

Petroleum Tank Release Compensation Board

Meeting Minutes

Wednesday, November 12, 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 William Hefner, and Commissioner of the Minnesota Pollution Control Agency (MPCA) delegate Jessica Ebertz; Board Counsel Assistant Attorney General Michael Tostengard; and Petrofund Director 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 July 9, 2014 Board Meeting Minutes and July 24, 2014 Board Special Meeting Minutes

Ms. Ebertz noted that the last word in the fourth paragraph of the MPCA Staff Report and Fund-Financed Summary Report section of the July 9, 2014 Board meeting minutes should read “encumbered,” rather than “invoiced.” Ms. Hankerson moved, Mr. Hefner seconded, to approve the July 9, 2014 Board meeting minutes, as amended. The motion carried 4-0, with Ms. Ludwigson abstaining.

Ms. Ludwigson moved, Ms. Hankerson seconded, to approve the July 24, 2014 Board Special Meeting minutes. The motion carried 5-0.

B. MPCA Staff Report and Fund-Financed Summary Report

Sarah Larsen (MPCA) updated the Fund-Financed Summary Report memo, indicating that 57% of the funds approved by the Board for Petroleum Remediation Program work in fiscal year (FY) 2015 had been encumbered and 11% invoiced, to date.

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

Ms. Larsen responded to a question posed by Mr. Kelley at the July 9, 2014 Board meeting regarding the eligibility of Leak #1533 - Mahtomedi Cleaners as a fund-financed project. Ms. Larsen explained that although the leaksite was identified on the Fund-Financed Summary Report by its current use, a drycleaner facility, the site was once occupied by a gas station, from which the contamination at the site originated.

Ms. Larsen indicated that approximately \$800,000 of the fund-financed dollars approved by the Board for FY2014 would be unspent and returned to the Petrofund.

Mr. Kelley inquired about the eligibility of Leak #19146 - Minneapolis Sidewalk Reconstruction from the Fund-Financed Summary Report as a fund-financed project. Ms. Larsen and Andrew Eddie (MPCA) responded that the release resulted from an underground storage tank found in the right-of-way.

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

Ms. Larsen and Chris McLain (MPCA) updated the Board on the MPCA’s vapor intrusion closed site project. Mr. McLain indicated that the MPCA was currently evaluating approximately 100 closed leaksites for possible vapor intrusion issues using the \$250,000 in funds previously approved by the Board for this project. Mr. McLain indicated that work orders totaling approximately \$300,000 had been written, and requested that the Board allow the MPCA to use some of the other \$5.25 million in funds previously

approved by the Board for FY2015 to cover the higher costs until the MPCA could prepare a more formal request for additional funding at a future Board meeting. In response to a request by Ms. Ludwigson, Mr. McLain confirmed that the original \$250,000 request was a starting point and that the MPCA had anticipated requesting additional funding later in the fiscal year once the scope of the project was better understood. Mr. McLain indicated that he estimated the additional request would be between \$150,000 and \$200,000, bringing the total estimated project costs for FY2015 to \$400,000 to \$450,000. Ms. Ludwigson asked that MPCA staff come back to the Board at a future meeting with a more detailed plan for how additional project funds would be spent over the next 12 months, including basic facts and assumptions about the project. Ms. Hankerson noted that she was comfortable with MPCA moving forward with work, but was unwilling to approve a specific amount of funding without a breakdown of the requested amount. Ms. Hankerson also requested that the plan requested by Ms. Ludwigson include a discussion about potential recovery of project costs from the Responsible Persons. Mr. Hefner asked that the plan also include a description of the criteria that go into selecting sites for evaluation.

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 17 days of their receipt. Mr. Fischer reported that 20 applications were received in July, 22 in August, 22 in September and 36 in October. Mr. Fischer reported that a total of \$1,605,677.61 in claims had been approved for payment, to date, in FY 2015.

Mr. Fischer announced that Ms. Hankerson's current term on the Board would expire on January 5, 2015. Mr. Fischer noted that Ms. Hankerson had reapplied for her position and had agreed to continue serving on the Board until the position is filled, as allowed by statute.

Mr. Fischer noted that the proposed legislation previously approved by the Board to allow for reimbursement of tank removal costs, when the removal has been approved by the MPCA as necessary for corrective action, was under review by the Governor's Office.

Mr. Fischer noted that a hearing had occurred on October 13, 2014 related to the BP litigation. Mr. Fischer indicated that the Board would receive a recap of the hearing at the closed meeting following the regular meeting, but apologized to the Board for not notifying them ahead of time of the hearing date. Mr. Fischer indicated that he would give the Board plenty of notice of hearing dates in the future, especially in case any of the members wished to attend.

Mr. Fischer updated the Board on the project Katherine Roelke (Petrofund) was working on to attempt to determine why certain applicants have not applied for reimbursement. Mr. Roelke indicated that her initial analysis of the leak numbers reported between 2007 and 2013 showed that applications have been received for approximately half of the leak numbers. Ms. Roelke noted that there appeared to be legitimate reasons that about half of the remaining leaks have not applied for reimbursement, but explanations could not be found for the remaining sites. Ms. Roelke indicated that Petrofund staff would be contacting those potential applicants in an attempt to determine why they have not yet sought reimbursement.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was \$16,250,521 and the Cash Balance was \$28,120,591. Mr. Fischer indicated that the revenue generated by the Petrofund fee from April through July 2014 was \$27,083,046.

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

D. Consideration of Appealed Reimbursement Determinations

1. City of Center City

File #42034

Analyst: Colleen Schiltz

The following representatives from the City of Center City attended the meeting to appeal the Petrofund staff's denial of \$23,694.42 in consultant and contractor services costs associated with the excavation and disposal of approximately 457 cubic yards of contaminated soil [pursuant to Minn. Stat. §115C.09, subd. 2 (d)]: City Clerk/Treasurer Terri Trudeau, City Attorney Ted Alliegro, City Mayor Jill Behnke, City Engineer Les Mateffy, of Mateffy Engineering, and the City's environmental consultant, Eric Halpaus, of Nova Consulting Group (Nova).

Ms. Hankerson requested confirmation that the MPCA originally pre-approved the excavation and disposal of up to 105 cubic yards of contaminated soil. Amy Miller (MPCA) confirmed that figure, indicating that although the City had requested a higher amount, she first approved the removal of 70 cubic yards and then an additional 35 cubic yards based on the location of the proposed utilities and the estimated size of the utility trench. Ms. Hankerson asked whether or not the MPCA would have approved the removal of additional contaminated soil if a request had been made before excavating additional contaminated soil and sampling analysis had been provided to document the contamination. Ms. Miller responded that she would have approved the removal of additional contaminated soil had the standard public works project process been followed.

Mr. Kelley asked why the public works process was not followed. Mr. Mateffy responded that it was his understanding that Nova was on-site performing all necessary sampling at the time the contaminated soil was being removed.

Ms. Ludwigson asked what information the MPCA would have needed to approve the removal of the contaminated soil as part of this project. Ms. Miller responded that MPCA requires sample analysis data obtained during the excavation of the contaminated soil in the utility trench, but that this information had not been provided to her, despite numerous requests. Mr. Halpaus responded that sample analysis data from test pits excavated in the utility trench area had been provided to the MPCA.

Mr. Hefner asked for clarification of why costs for utility work are eligible for reimbursement, while road subcut work does not qualify, when both would typically be referred to as public works projects. Mr. Fischer explained that costs for removing contaminated soil in the area of utilities are eligible for reimbursement as a Petrofund public works project because the MPCA typically does not want contamination surrounding potential receptors. Mr. Fischer noted that unless potential receptors are present as part of subcut road work, the MPCA does not typically require the removal of contaminated soil as part of that work.

Ms. Hankerson moved, Ms. Ludwigson seconded, to reimburse consultant and contractor costs associated with the excavation and disposal of 105 cubic yards of contaminated soil. The motion carried 4-1, with Ms. Ebertz opposing.

E. Consideration of Environmental Lien Filings

1. Jon Mead

Leak #18633

Analyst: Colleen Schiltz

The responsible person, Jon Mead, appeared before the Board contesting the filing of an environmental lien against his property. Mr. Mead indicated that in order to sell the property, he would need to come up with about \$15,000 extra to cover the lien amount. Mr. Kelley asked Mr. Mead whether the property would be worth its current value had it not been cleaned up. Mr. Mead responded that the property would have been unsellable in its contaminated condition.

Kathryn Serier (MPCA) expressed concern that Mr. Mead was not given proper notice that a portion of the MPCA's costs could possibly be recovered through an environmental lien. Ms. Serier indicated that because environmental liens generally were not being filed at the time the leak was discovered at this site, MPCA staff did not make Mr. Mead aware at any time during the fund-financed process that an environmental lien on his property was a possibility. Ms. Hankerson and Mr. Kelley indicated that a greater emphasis is being placed on cost recovery to ensure that, whenever possible, responsible persons are accountable for their 10% share of corrective actions costs. Mr. Mead stated that had he been aware that an environmental lien was a possibility, he would have kept closer track of the cleanup expenses and work to determine what was or was not necessary.

Ms. Hankerson moved, Ms. Ludwigson seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$14,592.94 against the property. The motion carried 4-0, with Ms. Ebertz abstaining.

2. David Earenfight

Leak # 3391

Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person.

Ms. Hankerson moved, Mr. Hefner seconded, to approve the Department of Commerce to file an environmental lien in the amount of \$928.70 against the property. The motion carried 5-0.

Adjournment – The meeting adjourned at 11:45 a.m..