

Petroleum Tank Release Compensation Board

Meeting Minutes

Wednesday, July 9, 2014

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; Board Council Assistant Attorney General Michael Tostengard; and Director of the Petrofund, Joel Fischer.

Absent: Commissioner of the Minnesota Department of Commerce (Department) delegate Jan Ludwigson (Vice-Chair).

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..

Mr. Kelley introduced Mr. Hefner as the new public member representative on the Board.

A. Approval of the May 14, 2014 Petrofund Board Meeting Minutes

Ms. Hankerson moved, Mr. Kanner seconded, to approve the May 14, 2014 Board meeting minutes. The motion carried 3-0, with Mr. Hefner abstaining.

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, with the exception of one isolated instance.

Mr. Kanner introduced two student workers who attended the meeting with MPCA staff.

Ms. Larsen noted that as requested by the Board at its May 14, 2014 meeting, an example of a work plan prepared as part of the MPCA's ongoing vapor intrusion project had been emailed to the Board.

Ms. Larsen updated the Fund-Financed Summary Report memo, indicating that 64% of the funds approved by the Board for Petroleum Remediation Program (PRP) work in fiscal year (FY) 2014 had been invoiced. Ms. Larsen noted that approximately \$300,000 of the funds approved by the Board for PRP Program work in FY 2015 had been encumbered.

Ms. Larsen reported that no Petrofund dollars had been spent addressing recent flooding across the state.

Mr. Kelley noted that a relatively new fund-financed project, Leak #1533 – Mahtomedi Cleaners, Inc., appeared to be a drycleaning facility, which would not typically qualify for funding. Ms. Larsen indicated that this was likely currently a drycleaning facility with an old petroleum release, but that she would check and provide more information to the Board.

Mr. Kelley asked why individual MPCA project leaders are assigned fund-financed projects spread across the state, seemingly making it difficult to travel to all of the sites. Mr. Kanner responded that an effort is made to assign sites geographically, but mostly projects are assigned based on staff workload. Mr. Kanner noted that not all sites are visited by project leaders that most of the on-site work is performed by the environmental consultants hired by the state.

Ms. Hankerson moved, Mr. Hefner seconded, to approve the MPCA Staff Report and Fund-Financed Summary Report. The motion carried 4-0.

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 14 days of their receipt. Mr. Fischer reported that 24 applications were received in May and 28 applications were received in June, bringing the total number of applications received in FY 2014 to 341. Mr. Fischer reported that a total of \$3,802,578.37 was approved for payment in FY 2014, and that \$214,936.61 had been approved in FY 2015, to date.

Mr. Fischer welcomed Mr. Hefner to the Board and noted that his term runs through January 1, 2018.

Mr. Fischer asked the Board to choose the Board Meeting schedule for calendar year 2015. Ms. Hankerson moved, Mr. Kanner seconded, to approve the following schedule: January 14, March 11, May 13, July 8, September 9, and November 12. The motion carried 4-0.

Mr. Fischer announced that the Petrofund Board and the Department had entered into a \$100,000 settlement agreement with Sunoco for allegedly obtaining insurance payments from settlements with carriers for corrective action costs for which the Petrofund Board had provided reimbursement, in violation of state statute. Mr. Fischer also notified the Board that BP had just filed a motion for dismissal of the complaint filed by the Board, and that he would provide them with a copy of the motion.

Mr. Fischer reported that the Department of Employment and Economic Development (DEED) had awarded \$3,696,666 in Contamination Cleanup and Investigation Grants as part of their May 2014 grant cycle, of which \$2,434,783 was Petrofund money. Ms. Hankerson asked that staff contact DEED to request that their descriptions of the projects receiving grants clearly describe the petroleum component required in order to qualify for Petrofund funding. Mr. Fischer indicated that he would do so.

Mr. Fischer reported that staff would be moving forward with amending the 30-year retention schedule for Petrofund applications to a shorter time-frame under the oversight of the Department records retention specialist. Mr. Fischer noted that certain important documents, such as those related to the oil company investigation, would continue to be retained for an extended time period.

Mr. Fischer noted that John Houck (Department) had prepared a memo for the Board recapping the FY 2014 activities of the Abandoned Underground Storage Tank Removal Program.

Mr. Fischer noted that Colleen Schiltz (Department) had prepared a memo for the Board recapping the FY 2014 activities related the recovery of Petrofund dollars from responsible persons for their share or fund-financed costs incurred by the MPCA.

Mr. Fischer reported that as requested by the Board at its May 14, 2014 meeting, he had scheduled a meeting with Mr. Russell Holewa (Leak #7635) and MPCA staff to update him on the status of the corrective action work at this site.

Mr. Fischer asked that the Board consider possible legislation for the 2015 legislative session, but suggested that the discussion occur at the end of the meeting so that the Board could more quickly get to the appeals and environmental liens scheduled for consideration. Mr. Kelley agreed and moved the discussion to the end of the meeting.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was \$7,724,756 and the Cash Balance was \$17,262,166. Mr. Fischer noted that the Cash Balance did not include the May revenues, since they had not yet been deposited at the time the Fund Report was

prepared. Mr. Fischer reminded the Board that the Petrofund fee was being imposed from April 1 to July 31, 2014, with \$6,041,919 already collected in April and \$6,955,464 in May. Mr. Fischer indicated that because the funds had not yet been received, the \$100,000 settlement with Sunoco was not reflected in the Fund Report.

Mr. Fischer also pointed out that instead of making their typical request for their entire \$6 million annual appropriation at the beginning of the fiscal year, DEED would first spend down their approximately \$5.4 million in carry forward funds from previous fiscal years.

Ms. Hankerson moved, Mr. Kanner seconded, to approve the Petrofund Staff Report and Fund Report. The motion carried 4-0.

D. Consideration of Appealed Reimbursement Determinations

1. MLLA, Inc. Leak # 19099 Analyst: Kathi Roelke

Mr. Marc Thiery attended the meeting representing the applicant, which was appealing the following items:

- a \$7,017.06 reduction in costs for excavating, loading, hauling, stockpiling and disposing of 61.26 cubic yards of contaminated soil, as well as the related purchase, transportation, and installation of clean fill, that exceeded the maximum costs for these tasks;
- a \$375.00 reduction in costs for field work notification and scheduling, utility clearance and excavation report preparation that exceed the proposed amounts; and
- a 10% reduction (totaling \$3,088.51) for failure to obtain a minimum of two written competitive bids for contractor services.

Mr. Thiery stated that a bid request was sent to four contractors, but only one responded with a bid, mainly because of the remote location of the leaksite and the busy time of year for contractors. Mr. Fischer noted that there appeared to have been other contractors available in the area of the leaksite that could have been contacted to provide a bid.

Mr. Thiery stated that since only contractor provided a bid for contractor services, he had no choice but to accept their rates in excess of the Petrofund maximum costs. Ms. Hankerson asked whether or not Mr. Thiery had received any information from his consultant, Braun Intertec, to explain the costs in excess of the maximums. Mr. Thiery responded that he had only received what had been provided to Petrofund staff. Kathi Roelke (Department) indicated that the explanation she received was that the higher costs were mainly related to the remoteness of the leaksite. Mr. Roelke also noted that no explanation had yet been provided to document the reasonableness of the consultant costs in excess of the proposed amounts.

Ms. Hankerson moved, Mr. Kelley seconded, to impose the \$7,017.06 and \$375.00 reductions, but not impose the 10% reduction (totaling \$3,088.51) for failure to obtain a minimum of two competitive bids for contractor services. The motion carried 3-0, with Mr. Kanner abstaining.

E. Consideration of Environmental Lien Filings

Mr. Fischer noted that for the environmental liens being considered by the Board at this meeting, the correspondence originally sent to the responsible persons notifying them of Petrofund staff's financial hardship determination included language that was unclear regarding the Petrofund's ability to file future environmental liens. Mr. Fischer explained that the language had since been clarified.

1. Roger Percy Stodgell

Leak # 11966

Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person. Mr. Fischer reported that staff had received an email from Ms. Maureen Stodgell, apparently a relative of Mr. Roger Stodgell, the day before the Board meeting indicating that Mr. Stodgell would like to discuss a payment plan for paying the \$4,222.41 environmental lien amount.

Ms. Hankerson moved, Mr. Kanner seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$4,222.41 against this leaksite property, with the understanding that the environmental lien would be removed upon full payment by Mr. Stodgell. The motion carried 4-0.

2. Jeffrey Kenneth Hardtke

Leak # 17704

Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person.

Ms. Hankerson moved, Mr. Kanner seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$1,070.41 against this leaksite property. The motion carried 4-0.

3. Goldie Knapp

Leak # 18210

Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person. Mr. Fischer reported that staff had received an email from Ms. Taryn Lindquist, Ms. Goldie Knapp's daughter, a week before the Board meeting. Ms. Lindquist indicated that Ms. Knapp thought no further cost recovery would be performed since receiving the financial hardship determination letter in 2011. Mr. Hefner asked what factors are considered in determining the financial hardship status of a responsible person and whether or not the Board had previously considered information about the condition of a leaksite property in its decision to file an environmental lien. Ms. Schiltz responded that a responsible person's income, last three years of taxes, investments, assets, etc., are included in her analysis of financial hardship claims. Mr. Fischer responded that he was not aware of the Board having ever looked specifically at the condition of a leaksite property in making an environmental lien determination, but that the Board could choose to do so on a case-by-case basis.

Ms. Hankerson moved, Mr. Kanner seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$2,744.80 against this leaksite property. The motion carried 4-0

4. Francis and Sharon Schwarzbauer

Leak # 12576

Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person. Mr. Hefner asked how environmental lien amounts are determined when it is expected that the MPCA will be incurring ongoing costs. Ms. Schiltz responded that environmental liens requests brought to the Board are based on costs incurred by the MPCA, to date. Mr. Fischer asked if the Board would like increases in environmental liens to be brought back to the Board for review. Ms. Hankerson responded that any increases in environmental lien amounts should be subject to Board review, and that those reviews should occur in a timely manner in order to help ensure that all appropriate costs are recovered before properties are sold.

Mr. Kelley moved, Ms. Hankerson seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$7,202.92 against this leaksite property. The motion carried 4-0.

5. Tom and Elizabeth Pearson

Leak # 13178

Analyst: Colleen Schiltz

Mr. Tom Pearson and Mr. Gary Rolek attended the meeting representing the responsible persons. Mr. Pearson indicated that he did not believe that he and his wife were responsible persons for the release at their property. Mr. Kanner explained the process for filing an appeal of the responsible person determination with the MPCA.

Ms. Hankerson moved, and Mr. Hefner seconded, to table consideration of the environmental lien request until the September 10, 2014 Board meeting (September 10, 2014) pending Mr. and Mrs. Pearson's appeal of the MPCA's responsible person determination. The motion carried 4-0.

C. Petrofund Staff Report and Fund Report - Continued

Mr. Fischer indicated that Department deadlines for proposing new legislation for the 2015 legislative session were fast approaching. Mr. Fischer noted that a bill containing the following amendment (underlined) to Minn. Stat. §115C.09, subd. 1(b)(1) had been supported by the Board this past legislative session, but had not passed into law:

- (b) The following costs are reimbursable for purposes of this chapter:
 - (1) corrective action costs incurred by the applicant and documented in a form prescribed by the board, except the costs related to the physical removal of a tank, unless the removal of the tank was ordered by the agency and is determined by the agency to not be a source of a release;

Mr. Fischer asked whether or not the Board still supported this language or preferred any other language. Mr. Kelley stated that the original intent of the tank removal exception in the statute was to prevent reimbursement for tank removal costs when large numbers of leaking tanks were being removed and replaced in response to the Environmental Protection Agency's 1988 mandate. Mr. Kelley indicated, though, that the petroleum marketers' understanding was always that costs for tank removals required as part of a corrective action approved by the MPCA would be eligible for reimbursement. Ms. Hankerson indicated that she would support approving tank removal costs in that situation, with the understanding that a reduction in reimbursement could be imposed if the tank(s) being removed were not in compliance with tank regulations.

Ms. Hankerson moved, Mr. Kelley seconded, to authorize Mr. Fischer to propose legislation removing the tank removal exception from Minn. Stat. §115C.09, subd. 1(b)(1), as illustrated below.

- (b) The following costs are reimbursable for purposes of this chapter:
 - (1) corrective action costs incurred by the applicant and documented in a form prescribed by the board, ~~except the costs related to the physical removal of a tank;~~

Mr. Kanner stated that the removal of a leaking tank should be the responsibility of the tank owner and should not be eligible for reimbursement.

The motion carried 3-1, with Mr. Kanner voting against.

Mr. Tostengard advised the Board that Mr. Matt Gikas (Omni Environmental), against whom the Board has had harassment restraining orders, had recently pled guilty to one count of money-laundering. Mr. Tostengard also noted that a motion hearing had been scheduled with the Office of Administrative Hearings as part of the contested case involving GH Holdings, LLC (Leak #18998).

F. MPCA Presentation

Underground Storage Tank Program Overview

Nate Blasing (MPCA) presented the Board with an overview of the MPCA Underground Storage Tank Program.

Adjournment – Ms. Hankerson moved, Mr. Kanner seconded, to adjourn the meeting. The motion carried 4-0. The meeting adjourned at 12:25 p.m..