Petroleum Tank Release Compensation Board
Meeting Minutes
Wednesday, May 20, 2015

Present: Board members – Petroleum industry representative Vernon Kelley (Chair), Commissioner of the Minnesota Department of Commerce delegate Jan Ludwigson (Vice-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 Director of the Petrofund, Joel Fischer.

Absent: Board Counsel Assistant Attorney General Michael Tostengard

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

Mr. Kelley called the meeting to order at 1:30 p.m.. Mr. Kelley recognized Ms. Hankerson for 20 years of service as a Board member and Ms. Ludwigson presented her with a plaque from Commissioner of Commerce Mike Rothman.

A. Approval of the March 11, 2015 Board Meeting Minutes and April 29, 2015 Board Special Meeting Minutes

Ms. Ludwigson moved, Mr. Hefner seconded, to approve the March 11, 2015 Petrofund Board meeting minutes. The motion carried 5-0.

Ms. Hankerson moved, Mr. Hefner seconded, to approve the Petrofund Board special meeting minutes. The motion carried 5-0.

B. MPCA Staff Report and Fund-Financed Summary Report

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

Ms. Larsen responded to Mr. Kelley's question from the March 11, 2015 Board meeting regarding the fund-financed Former Mower County Humane Society project. Ms. Larsen explained that the Humane Society was not a responsible person (RP) for the release and that the release came from a former service station.

Ms. Larsen updated the Fund-Financed Summary Report memo, indicating that work orders had been written for just under $5 million, or just under 90% of the funds approved by the Board for Petroleum Remediation Program (PRP) work in fiscal year (FY) 2015, and 42% of the funds had been invoiced. Ms. Larsen also reported that work orders had been written for 83.5% of the funds approved by the Board for the Emergency Response Program (ERP) and 56% had been invoiced.

Ms. Larsen introduced two new MPCA ERP representatives for Board meetings: Dorene Fier-Tucker and Kevin Mustonen.

Mr. Kelley asked for a description of the work being performed at the Blaine Municipal Wells site included on the PRP fund-financed project list. Ms. Larsen responded that the well system had been impacted for 20 to 30 years, that a treatment system had been installed on the wells and that a large excavation was planned for FY 2016 to remove highly contaminated soil.

Mr. Kelley asked for a description of the work being performed at the Trestle Stop site included on the PRP fund-financed project list. Amy Miller (MPCA) responded that the RP no longer owned the property and that the MPCA was continuing to monitor the site to make sure no additional releases occurred.

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

Ms. Larsen submitted the MPCA's request for fund-financed project funding for FY 2016, totaling $7 million: $6.1 million for existing PRP projects; $400,000 for new PRP projects opened in FY 2016; and $500,000 for new ERP projects opened in FY 2016. Ms. Larsen noted that this amount was $200,000 less than the $7.2 million request identified in the meeting information packet, indicating that the estimated costs for Leak #18540 – Garfield Unknown Source Investigation had been reduced from $250,000 to $50,000.

Mr. Kelley asked for clarification of whether or not the cost recovery process would be applied to any of the costs related to the Vapor Intrusion Investigation project. Chris McLain (MPCA) responded that if vapor intrusion investigations led to the reopening of leaksites, the responsible person would be required to complete any additional required work, but that the MPCA was not planning on referring Vapor Intrusion Investigation project costs to the Petrofund for cost recovery. Ms. Hankerson asked why efforts would not be made to recover a portion of the Vapor Intrusion Investigation costs if a leaksite needed to be reopened and an RP has been identified. Mr. McLain responded that the MPCA was not considering cost recovery referrals in those cases because doing so would make gaining access to future properties difficult.

Mr. Kanner noted that the Board can decide whether or not cost recovery occurs, but indicated that MPCA staff had discussed this process when the project funds were originally requested from the Board and believed from that meeting that the Board was in agreement regarding cost recovery. Ms. Hankerson asked whether or not the MPCA was informing potential RPs that cost recovery could occur. Mr. McLain responded that potential RPs have not been told that cost recovery will not occur and Kathryn Serier (MPCA) responded that they receive correspondence with language very similar to what is included in the MPCA's standard letter sent out when a leaksite is opened or reopened. Ms. Hankerson requested that a copy of the correspondence be provided to the Board. Ms. Larsen indicated that she would do so.

Mr. Kelley asked for a description of the work being performed at the Former Gas Station, Keewatin site included in the PRP fund-financed project list for FY 2016. Ms. Miller responded that the MPCA intends to purchase the onsite building from the current owner, who is not an RP, demolish it and then remove the petroleum contaminated soil beneath it.

Ms. Hankerson asked for a description of the work being performed at the L.F. Knutson site included in the PRP fund-financed project list for FY 2016, specifically regarding the replacement of highway pavement. Gary Zarling (MPCA) and Mr. Kanner responded that the restoration of the highway would be required after contaminated soil has been excavated from beneath it. Ms. Hankerson asked whether or not an RP existed that would allow for the filing of an environmental lien against the leaksite property. Mr. Zarling responded that the RP no longer owned the leaksite property, so an environmental lien would not be possible.

Ms. Hankerson asked for a description of the work being performed at the Former Red and White Service Station in Brook Park site included in the PRP fund-financed project list for FY 2016, specifically how much longer work would occur. Ms. Serier responded that work should be completed within the next year.

Ms. Hankerson asked for a description of the work being performed at the Former Town and Country Oil, Mora site included in the PRP fund-financed project list for FY 2016, specifically why the on-site remediation system had not been running for ten years. Laurie Kania (MPCA) responded that restarting the remediation system would have required an expensive, complete redesign, so the site was being monitored. Ms. Kania added that the MPCA was now moving forward with a pilot test to determine whether or not to restart the remediation system.

Ms. Ludwigson noted that the Board had previously discussed the cost recovery settlement related to the Farm Credit Services of West Central site included in the PRP fund-financed project list for FY 2016, but asked for a reminder of why a settlement was reached. Don Milless (MPCA) responded that a $15,000 settlement was reached based on an estimate of future costs that turned out to be significantly lower than the actual costs incurred to date.

Ms. Ludwigson asked what the amount of the MPCA's fund-financed request was for FY 2015. Ms. Larsen responded that the request was $6 million. Ms. Ludwigson asked whether any costs included in the FY 2016 request were the result of reductions in federal funding to the MPCA. Ms. Larsen responded that the FY 2016 fund-financed request was not affected by federal funding decisions.

Mr. Hefner noted that the ERP spending for FY 2015 had exceeded $500,000 and asked for confirmation that the $500,000 request for FY 2016 was sufficient. Ms. Larson responded that ERP spending has historically been well below $500,000 per year, so the MPCA was hoping FY 2015 was an anomaly and that the amount requested for FY 2016 was appropriate.

Ms. Hankerson asked about the status of the legislative initiative discussed at the previous Board meeting that would increase the MPCA's appropriation from the Petrofund. Mr. Kanner reminded the Board that the MPCA's request for an increased appropriation was mainly needed because of cuts in federal funding and noted that the higher appropriation amounts were included in MPCA budget bills moving through the legislative process.

Mr. Hefner moved, Mr. Kelley seconded, to approve the MPCA funding request of $7,000,000 for fund-financed projects for FY 2016. The motion carried 5-0.

Mr. Kanner noted that a bill was moving through the Legislature that would appropriate $2.5 million from the Petrofund to be awarded as a grant to the city of Paynesville to install an air stripping treatment process at its water treatment plant. Mr. Milless explained that the city of Paynesville believes their water supply, which is not contaminated at this time, is in imminent danger of becoming contaminated from a large historical release from a local former service station. Mr. Milless noted that the contamination plume had been stable since at least 2007, that there was no indication the city's water supply would be impacted, and that the installation of a water treatment system was unnecessary from a corrective action standpoint. Mr. Kanner stated that the MPCA had testified against this legislation at legislative committee hearings and that it would be recommending that the Governor veto the language.

Mr. Hefner asked whether or not the Board could communicate a position on the legislation to the Governor. Mr. Fischer responded that if the Board chose to do so, he would communicate the Board's position to the Governor's Office. Ms. Hankerson moved, Mr. Kelley seconded, to communicate to the Governor the Board's disagreement with city of Paynesville legislation and to request a veto of the language. Mr. Hefner proposed, Ms. Hankerson and Mr. Kelley accepted, an amendment to the motion noting that the reasons for the Board's position were that the legislation circumvented the standard Petrofund fund-financed process and that it was the Board's understanding that the installation of a treatment system on the city's water supply was not necessary for corrective action, as approved by the MPCA. The motion, as amended, carried 5-0.

Mr. Kelley switched the order of the agenda, considering *D. Consideration of Appealed Reimbursement Determination* before *C. Petrofund Staff Report and Fund Report*.

D. Consideration of Appealed Reimbursement Determination

1. S & R Mart Leak #19434 Analyst: Katherine Roelke

Seema Mahindru, representing the applicant, and Chris Loch, of Carlson McCain, Inc., appeared before the Board to appeal the 15% reduction ($816.65) imposed for failure to comply with leak detection requirements.

Ms. Hankerson asked what the MPCA's process was for following up on violations discovered during tank inspections. Mike Rynders (MPCA) responded that when violations are identified, MPCA staff issues warnings or field citations and RPs must then document that the problems have been addressed. Mr. Kelley noted that the information provided to the Board did not indicate that the violations identified in 2003 had been addressed. Mr. Rynders responded that since the inspection file had been closed, the tank inspector at that time presumably received the necessary compliance documentation.

Mr. Kelley asked why there did not appear to be any inspections between 2003 and 2008. Mr. Rynders responded that at that time, tank inspections were only being conducted every five years, but that inspections were now being done every three years.

Ms. Hankerson and Mr. Kelley asked what occurred following the 2011 and 2014 inspections, when violations were again identified. Mr. Rynders responded that he did not have the paperwork, but that since the inspection file had been closed, the tank inspector at that time presumably again received the necessary compliance documentation.

Ms. Hankerson noted that the applicant did not have an appropriate operator license in place. Mr. Rynders acknowledged that was the case. Ms. Mahindru explained that she had most recently scored 64% on the test, but that 70% was needed to pass.

Mr. Kelley asked whether or not the applicant did line leak testing between 2003 and 2008. Ms. Mahindru responded that she thought so, but could not locate the paperwork and the company that would have done the work did not have any record of it. Mr. Kelley noted that if the company did not have the paperwork, the line leak testing most likely did not occur.

Mr. Loch indicated that based on the available leak detection records, no new releases had occurred from the existing tank system. Mr. Rynders noted that fuel had been identified dripping from a dispenser during a tank inspection in 2014. Mr. Loch responded that a tank system contractor called to the site immediately after the inspection found no loss of petroleum product.

Ms. Hankerson moved, Ms. Ludwigson seconded, to accept the staff's recommendation of a 15% reduction ($816.65) for failure to comply with leak detection requirements. The motion carried 5-0.

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 12 days of their receipt. Mr. Fischer reported that 37 applications were received in April and 35 in May.

Mr. Fischer noted that a total of $3,386,829.27 in claims had been approved, to date, in FY 2015. Mr. Fischer updated the figures on the *Applications Approved for Payment – FY2015* document included in the meeting information packet, explaining that beginning April 1, he had begun approving uncontested applications for payment weekly, rather than on the first and fifteenth of each month. Mr. Fischer added that $44,361.77 had been approved on May 12 and $35,362.21 had been approved on May 19.

Mr. Fischer asked the Board to approve the Petrofund forms for FY 2016, noting that they were substantially similar to the FY 2015 forms, with the exception of the initial and supplemental reimbursement application forms and the related application guides. Mr. Fischer explained that because costs for work performed more than seven years prior to the submittal of an application would no longer be eligible for reimbursement as of July 1, 2015, attachments B and C of the application forms would no longer be necessary and needed to be removed from the forms. Mr. Fischer noted that as part of the project to figure out why certain applicants have not submitted applications for reimbursement, Kathi Roelke (Petrofund) had contacted a large number of potential applicants and notified them of the June 30, 2015 application deadline.

Ms. Hankerson moved, Ms. Ludwigson seconded, to approve the Petrofund forms for FY 2016. The motion carried 5-0.

Mr. Fischer addressed Mr. Hefner's question from the March 11, 2015 Board meeting when he asked how many liens the Minnesota Department of Revenue (Revenue) had filed as part of efforts to recover fund-financed costs referred to them by the Petrofund. Mr. Fischer indicated that Revenue had responded that it could not easily provide the requested information, but that Colleen Schiltz (Petrofund) had access to some of their records and could not find any indication that liens had been filed. Mr. Fischer noted that Revenue has many other more immediate, effective tools for recovering debt and that liens are likely a last resort.

Ms. Hankerson asked what the process would be to recover costs incurred by the MPCA as part their Vapor Intrusion Investigation project. Mr. Fischer responded that once RPs were identified and the MPCA had referred the costs to the Petrofund for recovery, the cases would be handled like any other cost recovery situation, where demand letters would be sent and RPs would be given the opportunity to document a financial hardship if one existed. Mr. Hankerson asked if the MPCA had reopened any leaksites as part of the Vapor Intrusion Investigation project. Mr. Kanner indicated that none had yet been reopened, but that the MPCA was considering opening four at that time. Ms. Hankerson moved, Mr. Kanner seconded, that the MPCA notify the Board of any Vapor Intrusion Investigation projects where the leaksite has been reopened and cost recovery may be necessary. The motion carried 5-0.

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 was removed from both of the House of Senate bills it was introduced under. Mr. Fischer indicated that he would discuss with the Board at a future meeting whether or not to attempt to introduce the language again next year.

Mr. Fischer reported that the Environmental Protection Agency (EPA) had completed its FY 2014 review of the Petrofund and found that the program was fiscally sound. Mr. Fischer noted the EPA's one recommendation was to possibly assess why a relatively large number of potential applicants had not applied for reimbursement and indicated that staff had already notified the EPA that the question was being studied. Mr. Fischer noted that, as in previous years, Ms. Larson and Nate Blasing (MPCA) were instrumental in completing the EPA evaluation forms.

Mr. Fischer asked the Board to authorize Mr. Kelley to sign on behalf of the Board the Interagency Agreement with the Attorney General's Office for legal services in FY 2016. Mr. Fischer explained that the agreement would be for up to 500 hours of legal services, at a rate of $129.00 per hour for attorney work and $71.00 per hour for paralegal work. Mr. Fischer noted that the Petrofund only pays for actual work performed and that if additional time was necessary, the agreement could be amended. Ms. Ludwigson moved, Mr. Hefner seconded, to authorize Mr. Kelley to sign the agreement on behalf of the Board. The motion carried 5-0.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was $3,344,590 and the Cash Balance was $23,535,881. Mr. Fischer noted that since the March 11 Board meeting, the Department of Employment and Economic Development (DEED) had requested half of the funds appropriated to their program for FY 2015, or $2,987,500, which was reflected under the *DEED Brownfield Cleanup Grants* line on the Fund Report. Mr. Fischer added that the remaining $2,987,500 would carry forward and be available to DEED to issue as grants in future fiscal years.

Mr. Fischer informed the Board that because the Fund Balance had dropped below $4 million, the Board would need to impose the Petrofund fee in accordance with Minn. Stat. §115C.08. Mr. Fischer indicated that Revenue required at least 60-days notice to activate the fee and recommended that the Board impose it for the four-month period of October 1, 2015 to January 31, 2016. Mr. Fischer noted that the fee typically generates approximately $27 million during any given four-month period.

Ms. Hankerson moved, Mr. Kanner seconded, to notify Revenue to impose the fee October 1, 2015 to January 31, 2016. The motion carried 5-0.

Ms. Hankerson moved, Ms. Ludwigson seconded, to accept the Petrofund Staff and Fund Reports. The motion carried 5-0.

Adjournment – Mr. Kelley adjourned the meeting at 3:25 p.m..