Petroleum Tank Release Compensation Board
Meeting Minutes
Thursday, November 12, 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; Board Counsel Assistant Attorney General Michael Tostengard; and Director of the Petrofund, Joel Fischer.

Absent: None

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 September 9, 2015 Board Meeting Minutes

Ms. Ludwigson moved, Ms. Hankerson seconded, to approve the September 9, 2015 Petrofund Board Meeting minutes. The motion carried 5-0.

Mr. Kelley noted that because representatives from Sinclair Marketing, Inc. had not yet arrived at the meeting, the company's appeal would be moved down the agenda.

C. Consideration of Environmental Lien Filings

1. Ms. Jodell Sanders Leak #17384 Analyst: Colleen Schiltz

Nobody was present on behalf of the responsible person (RP).

Ms. Hankerson moved, Ms. Ludwigson seconded, to approve the Department of Commerce to file an environmental lien in the amount of $937.83 against the leaksite property, which amounts to 10% of the eligible costs incurred by the MPCA, minus $565.98 already recovered by the Minnesota Department of Revenue. The motion carried 5-0.

D. 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 updated the fiscal year (FY) 2016 figures on the Fund-Financed Summary Report memo: for the Petroleum Remediation Program (PRP), work orders had been written for approximately 63% of the funds approved by the Board and approximately 20% of the funds had been invoiced; for the Emergency Response Program (ERP), work orders had been written for approximately 65% of the Board-approved funds and approximately 31% of the funds had been invoiced.

Ms. Larsen noted that the MPCA Preparedness and Equipment project mistakenly included on the ERP fund-financed project list and previously brought to the Board's attention could not be removed from the list. Ms. Larsen stated again that no Petrofund money had been or would be spent on that item.

Mr. Kelley asked for a description of the Klukow Enterprises - Dairyland Power project included on both the PRP and ERP fund-financed project lists. Chris McLain (MPCA) responded that Dairyland Power had sold the property in the mid-1980s. Mr. McLain explained that the release was initially handled by the ERP, but had been transferred to the PRP for further investigation.

Mr. Kelley asked for a description of the Jensen Timber Products project included on the PRP fund-financed project list. Mr. McLain indicated that he did not have information readily available for that project. Colleen Schiltz (Petrofund) indicated that business and underground storage tanks (USTs) on the leaksite property were owned and operated by the son of the person who owned the property. Brittney Schuller (MPCA) noted that the USTs had been removed by the Petrofund's Abandoned UST Removal Program.

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

Mr. Kelley noted the presence of representatives from Sinclair Marketing, Inc. at the meeting.

B. Consideration of Appealed Reimbursement Determinations

1. Sinclair Marketing, Inc. Leak #6514 Analyst: Colleen Schiltz

Mr. Paul Conrad, of Sinclair Marketing, Inc. (Sinclair), and the applicant's consultant, Mr. Jim Simonet, of Groundwater Environmental Service, Inc. (GES), appeared before the Board as part of the appeal of the 25% reduction ($3,915.75) for failure to cooperate fully with the MPCA.

Mr. Conrad acknowledged that there had been a problem with his company's responsiveness to the MPCA for this project, but that since receiving the MPCA's Commissioner's Order, a new project manager had been assigned at GES and Sinclair and GES were meeting bi-weekly to ensure work was being completed. Mr. Conrad noted that since receiving the Commissioner's Order, Sinclair had been cooperating and the site had been closed by the MPCA. Mr. Conrad asked that the 25% reduction be removed.

Ms. Hankerson asked whether any further applications would be submitted. Mr. Conrad responded that one additional application would be submitted that would include costs related to site closure.

Ms. Hankerson noted that the MPCA sent letters to Sinclair in 1998 and 2010 authorizing work and asked why there appeared to be a twelve year lag between contacts. Jessica Ebertz (MPCA) responded that her understanding was that the lack of cooperation only occurred during the approximate two-year period prior to the August 6, 2013 Commissioner's Order. Mr. Simonet confirmed that work was being performed as requested by the MPCA before and after that time period.

Mr. Fischer informed that Board that staff had mistakenly not imposed the 25% reduction on two applications submitted in October 2014 and that the total reduction amount would have been $1,820.15.

Ms. Hankerson moved, Mr. Kanner seconded, to impose the 25% reduction ($3,915.75) for failure to cooperate fully with MPCA. The motion carried 5-0.

D. MPCA Staff Report and Fund-Financed Summary Report - continued

Mr. McLain presented a written outline of the scope of the cost recovery process related to the MPCA's vapor intrusion pilot project and drafts of new letter templates for corresponding with tank and property owners, as requested by the Board at its September 9, 2015 meeting.

Ms. Hankerson asked whether RPs who no longer own or operate tanks at the vapor intrusion project sites would be notified of the possibility that they may be required to complete corrective actions. Mr. McLain indicated that RPs would only be contacted if the vapor intrusion work determined that a leak needed to be opened or reopened and corrective action was necessary.

Mr. Kelley asked for confirmation that in those cases where the vapor intrusion work determines that a leaksite needs to be reopened, the RP would be required to complete the necessary corrective actions and then could apply for reimbursement from the Petrofund. Mr. McLain confirmed Mr. Kelley's understanding of the process. Mr. Kelley and Ms. Hankerson noted that the vapor intrusion letters indicated that RPs may be required to complete additional work if new or previously unknown contamination was identified, but suggested that the language be amended to clarify that the contamination could include vapors.

Mr. Hefner noted that two of the vapor intrusion project letters stated that access to the properties may be required, while the third letter stated that access will be required, and suggested that they all say access will be required. Mr. McLain indicated that the Board's suggestions would be implemented.

Mr. McLain asked whether or not a vote was necessary for the Board to officially sign off on the cost recovery plan and letters for the vapor intrusion project. Mr. Kelley and Mr. Fischer indicated that since the Board was only providing suggestions, a vote was not necessary.

E. 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 13 days of their receipt. Mr. Fischer reported that 27 applications were received in September and 24 were received in October. Mr. Fischer reported that $88,447.13 in reimbursement claims had been approved for payment on November 3, 2015, bringing the total claims approved for payment in FY2016, to date, to $1,318,971.34.

Mr. Fischer indicated that Katherine Roelke (Petrofund) was continuing to work on the project attempting to identify why certain applicants are not submitting applications for reimbursement and that Ms. Schiltz had completed the yearslong review of a group of challenging Canadian Pacific Railway applications.

Mr. Fischer provided responses to two questions raised by Ms. Hankerson at the Board's September 9, 2015 meeting: had any funds from the use of civil penalties allowed under Minn. Stat. §115C.05 been deposited recently by the MPCA into the Petrofund; and what amount of tank removal contractor certification fees had been deposited recently into the Petrofund, as provided in Minn. Stat. §115C.08? Mr. Fischer responded that no civil penalties and $5,000.00 in tank removal contractor certification fees had been deposited into the Petrofund in FY2015. Ms. Hankerson asked whether or not the MPCA was using civil penalties for enforcement purposes. Mr. Kanner responded that the MPCA used non-cooperation reductions, both during the reimbursement and cost recovery processes, rather than civil penalties.

Mr. Fischer explained that the Petrofund-MPCA Combined Leaksite Payments handout documented historical reimbursements and fund-financed payments made from the Petrofund. Mr. Fischer noted that this information could be helpful as part of the Board's discussions regarding the Minnesota Petroleum Marketers' potential legislative proposal to raise the reimbursement cap from $1 million per release to $2 million per release. Ms. Hankerson suggested that the potential proposal be discussed at the January 13, 2016 Board meeting.

Ms. Hankerson asked about the status of the Board-approved legislation to extend the Petrofund 'sunset date' and to allow for reimbursement of tank removal costs when that work has been approved by the MPCA as necessary for corrective action. Mr. Fischer responded that the proposals appeared to be moving forward and were currently being reviewed by the Governor's Office.

Mr. Fischer advised the Board that Greg Wiese (Petrofund) has begun a program to systematically audit Petrofund-registered environmental consultants. Mr. Fischer noted that Mr. Wiese had attended two training sessions provided by the state of Tennessee.

Mr. Fischer updated the Board on the BP litigation, indicating that a ruling on BP's motion for summary judgment could be expected by January 2016.

Mr. Fischer presented the Fund Report, informing the Board that the Fund Balance of the Petrofund was -$5,325,760 and the Cash Balance was $14,198,555. Mr. Fischer noted that the Petrofund fee had been imposed beginning on October 1, 2015 and would remain in effect through January 31, 2016.

Ms. Ludwigson noted that she had been reauthorized to serve as the Commissioner of Commerce's delegate on the Board through January 2019.

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

Mr. Kelley opened a general discussion of the extent of the Board's latitude in interpreting the Petrofund statute and rules in making reimbursement determinations.

Mr. Tostengard stated that there are some statutes and rules that allow the Board some leeway in making determinations and others that do not, and suggested that if situations arise where an interested party believes more discretion is necessary, they should work to revise the statute(s) to allow for that.

Ms. Hankerson stated that the structure of the statute and rules generally limits the Board's discretion in determining which costs are covered by the program, but that once the question of eligibility has been answered, the Board has more flexibility in determining the reasonableness of the costs.

Mr. Kelley noted that Mr. Kanner and Mr. Bob Krogman, retired executive director of the Minnesota Petroleum Marketers Association, were involved in the creation of the Petrofund and asked if either of them had any thoughts on whether or not the Board was using its discretion as intended by the designers of the program. Mr. Krogman responded that the Petrofund was created for two reasons: to meet the federal financial assurance requirements; and to provide a funding mechanism so that people would not avoid identifying releases and doing cleanups for financial reasons. Mr. Krogman stated that he believed the Board had the authority to approve reimbursement when it believed the costs were justified. Mr. Kanner reiterated Mr. Krogman's comments regarding the reasons for the creation of the program and noted that the instances where Board discretion has been required have been exceptions, since almost all of the cases make it through the reimbursement process without even needing Board review.

Mr. Kelley and Mr. Hefner asked what entities have standing to challenge Board decisions they believe have been made incorrectly. Mr. Tostengard responded that the Office of the Legislative Auditor oversees the program and that applicants have sometimes contended that they were treated differently than others, though the Board has maintained in those situations that the facts were different in each case.

Mr. Hefner expressed concern that the Board may have tied its hands in some cases by having rules that were more restrictive than required by the Petrofund statute, and asked if any thought had been given to reevaluating and updating the rules. Mr. Fischer indicated that he would provide the Board with information about the rule revision process at the January 13, 2016 Board meeting.

Mr. Kelley noted that staff had prepared a binder for him that included the most recent versions of the Petrofund statute and rules and asked if the other Board members would like one as well. Mr. Fischer indicated that he would send copies of the most up-to-date statutes and rules to all of the Board members.

Adjournment – Mr. Kelley adjourned the meeting at 11:15 a.m.