

Petroleum Tank Release Compensation Board

Regular Meeting Minutes

Date: March 8, 2023

Location: Summit Conference Room, Golden Rule Building, 85 – 7th Place East, St. Paul, Minnesota
Participants could also attend remotely in accordance with Minn. Stat. §13D.015.

Board Members

Present

- Chair Vern Kelley, Petroleum industry representative
- Julie Quinn, Public member representative
- Charles Blixt, Experience in claims adjustment representative
- Vice-Chair Sarah Larsen, Commissioner of the Minnesota Pollution Control Agency (MPCA) designee
- Peter Bratsch, Commissioner of the Minnesota Department of Commerce (Commerce) designee

Call to Order

Mr. Kelley called the meeting to order at 10:03 a.m.

Mr. Kelley welcomed Mr. Blixt as the new experience in claims adjustment representative on the Board.

Approval of the January 25, 2023 Board Regular Meeting Minutes

Petrofund Director Joel Fischer noted that the *Election of Vice-Chair* section on the first page of the draft minutes needed to be amended by changing “Ms. Kelley” and “Mr. Hankerson” to “Mr. Kelley” and “Ms. Hankerson.” Mr. Bratsch moved, Ms. Larsen seconded, to approve the January 25, 2023 Board regular meeting minutes with the identified corrections. The motion passed 5-0.

Consideration of Appealed Reimbursement Determination

1. City of Eden Valley

File #42086 – Former Bischoff’s Garage

Cindy Anderson appeared before the Board on behalf of the City of Eden Valley to appeal a \$21,956.00 reduction in costs associated with upgrading a water line from PVC pipe to ductile iron pipe that had not been documented as necessary for corrective action [pursuant to Minn. Stat. §115C.09, subd. 2a (d)]. The applicant's environmental consultant, Kent Louwagie, of Bolton & Menk, Inc., also appeared before the Board.

Mr. Kelley explained that the appealed costs were related to the City’s replacement of a water line through an area where contamination existed from a petroleum tank release. Mr. Kelley noted that the MPCA had not approved the installation of the more expensive ductile iron pipe as necessary for corrective action.

Mr. Louwagie indicated that the City chose to install ductile iron pipe, rather than the usual PVC pipe, because of the possibility of groundwater contamination impacting the water line. MPCA Project Manager Wesley Knox explained that the MPCA's criteria for approving more protective piping for this type of project was based on the existence of petroleum-saturated soil at the depth of the proposed piping. Mr. Knox indicated that petroleum-saturated soil was not present at that depth in this case. Ms. Quinn asked whether the MPCA's criteria were based on statute, rule or policy. Mr. Knox responded that the criteria were outlined in an Agency guidance document.

Mr. Bratsch asked to what extent the decision to use ductile iron pipe was based on correspondence with the MPCA. Mr. Louwagie responded that correspondence with the MPCA was minimal and that the decision was mainly based on past experience dealing with this type of contamination scenario. Mr. Bratsch asked whether the City could have received proposals for both PVC and ductile iron pipe and paid for whichever actually needed to be installed. Mr. Louwagie responded that the City had structured their proposals in that fashion and that PVC pipe was installed in several other areas where contamination was not present. Mr. Kelley asked whether the City would have installed ductile iron pipe if contamination was not present. Mr. Louwagie responded that the City would have installed PVC pipe absent contamination.

Ms. Quinn asked whether the MPCA would have approved upgrading the pipe to ductile iron had the City made the request during installation, rather than prior to the work being performed. Mr. Knox responded that the MPCA may have approved the upgrade, but that he could not say for certain based on his limited experience working on these types of projects. Mr. Bratsch stated that it was important for Petrofund applicants and consultants to follow MPCA guidance documents and processes.

Mr. Blixt indicated that he was not in support of reimbursing for unapproved upgrades, but that he understood the City attempting to save costs by ordering the more protective piping before the work was started.

Ms. Quinn moved, Mr. Kelley seconded, to approve reimbursement of the \$21,956.00 in costs associated with upgrading a water line from PVC pipe to ductile iron pipe. The motion passed 3-1, with Ms. Larsen voting against and Mr. Bratsch voting present.

Minnesota Department of Employment and Economic Development Grant Summary Report

Office of Brownfields and Redevelopment Director Kristin Lukes presented the contamination investigation and cleanup grants awarded during the Department of Employment and Economic Development's (DEED's) May 2022 and November 2022 grant rounds.

Mr. Kelley asked how DEED staff respond to MPCA comments about the reasonableness of proposed grant costs. Ms. Lukes responded that DEED staff meets with MPCA staff to discuss all of the grant projects and that DEED will reduce project budgets when work has not been approved by the MPCA or costs appear unreasonable. Mr. Kelley suggested that DEED could use the Petrofund maximum costs as a guide in verifying the reasonableness of costs paid out as grants.

Ms. Quinn moved, Mr. Bratsch seconded, to approve the DEED grant summary report. The motion passed 5-0.

Minnesota Pollution Control Agency Staff Report and Fund-Financed Summary Report

Ms. Larsen introduced Luis Allen as the new Petrofund Liaison with Commerce and the Board.

Ms. Larsen responded to Mr. Kelley's question from the January Board meeting regarding the inclusion of the Marathon Refinery Tank Leak project on the fiscal year (FY) 2023 Emergency Response Unit (ERU) fund-financed project list. Ms. Larsen indicated that that project was incorrectly added to the list and had been removed from the list for the current Board meeting. Ms. Larsen added that the Storm Sewer Investigation in Minneapolis/University Avenue project would also be removed from future project lists.

Ms. Larsen reported that the MPCA was reviewing reports within its 120-day statutory requirement, with three exceptions since the Board's last regular meeting. Ms. Larsen explained that the three projects were identified after the departure of a former staff person.

Ms. Larsen noted that the Petroleum Remediation Program (PRP) currently had five vacancies that she was working on filling.

Ms. Larsen reported that of the \$8,754,000 requested for PRP's fund-financed projects for FY2023, PRP had written work orders totaling approximately 77% of that amount and invoices totaling approximately 28% of that amount, to date. Ms. Larsen reported that of the \$2,146,000 requested for the ERU's fund-financed projects for FY2023, ERU had written work orders totaling approximately 93% of that amount and invoices totaling approximately 73% of that amount, to date.

Ms. Larsen noted that legislation had been proposed related to the Office of the Legislative Auditor's February 2022 report regarding the PRP and that PRP was working on addressing the findings of that report.

Mr. Kelley moved, Mr. Bratsch seconded, to approve the MPCA staff report and fund-financed summary report. The motion passed 5-0.

Minnesota Department of Commerce Staff Report and Fund Report

Mr. Fischer notified the Board that Petrofund staff was not reviewing initial and supplemental reimbursement applications within 60 and 120 days, respectively, as required by statute. Mr. Fischer noted that as of the date of the Board meeting, initial applications were being reviewed within 77 days of their receipt and supplemental applications were being reviewed within 134 days of their receipt. Mr. Fischer indicated that he had received approval from Commerce leadership to add a support staff person, which would allow other Commerce Petrofund staff to assist in the review of reimbursement applications.

Mr. Fischer reported that the following number of applications had been received since his last report to the Board: 19 in January; and 28 in February. Mr. Fischer indicated that a total of \$2,404,059.86 in claims had been approved for payment in FY2023, to date, including \$196,246.50 approved for payment on February 24, 2023.

Mr. Fischer reported that, as required by Minn. Rule 2890, he had conducted his annual analysis of the Implicit Price Deflator for the Gross Domestic Product to determine whether the maximum costs specified in the

Petrofund rules would need to be increased or decreased on July 1, 2023 due to inflation or deflation. Mr. Fischer notified the Board that the maximum costs would remain unchanged for FY2024.
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Mr. Fischer informed the Board that a Request for Proposals for contractors to perform Abandoned Underground Storage Tank Removal Program services for the Petrofund Program had been posted to the State contract portal (SWIFT). Mr. Fischer noted that proposals would be accepted through March 21, 2023.

Mr. Fischer presented the Fund Report, informing the Board that the unencumbered balance of the Petrofund was -\$12,111,918 and the cash balance was \$19,598,281. Mr. Fischer reminded the Board that the Petrofund fee would be imposed from April 1, 2023 to July 31, 2023. Mr. Fischer noted that the abnormally low unencumbered balance was largely due to the large amount of funds carried over from previous fiscal years by DEED and that Commerce and DEED staff were working on ways to address this issue.

Ms. Quinn moved, Mr. Blixt seconded, to approve the Commerce staff report and fund report. The motion passed 5-0.

Mr. Kelley indicated that he would be unable to attend the Board's regular meeting scheduled for May 10, 2023 and asked the other Board members to consider rescheduling the meeting. Ms. Quinn moved, Ms. Larsen seconded, to reschedule the May 10, 2023 meeting to May 16, 2023. The motion passed 5-0.

Discussion of Process for Handling Public Comment Requests

Mr. Kelley explained that a request has been made from a member of the public to make a general comment at a Board regular meeting. Mr. Kelley noted that the Board did not currently have a policy in place for handling general public comments and asked that the Board discuss the following; whether to allow general public comments at Board meetings; and, if so, the process for general public comments to be brought to the Board.

Mr. Bratsch expressed support for allowing general public comments, with stakeholders making their request in advance and in writing. Mr. Bratsch recommended that public comment requests include a citation of the Board's authority in statute to act on requesters' comments.

Ms. Quinn expressed support for allowing general public comments, with the understanding that the topic be germane to Petrofund Board activities.

Mr. Blixt expressed concern about allowing an open public comment period, favoring potential commenters submitting their comments in writing before appearing before the Board.

Ms. Larsen expressed support for allowing general public comments, with comment requests being submitted in writing ahead of time. Ms. Larsen also expressed openness to in person comments with reasonable time limits. Ms. Larsen recommended that the Board not necessarily address comments immediately, but take time to research them and make informed decisions, when necessary, at a later date.

Ms. Quinn recommended that a form be created and posted to the Petrofund website that would allow stakeholders to request the opportunity to make a general public comment at a Board meeting. Ms. Quinn suggested that the form should request the following information: the name of requester and on whose behalf they would be speaking; the issue on which they would like to comment; the action that the commenter would like the Board to take; and a citation of the Board's authority to take the requested action.

Mr. Bratsch noted that other Boards, like the Environmental Quality Board, had specific statutory authority to handle public comments and asked whether the Petrofund Board creating a public comment process in this manner would constitute unpromulgated rulemaking. Mr. Fischer responded that his research led him to conclude that Boards had the authority to create their own public comment processes and that doing so would not be considered unpromulgated rulemaking.

Mr. Fischer recommended that the final decision of whether a public comment request would be scheduled as a Board meeting agenda item be made by the Board Chair. Board Counsel Oliver Larson recommended that the Board review a draft process for general public comments at a future meeting and possibly delegate to the Board Chair the authority to make that determination.

Ms. Larsen asked whether the Board should allow discussion after public comments are made. Ms. Quinn suggested that the Board could allow discussion at its discretion, but that it was not obligated to respond immediately to public comments. Mr. Blixt expressed reluctance for the Board to make decisions related to public comments without taking time to consider the information that had been presented by the commenter.

Mr. Oliver noted that the process and form should be clear that general public comments could not include any business that the Board was in the process of reviewing or could in the future fall under the quasi-judicial functions of the Board, such as the review of reimbursement appeals.

Mr. Bratsch asked whether there was sufficient time for staff to prepare a draft process and form for general public comments that the Board could review at its May 16, 2023 regular meeting. Mr. Fischer responded that staff could do so.

Mr. Bratsch moved, Ms. Quinn seconded, to direct Commerce staff to prepare a draft process and form for general public comments for the Board's review at its May 16, 2023 regular meeting. The motion passed 5-0.

Mr. Kelley indicated that Mark Toso had submitted the request to make a general public comment and that the Board would potentially allow him to do so at the Board's May 16, 2023 meeting. Mr. Fischer indicated that he would provide a copy of the draft general public comment request form to Mr. Toso to complete so that it and any supporting documents could be reviewed by Commerce staff and Mr. Kelley and, if approved as an agenda item, be included with the meeting information packet.

Mr. Toso requested that he be scheduled to make his general public comments at the beginning of the Board meeting. Mr. Kelley responded that the Board could accommodate that request. Mr. Kelley and Ms. Quinn indicated that Mr. Toso's request to provide general public comment would be approved or denied based on his responses to the questions on the draft general public comment request form, as discussed during this meeting.

Adjournment

Mr. Bratsch moved, Ms. Quinn seconded, to adjourn the meeting. The motion passed 5-0. Mr. Kelley adjourned the meeting at 11:52 a.m.

Minutes prepared by: Joel Fischer, Petrofund Director