

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ULE REVIEW CHECKLIST

File No. 1456 wrong — Docket No. 05.0009.0142

DATE RECEIVED 2/29/88 — ADOPTED W/O HEARING ____

REVIEW DATE ~~3/3/88~~ 3/9/88 — EMERGENCY RULE ____

DUE DATE 3/14/88-ok

REVISOR APPROVED ____

APPROVED 3.9.88mjc — REVISOR DISAPPROVED ____

DISAPPROVED ____ — FIELD W/SEC.STATE ____

WITHDRAWN ____ — RETURNED TO AGENCY ____

✓ Rule as adopted (4 copies)

____ Notice to Solicit Outside Information/Opinion

____ Date published in State Register

____ Comments

____ Petition for Adoption of a Rule

✓ Board's Authorizing Resolution

✓ Proposed rule - del new

____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

115C.07, subd3 Statutory Authority

yes Small Business Statement

____ Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

____ Small Business Statement

✓ Fees - § 16A.128

____ Affidavit of Mailing Notice of Intent to Adopt Rule - no mailing

____ Date 30/25 days before adoption

✓ Publication in State Register

11-2-87 Date 30/25 days before adoption

✓ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting

____ Date

none Written requests, submissions or comments

✓ Declaration of attorney

Lowthoffman Name of SAAG representing agency

____ Notice of Submission to Attorney General

N/A Affidavit of Mailing Notice to Attorney General

✓ order - old form

ATTORNEY GENERAL

March 10, 1988

HEIDI ALMQUIST
Executive Director
Petroleum Tank Release Compensation Board

MARTHA J. CASSERLY
Special Assistant
Attorney General

6-6839

In the Matter of the Adopted Rule Relating to
Petroleum Tank Release Compensation Board

The above-referenced rule has been approved as to its legality by the Attorney General on March 9, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:nah
Enclosures

cc: Maryanne Hruby
Duane Harves

A9

Department of Commerce

Adopted Permanent Rules Relating to Petroleum Tank Release Compensation Board

Rules as Adopted

2890.0010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the terms in this part have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subp. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subp. 5. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subp. 6. **Responsible person.** "Responsible person" means a person who is an owner or operator of a tank at any time during or after the release.

2890.0020 BOARD MEETINGS; TIME, PLACE, NOTICE.

Subpart 1. **Regular meetings.** A regular meeting of the board must be scheduled at least four times a year. A scheduled meeting may be canceled if there is insufficient business.

Subp. 2. **Special meetings.** A special meeting may be called by the chair or by written request of three board members. ~~Written notice of the meeting as to time and place must be given to board members at least five days before a regular meeting. Between regular meetings, business may be conducted by mail.~~

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~~Subp. 2. Special meetings. The chair shall attempt to give five days' notice before a special meeting. The board may waive the five-day notice requirement.~~

2890.0030 VICE-CHAIR.

A vice-chair shall be elected by the board. The vice-chair shall preside at regular and special meetings in the absence of the chair and perform other duties assigned by the board.

2890.0040 CONDUCT OF MEETINGS.

Subpart 1. **Quorum.** A quorum shall consist of three board members.

Subp. 2. ~~**Proxies.** An absent member may assign a proxy, in writing, to another board member. Proxies shall count toward a quorum.~~

~~Subp. 3.~~ **Minutes.** Meetings shall be tape recorded and minutes prepared by staff.

Subp. ~~4.~~ 3. **Parliamentary procedure.** Except as specifically provided by statute or negotiation, Robert's Rules of Order shall govern questions that may arise at a meeting of the board.

2890.0050 CONFLICT OF INTEREST.

A member of the board who has a direct or indirect financial or employment interest relating to a matter before the board, which interest is reasonably likely to affect impartiality or judgment in the matter, shall make known the interest and shall refrain from participating in, or voting upon, the matter. The abstention of a board member or members shall not prevent the remaining members from conducting a legal vote.

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has taken corrective action in response to a release reported on or after June 4, 1987, may apply to the board for partial reimbursement of eligible costs.

Subp. 2. **Conditions for reimbursement.** A reimbursement

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may not be made unless the board determines that:

A. the commissioner has determined that the corrective action has adequately addressed the release and that the release no longer poses a threat to public health and welfare or the environment;

B. at the time of the release the tank was in compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility.

C. the agency was given notice of the release as required by Minnesota Statutes, section 115.061;

D. the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

E. if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

Subp. 3. **Multiple responsible persons.** If there is more than one responsible person who incurs eligible corrective action costs for a single release or at a single corrective action site, each responsible person must apply separately for reimbursement. The reimbursement available to each applicant shall be 75 percent of the applicant's total eligible costs greater than $10,000 and less than $100,000.

2890.0070 ELIGIBLE COSTS.

Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. Emergency response and initial site hazard mitigation. Costs may include, but are not limited to, those necessary to abate acute risks to human health, safety, and the environment.

B. Temporary site hazard control measures. Costs may include, but are not limited to, temporary provision of drinking water and housing, initial abatement of vapors, and removal of free product.

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C. Investigation and source identification including, but not limited to, collecting and analyzing soil samples, testing the groundwater, testing adjacent drinking water supplies, tank integrity testing, and engineering services.

D. Development of a corrective action plan in accordance with the commissioner's requirements.

E. Clean-up of releases including, but not limited to, removal, treatment, or disposal of surface and subsurface contamination and provision of a permanent alternative water supply. Clean-up must be performed in accordance with a corrective action plan approved by the commissioner.

F. Removal or closure in place of the tank that is the source of the release.

It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs.

2890.0080 INELIGIBLE COSTS.

All costs associated with actions that do not minimize, eliminate, or clean up a release to protect the public health and welfare or the environment are ineligible costs. Ineligible costs include, but are not limited to, any costs related to the permanent repair or replacement of a tank, upgrading tanks, loss of income, attorney's fees, permanent relocation of residents, decreased property values, reimbursement for the responsible person's own time spent in planning and administering a corrective action plan, aesthetic improvements, or any work performed that is not in compliance with safety codes including but not limited to Occupational Safety and Health Administration requirements, well codes, and fire codes.

2890.0090 APPLICATION PROCESS.

Subpart 1. **Applications.** A person who requests compensation from the fund shall complete, sign, and submit to the board a written application. The application shall be made on a form prescribed by the board and shall contain at least the following:

A. the name of the responsible person making the

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application;

B. a description of the site of the release;

C. a copy of the corrective action plan and the commissioner's approval of the plan; and

D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action.

Subp. 2. **Time of application.** The application and all accompanying documentation must be received by the board's office 30 days before a board meeting in order for reimbursement to be considered at that meeting. The board may waive the 30-day requirement, if it finds that undue financial hardship to the applicant will result if action is delayed until the next regular meeting.

Subp. 3. **Subsequent applications.** An eligible responsible person who has already obtained partial reimbursement from the board and who has incurred additional or continuing eligible costs due to the same release may reapply if:

A. the amount of the person's original reimbursement was less than 75 percent of the eligible costs between $10,000 and $100,000.

B. the eligible costs submitted on a subsequent application are not related to any new releases at the site. The total reimbursement to a responsible person for a release shall not exceed 75 percent of the total eligible costs between $10,000 and $100,000 regardless of the number of applications for reimbursement submitted by the responsible person.

Subp. 4. **Signatures.** An application must be signed as follows:

A. for a corporation, by a principal executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the facility that is the subject of the application or a person whom the board of directors designates by means of a

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corporate resolution;

B. for a partnership, sole proprietorship or individual, by a general partner, the proprietor, or individual respectively; or

C. for a municipality, state, federal, or other public agency, by either a principal, executive officer, or ranking elected official.

Subp. 5. **Certification.** A person who signs an application for reimbursement shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify that I have the authority to submit this application on behalf of ..... ."

Subp. 6. **Report of the commissioner.** Upon notification by the board's staff that a complete application has been received, the commissioner shall, in a timely manner, provide the board with a written report on the applicant's compliance or noncompliance with Minnesota Statutes, section 115C.09, subdivision 2, paragraph (b), clauses (1) to (5). The report shall include documentation supporting the commissioner's findings. The commissioner shall file the report with the board no later than 15 days after notification.

In addition, the board may, as it deems necessary, request additional information from the commissioner or can request participation of agency staff at a board meeting. All responses to requests for information shall be delivered in a timely manner. The board may delegate these powers to its staff.

2890.0100 REVIEW AND DETERMINATION.

Subpart 1. **Review.** The board's staff shall review all

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applications. If the staff finds that the application is incomplete or otherwise deficient, the staff shall promptly advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A complete application and the corresponding report of the commissioner constitutes the written record.

Subp. 2. **Staff recommendation.** After a reimbursement application is complete and the commissioner has provided the information relevant to the application, the board's staff shall make a recommendation as to the eligibility of the applicant and the costs specified in the application.

Subp. 3. **Board determination.** The board shall determine the amount of the reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The determination shall be made on the basis of the written record. The board may also allow supplemental information explaining the application to be presented orally. The board may establish a fair and reasonable limit on time allowed for oral ~~testimony~~ presentation.

The applicant shall be notified in writing within ten days of the board's decision. If the board rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

2890.0110 RIGHT TO APPEAL.

A decision of the board is to be considered a final order, decision, or judgment for purposes of Rule 103.3 of the Rules of Civil Appellate Procedure.

2890.0120 FUNDING OF MPCA ACTIONS.

In accordance with Minnesota Statutes, section 115C.10, subdivision 1, paragraph (a), the agency may apply to the board for money to pay for actions taken under Minnesota Statutes, section 115C.03, if all other state and federal funds appropriated for such actions have been exhausted. The

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application shall consist of a written statement of proposed corrective actions, an itemized estimate of costs for the proposed actions, and documentation that applicable state appropriations and federal awards have been exhausted by actions authorized under Minnesota Statutes, section 115C.03.

The board shall pay the agency the cost of the proposed actions if the board determines that:

A. applicable state and federal funds are exhausted;

B. the agency's proposed actions are authorized under Minnesota Statutes, section 115C.03; and

C. an adequate amount exists in the fund to pay for the proposed actions.

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by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
3:37 PM
MAR 10 1988
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
May 9 1988
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF THE
PETROLEUM TANK RELEASE COMPENSATION BOARD
AUTHORIZING RESOLUTION

I, F. P. Trautwine do hereby certify that I am a member and the chair of the Petroleum Tank Release Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the board duly and properly called and held on the 24th day of September 1987, that a quoram was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Heidi Almquist, the executive director of the board, is hereby granted the authority and directed to sign and give the Notice of the Board's Intent to Adopt A Rule Without A Public Hearing governing the structure and operation of the Board and the claims administration process to all persons who have registered their names with the Board for that purpose and publish the Notice and Rule in the State Register, and to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of September, 1987.

F. P. Trautwine
Chair

Attest by

Department of Commerce

Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

Rules as Proposed (all new material)

2890.0010 DEFINITIONS.

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Subp. 5. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subp. 6. **Responsible person.** "Responsible person" means a person who is an owner or operator of a tank at any time during or after the release.

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give five days' notice before a special meeting. The board may waive the five-day notice requirement.

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A. the commissioner has determined that the

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corrective action has adequately addressed the release and that the release no longer poses a threat to public health and welfare or the environment;

B. at the time of the release the tank was in compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility.

C. the agency was given notice of the release as required by Minnesota Statutes, section 115.061;

D. the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

E. if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

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A. Emergency response and initial site hazard mitigation. Costs may include, but are not limited to, those necessary to abate acute risks to human health, safety, and the environment.

B. Temporary site hazard control measures. Costs may include, but are not limited to, temporary provision of drinking water and housing, initial abatement of vapors, and removal of free product.

C. Investigation and source identification including, but not limited to, collecting and analyzing soil samples,

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testing the groundwater, testing adjacent drinking water supplies, tank integrity testing, and engineering services.

D. Development of a corrective action plan in accordance with the commissioner's requirements.

E. Clean-up of releases including, but not limited to, removal, treatment, or disposal of surface and subsurface contamination and provision of a permanent alternative water supply. Clean-up must be performed in accordance with a corrective action plan approved by the commissioner.

F. Removal or closure in place of the tank that is the source of the release.

It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs.

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C. a copy of the corrective action plan and the commissioner's approval of the plan; and

D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action.

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Subp. 4. **Signatures.** An application must be signed as follows:

A. for a corporation, by a principal executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the facility that is the subject of the application or a person whom the board of directors designates by means of a corporate resolution;

B. for a partnership, sole proprietorship or

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individual, by a general partner, the proprietor, or individual respectively; or

C. for a municipality, state, federal, or other public agency, by either a principal, executive officer, or ranking elected official.

Subp. 5. **Certification.** A person who signs an application for reimbursement shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify that I have the authority to submit this application on behalf of ..... ."

Subp. 6. **Report of the commissioner.** Upon notification by the board's staff that a complete application has been received, the commissioner shall, in a timely manner, provide the board with a written report on the applicant's compliance or noncompliance with Minnesota Statutes, section 115C.09, subdivision 2, paragraph (b), clauses (1) to (5). The report shall include documentation supporting the commissioner's findings. The commissioner shall file the report with the board no later than 15 days after notification.

In addition, the board may, as it deems necessary, request additional information from the commissioner or can request participation of agency staff at a board meeting. All responses to requests for information shall be delivered in a timely manner. The board may delegate these powers to its staff.

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Subpart 1. **Review.** The board's staff shall review all applications. If the staff finds that the application is incomplete or otherwise deficient, the staff shall promptly

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advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A complete application and the corresponding report of the commissioner constitutes the written record.

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Subp. 3. **Board determination.** The board shall determine the amount of the reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The determination shall be made on the basis of the written record. The board may also allow supplemental information explaining the application to be presented orally. The board may establish a fair and reasonable limit on time allowed for oral testimony.

The applicant shall be notified in writing within ten days of the board's decision. If the board rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

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appropriations and federal awards have been exhausted by actions authorized under Minnesota Statutes, section 115C.03.

The board shall pay the agency the cost of the proposed actions if the board determines that:

A. applicable state and federal funds are exhausted;

B. the agency's proposed actions are authorized under Minnesota Statutes, section 115C.03; and

C. an adequate amount exists in the fund to pay for the proposed actions.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2890

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

In the Matter of the Proposed Adoption of Rule of the Petroleum Tank Release Compensation Board

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Petroleum Tank Release Compensation Board intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. The statutory authority to adopt the rule is Minnesota Statutes §115C.07 subd. 3.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the department will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Heidi Almquist
Executive Director
Petroleum Tank Release
Compensation Board
500 Metro Square Building
St. Paul, MN 55101
(612) 297-3238

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Heidi Almquist.

Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Heidi Almquist.

J. P. Trautwein

Chair

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Petroleum Tank Release Compensation Board

STATEMENT OF NEED AND REASONABLENESS

Background

Chapter 389, Laws of Minnesota 1987 created Chapter 115C of Minnesota Statutes, commonly known as the Petroleum Tank Release Clean-up Act. The purpose of the act was to create a mechanism to take corrective action in regard to petroleum tank releases and to provide for a means of compensation for the cost of the corrective action. Chapter 389 created the Petroleum Tank Release Compensation Board to administer the Petroleum Tank Release Clean-up Fund which will be the source of funds to pay the corrective action costs. The clean-up fund is to be capitalized from a Petroleum Tank Release Clean-up fee assessed against owners of petroleum product tanks.

The Act specifically limits the manner in which the funds can be spent to the following:

1. Administration costs of the clean-up program
2. Agency administrative costs and costs of corrective actions taken by the agency
3. The cost of recovering expenses of corrective actions and training, certification and rulemaking.

The primary expenditure will be for reimbursement for corrective actions taken. The basis upon which persons are eligible for reimbursement and the amount of the reimbursement are specified in the act. Accordingly a substantial amount of the more substantive provisions regarding administration of the program are specified in the statute. However the statute does mandate that rules be adopted regarding the practices and procedures for applications for compensation, investigation of claims as well as specifying the costs that are eligible for reimbursement.

In addition to the matters specified in the Act, the board also determined that it would be appropriate for the rules to deal with procedural and structural matters pertaining to the operation of the board. Accordingly rules are proposed for that purpose and for the purposes specified in the statute.

Rules

2890.0010 Definitions

The definitions found in this part repeat the statutory definitions. They are repeated for the sake of convenience, particularly for applicants who will be referring only to these rules when dealing with the board. This removes the necessity of having both the statute and the rules available when preparing an application or when dealing with the board.

2890.0020 Board Meetings

Subp. 1. Regular Meetings

This subpart establishes a framework for holding regular meetings of the board that allows appropriate flexibility due to the unpredictable nature of the board's workload. It will be difficult to predict the number of applications for reimbursement that will be received in any given time period and the flow of applications will likely be erratic. Therefore, setting a minimum number of yearly meetings and allowing cancellation of meetings due to insufficient business are practical and reasonable provisions.

Subp. 2. Special Meetings

The unpredictable and erratic workload discussed above also necessitates what is in any case a customary ability of boards to call special meetings if such meetings are necessary to discharge the boards obligations.

Subp. 3. Vice-Chair

Although a board of this nature and size does not require the election of officers, provision must be made for the powers of the chair to be passed in the event of the chair's absence so that the board's business may be conducted.

2890.0040 Conduct of Meetings

This section establishes the procedures which ensure that meetings are conducted in an orderly manner and that the business is dealt with in an orderly manner and that the proceedings are properly documented.

2890.0050 Conflict of Interest

The composition of the board as defined by statute increases the liklihood that a conflict of interest may arise. This part recognizes that possibility and ensures that the conflict will not taint a board decision and will not hamper the board during the course of a meeting. Board members and the public know what is to be done where there is a conflict.

2890.0060 Reimbursement of Costs

Subp. 1. Generally and Subp. 2. Conditions of Reimbursement

These subparts simply repeat the requirements for reimbursement established by statute.

Subp. 3. Multiple Responsible Persons

The act states that any responsible person who has incurred eligible costs and meets the statutory conditions for reimbursement is eligible to apply. No specific provision is made for handling situations in which there will be multiple responsible persons but only one tank or corrective action site involved. This subpart clarifies that in those circumstances each responsible person must apply separately even if there is only one tank or corrective action site involved.

2890.0070 Eligible Costs

The statute requires that the board's rules specify the costs that are eligible for reimbursement. This part establishes six general categories (A-F) of eligible costs which coincide with the various phases typically involved in a clean-up operation. Within each general category, some specific illustrative costs are listed. It is not feasible at this time to establish an exhaustive list of specific eligible costs. Instead the general categories and illustrations establish the types of costs which will be eligible for reimbursement. The categories and costs listed were developed in cooperation with the Pollution Control Agency and are based on the agency's past experience as well as the proposed rules for the Federal Leaking Underground Storage Tank Trust Fund. The framework established in this section allows the board some flexibility while being specific enough to give potential applicants a clear picture of the type of costs which are reimbursable.

The legislation's intent was to defray costs for individuals who take responsible appropriate actions in the event of a leak. The intent was not, however, to enable responsible persons or their contractors to profit from the program. For that reason it is the responsibility of the person claiming reimbursement to establish the reasonableness of the costs rather than the board's reponsibility to prove that a cost is unreasonable. If the burden were placed on the board substantial extra staffing and expenditure of funds would be necessary to assure that the monies which are being assessed against petroleum tanks were not inappropriately spent. By having the applicant required to prove their case is a more prudent and judicious use of the funds and more adequately carries out the purpose of the legislation.

2890.0080 Ineligible Costs

The purpose of this part is to rule out the use of fund monies to accomplish capital improvements rather than corrective actions at a leak site. As explained above, it is not feasible to attempt to enumerate each and every eligible cost. However, further clarification of eligible costs is accomplished in this section by identifying certain ineligible costs. It is believed that the illustrations used in this part and the previous part will adequately put any applicant on notice as to those items which are either clearly ineligible or which should at least be considered potentially ineligible.

2890.0090 Application Process

This part is also mandated in Chapter 115C which requires the board to adopte rules regarding "the form and procedures for application..."

Subp. 1. Applications

The requirements for the application form are established in this subpart. The form gives the board the basic information it needs to begin its evaluation while recognizing that additional information may be required by the specific characteristics of each release. The application questions listed will extract the minimal information needed from each applicant to begin the reimbursement review process. The information requested identifies who is making the application, the site of the release, the corrective action plan and the commissioner's approval of that plan as well as what is more basic to the entire process; the list of the corrective actions, the eligible costs and the name of the engineering contracter or subcontractor who perform the action. This is the hard core of data that it will be necessary for the board to have to begin its review process.

Subp. 2. Time of Application

It was felt to be important that some time frame for processing applications be established in the rules so that both the applicant and the board would know what the expectations of each were. The thirty day time frame for review established in this subpart strikes a balance between the needs of the board and the needs of the applicant. A shorter period of time would jeopardize the board's ability to thoroughly review the complex claims while a longer waiting period could be unfair to the applicant. In addition, as stated in Subp. 6 below, the Commissioner of the Pollution Control Agency has 15 days following the receipt of a complete application to file a corresponding reort with the board's office, thereby shortening the time period for board and staff review of the complete written record.

It is likely that some applicants will be faced with financial deadlines relating to short-term loans taken out to clean up a release. In order to accommodate the financial needs of these applicants, a provision for waiving the 30-day requirement in cases of financial hardship is also included.

Subp. 3. Subsequent Applications

Responsible persons may meet the conditions for reimbursement set forth in part 2890.0060 Subp. 2 after having incurred the majority of the expenses related to clean-up of a release but with the potential for incurring some additional or ongoing eligible costs.

This subpart enable a person in that situation to make application more than once. Items A and B set forth the conditions which must be met in order for subsequent applications to be considered after an applicant has made an initial application and received partial reimbursement. The first condition ensures that the applicant did not receive the statutory maximum reimbursement following the original application. The second condition prevents someone from submitting costs related to new releases that may not have been properly reported. The section also guards against the possibility that multiple applications will create an avenue for avoiding the statutory maximum reimbursement.

Subp. 4. Signatures and Subp. 5 Certification

The purpose of these two subparts are to ensure than an authorized person signs the application and takes responsibility for the information contained therein. Clean-up operations may involve numerous contractors and subcontractors as well as a variety of persons employed by the responsible person. The certification language in particular calls for a high degree of accountability on the part of the responsible person for all information submitted.

Subp. 6. Report of the Commissioner

The act lists several determinations that are to be made by the board based on information provided by the Pollution Control Agency. Time limits for the commissioner to act are not specified in the legislation. Because the applicants may have financial difficulties if expeditious review of their applications does not occur it was deemed important to set time limits and clarify the procedure for the action by the Pollution Control Agency. This section sets the procedure for the submission of that information. The commissioner is allowed 15 days following notification to submit the information in written form. The time restraint is necessary in view of the 30 day time frame the board has to work with in reviewing the applications. This section also clarifies the Pollution Control Agency's obligation to provide adequate information to allow the board to conduct a timely review of claims.

2890.0100 Review and Determination

Subp. 1. Review and Subp. 2. Staff Recommendation

Because the board will not convene to meet each time an application is submitted but will rather, except in extraordinary circumstances, meet at regularly scheduled times and review the applications then pending it was deemed appropriate to make sure that the applications that board will be reviewing are as full and complete as possible. Accordingly it was felt that it should be clear that the board staff has the authority to make preliminary determinations regarding the completeness of each application so that additional information or whatever other action is necessary can be taken by the staff prior to the board meeting to ensure that the applications to be reviewed by the board are as complete as possible at the time of the meeting. This provision enables the staff to assemble all information and documentation relevant to an application thereby providing board members with a complete record of each claim. Without this provision, board members would face a situation where information relevant to a claim may filter in erratically making timely and proper review difficult.

Subp. 3. Board Determination

The entire application process is intended to gather all information pertaining to a leak that is necessary for the board's determination. Minnesota Statutes § 115C.09 subd. 3 requires that a reimbursement can only be made if the costs are actually incurred and are reasonable. The fact that costs were actually incurred should have been with the application documented. This subpart requires that the board's determination be based upon the written record since for the most part what is involved in the application process is a determination of what corrective actions were taken, what was the cost of those corrective actions, were those costs reasonable as well as whether or not those costs are eligible, it is expected that there will be little if any necessity for oral presentations. However, since that is always a possibility, provision is made for oral presentations within a reasonable time frame. The board would like to encourage as much as possible that submissions be in writing because most of the matters to be dealt with are technical in nature or a written submission provide time for the board and staff to give a fair and accurate review prior to a meeting. Oral presentation may result in the board needing to go back to the staff or other persons to consider that oral presentation and may delay an applicant's claim. However the board feels it is extremely important to make sure that no one feel foreclosed from fully presenting their case. Accordingly while oral presentations may not be the best method for the applicant to follow, it is specifically permitted so that the applicant may as fully as possible present their case.

The last paragraph of this subpart sets a requirement which it would be hoped all boards would follow but which it was felt important enough to specify in a rule, that the board promptly notify each applicant of its decision.

2890.0110 Right of Appeal

While it is presumed that there is a right of appeal from a decision of the board, the act did not state the specific procedural basis for the right. To avoid any confusion, this part clarifies that point.

2890.0120 Funding MPCA Actions

This part provides the mechanism by which the Minnesota Pollution Control Agency may apply to the board for additional funds if all other state and federal funds have been exhausted. The right of the agency to request additional funds is establishedin statute. This mechanism requires the agency to document the use of the original appropriations and to give a specific estimate of future agency costs. This allows the board to carry out its charge of properly administering fund monies. The provisions of this section make sure that the board has enough information to adequately assure that the funds were expended in an appropriate manner and for appropriate purposes.

Small Business Consideration

Minnesota Statutes § 14.115 requires that the impact of the rules upon small businesses be considered in regard to any rulemaking procedure. In the present instance the rules have two functions, one is to determine how the board structurally is organized and operates. In that respect these rules would have no impact upon small business. The only impact upon a small business would come in respect to a small business being an applicant for reimbursement. The board considered the provisions of subpart 2 in regard to those small businesses and determined that because the nature of the rules was to assure that there was adequate documentation to show that small businesses incurred the costs in the manner the statute requires and met the statutory requirements for reimbursement that there could be no distinction between small businesses and other businesses as to the levels of proof that would be required. To have some lesser standard for a small business in the present instance would potentially defeat the purpose of assuring that the funds were expended for the appropriate reason.

In regard to subpart 2 (a) the establishment of less stringent compliance and reporting requirements for small businesses would be inapplicable in this particular situation since the only reporting or compliance requirements pertain to when a business files an application and not anything that the business has to do. These are not compliance or reporting requirements in the usual

sense but as previously discussed set the minimum documentation needed for reimbursement.

As to the establishment of less stringent schedules or deadlines for compliance or reporting requirements, once again since this is a reimbursement procedure, this particular provision would not be applicable to the process. If anything a small business might want to accelerate the time periods to enable it to recover its money as quickly as possible. The rules do provide for waiver of the time periods.

As to the consolidation or simplification of compliance or reporting requirements for small businesses if the application process and the documentation of claims could be construed to be compliance or reporting requirements which the board does not feel is the case, it would inappropriate in this instance to allow small businesses to produce less documentation for reimbursement of the monies than large businesses. The purpose of the board in the administration of the fund is to assure that the funds are expended for the appropriate reasons and that there is an adequate showing that this has occurred. There can be no lower standard for small businesses.

As to the establishment of performance standards to replace design or operational standards there are no such standards in the rule and this particular provision is not applicable.

Exemption of small businesses would not be appropriate in this instance because once again the entire procedure is set up to make sure that expenses are incurred for an appropriate purpose and they are properly reimbursable. The level of proof is the same for everybody. Therefore it is difficult to see in any way that small businesses could be exempted from these provisions and still carry out the statutory requirement of assuring the appropriate use of these funds as statute requires.

Also it is presumed that many if not most of the applicants will likely be small businesses so that the primary impact of these rules will be on small businesses. Accordingly when the rules were being drafted one of the considerations that was involved was not creating so many requirements and documentation demands as to overload an individual or a small business who would seek reimbursement while at the same time assuring that there was adequate documentation to discharge the board's responsibility to make sure that these funds were not disbursed in an inappropriate manner or to persons who were not qualified to receive them.

STATE OF MINNESOTA
COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the Petroleum Tank Release Compenstation Bond

Affidavit of
Heidi Almquist

Heidi Almquist, being first duly sworn, does hereby state and avow that she is the Executive Director of the Petroleum Tank Release Compensation Board. That of this date no persons have requested notice of any rule proceeding and therefore there is no list of such people pursuant to Minnesota Statute 14.14, Subd. 1a and therefore no mailing was made regarding this rule proceeding.

s/ Heidi Almquist

Subscribed and sworn to before me this
25th date of February 1988.

s/ Richard Gomez
Notary Public

State of Minnesota

STATE REGISTER

Department of Administration—Documents Division



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I hereby certify that the above named voter exhibited the enclosed ballots to me unmarked; that in my presence and in a manner that I could not see, marked the ballots and enclosed and sealed them in the ballot envelope.

....
(date) (legal signature of witness)

.....
(print or type name of witness)

.....
(legal address if witness is an eligible voter)

OR

.....
(official title is witness is an official)

Department of Commerce

Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Petroleum Tank Release Compensation Board intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. The statutory authority to adopt the rule is *Minnesota Statutes* § 115C.07 subd. 3.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the department will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Heidi Almquist
Executive Director
Petroleum Tank Release Compensation Board
500 Metro Square Building
St. Paul, MN 55101
(612) 297-3238

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Heidi Almquist.

Pursuant to *Minnesota Statutes* Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of

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the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Heidi Almquist.

Rules as Proposed (all new material)

2890.0010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the terms in this part have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subp. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subp. 5. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subp. 6. **Responsible person.** "Responsible person" means a person who is an owner or operator of a tank at any time during or after the release.

2890.0020 BOARD MEETINGS; TIME, PLACE, NOTICE.

Subpart 1. **Regular meetings.** A regular meeting of the board must be scheduled at least four times a year. A scheduled meeting may be canceled if there is insufficient business. A meeting may be called by the chair or by written request of three board members. Written notice of the meeting as to time and place must be given to board members at least five days before a regular meeting. Between regular meetings, business may be conducted by mail.

Subp. 2. **Special meetings.** The chair shall attempt to give five days' notice before a special meeting. The board may waive the five-day notice requirement.

2890.0030 VICE-CHAIR.

A vice-chair shall be elected by the board. The vice-chair shall preside at regular and special meetings in the absence of the chair and perform other duties assigned by the board.

2890.0040 CONDUCT OF MEETINGS.

Subpart 1. **Quorum.** A quorum shall consist of three board members.

Subp. 2. **Proxies.** An absent member may assign a proxy, in writing, to another board member. Proxies shall count toward a quorum.

Subp. 3. **Minutes.** Meetings shall be tape recorded and minutes prepared by staff.

Subp. 4. **Parliamentary procedure.** Except as specifically provided by statute or negotiation, Robert's Rules of Order shall govern questions that may arise at a meeting of the board.

2890.0050 CONFLICT OF INTEREST.

A member of the board who has a direct or indirect financial or employment interest relating to a matter before the board, which interest is reasonably likely to affect impartiality or judgment in the matter, shall make known the interest and shall refrain from participating in, or voting upon, the matter. The abstention of a board member or members shall not prevent the remaining members from conducting a legal vote.

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has taken corrective action in response to a release reported on or after June 4, 1987, may apply to the board for partial reimbursement of eligible costs.

Subp. 2. **Conditions for reimbursement.** A reimbursement may not be made unless the board determines that:

A. the commissioner has determined that the corrective action has adequately addressed the release and that the release no longer poses a threat to public health and welfare or the environment;

B. at the time of the release the tank was in compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility.

C. the agency was given notice of the release as required by Minnesota Statutes, section 115.061;

D. the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

E. if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

Subp. 3. **Multiple responsible persons.** If there is more than one responsible person who incurs eligible corrective action costs for a single release or at a single corrective action site, each responsible person must apply separately for reimbursement. The reimbursement available to each applicant shall be 75 percent of the applicant's total eligible costs greater than $10,000 and less than $100,000.

2890.0070 ELIGIBLE COSTS.

Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. Emergency response and initial site hazard mitigation. Costs may include, but are not limited to, those necessary to abate acute risks to human health, safety, and the environment.

B. Temporary site hazard control measures. Costs may include, but are not limited to, temporary provision of drinking water and housing, initial abatement of vapors, and removal of free product.

C. Investigation and source identification including, but not limited to, collecting and analyzing soil samples, testing the groundwater, testing adjacent drinking water supplies, tank integrity testing, and engineering services.

D. Development of a corrective action plan in accordance with the commissioner's requirements.

E. Clean-up of releases including, but not limited to, removal, treatment, or disposal of surface and subsurface contamination and provision of a permanent alternative water supply. Clean-up must be performed in accordance with a corrective action plan approved by the commissioner.

F. Removal or closure in place of the tank that is the source of the release.

It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs.

2890.0080 INELIGIBLE COSTS.

All costs associated with actions that do not minimize, eliminate, or clean up a release to protect the public health and welfare or the environment are ineligible costs. Ineligible costs include, but are not limited to, any costs related to the permanent repair or replacement of a tank, upgrading tanks, loss of income, attorney's fees, permanent relocation of residents, decreased property values, reimbursement for the responsible person's own time spent in planning and administering a corrective action plan, aesthetic improvements, or any work performed that is not in compliance with safety codes including but not limited to Occupational Safety and Health Administration requirements, well codes, and fire codes.

2890.0090 APPLICATION PROCESS.

Subpart 1. **Applications.** A person who requests compensation from the fund shall complete, sign, and submit to the board a written application. The application shall be made on a form prescribed by the board and shall contain at least the following:

A. the name of the responsible person making the application;

B. a description of the site of the release;

C. a copy of the corrective action plan and the commissioner's approval of the plan; and

D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action.

Subp. 2. **Time of application.** The application and all accompanying documentation must be received by the board's office 30 days before a board meeting in order for reimbursement to be considered at that meeting. The board may waive the 30-day requirement, if it finds that undue financial hardship to the applicant will result if action is delayed until the next regular meeting.

Subp. 3. **Subsequent applications.** An eligible responsible person who has already obtained partial reimbursement from the board and who has incurred additional or continuing eligible costs due to the same release may reapply if:

A. the amount of the person's original reimbursement was less than 75 percent of the eligible costs between $10,000 and $100,000.

B. the eligible costs submitted on a subsequent application are not related to any new releases at the site. The total reimbursement

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to a responsible person for a release shall not exceed 75 percent of the total eligible costs between $10,000 and $100,000 regardless of the number of applications for reimbursement submitted by the responsible person.

Subp. 4. **Signatures.** An application must be signed as follows:

A. for a corporation, by a principal executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the facility that is the subject of the application or a person whom the board of directors designates by means of a corporate resolution;

B. for a partnership, sole proprietorship or individual, by a general partner, the proprietor, or individual respectively; or

C. for a municipality, state, federal, or other public agency, by either a principal, executive officer, or ranking elected official.

Subp. 5. **Certification.** A person who signs an application for reimbursement shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify that I have the authority to submit this application on behalf of ....."

Subp. 6. **Report of the commissioner.** Upon notification by the board's staff that a complete application has been received, the commissioner shall, in a timely manner, provide the board with a written report on the applicant's compliance or noncompliance with Minnesota Statutes, section 115C.09, subdivision 2, paragraph (b), clauses (1) to (5). The report shall include documentation supporting the commissioner's findings. The commissioner shall file the report with the board no later than 15 days after notification.

In addition, the board may, as it deems necessary, request additional information from the commissioner or can request participation of agency staff at a board meeting. All responses to requests for information shall be delivered in a timely manner. The board may delegate these powers to its staff.

2890.0100 REVIEW AND DETERMINATION.

Subpart 1. **Review.** The board's staff shall review all applications. If the staff finds that the application is incomplete or otherwise deficient, the staff shall promptly advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A complete application and the corresponding report of the commissioner constitutes the written record.

Subp. 2. **Staff recommendation.** After a reimbursement application is complete and the commissioner has provided the information relevant to the application, the board's staff shall make a recommendation as to the eligibility of the applicant and the costs specified in the application.

Subp. 3. **Board determination.** The board shall determine the amount of the reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The determination shall be made on the basis of the written record. The board may also allow supplemental information explaining the application to be presented orally. The board may establish a fair and reasonable limit on time allowed for oral testimony.

The applicant shall be notified in writing within ten days of the board's decision. If the board rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

2890.0110 RIGHT TO APPEAL.

A decision of the board is to be considered a final order, decision, or judgment for purposes of Rule 103.3 of the Rules of Civil Appellate Procedure.

2890.0120 FUNDING OF MPCA ACTIONS.

In accordance with Minnesota Statutes, section 115C.10, subdivision 1, paragraph (a), the agency may apply to the board for money to pay for actions taken under Minnesota Statutes, section 115C.03, if all other state and federal funds appropriated for such actions have been exhausted. The application shall consist of a written statement of proposed corrective actions, an itemized estimate of costs for the proposed actions, and documentation that applicable state appropriations and federal awards have been exhausted by actions authorized under Minnesota Statutes, section 115C.03.

The board shall pay the agency the cost of the proposed actions if the board determines that:

A. applicable state and federal funds are exhausted;

B. the agency's proposed actions are authorized under Minnesota Statutes, section 115C.03; and

C. an adequate amount exists in the fund to pay for the proposed actions.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules of the Petroleum Tank Release Compensation Board	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 24th day of September 1987 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and that said Notice be published in the State Register.

J. P. Trautwein
Chair

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules of the Petroleum Tank Release Compensation Board

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT A PUBLIC HEARING

Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on October 19, 1987 and November 2, 1987. No persons have requested that their names be maintained on a list maintained by the board pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was published and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the board.

Based on the comments and evidence in the record before the board, I find the following:

That concern has been expressed that the provisions of part 2890.0020 and part 2890.0040 subpart 2 of the rules as published might allow meetings to be held or conducted which do not comply with the Minnesota Open Meeting Law, Minnesota Statutes § 471.705. To clarify the proposed rules so that the possibility of such a violation is removed Part 2890.0020 is amended to read as follows:

2890.0020 BOARD MEETINGS; TIME, PLACE, NOTICE

Subpart 1. Regular meetings. A regular meeting of the board must be scheduled at least four times a year. A scheduled meeting may be canceled if there is insufficient business.

Subpart 2. Special meetings. A special meeting may be called by the chair or by written request of three board members.

For the same reasons noted above regarding Part 2890.0020, subpart 2 of Part 2890.0040 which allowed the used of proxies is deleted. These changes do not constitute a substantial change.

Part 2890.0100 subpart 3 specifically allows supplemental information to be presented orally. The word tesimony is used in that subpart to describe this procedure. Because the board felt that the word testimony implied a legalistic approach which was not intended the word "presentation" is substituted for the word "testimony" in that subpart. This change is not substantial.

The amended rule is substantially similar to the prior rule and does not constitute a substantial change.

The above-captioned rule as amended is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Rules of the Petroleum Tank Release Compensation Board as modified are adopted this 11th day of December pursuant to the authority vested in the Board by Minnesota Statutes, section 115C.07, subd. 3

F.P. Troutwine
Chair

Dated this 11th day of
December 1987.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Adoption
of the Rule of the State
Petroleum Tank Release
Compensation Board.

DECLARATION
OF COUNSEL

I, Louis Hoffman, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0142.

Louis Hoffman

LOUIS HOFFMAN
Special Assistant
Attorney General

Dated: February 29, 1987

SF-00006-05 (4.86)

DEPARTMENT : of Commerce

STATE OF MINNESOTA

Office Memorandum

DATE : 2/25/88

TO : Marty Carrely

FROM : Richard G. Gomsrud

PHONE : 296-5689

SUBJECT : Petroleum Tank Release Compensation Board

Enclosed are copies of the following materials regarding the above captioned rules:

1. Notice of Intent to Solicit Outside Opinion as published in State Register (2010.0300 A) None
2. Copy of the Proposed Rules with Revisor's Certificate (2010.0300 D)
3. Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 E)
4. Statement of Need and Reasonableness (2010.0300 F)
5. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 G) Affidavit of Heidi Almquist
6. Copy of Notice of Intent to Adopt Rule Without Public Hearing and Rules as published in the State Register (2010.0300 H)
7. Four copies of Rule as adopted (2010.0300 I)
8. Findings of Fact, Conclusions & Order Adopting Rule (2010.0300 K)
9. Written Comments, Submission & Requests on Rule (2010.0300 L) None
10. Declaration of Attorney General (2010.0300 M)
11. Notice of Submission to Attorney General (2010.0300 N) None requested
12. Affidavit of Mailing Notice of Submission to Attorney General (2010.0300 O) N/A

Rec'd 2/29/88

RECEIVED 2/26/88 Returned at request of Louis Hoffman Rmd

FEB 25 1988

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155