

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

FILE COPY

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : December 13, 1989

TO : CAROLYN P. HAM
Special Assistant Attorney General
1100 Bremer Tower

FROM : CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500

PHONE :

SUBJECT : 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 December 12, 1989.

Enclosed is your 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 along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of tne notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "

Department of Commerce

Adopted Permanent Rules Relating to Petroleum Tank Release Compensation Board

Rules as Adopted

2890.0010 DEFINITIONS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Volunteer.** "Volunteer" means a person who:

A. is not a responsible person under Minnesota Statutes, section 115C.02;

B. holds legal or equitable title to the property where a release occurred; and

C. incurs reimbursable costs on or after May 22, 1989.

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, and each volunteer who has incurred reimbursable costs on or after May 22, 1989, in response to a release, 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 the commissioner has determined that the corrective action has, or when completed will have, adequately addressed the release in terms of public health, welfare, and the environment.

Subp. 2a. **Amount of reimbursement.** The board shall reimburse a responsible person or volunteer who is eligible for 90 percent of the portion of the total reimbursable costs less than $250,000.

Subp. 2b. **Reduced reimbursement.** The board shall reduce the amount of reimbursement to be made under this part if it finds that the responsible person or volunteer has not complied with one or more of the following requirements:

A. at the time of the release the tank was in substantial compliance with state and federal rules and

regulations applicable to the tank, including rules or regulations relating to financial responsibility;

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

C. the responsible person or volunteer, to the extent possible, fully cooperated with the agency in responding to the release;

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

E. the reimbursement shall be reduced as much as 100 percent for failure by the responsible person or volunteer to comply with items A to D. In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subp. 3. **Multiple responsible persons.** If there is more than one responsible person or volunteer who incurs reimbursable costs for a single release or at a single corrective action site, each responsible person or volunteer must apply separately for reimbursement. Not more than $250,000 may be reimbursed for cost associated with a single release, regardless of the number of persons eligible for reimbursement.

Subp. 4. **Eligibility of other persons.** Notwithstanding Minnesota Statutes, section 115.09, subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

A. [Unchanged.]

B. the commissioner has determined that the person was not a responsible person or volunteer under Minnesota

Statutes, section 115C.02; and

C. [Unchanged.]

2890.0070 ELIGIBLE COSTS.

Subpart 1. **Reimbursable corrective actions.** Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. to F. [Unchanged.]

Subp. 2. **Documentation of reasonableness.** It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs. Upon request of the board or the board's staff, the applicant shall document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through a competitive bidding procedure;

B. evidence that the cost is substantially equivalent to that charged by comparable person or persons in the same geographical area;

C. evidence that there was only one party reasonably available to perform the necessary work; or

D. evidence that there was only one party reasonably qualified to perform the necessary work.

The board shall reimburse only those costs which it determines to be reasonable.

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 person making the application;

B. to D. [Unchanged.]

Subp. 2. [Unchanged.]

Subp. 3. **Subsequent applications.** An eligible responsible

person or volunteer 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 90 percent of the eligible costs up to $250,000.

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 or volunteer for a release shall not exceed 90 percent of the total eligible costs up to $250,000 regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

Subp. 4. to 6. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 13 1989

Joan Anderson Growe
Secretary of State

11:45 AM

APPROVED AS TO LEGALITY

December 12, 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene H. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT: ATTORNEY GENERAL

DATE: November 15, 1989

TO: **PATRICIA NOLTE**
Legal Assistant
Public Finance Division

FROM: **CAROLYN P. HAM**
Special Assistant
Attorney General

PHONE: 6-7861

SUBJECT: **RULEMAKING - PETROLEUM TANK RELEASE COMPENSATION BOARD**

Attached for your review is:

1. Declaration of Counsel;

2. Order for Notice of Intent to Adopt Rules without Public Hearing;

3. Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board approved by the Revisor of Statutes;

4. Notice of Intent to Adopt Rules Without a Public Hearing;

5. Statement of Need and Reasonableness;

6. Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register;

7. Findings of Fact, Conclusions and Order Adopting Rule Without a Public Hearing;

8. Four copies of the Proposed Rules.

If you have any questions concerning these rules, please call me at 296-7861.

CPH:lf/.au5
Attachments

RECEIVED

NOV 16 1989

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

Amendments

CH

RULE REVIEW CHECKLIST

File No. 1645

Docket No. 05.0009.0142

DATE RECEIVED 11-28-89

ADOPTED W/O HEARING X

REVIEW DATE 12-7-89

EMERGENCY RULE

DUE DATE 12-12-89

TO REVISOR ON 12-8-89

REVISOR APPROVED ✓

APPROVED 12-12-89

REVISOR DISAPPROVED

DISAPPROVED

FILED W/SEC. OF STATE 12/13/89

WITHDRAWN

RETURNED TO AGENCY 12/13/89

✓ Rule as adopted (4 copies) not back from Revisor back from Revisors

Notice to Solicit Outside Information/Opinion (if applicable)

Date published in State Register

Comments

Petition for Adoption of a Rule (if applicable)

Did not do Board's Authorizing Resolution if have 2nd if they ratified by what they did

Date adopted –

Bd's Resolution Adopting Rule; adopted 12-4-89 (d/n attach cc of rules)

✓ Proposed Rule (11) attached ppd rule

Revisor's Certificate

✓ Notice of Intent to Adopt Rule – missing E(11)

46.023 Statutory Authority 115C.07, subd 3 – wrong cite there is no 46.023

✓ Small Business Statement

NA Expenditure of public money statement

Undated Signature

✓ Statement of Need and Reasonableness (if applicable)

✓ Small Business Statement

NA Fees - § 16A.128

Affidavit of Mailing Notice of Intent to Adopt Rule

NA Date 30/25 days before adoption no list

Notice attached affadavit stating there is no list

Copy of rule or summary attached

✓ Publication in State Register

Aug 7, 1989 Date 30/25 days before adoption

✓ 180-day deadline from:

NA Effective date of law requiring rule amendment (14.12) (both rules) so doesn't apply

✓ end of comment period (§ 14.26) (rules without hearing)

effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting

Dec 4, 1989 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting

Dec 5, 1989 Date

Written requests, submissions or comments

✓ Declaration of attorney

Carolyn Ham Name of SAAG representing agency

Notice of Submission to Atty. Gen. (if applicable)

Aff. of Mailing Notice to Atty. Gen. (if applicable)

Notice of Intent
Does not have a statement that the rule is attached or a summary of the rule (2010.0300 E (11))

Statement of Need and Reasonableness
only explains the rules doesn't show the need or why the rules are reasonable very weak

2890.0070 subpart 2 somewhat vague should have stated when or how they determine what is needed to document reasonableness of costs. ie (how do they determine if all four (A.B.C.D) are needed how does the applicant know what they are going to request

what are considered reas. costs

Stat Authority in notice of Intent
46.023 - there is no 46.023 wrong cite other cite attached 1154.0

State of Minnesota
Department of Commerce

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

STATEMENT OF NEED
AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statute Chapter 115C, the Petroleum Tank Release Clean-up Act, provides a mechanism for persons who take corrective action in response to petroleum tank releases to receive partial compensation for the cost of the corrective action. Minnesota Statute 115C.07, Subd. 3(a) stipulates that the Petroleum Tank Release Compensation Board (hereinafter the "Board") shall adopt rules regarding its practices and procedures. The rules as proposed amend Minnesota Rule 2890 by incorporating amendments made to Chapter 115C by the 1989 Minnesota Legislature.

Further, Minnesota Statute § 115C.09 authorizes the Board to reimburse persons for costs incurred that were reasonable. The rules as proposed set forth the criteria for determining whether a cost is reasonable based upon the statutory mandate.

FACTS ESTABLISHING NEED AND REASONABLENESS

Part 2890.0010 Definitions.

Subpart 7. Volunteer. In 1989, Chapter 115C was amended to allow a property owner to volunteer to clean up a release site in the absence of the responsible person and be eligible for reimbursement. A volunteer is eligible to receive reimbursements for costs incurred after May 22, 1989. This subpart adopts the definition of a "volunteer" as stated in Minn. Stat. § 115C.09, Subd. 3b.

Part 2890.0060 Reimbursement of Costs.

Subpart 1. Generally and Subpart 2. Conditions for Reimbursement. These subparts simply repeat the requirements for reimbursement established by statute. A responsible person and volunteer may apply to the Board for a partial reimbursement of eligible costs when the commissioner has approved a corrective action plan.

Subpart 2a. Amount of Reimbursement and Subpart 2b. Reduced Reimbursement. These subparts authorize the Board to reimburse an eligible responsible person or volunteer for 90 percent of the portion of the total reimbursable costs less than $250,000. This section spells out under what conditions the Board may reduce a reimbursement. This section only incorporates the statutory language as amended.

Subpart 3. Multiple Responsible Persons. This subpart provides that no more than $250,000 may be reimbursed for costs associated with a single release, as stated in Chapter 115C. Any number of people may apply for reimbursement from the Petrofund for costs incurred for the cleanup of a site, but no more than $250,000 can be reimbursed for one particular release site.

Part 2890.0070 Eligible Costs.

Subpart 2. Documentation of Reasonableness. This part requires the responsible person or volunteer, at the request of the Board or the Board's staff, to document the reasonableness of any costs included on the reimbursement application. This would require the applicant to provide evidence that the work was performed by a person at a competitive price or that there was only one person available or qualified to perform the necessary work. The legislative intent of this Act was to defray costs for individuals who take

responsible, appropriate actions in the event of a leak. The intent was not, however, to allow persons to reap excess profits from the program.

Accordingly, the Board is seeking to establish more specific guidelines for applicants to follow to ensure that they meet the reasonableness test.

Part 2890.0090 Application Process.

Subpart 1. Applications and Subpart 3. Subsequent Applications. These subparts simply repeat the requirements for reimbursements established by statute as amended in 1989. An eligible responsible person or volunteer may request reimbursement for 90% of eligible costs incurred up to $250,000.

Small Business Consideration

Minnesota Statutes § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

In drafting the proposed rules, the Board considered whether the provisions of the rule might be modified to accomodate the interests of small businesses. Since the statute establishes the reimbursement formula, the Board has no authority to alter the amount of the reimbursement based on financial need.

The rules pertaining to reasonable costs allow for the fact that larger companies may be able to secure certain services at a better price. Applicants are only required to show evidence that their business could not have secured a better price for a particular service. In addition, the application process was designed to enable small businesses to complete the application without the aid of an attorney or consultant.

Each of the methods described at Minnesota Statutes § 15.115, subdivision 2(a)-3 was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative process.

State of Minnesota
Department of Commerce

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

Notice of Intent to Adopt Rules Without a Public Hearing

(1) Notice is hereby given that the Department of Commerce 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. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 115C.07, Subd. 3.

(2) 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. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. (8) 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.

(4) 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. (5) (6) 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. (7) If a public hearing is required, the department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

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

Robin H. Hanson
Petrofund Board
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 297-4017

(12) 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 Robin H. Hanson.

(14) 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.

(9) 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 wish to receive a copy of the adopted rule, must submit the written request to Robin H. Hanson.

P. Troutwine

PHIL TROUTWINE
Chair
Petroleum Tank Release
Compensation Board

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

STATE OF MINNESOTA
NOV 2 1989
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 August 7, 1989. 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:

No comments were received and no evidence presented in the record regarding changes to the rules as published.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as Rules of the Petroleum Tank Release Compensation Board as modified as adopted this 1 of November pursuant to the authority vested in the Board by Minnesota Statutes, section 115C.07, subd. 3.

F. P. Troutwine
Chair

Dated this 1 day of November, 1989

RECEIVED

NOV 16 1989

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

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

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 24th day of July 1989 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.

Phil Troutwine

PHIL TROUTWINE
Chair
Petroleum Tank Release
Compensation Board

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 PUBLIC HEARING

(1) Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on August 7, 1989. No persons or associations have requested that their names be placed on a list maintained by the Board, and therefore no mailing has been made. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the Board.

(7) No submissions or comments on the rule were received by the Board. No requests for notice of submission to the attorney general were received by the Board.

Based on the evidence in the record before the Board, I find the following:

(8) The above-captioned rule is needed and reasonable.

(8) NOW, THEREFORE, IT IS ORDERED that the rule identified as Rules of the Petroleum Tank Release Compensation Board is adopted this 5th day of December, pursuant to the authority vested in the Board by Minnesota Statutes, section 115C.07, Subd. 3.

(9) Susan Bergh

Susan Bergh
Executive Director

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Susan Bergh, being sworn says:

I hereby certify that no persons or associations have requested, pursuant to Minnesota Statute, Sections 14.14, Subdivision 1a and 14.22 or 14.30, that their names be placed on the Petroleum Tank Release Compensation Board Rulemaking mailing list as of this 5th day of December, 1989, and that therefore no mailing has been made regarding this rulemaking proceeding.

Susan Bergh

SUSAN BERGH
Executive Director of the Petroleum Tank Release Compensation Board

Subscribed and sworn to before me this 5th day of December 1989.

Cynthia L. Claason

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 11, 1992

CERTIFICATE OF THE

PETROLEUM TANK RELEASE COMPENSATION BOARD

RESOLUTION ADOPTING THE RULE

I, F. P. Troutwine, do hereby certify that I am a member and the Chairman 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 Petroleum Tank Release Compensation Board, duly and properly called and held on the 4th day of December, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that these rules are approved and adopted, pursuant to authority vested in the Petroleum Tank Release Compensation Board by Minnesota Statutes, chapter 115C. Susan Bergh, the Executive Director of the Petroleum Tank Release Compensation Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 4th day of December, 1989.

F. P. Troutwine

Chairman of the Board

Richard Sranda

Attest by one other Board member

Public Safety Department
7520.0100; .0200; .0350; .0680 (proposed) 108
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Teaching Board
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Unlicensed Mental Health Providers Board
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Veterinary Medicine Board
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Human Services Department
9500.1100 (adopted) 8
9505.0175; .0260; .0323 (adopted) 8
9500.1070 s.4, 6, 23 (repealed) 8
9565.5500; .5510; .5520 (adopted) 165
9575.0010; .0020; .0090; .0380; .0530; .0620; .0720 (proposed) 101
9575.0090 s. 2, 3 (proposed repealer) 101

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register.* The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

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 Department of Commerce 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. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 46.023 and 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 14.13 to 14.20.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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

Robin H. Hanson
Petrofund Board
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 297-4017

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 Robin H. Hanson.

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 wish to receive a copy of the adopted rule, must submit the written request to Robin H. Hanson.

Phil Troutwine
Chair
Petroleum Tank Release
Compensation Board

Rules as Proposed

2890.0010 DEFINITIONS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Volunteer.** "Volunteer" means a person who:

A. is not a responsible person under Minnesota Statutes, section 115C.02;

B. holds legal or equitable title to the property where a release occurred; and

C. incurs reimbursable costs on or after May 22, 1989.

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has ~~taken corrective action and~~ incurred reimbursable costs after June ~~4~~, 1987, in response to a release, and each volunteer who has incurred reimbursable costs on or after May 22, 1989, in response to a release, 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, or when completed will have, adequately addressed the release ~~and that the release no longer poses a threat to~~ in terms of public health ~~and~~, welfare ~~or~~, and the environment~~:~~.

Subp. 2a. **Amount of reimbursement.** The board shall reimburse a responsible person or volunteer who is eligible for 90 percent of the portion of the total reimbursable costs less than $250,000.

Subp. 2b. **Reduced reimbursement.** The board shall reduce the amount of reimbursement to be made under this part if it finds that the responsible person or volunteer has not complied with one or more of the following requirements:

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

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

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

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

E. the reimbursement shall be reduced as much as 100 percent for failure by the responsible person or volunteer to comply with items A to D. In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subp. 3. **Multiple responsible persons.** If there is more than one responsible person or volunteer who incurs ~~eligible corrective action~~ reimbursable costs for a single release or at a single corrective action site, each responsible person or volunteer 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.~~ Not more than $250,000 may be reimbursed for cost associated with a single release, regardless of the number of persons eligible for reimbursement.

Subp. 4. **Eligibility of other persons.** Notwithstanding Minnesota Statutes, section 115.09, subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

A. [Unchanged.]

B. the commissioner has determined that the person was not a responsible person or volunteer under Minnesota Statutes, section 115C.02; and

C. [Unchanged.]

2890.0070 ELIGIBLE COSTS.

Subpart 1. **Reimbursable corrective actions.** Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. to F. [Unchanged.]

Subp. 2. **Documentation of reasonableness.** It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs. Upon request of the board or the board's staff, the applicant shall document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through a competitive bidding procedure;

B. evidence that the cost is substantially equivalent to that charged by comparable person or persons in the same geographical area;

C. evidence that there was only one party reasonably available to perform the necessary work; or

D. evidence that there was only one party reasonably qualified to perform the necessary work.

The board shall reimburse only those costs which it determines to be reasonable.

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. to D. [Unchanged.]

Subp. 2. [Unchanged.]

Subp. 3. **Subsequent applications.** An eligible responsible person or volunteer 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~~ 90 percent of the eligible costs ~~between $10,000 and $100,000~~ up to $250,000.

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 or volunteer for a release shall not exceed ~~75~~ 90 percent of the total eligible costs ~~between $10,000 and $100,000~~ up to $250,000 regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

Subp. 4. to 6. [Unchanged.]

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

le information. A person who the commissioner has reason
rson, or the owner of real property where corrective action
o might otherwise have information concerning a release,
commissioner or any member, employee, or agent of the
by the commissioner, furnish to the commissioner any
y have or may reasonably obtain that is relevant to the

rmation and property. The commissioner or any member,
ncy authorized by the commissioner, may, upon presenta-
tials, take any of the following actions:
oks, papers, records, memoranda, or data of a person who
ation to the commissioner under subdivision 6; and
private property for the purpose of taking action autho-
ng obtaining information from a person who has a duty
der subdivision 6, conducting surveys and investigations,

f data. Except as otherwise provided in this subdivision,
nder subdivision 6 or 7 is public data as defined in section
he subject of the data that the data relates to sales figures,
uction unique to that person, or information that would
mpetitive position of that person, the commissioner shall
onpublic data as defined in section 13.02. Data classified
r this subdivision may be disclosed when relevant in a
5C.03 to 115C.10.

1987 c 389 s 3

ESPONSE COSTS.

action liability. (a) A responsible person is liable for the
ken by the agency under section 115C.03, subdivisions
investigating the release and administrative and legal

has failed to take a corrective action ordered by the
has taken the action;
rrective action in an emergency under section 115C.03,

orrective action because a responsible person could not

is liable for the reimbursement paid by the petroleum
rd under section 115C.09, subdivision 3a, to the extent
tive action that the responsible person could have been
on 115C.03, subdivision 1.

ability. (a) A responsible person may not avoid the
nce of any right, title, or interest in real property; or by
nless agreement, or similar agreement.
not:
may be liable from entering an agreement by which the
s, or indemnified for part or all of the liability;
nt of an insurance, hold harmless, or indemnification

ought by a person who may be liable or by an insurer
of subrogation or otherwise.

very. Reasonable and necessary expenses incurred by
ve action, including costs of investigating a release,
es, and reimbursement

1, paragraph (b), may be recovered in a civil action in district court brought by the attorney general against a responsible person. The agency's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. Expenses that are recovered under this section must be deposited in the fund.

History: *1987 c 186 s 15; 1987 c 389 s 4; 1988 c 683 s 2,3*

115C.05 CIVIL PENALTY.

The agency may enforce section 115C.03 using the actions and remedies authorized under section 115.071, subdivision 3. The civil penalties recovered by the state must be credited to the fund.

History: *1987 c 389 s 5*

115C.06 EFFECT ON OTHER LAW.

Subdivision 1. **Actions under chapter 115B.** Sections 115C.03 to 115C.10 do not limit any actions initiated by the agency under chapter 115B.

Subd. 2. **Duty to notify and take action for release.** Sections 115C.03 to 115C.10 do not limit a person's duty to notify the agency and take action related to a release as provided in section 115.061.

History: *1987 c 389 s 6*

115C.07 PETROLEUM TANK RELEASE COMPENSATION BOARD.

Subdivision 1. **Establishment.** The petroleum tank release compensation board consists of the commissioner of the pollution control agency, the commissioner of commerce, two representatives from the petroleum industry, and one representative from the insurance industry. The governor shall appoint the members from the insurance and petroleum industry. The filling of positions reserved for industry representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by section 15.0575. The governor shall designate the chair of the board.

Subd. 2. **Staff.** The commissioner of commerce shall provide staff to support the activities of the board.

Subd. 3. **Rules.** (a) The board shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.

(b) The board may adopt emergency rules under this subdivision for one year after June 4, 1987.

History: *1987 c 186 s 15; 1987 c 389 s 7*

115C.08 PETROLEUM TANK RELEASE CLEANUP FUND.

Subdivision 1. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to a petroleum tank release cleanup fund:

(1) the proceeds of the fee imposed by subdivision 3;

(2) money recovered by the state under sections 115C.04, 115C.05, and 116.491, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement;

(3) interest attributable to investment of money in the fund;

(4) money received by the board and agency in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund; and

(5) fees charged for the operation of the tank installer certification program established under section 116.491.

Subd. 2.

Department of Commerce

Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0010 DEFINITIONS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Volunteer.** "Volunteer" means a person who:

A. is not a responsible person under Minnesota Statutes, section 115C.02;

B. holds legal or equitable title to the property where a release occurred; and

C. incurs reimbursable costs on or after May 22, 1989.

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has ~~taken corrective action and~~ incurred reimbursable costs after June 4, 1987, in response to a release, and each volunteer who has incurred reimbursable costs on or after May 22, 1989, in response to a release, 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, or when completed will have, adequately addressed the release ~~and that the release no longer poses a threat to~~ in terms of public health ~~and~~, welfare ~~or~~, and the environment~~;~~.

Subp. 2a. **Amount of reimbursement.** The board shall reimburse a responsible person or volunteer who is eligible for 90 percent of the portion of the total reimbursable costs less than $250,000.

Subp. 2b. **Reduced reimbursement.** The board shall reduce the amount of reimbursement to be made under this part if it finds that the responsible person or volunteer has not complied

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with one or more of the following requirements:

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

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

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

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

E. the reimbursement shall be reduced as much as 100 percent for failure by the responsible person or volunteer to comply with items A to D. In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subp. 3. **Multiple responsible persons.** If there is more than one responsible person or volunteer who incurs ~~eligible corrective action~~ reimbursable costs for a single release or at a single corrective action site, each responsible person or volunteer 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.~~ Not more than $250,000 may be reimbursed for cost associated with a single release, regardless of the number of persons eligible for reimbursement.

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Subp. 4. **Eligibility of other persons.** Notwithstanding

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Minnesota Statutes, section 115.09, subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

A. [Unchanged.]

B. the commissioner has determined that the person was not a responsible person or volunteer under Minnesota Statutes, section 115C.02; and

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Subpart 1. **Reimbursable corrective actions.** Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. to F. [Unchanged.]

Subp. 2. **Documentation of reasonableness.** It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs. Upon request of the board or the board's staff, the applicant shall document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through a competitive bidding procedure;

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The total reimbursement to a responsible person or volunteer for a release shall not exceed ~~75~~ 90 percent of the total eligible costs ~~between $10,000 and $100,000~~ up to $250,000 regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

Subp. 4. to 6. [Unchanged.]

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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

Department of Commerce

Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0010 DEFINITIONS.

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A. is not a responsible person under Minnesota Statutes, section 115C.02;

B. holds legal or equitable title to the property where a release occurred; and

C. incurs reimbursable costs on or after May 22, 1989.

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Subpart 1. **Generally.** Each responsible person who has ~~taken corrective action and~~ incurred reimbursable costs after June 4, 1987, in response to a release, and each volunteer who has incurred reimbursable costs on or after May 22, 1989, in response to a release, 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~~:~~

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Subp. 2a. **Amount of reimbursement.** The board shall reimburse a responsible person or volunteer who is eligible for 90 percent of the portion of the total reimbursable costs less than $250,000.

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with one or more of the following requirements:

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

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

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

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

E. the reimbursement shall be reduced as much as 100 percent for failure by the responsible person or volunteer to comply with items A to D. In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

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Minnesota Statutes, section 115.09, subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

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B. to D. [Unchanged.]

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A. the amount of the person's original reimbursement was less than ~~75~~ 90 percent of the eligible costs ~~between $10,000 and $100,000~~ up to $250,000.

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Subp. 4. to 6. [Unchanged.]

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Office of the Revisor of Statutes

Administrative Rules

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AGENCY: Department of Commerce

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Department of Commerce

Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

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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

Department of Commerce

Proposed Permanent Rules Relating to Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0010 DEFINITIONS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Volunteer.** "Volunteer" means a person who:

A. is not a responsible person under Minnesota Statutes, section 115C.02;

B. holds legal or equitable title to the property where a release occurred; and

C. incurs reimbursable costs on or after May 22, 1989.

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has ~~taken corrective action and~~ incurred reimbursable costs after June 4, 1987, in response to a release, and each volunteer who has incurred reimbursable costs on or after May 22, 1989, in response to a release, 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, or when completed will have, adequately addressed the release ~~and that the release no longer poses a threat to~~ in terms of public health ~~and~~, welfare ~~or~~, and the environment~~;~~.

Subp. 2a. **Amount of reimbursement.** The board shall reimburse a responsible person or volunteer who is eligible for 90 percent of the portion of the total reimbursable costs less than $250,000.

Subp. 2b. **Reduced reimbursement.** The board shall reduce the amount of reimbursement to be made under this part if it finds that the responsible person or volunteer has not complied

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with one or more of the following requirements:

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

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

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

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

E. the reimbursement shall be reduced as much as 100 percent for failure by the responsible person or volunteer to comply with items A to D. In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subp. 3. **Multiple responsible persons.** If there is more than one responsible person or volunteer who incurs ~~eligible corrective-action~~ reimbursable costs for a single release or at a single corrective action site, each responsible person or volunteer 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.~~ Not more than $250,000 may be reimbursed for cost associated with a single release, regardless of the number of persons eligible for reimbursement.

Subp. 4. **Eligibility of other persons.** Notwithstanding

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Minnesota Statutes, section 115.09, subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

A. [Unchanged.]

B. the commissioner has determined that the person was not a responsible person or volunteer under Minnesota Statutes, section 115C.02; and

C. [Unchanged.]

2890.0070 ELIGIBLE COSTS.

Subpart 1. **Reimbursable corrective actions.** Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. to F. [Unchanged.]

Subp. 2. **Documentation of reasonableness.** It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs. Upon request of the board or the board's staff, the applicant shall document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through a competitive bidding procedure;

B. evidence that the cost is substantially equivalent to that charged by comparable person or persons in the same geographical area;

C. evidence that there was only one party reasonably available to perform the necessary work; or

D. evidence that there was only one party reasonably qualified to perform the necessary work.

The board shall reimburse only those costs which it determines to be reasonable.

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

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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. to D. [Unchanged.]

Subp. 2. [Unchanged.]

Subp. 3. **Subsequent applications.** An eligible responsible person or volunteer 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~~ 90 percent of the eligible costs ~~between $10,000 and $100,000~~ up to $250,000.

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 or volunteer for a release shall not exceed ~~75~~ 90 percent of the total eligible costs ~~between $10,000 and $100,000~~ up to $250,000 regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

Subp. 4. to 6. [Unchanged.]

Approved
by Revisor _____

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
Adoption of Rules Relating
to the Petroleum Tank
Release Compensation Fund

DECLARATION OF COUNSEL

I, Carolyn Ham, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules, and the 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.

Dated: November 15, 1989

CAROLYN HAM
Special Assistant
Attorney General

1100 Bremer Tower
Seventh Place & Minnesota Street
St. Paul, Minnesota 55101
Telephone: (612) 296-9412

Subscribed and sworn to before me
on November 15, 1989.

Notary Public

LINDA H. FRIED
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES JULY 28, 1993

.aq4

GrayLine SNAP-A-WAY FORM

Speed Letter

From Patty Nolte

To Carolyn Hum

Subject Petroleum Tank Release Compensation Board

– No. 9 & 10 FOLD

MESSAGE

Here is the Board's resolution as well as the affidavit of nonmailing and the Findings of Fact

Please let me know if these forms are not acceptable; we'll have to start again

Date 12/7/89 Signed Carolyn H

REPLY

– No. 9 FOLD

– No. 10 FOLD

Date Signed

WilsonJones
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Speed Letter® 44-902 GrayLine® SNAP-A-WAY® FORM

Speed Letter®

To Pat Nolte From Carolyn Ham

Subject Petroleum Tank Release Compensation Board

—No 9 & 10 FOLD

MESSAGE

Here are the revisor's Adopted Rules (4 copies) you requested. Please let me know if you need anything else

Date 11/27/89 Signed Carolyn Ham

REPLY

Rec 11-28-89

—No. 9 FOLD

—No. 10 FOLD

Date Signed

WilsonJones
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STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ADDRESS REPLY TO:
1100 BREMER TOWER
SEVENTH PL. AND MINNESOT.
ST. PAUL, MN 55101
TELEPHONE: (612) 296-9412

MINNESOTA ATTORNEY GENERAL'S OFFICE
1100 BREMER TOWER

TO: Patty Nolte

FROM: Carolyn Ham

NUMBER OF PAGES (including this page): 5

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OUR FAX MACHINE: (612) 296-7438
(AUTOMATIC)

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PLEASE CALL: Melody
AT (612) 296-1538

DATE: 12-7-89

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Speed Letter.

To Patty Nolte From Carolyn Ham

Subject Petroleum Tank Release Compensation Bo

—No 9 & 10 FOLD

MESSAGE

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—No. 10 FOLD

Date Signed

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CERTIFICATE OF THE

PETROLEUM TANK RELEASE COMPENSATION BOARD

RESOLUTION ADOPTING THE RULE

I, F. P. Troutwine, do hereby certify that I am a member and the Chairman 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 Petroleum Tank Release Compensation Board, duly and properly called and held on the 4th day of December, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that these rules are approved and adopted, pursuant to authority vested in the Petroleum Tank Release Compensation Board by Minnesota Statutes, chapter 115C. Susan Bergh, the Executive Director of the Petroleum Tank Release Compensation Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 4th day of December, 1989.

F. P. Troutwine

Chairman of the Board

Richard Sranda

Attest by one other Board member

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Susan Bergh, being sworn says:

I hereby certify that no persons or associations have requested, pursuant to Minnesota Statute, Sections 14.14, Subdivision 1a and 14.22 or 14.30, that their names be placed on the Petroleum Tank Release Compensation Board Rulemaking mailing list as of this 5th day of December, 1989, and that therefore no mailing has been made regarding this rulemaking proceeding.

Susan Bergh

SUSAN BERGH
Executive Director of the Petroleum Tank Release Compensation Board

Subscribed and sworn to before me this 5th day of December 1989.

Cynthia L. Claason

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES [illegible]

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 PUBLIC HEARING

Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on August 7, 1989. No persons or associations have requested that their names be placed on a list maintained by the Board, and therefore no mailing has been made. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was published in the State Register 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.

No submissions or comments on the rule were received by the Board. No requests for notice of submission to the attorney general were received by the Board.

Based on the evidence in the record before the Board, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Rules of the Petroleum Tank Release Compensation Board is adopted this 5th day of December, pursuant to the authority vested in the Board by Minnesota Statutes, section 115C.07, Subd. 3.

Susan Bergh
Executive Director