

**Petroleum Tank Release Compensation Board
Meeting Minutes
Wednesday, September 14, 2016**

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

Location: Meeting Room Lower Level 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 May 11, 2016 Petrofund Board Meeting Minutes

Ms. Ludwigson moved, Ms. Hankerson seconded, to approve the May 11, 2016 Petrofund Board Meeting minutes. The motion carried 5-0.

B. Consideration of Environmental Lien Filings

1. Mr. James Organ Leak #15904 Analyst: Colleen Schiltz

Mr. Organ appeared before the Board to request that an environmental lien in the amount of \$5,707.42 not be placed on his property. Mr. Organ indicated that he did not perform the corrective action work required by the MPCA because he did not believe that a release had occurred at his property. Ms. Hankerson noted that once contamination was discovered on his property, Mr. Organ was required by law to complete an investigation.

Ms. Hankerson moved, Mr. Kanner seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$5,707.42 against the leaksite property, which amounts to 10% (\$1,756.13) of the eligible costs incurred by the MPCA, plus a 25% (\$3,951.29) penalty for failure to cooperate with the MPCA. The motion carried 5-0.

C. Minnesota Pollution Control Agency (MPCA) Staff Report and Fund-Financed Summary Report

Sarah Larsen (MPCA) reminded the Board that because the MPCA was converting to a new database, the *Fund-Financed Summary Report* did not include the project-specific information typically contained in the report. Ms. Larsen noted that the format of the report would likely change for future Board meetings, most notably that it may not be possible to identify cumulative historic project data at each meeting.

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

Ms. Larsen indicated that of the approximately \$7 million transferred from the Petrofund to the MPCA to cover fund-financed project costs for fiscal year (FY) 2016, around \$1 million was unspent and would be returned to the Petrofund account. Ms. Larsen reported that more than \$6.6 million in work orders had been written in FY 2016 and just over 80% of the funds approved by the Board for the year had been invoiced. Ms. Larsen noted that the MPCA had encumbered \$2.5 million and spent just over \$300,000 for FY 2017 fund-financed projects.

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

Jessica Ebertz (MPCA) reported that based on a discussion at the Board's May 11, 2016 meeting, the MPCA had amended language previously included in the Agency's *Commissioner's Site Report (CSR)*. Ms. Ebertz explained that the old language recommended reductions in reimbursement for failure to comply with tank regulations based on non-compliance "at the time of the release." Ms. Ebertz noted that because the "at the time of the release" language was not in line with the applicable statute or MPCA practice, that reference had been removed from the CSR.

Ms. Ebertz explained the MPCA's process for preparing CSRs, noting that their recommendations for reductions in reimbursement for failure to comply with tank regulations are based on each applicant's history of non-compliance and on MPCA staff's professional judgment about the severity of the violations. Ms. Ebertz indicated that an applicant's failure to comply with tank regulations does not need to have caused a release in order for the MPCA to recommend a reduction. Ms. Ebertz noted that although the Petrofund statute and rules may allow for separate 15% reductions for failure to comply with each type of tank regulation, the MPCA had historically been recommending a single 15% reduction in cases where multiple types of violations had occurred.

Mr. Kelley and Ms. Hankerson noted that the Petrofund rules seemed to require separate 15% reductions for tank regulation non-compliance and asked when the practice of combining them had begun. Mr. Fischer indicated that he would research that question and report back to the Board at its November meeting. Ms. Hankerson requested that the MPCA's *Petroleum Tank Release Compliance Checklist* be included with CSRs as part of future Board meeting information packets. Ms. Ebertz responded that the forms would be provided moving forward. Ms. Hankerson asked that the Board be informed of those cases where Petroleum Remediation Program (PRP) staff overrule Tank Compliance and Assistance Program (Tanks) staff reduction recommendations. Sarah Larsen (MPCA) stated that PRP staff rarely deviate from Tanks staff recommendations and then generally only to maintain consistency across the program. Ms. Hankerson questioned PRP staff deviations from Tanks staff recommendations, noting that once the Tanks staff has determined that a violation has occurred, the Board has the final authority of determining whether or not to impose a reduction. Ms. Hankerson maintained that CSRs should report on the criteria specified in Minn. Rule 2890.0065, subd. 3.

Mr. Kelley asked MPCA staff to provide tank inspection statistics at the Board's November meeting. Nate Blasing (MPCA) noted possible difficulties in obtaining information using the Agency's new database, but indicated that he should be able to provide information relevant to the CSR discussion. Ms. Hankerson asked MPCA staff to provide an explanation at the Board's November meeting of the entire process for recommending reimbursement reductions on CSRs, including a description of what constitutes a violation of tank regulations.

D. 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 11 days of their receipt. Mr. Fischer reported that 31 applications were received in May, 18 in June, 27 in July and 18 in August. Mr. Fischer reported that \$74,551.44 in reimbursement claims had been approved for payment on September 13, bringing the total claims approved for payment in fiscal year FY 2017, to date, to \$816,852.39. Mr. Fischer reported that a total of \$5,025,201.42 in claims were approved in FY 2016.

Ms. Hankerson asked about the status of staff's efforts to convert the paper copies of closed reimbursement application files to electronic files. Mr. Fischer responded that the staff file manager, Clodet Jenson, was working on digitizing the paper files on-site at the Department of Commerce and would tackle the over 500 boxes of files at the state Records Retention facility once the on-site files were handled.

Mr. Fischer updated the Board on the project being worked on by Kathi Roelke (Commerce) to determine why certain potential applicants for reimbursement had not submitted applications. Mr. Fischer noted that staff had data on 75% of the leak numbers under consideration, but was having difficulty collecting information on the remaining 25%. At the suggestion of the Board, Mr. Fischer indicated that staff would continue its attempts to find out why certain applicants have passed on seeking reimbursement.

Mr. Fischer informed the Board that he would be making a recommendation at its November meeting to authorize the staff to begin the process of revising the Petrofund rules. Mr. Fischer indicated that staff would provide an estimated timeline of the rule-writing process and a list of possible rule changes to illustrate the need for the revisions.

Mr. Fischer advised the Board that it needed to select its regular meeting dates for calendar year 2017. Ms. Hankerson moved, Ms. Ludwigson seconded, to approve the following schedule: January 11, March 8, May 10, July 12, September 13 and November 8. The motion carried 5-0.

Mr. Fischer reported that the Department of Employment and Economic Development (DEED) had awarded \$5,780,185 in Contamination Cleanup and Investigation Grants as part of their May 2016 grant cycle, of which \$5,545,087 was Petrofund money. Mr. Kelley asked MPCA staff to provide additional information for the Richfield - Lyndale Gardens project to illustrate for the Board how the presence of petroleum contamination is verified for DEED grants. Mr. Kanner recommended that DEED staff be invited to future meetings to address questions related to their program and suggested that the additional information for that project be requested directly from DEED. Mr. Fischer indicated that he would request the information from DEED staff and invite them to attend all Board meetings where DEED-related questions might arise.

Mr. Fischer noted that John Houck (Commerce) had prepared a memo for the Board recapping the FY 2016 activities of the Abandoned Underground Storage Tank Removal Program. Mr. Houck made a correction to the memo, noting that 213,366 gallons of liquids, not 197,848 gallons, had been removed and properly disposed from tanks during the history of the program.

Mr. Kelley called for a ten-minute break at 11:25 a.m.

Mr. Kelley called the meeting back to order at 11:35 a.m.

Mr. Fischer noted that Colleen Schiltz (Commerce) had prepared a memo for the Board recapping the FY 2016 activities related to the recovery of Petrofund dollars from responsible persons for their share of fund-financed costs incurred by the MPCA.

Mr. Fischer explained that four changes were made to the Petrofund statute during the previous legislative session: tank removal costs were made eligible for reimbursement when the removal was approved by the MPCA as necessary for corrective action; the maximum reimbursement per release was increased from \$1 million to \$2 million and the reimbursement cap of \$2 million per tank facility was removed; the Petrofund 'sunset date' was extended from June 30, 2017 to June 30, 2022; and the effective date of the seven-year reimbursement deadline provision passed in 2014 was shifted from applications received on or after July 1, 2015 to those received on or after January 1, 2016. Mr. Fischer noted that the changes were made as part of 2016 Session Laws Chapter 189, Article 6 and went into effect on August 1, 2016.

Mr. Fischer reported that the Environmental Protection Agency (EPA) had completed its FY 2015 review of the Petrofund and found that the program was fiscally sound. Mr. Fischer and Mr. Kanner noted that they, along with Chris McLain (MPCA) and Mr. Blasing, had recently attended the annual EPA Region 5 meeting.

Mr. Kelley recused himself from the Board's discussion of the new legislation allowing for the reimbursement of tank removal costs when the removal was approved by the MPCA as necessary for corrective action. Mr. Kelley turned the meeting over to Vice-Chair Ludwigson.

Mr. Fischer explained that the intent of the legislation was to provide reimbursement of tank removal costs when the MPCA requires a tank to be removed in order to access contaminated soil or to verify whether or not a suspected tank was leaking. Mr. Fischer noted that situations could arise, though, where the tanks in those situations should already have been removed in the past under the Tanks Program rules, most notably if the tanks have been out of service for more than five years. Mr. Fischer noted that Commerce and MPCA staff had discussed considering the removal of non-compliant tanks in those situations as a Tanks Program requirement, making the costs ineligible for reimbursement, rather than as a corrective action mandate from PRP or Emergency Response (ER) Program staff, making the costs eligible. Mr. Fischer indicated that the question was being brought to the Board for guidance in making the decision.

Ms. Hankerson and Ms. Ludwigson stated that they would support denial of the tank removal costs in certain situations, but only if applicants are clearly informed by the MPCA that the removal of a tank was required under the Tanks Program rules and not as part of a corrective action. Mr. Hefner noted that if a tank removal is required as part of a corrective action, the Petrofund statute and rules would not allow for a reduction in reimbursement for failure to comply with the Tanks Program's temporary closure rules. Bob Krogman (Minnesota Petroleum Marketers Association) stated that the term "corrective action" is sometimes used by the MPCA for enforcement purposes, as well as to describe required contamination investigation and cleanup work. Mr. Blasing confirmed that the Tanks Program uses the term "corrective action" differently than the PRP and ER Programs. Mr. Hefner, Ms. Ludwigson and Ms. Hankerson recommended that the Tanks Program avoid using the term "corrective action" in enforcement cases where a tank owner could mistakenly interpret the removal of a tank as a necessary part of investigating and cleaning up contamination. Mr. Blasing noted that "corrective action" is used for enforcement purposes throughout the MPCA, so having the Tanks Program discontinue using it may not be a simple solution.

Ms. Ludwigson turned the meeting back over to Chair Kelley.

Mr. Fischer discussed a letter sent by Mr. Thomas and Ms. Elizabeth Pearson requesting that the Board remove the environmental lien previously reviewed by the Board and filed against their property, the Former Stony River Sports Shop (Leak #13176), by the Department of Commerce. Ms. Hankerson moved, Mr. Kanner seconded, to authorize Mr. Fischer to send a response to Mr. and Ms. Pearson informing them that the Board would not be revisiting its previous determinations regarding their case and that it did not support the removal of the environmental lien from their property. The motion carried 5-0.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was \$397,712 and the Cash Balance was \$21,269,209. 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 the Minnesota Department of Revenue (Revenue) required at least 60-days notice to activate the fee and recommended that the Board impose it for the four-month period of January 1, 2017 to April 30, 2017. Mr. Kelley moved, Ms. Hankerson seconded, to notify Revenue to impose the fee from January 1, 2017 to April 30, 2017. The motion carried 5-0.

Mr. Fischer informed the Board that due to a scheduling conflict with the regular meeting room, the Board's November 9, 2016 meeting would be held in Conference Room 295 on the skyway level of the Golden Rule Building.

Adjournment: Mr. Kelley moved, Ms. Ludwigson seconded, to adjourn the meeting. The motion carried 5-0. Mr. Kelley adjourned the meeting at 11:30 a.m.