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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1812**

In the Matter of the Minnesota Department of Commerce
Petroleum Tank Release Compensation Board Appeal of
All Petro Connection, Inc.

**Filed July 5, 2011
Reversed
Halbrooks, Judge**

Commissioner of Commerce
OAH File No. 16-1010-20865-2

Daniel W. Voss, Minneapolis, Minnesota (for relator All Petro Connection, Inc.)

Lori Swanson, Attorney General, Michael J. Tostengard, Assistant Attorney General,
St. Paul, Minnesota (for respondent Commissioner of Commerce)

Considered and decided by Halbrooks, Presiding Judge; Wright, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator brings this certiorari appeal, arguing that it is entitled to reimbursement of costs expended to investigate a petroleum release. Because the rules unambiguously allow for the requested reimbursement in this situation, we reverse.

FACTS

The Minnesota Pollution Control Agency (MPCA) required relator All Petro Connection, Inc. to perform a limited site investigation (LSI) at a site of a petroleum release. Relator sought bids for the LSI and accepted the lowest bid, which was \$1,600, from Omni Environmental, Inc. The ultimate cost for the LSI was \$2,376. Relator sought reimbursement for the LSI work and received full reimbursement from the Minnesota Department of Commerce's Petroleum Tank Release Compensation Board (Petrofund). Based on its review of the LSI results, the MPCA requested a follow-up remedial investigation (RI). Omni performed the additional RI work at a cost of \$3,875. Relator submitted its reimbursement application for this amount. Petrofund denied \$1,238 of the submitted request on the ground that the amount sought by relator exceeded the maximum amount allowed by Minn. R. 2890.1300 (2009).

Relator appealed the denial and requested a hearing in front of the Petrofund board. The board upheld the denial, and relator requested a contested-case hearing. An administrative-law judge (ALJ) conducted a hearing and recommended denial of \$1,238 in costs. The board's order was subsequently upheld by respondent Commissioner of Commerce, who adopted the ALJ's findings of fact and conclusions of law in their entirety. This certiorari appeal follows.

DECISION

This court may reverse an agency's decision "if the substantial rights of the petitioner[] may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are . . . affected by [an] error of law." Minn. Stat. § 14.69

(2010). Under the Petroleum Tank Release Cleanup Act, Minn. Stat. §§ 115C.01-.13 (2010), Petrofund will generally refund up to 90% and, in certain cases, more than 90% of corrective-action costs incurred in remediating a petroleum spill. Minn. Stat. § 115C.09, subd. 3(a). The act authorizes Petrofund to promulgate rules “regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.” Minn. Stat. § 115C.07, subd. 3(a).

The rule at issue in this appeal provides:

[6]F. Investigation report preparation (full RI) has a maximum cost of:

(3) for a full remedial investigation report submitted in response to a documented special request made by the agency after a limited site investigation report was submitted to the agency, the maximum cost for investigation report preparation (LSI only), plus [certain enumerated costs].

....

G. Investigation report preparation (LSI only) has a maximum cost of \$3,477.50[.]

Minn. R. 2890.1300, subp. 6.

The parties disagree over the interpretation of the phrase “the maximum cost for investigation report preparation (LSI only)” in subpart 6F(3). “When a decision turns on the meaning of words in a . . . regulation, a legal question is presented.” *St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39 (Minn. 1989). In considering questions of law, “reviewing courts are not bound by the decision of the agency and need not defer to agency expertise.” *Id.* at 39-40. “When the agency’s construction of its own regulation is at issue, however, considerable deference is given to the agency

interpretation, especially when the relevant language is unclear or susceptible to different interpretations.” *Id.* at 40. But this deference does not extend to situations when the rules are “clear and capable of understanding.” *Id.*

We find subpart 6 to be clear and capable of understanding. Subpart 6F defines the maximum reimbursable cost for an RI. It states that the calculation must begin with “the maximum cost for investigation report preparation (LSI only),” which is defined in subpart 6G as \$3,477.50.¹ Utilizing the maximum cost for an LSI as defined in subpart 6G, relator’s requested reimbursement for the RI did not exceed the maximum cost and was therefore eligible for reimbursement.

Respondent argues that we must look to subpart 1 of the rule to interpret the definition of the maximum cost for an LSI. This subpart states:

When a task listed in this part is performed during the [LSI] or [RI] step of services . . . the cost is prima facie unreasonable when it exceeds the amount specified for it in the proposal for consultant services or the maximum cost specified for it in this part . . . whichever is less.

Minn. R. 2890.1300, subp. 1. Respondent argues that this subpart “provides that the maximum cost for a task listed in Minn. R. 2890.1300 is either the specific maximum cost listed in subparts 2-6 or the amount proposed for that task, whichever is less.”² We

¹ The parties agree that this amount has since increased by 10%, resulting in a maximum cost of \$3,825. When this figure is added to the other enumerated costs listed in subpart 6F(3), the maximum reimbursable amount for a full RI in relator’s case is \$6,477.

² Based on this interpretation, respondent assigns a figure of \$2,376 to “the maximum cost for investigation report preparation (LSI only).” Using this figure, relator’s requested reimbursement (\$6,251) exceeded what respondent calculated as the maximum reimbursable amount (\$5,013) by \$1,238.

disagree. Subpart 1 does not set a maximum cost for tasks nor does it state that a reasonable amount that is reimbursed for a task becomes the maximum for that task as it applies to other parts of the rule. Although it might be reasonable to set the maximum cost of an RI performed after an LSI by starting with the actual cost paid for the LSI—this is not what the rule states. The rule clearly states that the maximum cost for an RI is the “maximum cost for investigation report preparation (LSI only)” plus other costs and that an “[i]nvestigation report preparation (LSI only) has a maximum cost of \$3,477.50.” Minn. R. 2890.1300, subp. 6(F)(3), (G). Respondent’s argument ignores this language.

Although appellate courts defer to an agency’s reasonable interpretation of its rules, respondent’s interpretation in this case is not reasonable. The maximum cost for investigation report preparation (LSI only) is defined by the rules. There is nothing ambiguous about it that would require this court to defer to the agency’s interpretation. Because we conclude that respondent’s decision is affected by an error of law, we reverse.

Reversed.