

# Petroleum Tank Release Compensation Board

## Special Meeting Minutes

Date: September 22, 2021

Location: The meeting was held remotely in accordance with Minn. Stat. §13D.021.

### Board Members Present

- Chair Vern Kelley, Petroleum industry representative
- Jeanne Hankerson, Experience in claims adjustment representative
- Julie Quinn, Public member representative
- Jessica Ebertz, Commissioner of the Minnesota Pollution Control Agency (MPCA) delegate
- Vice-Chair Jan Ludwigson, Commissioner of the Minnesota Department of Commerce (Commerce) delegate

### Call to Order

Mr. Kelley called the meeting to order at 9:00 a.m.

### Review of Omni Environmental, Inc. Applications for Consultant and Contractor Registration

Matt Gikas, of Omni Environmental, Inc. (Omni) and Daniel Voss, of The Law Offices of Daniel W. Voss, PLLC, appeared before the Board on behalf of Omni to request approval of the company's applications for registration as a Petrofund consultant and contractor.

Petrofund Director Joel Fischer presented the Department of Commerce (Department) staff's recommendation that the Board deny Omni's registration applications based on Minnesota Statute 115C.11, subd. 1 (i). Mr. Fischer gave an overview of the basis for the recommendation, as outlined in staff's letter to Omni dated March 22, 2021, which explains that the Board may deny a consultant or contractor registration if the consultant or contractor:

1) does not intend to or is not in good faith carrying on the business of an environmental consultant or contractor [Minn. Stat. §115C.11, subd. 1(i)(1)];

(3) has engaged in any fraudulent, coercive, deceptive, or dishonest act or practice whether or not the act or practice involves the business of environmental consulting or contracting [Minn. Stat. §115C.11, subd. 1(i)(3)]; and

(5) has been convicted, whether by pleading guilty, with or without admitting guilt, or pleading nolo contendere, of any of the following offenses: any felony; any gross misdemeanor; or a misdemeanor involving: (i) assault; (ii) harassment; (iii) moral turpitude; or (iv) conduct similar to items (i) to (iii) [Minn. Stat. §115C.11, subd. 1(i)(5)].

Mr. Fischer reminded the Board that it had denied Omni's registration applications in July 2015 based on Mr. Gikas' guilty plea for filing a false tax return and for failure to provide information requested by Petrofund staff as part of determining the eligibility and reasonableness of costs submitted for reimbursement.

Mr. Fischer noted that when Mr. Gikas subsequently provided the requested information, staff identified instances where Omni's time records did not match what was billed to some of Omni's clients. Mr. Fischer indicated that Omni's clients' reimbursements were reduced a total of \$3,998.00 in undocumented costs and Omni returned \$1,459.65 in undocumented costs to the Petrofund.

Mr. Fischer explained that when staff subsequently required Mr. Gikas to provide time records with all remaining new Omni applications, staff identified ten instances involving five leaksite files where the time records that Omni had previously provided had been altered as part of the new submittals to make them appear to match the information included on Omni's invoices.

Mr. Fischer noted that as a CVT employee, Mr. Gikas had submitted a Petrofund active remediation proposal to a client in 2016 that knowingly included inaccurate information about the Petrofund rules. Mr. Fischer also noted that Mr. Gikas in 2016 and 2017 repeatedly failed to provide accurate information, including a site map, related to staff's review of a Petrofund active remediation proposal from CVT.

Mr. Fischer explained that Mr. Gikas' actions while employed with CVT led the Department to issue a *Cease and Desist Order* against Mr. Gikas and CVT in 2017 and to enter into a *Settlement Agreement* with CVT that same year. Mr. Fischer noted that the Department entered into the *Settlement Agreement* with CVT, and not Mr. Gikas directly, because Petrofund registration applies to companies, not individuals.

Mr. Gikas indicated that although mistakes may have been made on Omni's time records, his company never submitted a cost to the Petrofund for reimbursement for work that was not actually performed.

Mr. Voss identified two instances of litigation that he described as embarrassing to the Board and attributable to illegal rulemaking on the part of Mr. Fischer and former Assistant Attorney General Michael Tostengard: the Minnesota Court of Appeals case involving All Petro Connection, Inc.; and the Minnesota Court of Appeals case involving GH Holdings, LLC. Mr. Voss noted that descriptions of the cases were included in his letter to the Attorney General's Office and the Petrofund Program dated July 27, 2021.

Mr. Voss noted that Mr. Gikas' conviction for filing a false tax return had occurred 13 years ago when he was having financial difficulties. Mr. Voss indicated that Mr. Gikas should not have filed the false tax return, but that he had owned up to it.

Mr. Voss noted that soon after the Board denied Omni's registration applications in 2015 and Mr. Gikas subsequently sold Omni's assets to Chosen Valley Testing, Inc. (CVT) and went to work for that company, Mr. Fischer almost immediately started an investigation of CVT.

Mr. Voss stated that the Board should expect litigation if it denied Omni's registration applications. Mr. Voss noted that Omni was applying for a registration, not a license, and that Mr. Gikas was competent to perform Petrofund-related work. Mr. Voss noted that Omni had been registered with the Petrofund from 1995 to 2015.

Mr. Gikas asked for a citation of which Petrofund law required that time records could not be changed. Mr. Kelley responded that the Board had an expectation that costs being requested for reimbursement from the Petrofund were being billed accurately. Mr. Gikas reiterated that although some of Omni's time records may have initially been completed inaccurately, all of Omni's costs were billed accurately.

Ms. Hankerson stated that if a company bills its costs based on time records, then there is an expectation that the time records will be accurate. Mr. Gikas responded that he was aware of other companies, including CVT, that do not keep time records at all, and that employee time does not need to be on a time record when others, such as clients and MPCA staff, can confirm that the consultant's employee did the work.

Ms. Quinn noted that the statute governing Petrofund consultant and contractor registrations does not impose a time limit on how far back the Board should look in considering compliance with the law.

Ms. Quinn asked whether Omni's bids and contracts with its clients prior to 2015 were based on a per job rate, a per hour rate or a combination of the two. Mr. Gikas responded that Omni's contracts were based on time and materials, in accordance with Petrofund requirements. Mr. Fischer confirmed that the Petrofund rules require consultants to bill their costs based on the actual amount of time spent performing work.

Mr. Gikas cited staff's handling of Vieau Associates, Inc.'s enforcement case as an example of how Omni was being treated different than other Petrofund consultants.

Ms. Quinn asked how he would react differently now if faced with financial difficulties similar to what he experienced 13 years ago. Mr. Gikas responded that if Omni's registration were approved by the Board, the company would only be submitting approximately \$20,000 in labor costs annually for reimbursement.

Mr. Voss stated that neither Mr. Gikas nor he were given an opportunity to contest the *Settlement Agreement* reached between the Department and CVT, which he believed included frivolous accusations related to the keeping of time records.

Mr. Kelley asked why Mr. Gikas did not appeal the Board's denial of Omni's registration in 2015. Mr. Gikas responded that he did not have sufficient funds at that time to take any further legal action.

Mr. Gikas offered to email staff each time he left for and returned from doing work on Petrofund sites to document that work was being performed. Ms. Quinn stated that administering such a plan was unrealistic and asked Mr. Gikas to explain how Omni would accurately track employee staff time moving forward. Mr. Gikas responded that just because staff time is not included on a time record does not mean that the work was not performed. Ms. Quinn noted that a time record should identify the actual amount of employee time spent performing work, and whether a time record is changed intentionally or by mistake, the inaccuracy is problematic. Ms. Quinn asked how Omni tracks employee staff time. Mr. Gikas responded that he writes down the work that he performs every day and that he has kept those records from his entire 30-year career. Ms. Voss offered that Omni would be willing to implement a time reporting system.

Ms. Ebertz indicated that because of disrespectful, unprofessional and derogatory communications directed at MPCA staff by Mr. Gikas, MPCA leadership in 2019 and 2020 made arrangements with CVT and Mr. Gikas' subsequent employer, Meisch & Associates, Inc. (Meisch), that required all contact with MPCA staff to go through CVT and Meisch employees other than Mr. Gikas. Ms. Ebertz noted that the MPCA has set up an email account for only Mr. Gikas where he can send electronic correspondence in order to limit his interactions with MPCA staff.

Ms. Ebertz indicated that based on Mr. Gikas' responses to other Board members' questions, it did not appear that Mr. Gikas and Omni would handle future Petrofund work any differently that it had been handled in the past. Ms. Ebertz expressed concern for Petrofund applicants who are adversely affected when consultants don't comply with Petrofund requirements and noted the Board's role in protecting applicants through the registration process.

Mr. Kelley expressed concern for Mr. Gikas' apparent disrespect for the Petrofund statutes, rules and requirements and the negative nature of his communications with the Board and staff. Mr. Voss responded that although Mr. Gikas should admittedly stop picking unnecessary fights with the Petrofund, the Petrofund should also stop picking unnecessary fights, such as the All Petrofund Connection, Inc. and GH Holdings, LLC cases, with Omni and Mr. Gikas.

Ms. Hankerson moved, Ms. Ludwigson seconded, to deny Omni's applications for registration with the Petrofund as a consultant and contractor. The motion passed 5-0.

## **Adjournment**

Ms. Hankerson moved, Ms. Quinn seconded, to adjourn the meeting. The motion passed 5-0. Mr. Kelley adjourned the meeting at 10:05 a.m.

Minutes prepared by: Joel Fischer, Petrofund Director