site assessment. Ms. Ludwigson asked for clarification of when the applicant was out of compliance with the tank regulations. Ms. Larsen and Jessie Ebertz (MPCA) responded that the applicant was out of compliance when they first purchased the property, but then came into compliance within a year later.

Mr. Kelley moved, Ms. Ludwigson seconded, to not impose the 15% reduction for failure to comply with leak detection and spill prevention/overfill protection requirements. The motion carried 4-1, with Mr. Kanner opposing.

3. Cormorant Store, Inc. Leak # 18836 Analyst: Katherine Roelke

Mr. Richard Sherbrooke appeared on behalf of the applicant, along with Ms. Kathy Wevley (West Central Environmental Consultants), to appeal a 15% reduction (\$3,669.03) for failure to comply with leak detection, corrosion protection, and spill prevention/overfill protection requirements (pursuant to Minn. Rule 2890.0065) and a 10% reduction (totaling \$2,446.02) for failure to obtain competitive proposals for consultant services based on substantially similar assumptions as to the characteristics of the site (pursuant to Minn. Rule 2890.2000).

Michael Rynders (MPCA) indicated that during an inspection of the facility, he determined that the applicant had leak detection equipment, but was not operating it properly. Mr. Rynders also indicated

Mr. Kelley called the meeting back into session at 11:15 a.m..

F. MPCA Staff Presentations

Review of Leaksites that are Greater than Ten Years Old

Ms. Ebertz noted that there are currently approximately 200 leaksites that have been open for more than ten years, and that MPCA staff has begun to systematically re-evaluate and track those sites.

Request for Fund-Financed Project Funding for Fiscal Year 2015

Ms. Larsen submitted the MPCA's request for fund-financed project funding for FY 2015, totaling \$6 million: \$5 million for existing PRP projects; \$500,000 for new PRP projects; and \$500,000 for new ER projects.

Ms. Ludwigson asked how the \$250,000 estimate for the Vapor Intrusion Study in Various Cities project was determined. Chris McLain (MPCA) responded that the figure was based on work performed at 25 sites at approximately \$10,000 per site. Mr. McLain indicated that an example of a project work order would be provided to the Board members to illustrate the \$10,000 per site estimate.

Ms. Hankerson moved, Mr. Kelley seconded, to approve the MPCA's request of \$6,000,000 for fund-financed projects for FY 2015. The motion carried 5-0.

Adjournment – Mr. Kelley adjourned the meeting at 11:50 a.m..

Shortly after adjournment, Mr. Russell Holewa approached Mr. Kelley and Mr. Fischer indicating that he had been present during the meeting, but that he did not realize his case had already been reviewed by the Board.

Mr. Kelley called the meeting back to order at 11:55 a.m. and re-opened discussion on Mr. Holewa's case.

E. Consideration of Environmental Lien Filings

4. Mr. Russel Holewa

Leak # 7635

Analyst: Colleen Schiltz

Mr. Holewa indicated that he did not understand what work was being performed by the MPCA's fund-financed contractors at this site or why the costs incurred by the MPCA were so high. Mr. Kelley asked that Petrofund and MPCA staff meet with Mr. Holewa to update him on the status of the corrective action work at this site. Mr. Kelley asked that Mr. Fischer report back to the Board on this case at its next meeting.

Adjournment – Mr. Kelley called for a motion to re-adjourn. Ms. Hankerson moved, Ms. Ludwigson seconded, to re-adjourn the meeting. The meeting re-adjourned at 12:10 p.m..