

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: March 25, 1991

TO: ROBIN H. HANSON
Petroleum Tank Release Compensation Board

FROM: CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

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

The above-referenced rule has been approved as to its legality by the Attorney General on March 22, 1991.

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 the 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.

CH:sc
Enclosures
cc: Ken Raschke
William Brown, Chief Judge
MaryAnn Hruby

Department of Commerce

Adopted Permanent Rules Relating to the Petroleum Tank Release Compensation Board

Rules as Adopted

2890.0010 DEFINITIONS.

[For text of subps 1 to 6, see M.R.]

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 23, 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 23, 1989, in response to a release, may apply to the board for partial reimbursement of eligible costs.

[For text of subp 2, see M.R.]

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 or $1,000,000, whichever is less.

[For text of subp 2b, see M.R.]

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 $1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement.

[For text of subp 4, see M.R.]

Approved by Revisor

2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

Subpart 1. **Amount of reduction.** Pursuant to Minnesota Statutes, section 115C.09, subdivision 2, the board shall reduce the amount of reimbursement to be made to a noncompliant responsible person as follows:

A. For failure to comply with state and federal rules and regulations applicable to the tank, the board shall reduce the amount of reimbursement by ten to 25 percent upon consideration of the likely environmental impact of the failure to comply. Notwithstanding the foregoing, the board shall reduce the amount of reimbursement by five percent, with a minimum reduction of $200, for failure to register a tank pursuant to Minnesota Statutes, section ~~115.061~~ 116.48.

B. For failure to report a release as required by Minnesota Statutes, section 115.061, the board shall reduce the amount of reimbursement by ten to 25 percent upon consideration of the likely environmental impact of the failure to report.

C. For failure to cooperate with the agency in responding to the release, the board shall reduce the amount of reimbursement by 25 to 50 percent upon consideration of the likely environmental impact of the failure to cooperate.

D. For failure to exercise due care with regard to operation of the tank, the board shall reduce the amount of reimbursement by 25 to 50 percent upon consideration of the likely environmental impact of the failure to exercise due care.

Subp. 2. **Cumulative application.** The reduction percentages specified in subpart 1 shall be applied on a cumulative basis.

Subp. 3. **Deviations.** The board may increase or decrease the amount of reduction by up to 50 percent of the original amount of reimbursement if warranted upon consideration of the following factors:

A. the public interest;

B. the deterrent effect of the award reduction on other tank owners and operators;

C. the amount of reimbursement reduction recommended

Approved
by Revisor _____

by the commissioner; and

D. whether the noncompliance was knowing or willful.

2890.0070 ELIGIBLE COSTS.

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

[For text of items A to E, see M.R.]

[For text of subp 2, see M.R.]

2890.0090 APPLICATION PROCESS.

[For text of subps 1 and 2, see M.R.]

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 or $1,000,000, whichever is less.

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 or $1,000,000, whichever is less, regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

[For text of subp 4, see M.R.]

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.

Approved
by Revisor _____

I certify that if I have submitted invoices for costs that I have incurred but that remain unpaid, I will pay those invoices within 30 days of receipt of reimbursement from the board. I understand that if I fail to do so, the board may demand return of all or any portion of reimbursement paid to me and that if I fail to comply with the board's demand, that the board may recover the reimbursement, plus administrative and legal expenses in a civil action in district court. I understand that I may also be subject to a civil penalty."

Additionally, if the responsible person is not an individual, the person authorized under subpart 4 shall make the following certification: "I further certify that I am authorized to sign and submit this application on behalf of (entity)."

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, paragraphs (b) and (c). 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.

2890.0110 RIGHT TO APPEAL.

~~If a request is denied, the responsible~~ A person may appeal ~~the decision~~ a determination by the board as a contested case hearing under chapter 14.

Approved
by Revisor _____

APPROVED AS TO LEGALITY

March 22, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene M. Hatch
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 2 0 1991

Joan Anderson Growe
Secretary of State

4:22 P.M.

3/12
CH

RULE REVIEW CHECKLIST

File No. 1804
DATE RECEIVED 3-8-91
REVIEW DATE 3-18-91
DUE DATE 3-22-91
(~~DIS~~)APPROVED 3-22-91
WITHDRAWN _____

Docket No. 05 0009 0142
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 3-12-91
REVISOR (~~DIS~~)APPROVED 3-15-91
FILED W/SEC. OF STATE 3-22-91
RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ Notice to Solicit Outside Information/Opinion (if applicable)
_____ Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule

✓ Board's Authorizing Resolution
August 9, 1991 Date adopted - a bad copy

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
115C.07 subd 3 Statutory Authority
_____ Small Business Statement
_____ Expenditure of public money statement
August 31, 1990 Signature

✓ Statement of Need and Reasonableness (if applicable)
_____ Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
September 27, 1990 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

* Ken said client mailed SONAR to LCARA They don't have the letter but they mailed it

✓ Publication in State Register
October 1, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of ~~comment period~~ (§ 14.26) (rules without hearing)
_____ effective date of statutory ~~authority~~ (§ 14.29) (emergency rules)

✓ Resolution Adopting
December 20, 1990 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Dec 28, 1990 Date

✓ Written Requests, Submissions or Comments

_____ Declaration of Attorney
Ken Las Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable) Missing

Stat Authority 115C.07 subd 3

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

Findings of fact

missing (7) agency received no requests for a hearing or received no submissions or comments on the rule to be submitted

2 people requested notice of submission to AG

Going to send affadavits separately

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION FUND

In the Matter of the Proposed Rules Regarding Petrofund Reimbursement and Appeals

FINDINGS OF FACT CONCLUSIONS & ORDER OF ADOPTION

Notice of the Board's intent to adopt the above-entitled rules without public hearing was published in the State Register on October 1, 1990. On September 27, 1990, the Board sent copies of the Notice by United States mail to all persons on the list maintained by the Board pursuant to Minnesota Statutes, Section 14.14, Subdivision 1, paragraph (a) and 14.22. The statement of need and reasonableness was prepared before the notice of intent was published, and was available to the public.

All persons were given the opportunity to submit comments on the rules for thirty days after notice of proposed rulemaking. Less than twenty-five persons submitted requests for hearing within the thirty day comment period.

Based upon the comments and evidence on the record I find the following:

1. That part 2890.0065, Subpart 1(A) should be amended to: ". . .failure to register a tank pursuant to Minnesota Statutes, section 116.48." This change is not substantial and is necessary to correct a misprint in the proposed rule as published.

2. That part 2890.0110 should be amended to permit an appeal of any determination by the Board, rather than only the denial of a request. Therefore, that provision should read: "RIGHT TO APPEAL. A person may appeal a determination by the board as a contested case hearing under chapter 14." This change is not substantial and serves merely to clarify that the intent of this rule is to provide a broad right to appeal.

3. That the above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Rules Relating to Petrofund Reimbursement and Appeals, as modified above, are adopted this 28th day of December, 1990 pursuant to the authority vested in the Board by Minnesota Statutes, Section 115C.07.

SUSAN BERGH
Executive Director
Petroleum Tank Release Compensation Fund

Dated this 28th day
of December 1990

copy to Ken Kaschke

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION FUND

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Reimbursement and Appeals

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Susan L. Bergh being sworn says:

That on the 8th day of March, 1991, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Amended Notice of Submission to the Attorney General by depositing in the United States mail a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Susan L. Bergh
Executive Director
Petroleum Tank Release Compensation Fund

Subscribed and sworn to before me
this 8th day of March, 1991.

Cynthia L. Clawson

CYNTHIA L. CLAWSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 17, 1994

SENT TO: (3-8-91)
Christopher K. Sandberg
Opperman Heins & Paquin
2200 Washington Square
100 Washington Avenue South
Minneapolis, MN 55401

J. Patrick Wilcox
Severson, Wilcox & Sheldon, P.A.
600 Midway National Bank Building
7300 West 147th Street
Apple Valley, MN 55124

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION FUND

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Reimbursement and Appeals

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
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Susan L. Bergh
Executive Director
Petroleum Tank Release Compensation Fund

Subscribed and sworn to before me
this 8th day of March, 1991.

Cynthia L. Clawson

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

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Reimbursement and Appeal

AMENDED NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, March 8, 1991, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rule which was published in the State Register and made available to the public on October 1, 1990, has been modified. A copy of the rule as modified is enclosed with this notice.

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
525 Park Avenue, 4th Floor
Saint Paul, Minnesota 55103
Telephone Number: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Susan Bergh
Petroleum Tank Release Compensation Fund
Minnesota Department of Commerce
133 East 7th Street
St. Paul, MN 55101
Telephone Number: (612) 297-4815

Susan L. Bergh
Executive Director
Petroleum Tank Release Compensation Fund

Dated: March 8 1991

CERTIFICATE OF THE

Petroleum Tank Release Compensation Board

RESOLUTION ADOPTING THE RULE

I, Phil Troutwine, do hereby certify that I am a member and the chairman of the Petroleum Tank Release Compensation Board ("Petrofund 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 Petrofund Board, duly and properly called and held on the 20th day of December, 1990, 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 the rules relating to Petrofund, Reimbursement and Appeals are approved and adopted pursuant to authority vested in the Petrofund Board by Minnesota Statutes 115C.07. Susan Bergh, the Executive Director of the Petroleum Tank Release Compensation Fund, 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 20th day of December, 1990.

F. R. Troutwine
Chairman of the Board

Richard Swanda
Attest by one other Board member

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 the Petroleum Tank Release Compensation Board

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State of Minnesota intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in *Minnesota Statutes*, 115C.07, subdivision 3.

All persons have 30 days in which to submit comment 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.

Any person may make a written request for a public hearing on the rule 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 public 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 agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Robin H. Hanson
Petroleum Tank Release Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, MN 55101
(612) 297-4017

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

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 rule has been prepared and is available from Robin Hanson upon request.

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 Robin Hanson.

Dated: 31 August 1990

Susan L. Bergh
Executive Director

Rules as Proposed

2890.0010 DEFINITIONS.

[For text of subps 1 to 6, see M.R.]

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~~ 23, 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~~ 23, 1989, in response to a release, may apply to the board for partial reimbursement of eligible costs.

[For text of subp 2, see M.R.]

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~~ or $1,000,000, whichever is less.

[For text of subp 2b, see M.R.]

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~~ $1,000,000 may be reimbursed for ~~cost~~ costs associated with a single release, regardless of the number of persons eligible for reimbursement.

[For text of subp 4, see M.R.]

2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

Subpart 1. **Amount of reduction.** Pursuant to *Minnesota Statutes*, section 115C.09, subdivision 2, the board shall reduce the amount of reimbursement to be made to a noncompliant responsible person as follows:

A. For failure to comply with state and federal rules and regulations applicable to the tank, the board shall reduce the amount of reimbursement by ten to 25 percent upon consideration of the likely environmental impact of the failure to comply. Notwithstanding the foregoing, the board shall reduce the amount of reimbursement by five percent, with a minimum reduction of $200, for failure to register a tank pursuant to *Minnesota Statutes*, section 115.061.

B. For failure to report a release as required by *Minnesota Statutes*, section 115.061, the board shall reduce the amount of reimbursement by ten to 25 percent upon consideration of the likely environmental impact of the failure to report.

C. For failure to cooperate with the agency in responding to the release, the board shall reduce the amount of reimbursement by 25 to 50 percent upon consideration of the likely environmental impact of the failure to cooperate.

D. For failure to exercise due care with regard to operation of the tank, the board shall reduce the amount of reimbursement by 25 to 50 percent upon consideration of the likely environmental impact of the failure to exercise due care.

Subp. 2. **Cumulative application.** The reduction percentages specified in subpart 1 shall be applied on a cumulative basis.

Subp. 3. **Deviations.** The board may increase or decrease the amount of reduction by up to 50 percent of the original amount of reimbursement if warranted upon consideration of the following factors:

A. the public interest;

B. the deterrent effect of the award reduction on other tank owners and operators;

C. the amount of reimbursement reduction recommended by the commissioner; and

D. whether the noncompliance was knowing or willful.

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.

2890.0070 ELIGIBLE COSTS.

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

[For text of items A to E, see M.R.]

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

[For text of subp 2, see M.R.]

2890.0090 APPLICATION PROCESS.

[For text of subps 1 and 2, see M.R.]

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~~ or $1,000,000, whichever is less.

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~~ or $1,000,000, whichever is less, regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

[For text of subp 4, see M.R.]

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 _____.~~"

I certify that if I have submitted invoices for costs that I have incurred but that remain unpaid, I will pay those invoices within 30 days of receipt of reimbursement from the board. I understand that if I fail to do so, the board may demand return of all or any portion of reimbursement paid to me and that if I fail to comply with the board's demand, that the board may recover the reimbursement, plus administrative and legal expenses in a civil action in district court. I understand that I may also be subject to a civil penalty."

Additionally, if the responsible person is not an individual, the person authorized under subpart 4 shall make the following certification: "I further certify that I am authorized to sign and submit this application on behalf of (entity)."

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~~ paragraphs (b)~~, clauses (1) to (5)~~ and (c). 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.

2890.0110 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.~~ If a request is denied, the responsible person may appeal the decision as a contested case hearing under chapter 14.

Board of Electricity

Proposed Repeal of Permanent Rules Relating to Duplicate Rules

Rules as Proposed (all new material)

REPEALER. *Minnesota Rules*, parts 3800.1700, 3800.1800, 3800.1900, 3800.2000, 3800.2100, 3800.2200, 3800.2300, 3800.2400, 3800.2500, and 3800.2600 are repealed.

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Reimbursement and Appeals

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

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Susan L. Bergh, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state of Minnesota rulemaking mailing list is accurate, complete, and current as of this 1st day of October 1990.

That on the 27th day of September, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the United States mail, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Susan L. Bergh
Executive Director

Cynthia L. Clawson

Subscribed and sworn to before me
this 5th day of October, 19 90

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

NORTHWEST PETROLEUM ASSOCIATION

2345 Rice St. - Suite 173
St. Paul, Minnesota 55113
484-7227

STATE OF MINNESOTA

OCT 18 1990

DEPARTMENT OF COMMERCE

OFFICERS

Tony Yocum
President

Steve Gilbertson
Vice President

Bob Novak
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Ed Uhlich
Dennis Krueger

Bob Krogman
Exec. Director

October 16, 1990

Robin Hanson
Petroleum Tank Release Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, MN 55101

RE: PROPOSED PERMANENT RULES RELATING TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD PUBLISHED IN THE STATE REGISTER, VOLUME 15, NUMBER 14.

Robin:

Northwest Petroleum Association is a trade association of 750 member companies who retail petroleum products throughout Minnesota. All are small independent businessmen who own and operate petroleum storage tanks.

We are concerned with the language in 2890.065 subpart 2 of the proposed rules. This subpart requires all reductions for the reasons mentioned in subpart 1 be applied on a cumulative basis. The Petrofund Board does not seem to have discretion on this cumulative application.

Subpart 3 then seems to allow the Board discretion on applying these cumulative applications. They may increase or decrease the amount of reductions by up to 50% of the total reimbursement. This procedure appears confusing and perhaps redundant. On one hand the Board shall reduce reimbursements on a cumulative basis, and then those accumulated reductions can be increased or decreased based on the factors in subpart 3.

In our opinion, subpart 2 should be deleted from the rules, and the Petrofund Board should have the discretion to increase or decrease reimbursements as per subpart 3.

In subpart 3 we would suggest an additional factor for consideration for reimbursement increases or decreases. Given the high cost of clean up, a reduction of 50% could put smaller tank owners in a severe financial crises. In our opinion, one of the factors for consideration under subpart 3 should be "E. The impact on small business."

Under 2890.0110 Right To Appeal. If a responsible party is denied reimbursement they may appeal the decision as a contested case hearing. In our opinion, a responsible person whose reimbursement is reducted should also be able to appeal. There are several reasons for reimbursement reduction while there are fewer reasons for complete denial of a claim.

Thank you for your consideration.

Sincerely,

Bob

Bob Krogman
Executive Director

/ws

FEDERATED INSURANCE
121 East Park Square
P.O. Box 328; Owatonna, MN 55060
Phone: (507) 455-5200
Toll Free: 800-533-0472

October 23, 1990

STATE OF MINNESOTA
OCT 24 1990
DEPARTMENT OF COMMERCE

MS. ROBIN H. HANSON
PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF COMMERCE
133 EAST SEVENTH STREET
ST. PAUL MN 55101

PROPOSED RULE 2890.0110

Dear Ms. Hanson:

This letter constitutes Federated's comment in opposition to Rule 2890.0110 pursuant to Minn. Stat. 14.22.

Rule 2890.0110 addresses an applicant's right to appeal a decision of the Board. Federated is opposed to the wording of the Rule. It provides:

> If a request is denied, the responsible person may appeal the decision as a contested case hearing under Chapter 14.

The word "request" is inconsistent with the language used throughout the Act and the Rules. Generally, the Petrofund Board has used the word "application," as opposed to "request." Further, the previous language of this Rule used the word "decision" as opposed to "request." Since the Board's decisions are generally in the form of resolutions, it would be more appropriate if the Rule incorporated one of those terms.

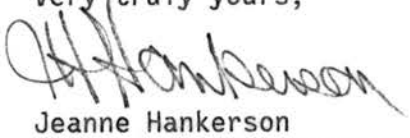
Further, a responsible person might be aggrieved by a decision or resolution of the Board even though his application for reimbursement is partially granted. Under those circumstances, it is not clear from the wording of the Rule whether that responsible person would be entitled to a contested case hearing. Under the proposed Rule, the right to a contested case hearing is only provided where a request is denied. Obviously, this cannot be the intent of the Board.

For these reasons, Federated respectfully requests that the Petrofund Board consider the following proposed change to Rule 2890.0110:

> If a responsible person is aggrieved by a decision of the Board, the responsible person may appeal the decision as a contested case hearing under Chapter 14.

If you have any questions with respect to the above comment, please contact me.

Very truly yours,



Jeanne Hankerson
Environmental Coordinator
Federated Mutual Insurance Company
le

AMERICAN
ENGINEERING
TESTING, INC.

CONSULTANTS
• GEOTECHNICAL
• MATERIALS

October 31, 1990

Ms. Robin H. Hanson
Petroleum Tank Release Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, MN 55101

Dear Ms. Hanson:

Thank you for taking the time to discuss this important issue with me on October 24, 1990. As discussed, the geotechnical/environmental industry, as a whole, is concerned about initiating changes in the rules that currently govern reimbursement of engineering, testing, and other consultant services associated with leaking storage tank remediation. We at American Engineering Testing, Inc. feel the proposed revisions to the rules relating to the Petroleum Tank Release Compensation Board, Chapter 2890.0090 Application Process, Subparagraph 5, concerning certification and payment will serve as this vehicle. If this request is inappropriate with the rules change procedures, we request this correspondence be considered as the first step in obtaining a hearing to present the industry prospective on this unfavorable trend to private industry.

We strongly recommend changing the rules so that a Petrofund applicant must promptly pay all invoices for engineering and consultative services, possibly before submission of a payment request to the Petro Board. This request is made for the following reasons:

1. Of the 38 states having a reimbursement plan for tank remediation, only the State of Minnesota does not require payment of invoices to consultants before applicant reimbursement. Other states have recognized the inequity of having private industry finance tank remediation required by the State.

2. The timeline from start of engineering services to final reimbursement by a petrofund applicant, based on AET's experience, can take up to 1 year. We recognize the State does not desire to pay interest on invoices for engineering and consultative services associated with tank remediation. However, as currently structured, consultants and other subcontractors are being asked to finance the cleanup process.

   Other states, such as Wisconsin, have recognized this inequity and their PECFA fund allows a bank to loan money to a tank remediation applicant and charges a reasonable rate of interest for that loan. This allows the applicant to pay their consultants in a timely fashion. When the PECFA fund reimburses the applicant, it is through the bank. We suggest strongly that the Wisconsin procedure be used as a model for the State of Minnesota.

2102 University Ave. W. • St. Paul, MN 55114 • Phone 612-659-9001 • Fax 612-659-1379

3. As certain members of private industry are unable to carry aged-receivables for a long period of time, the State's current policy forces consultants not to participate in this type of work. We feel this limits competition and further increases costs to the State.

4. Owing to the situations described above, responsible parties are having an increasingly difficult time remediating their tank sites. We feel this situation is contradictory to the State's goal of timely tank remediation.

We share the State's desire for timely and efficient remediation of tank sites. However, we believe adoptions of these rule changes is consistent with these goals, and will ultimately result in additional cost savings.

Very truly yours.

Terry E. Swor, C.P.G.
President

Jeffery K. Voyen
Geotechnical Manager

Donovan K. Stormoe
Senior Vice President

TES/jw

cc: Phil Troutwine
Brian Ettesvold
Kris Eiden
Richard Svanda
Mark Sheehan

AMERICAN ENGINEERING TESTING, INC.

CONSULTANTS
• GEOTECHNICAL
• MATERIALS

October 31, 1990

STATE OF MINNESOTA
NOV 0 1 1990
DEPARTMENT OF COMMERCE

Ms. Robin H. Hanson
Petroleum Tank Release Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, MN 55101

Dear Ms. Hanson:

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We strongly recommend changing the rules so that a Petrofund applicant must promptly pay all invoices for engineering and consultative services, possibly before submission of a payment request to the Petro Board. This request is made for the following reasons:

1. Of the 38 states having a reimbursement plan for tank remediation, only the State of Minnesota does not require payment of invoices to consultants before applicant reimbursement. Other states have recognized the inequity of having private industry finance tank remediation required by the State.

2. The timeline from start of engineering services to final reimbursement by a petrofund applicant, based on AET's experience, can take up to 1 year. We recognize the State does not desire to pay interest on invoices for engineering and consultative services associated with tank remediation. However, as currently structured, consultants and other subcontractors are being asked to finance the cleanup process.

   Other states, such as Wisconsin, have recognized this inequity and their PECFA fund allows a bank to loan money to a tank remediation applicant and charges a reasonable rate of interest for that loan. This allows the applicant to pay their consultants in a timely fashion. When the PECFA fund reimburses the applicant, it is through the bank. We suggest strongly that the Wisconsin procedure be used as a model for the State of Minnesota.

2102 University Ave. W. • St. Paul, MN 55114 • Phone 612-659-9001 • Fax 612-659-1379

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4. Owing to the situations described above, responsible parties are having an increasingly difficult time remediating their tank sites. We feel this situation is contradictory to the State's goal of timely tank remediation.

We share the State's desire for timely and efficient remediation of tank sites. However, we believe adoptions of these rule changes is consistent with these goals, and will ultimately result in additional cost savings.

Very truly yours,

Terry E. Swor, C.P.G.
President

Jeffery K. Voyen
Geotechnical Manager

Donovan K. Stormoe
Senior Vice President

TES/jw

cc: Phil Troutwine
Brian Ettesvold
Kris Eiden
Richard Svanda
Mark Sheehan

twin city testing
corporation

662 CROMWELL AVENUE
ST. PAUL, MN 55114
PHONE 612/645-3601

October 29, 1990

STATE OF MINNESOTA
OCT
DEPARTMENT OF COMMERCE

Ms. Robin H. Hanson
Petroleum Tank Release Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, Minnesota 55101

Dear Ms. Hanson

I wish to express my opposition to the proposed permanent rules relating to the Petroleum Tank Release Compensation Board, Chapter 2890.0090 Application Process, subparagraph 5, concerning related certification and payment. It is my opinion these rules should not be put into law in their present form. As presented, an applicant need not pay all of their related invoices for engineering and construction services before they submit their application for reimbursement. As it stands now, these services are paid after receipt of repayment.

As a geotechnical engineer who could potentially work on such a project, this presents a problem in that after the applicant receives repayment, they can often take their check and not reimburse those of us who worked on this project in the related engineering and construction services.

It is my understanding that Minnesota is the only state of the 38 that has a reimbursement plan that does not require payment of invoices before the applicant is reimbursed. I feel that the State of Minnesota should recognize the importance of requiring a fund recipient to pay his bills before receiving a grant from the Petrofund.

I further understand the State of Minnesota has taken the stand that it will not pay interest on the invoices for cleanup engineering and contracting services. As it may take up to one year to be reimbursed, we are being asked to finance the cleanup process. I suggest that you review the process being used by the State of Wisconsin, in which a bank is allowed to loan money and charge a reasonable rate of interest, when the PECFA Fund pays for the cleanup process. The reimbursement check is then issued directly to the bank holding the loan. The current approach being used by the State of Minnesota forces many consultants to make a difficult decision whether to become involved in this type of work, knowing that they will not be paid for several months. Ultimately, this could reduce the amount of competition, and result in even higher prices.

AS A MUTUAL PROTECTION TO CLIENTS, THE PUBLIC AND OURSELVES, ALL TWIN CITY TESTING CORPORATION REPORTS ARE SUBMITTED AS THE CONFIDENTIAL PROPERTY OF CLIENTS AND AUTHORIZATION FOR PUBLICATION OF STATEMENTS, CONCLUSIONS OR EXTRACTIONS FROM OR REGARDING OUR REPORTS IS RESERVED PENDING OUR PRIOR WRITTEN APPROVAL.

I would appreciate your consideration regarding this matter. If necessary, I suggest that a hearing be held on this subject so others can also express their opinions and present other suggestions.

Sincerely,

Twin City Testing Corporation

Michael P. McCarthy, P.E.
Principal Geotechnical Engineer

AS A MUTUAL PROTECTION TO CLIENTS, THE PUBLIC AND OURSELVES, ALL TWIN CITY TESTING CORPORATION REPORTS ARE SUBMITTED AS THE CONFIDENTIAL PROPERTY OF CLIENTS AND AUTHORIZATION FOR PUBLICATION OF STATEMENTS, CONCLUSIONS OR EXTRACTIONS FROM OR REGARDING OUR REPORTS IS RESERVED PENDING OUR PRIOR WRITTEN APPROVAL

Delta
Environmental
Consultants, Inc.

900 Long Lake Road, Suite 300
St. Paul, MN 55112
612/636-0220
FAX: 612/636-6514

October 31, 1990

Ms. Robin H. Hanson
PETROLEUM TANK RELEASE COMPENSATION BOARD
Department of Commerce
133 East 7th Street
St. Paul, MN 55101

Dear Ms. Hanson:

We recommend that the rules relating to the Petroleum Tank Release Compensation Board, Chapter 2890.0090 Application Process be changed so that a Petrofund applicant must pay all invoices for engineering and consultative services before submission of a payment request to the Petro Board. This request is made for the following reasons:

1. Thirty-eight states have a reimbursement plan for tank remediation, but only the State of Minnesota does not require payment of invoices to consultants before applicant reimbursement. Other states have recognized the inequity of having private industry finance tank remediation required by the State.

2. The time from start of engineering services to final reimbursement by a Petrofund applicant, based on experience, can take up to one year. We recognize the State does not desire to pay interest on invoices for engineering and consultative services associated with tank remediation. However, as currently structured, consultants and other subcontractors are being asked to finance the clean-up process.

   Other states, such as Wisconsin, have recognized this inequity and their PECFA fund allows a bank to loan money to a tank remediation applicant and charges a reasonable rate of interest for that loan. This allows the applicant to pay their consultants in a timely fashion. When the PECFA fund reimburses the applicant, it is through the bank. We recommend that the Wisconsin procedure be used as a model for the State of Minnesota.

3. As certain members of private industry are unable to carry aged-receivables for a long period of time, the State's current policy forces consultants not to participate in this type of work. We believe this limits competition and further increases costs to the State.

4. Owing to the situations described above, responsible parties are having an increasingly difficult time remediating their tank sites. We believe this situation is contradictory to the State's goal of timely tank remediation.

We share the State's desire for timely and efficient remediation of tank sites. However, we believe adoption of these rule changes is consistent with these goals, and will ultimately result in additional cost savings.

Very truly yours,

DELTA ENVIRONMENTAL CONSULTANTS, INC.

J. R. Toren
General Counsel

JRT/tls/057.90

6800 South TH-169, P.O. Box 39108
Minneapolis, Minnesota 55439
Phone 612/941-5600 Fax: 612/942-4844

BRAUN ENVIRONMENTAL LABORATORIES

Quality Services Since 195

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STATE OF MINNESOTA

OCT 29 1990

DEPARTMENT OF COMMERCE

October 29, 1990

Ms. Robin Hanson
Petroleum Tank Release Compensation Board
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Dear Ms. Hanson:

The purpose of this letter is to comment on the proposed permanent rules relating to the Petroleum Tank Release Compensation Board application process, Minnesota Rules chapter 2890.0090 subparagraph 5.

As a very active participant in the tank release remediation process, Braun believes that the Petroleum Tank Release Clean-Up Act has been extremely successful in addressing environmental problems. While we applaud its success, the program has not been without a number of administrative problems. One of the most serious of these problems involves the large debt which is usually incurred by the responsible parties before reimbursement is made. Many of these responsible parties are not financially able to bear the cost of these investigations prior to reimbursement. Lending institutions have been reluctant to issue loans to cover these costs. As a result, environmental consulting firms are frequently asked to "finance" the responsible party's investigation until reimbursement is made. Frequently this problem becomes apparent only after the consulting company has incurred significant costs; in these cases, the consulting firms may be compelled to continue "financing" the clean-up in order to protect the "investment" that has already been made.

Agreeing to "finance" clean-ups poses a high risk to the consulting firm in the form of potential non-payment and stressed cash flow. Due to these risks the consulting firms must consider refusing work for those who cannot make timely payment prior to reimbursement. This situation may have the effect of denying the benefits of the services of experienced and cost effective consulting to those which need it. This may lead to increased cost to the responsible party because of little competition and ultimately to the Petrofund.

The proposed rule change takes steps to ensure that environmental consultants and other contractors receive payment for reimbursement. It is a step toward assignment of the reimbursement to the contractor. We have supported assignment of reimbursements largely because assignment would eliminate approximately 90% of our risk of non-payment. We are also in favor of the proposed rule because of the potential protection it provides us. In Braun's opinion,

however, this change does not adequately address the real issue of how equitably to assist, expedite, and assure the clean-up while minimizing financial hardship.

In Braun's opinion some provision must be made to assist hardship cases. This provision could take the form of immediate eligibility for reimbursement, provided satisfactory progress is being made. Another option could be a loan program by the fund in which the principal would be forgiven upon adequate completion of the investigation and/or clean-up. Other options may exist. Until some action such as additional rule change or legislative change is taken to relieve the financial stress caused by the up front costs of remedial investigation and corrective action design, attempts to deal with the issue will provide only symptomatic relief.

Sincerely yours,

BRAUN ENVIRONMENTAL LABORATORIES, INC.

Mark A. Collins
Senior Supervisor, Remedial Services Section

Richard M. Johnston
Manager, Technical Investigations Department

cc: David Oxley
MN Consulting Engineers Council

MAC/RMJ:jas2\RULES.OCT

BRAUN

LEGGETTE, BRASHEARS & GRAHAM, INC.

PROFESSIONAL GROUND-WATER CONSULTANTS

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LONNIE D. NORMAN
JEFFREY B. LENNOX
KEVIN J. MILLER
FRANK J. GETCHELL

October 30, 1990

STATE OF MINNESOTA

OCT 31 1990

DEPARTMENT OF COMMERCE

Ms. Robin H. Hanson
Petroleum Tank Release
Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, Minnesota 55101

Dear Ms. Hanson:

We wish to comment on the proposed permanent rules relating to the Petroleum Tank Release Compensation Board, Chapter 2890.0090 Application Process, subparagraph 5, concerning certification and payment.

We strongly recommend changing the rules, so that an applicant must pay all of his invoices for consulting and construction services before he submits his application and receives reimbursement. We request this change for several reasons.

1. The State of Minnesota is the only state of 38 that has a reimbursement plan that does not require payment of invoices before reimbursement. It is apparent that every other state recognizes the precedence of requiring a fund recipient to pay his bills before receiving a grant from the Petrofund.

2. The State has taken the position that it will not pay interest on the invoices for cleanup engineering and contracting services. From the start of the job to reimbursement, which can take a year, consultants and contractors are being asked to

underwrite (i.e., finance) the cleanup process. These outside firms did not cause the problem: they help clean it up, and they cannot afford to "loan money." We suggest that you review Wisconsin's PECFA Fund as guidance. In Wisconsin, a bank is allowed to loan the money and charge a reasonable rate of interest, and when the PECFA Fund pays for the cleanup, the check is paid directly to the bank.

3. The State's current approach forces many consultants to make the decision not to participate in this type of work, thus limiting competition and further driving up the prices.

4. We have been told that responsible parties are having an increasingly difficult time getting the cleanups done, because banks are reluctant or refuse to loan money for a cleanup. This situation is not conducive to your goal of having the sites remediated.

We believe that by making this change, the State will obtain cleanups in an efficient manner, with better response, and will achieve cost savings in the reimbursement program.

Very truly yours,

LEGGETTE, BRASHEARS & GRAHAM, INC.

J. Kevin Powers
Senior Associate

JKP:kw
cc: Messrs. Phil Troutwine
Brian Ettesvold
Richard Svanda
Mark Sheehan
Ms. Kris Eiden
lbgen\petro

SEVERSON, WILCOX & SHELDON, P.A.

A PROFESSIONAL ASSOCIATION
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LOREN M. SOLFEST
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ANNETTE M. MARGARIT
DANIEL M. SHERIDAN

OF COUNSEL
JOHN E. VUKELICH

October 2, 1990

STATE OF MINNESOTA
OCT 04 1990
DEPARTMENT OF COMMERCE

Ms. Robin H. Hanson
Petroleum Tank Release
Compensation Board
Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101

Re: Proposed Petro Fund Rules, Sections 2890.0010, 2890.0065, 2890.0090 and 2890.0110 (as contained at 15 S.R. 823, 824)

Dear Ms. Hanson:

Pursuant to the applicable provisions of the Minnesota APA, would you please advise me when the above-referenced proposed Rules are submitted to the Attorney General's Office and send me a copy of the final adopted Rules.

Thank you for you assistance and cooperation in this matter.

Very truly yours,

SEVERSON, WILCOX & SHELDON, P.A.

Pat Wilcox

J. Patrick Wilcox
JPW:tat

OPPERMAN HEINS & PAQUIN
ATTORNEYS AT LAW
2200 WASHINGTON SQUARE
100 WASHINGTON AVENUE SOUTH
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LINDA L. HOLSTEIN
W. JOSEPH BRUCKNER

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OF COUNSEL
JONATHAN W. CUNEO*
JAMES J. SCHWEITZER*

*ADMITTED IN D.C. ONLY

December 26, 1990

State of Minnesota
DEC 27 1990
Dept. of Commerce

Robin Hanson
Petroleum Tank Release Compensation Board
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101

Re: Proposed rules

Dear Ms. Hanson:

On October 8, 1990, the Petroleum Tank Release Compensation Board published proposed rules at 15 S.R. 878. I hereby request a copy of the Statement of Need and Reasonableness prepared by the Board in support of those rules.

I further request that I be given notice of the submission of the rules and supporting materials to the Attorney General, and that I receive a copy of the adopted rules.

Sincerely,

OPPERMAN HEINS & PAQUIN

Christopher K. Sandberg

Department of Commerce

Proposed Permanent Rules Relating to the Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0010 DEFINITIONS.

[For text of subps 1 to 6, see M.R.]

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~~ 23, 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~~ 23, 1989, in response to a release, may apply to the board for partial reimbursement of eligible costs.

[For text of subp 2, see M.R.]

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~~ or $1,000,000, whichever is less.

[For text of subp 2b, see M.R.]

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~~ $1,000,000 may be reimbursed for ~~cost~~ costs associated with a single release, regardless of the number of persons eligible for reimbursement.

[For text of subp 4, see M.R.]

Approved by Revisor

2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

Subpart 1. **Amount of reduction.** Pursuant to Minnesota Statutes, section 115C.09, subdivision 2, the board shall reduce the amount of reimbursement to be made to a noncompliant responsible person as follows:

A. For failure to comply with state and federal rules and regulations applicable to the tank, the board shall reduce the amount of reimbursement by ten to 25 percent upon consideration of the likely environmental impact of the failure to comply. Notwithstanding the foregoing, the board shall reduce the amount of reimbursement by five percent, with a minimum reduction of $200, for failure to register a tank pursuant to Minnesota Statutes, section 115.061.

B. For failure to report a release as required by Minnesota Statutes, section 115.061, the board shall reduce the amount of reimbursement by ten to 25 percent upon consideration of the likely environmental impact of the failure to report.

C. For failure to cooperate with the agency in responding to the release, the board shall reduce the amount of reimbursement by 25 to 50 percent upon consideration of the likely environmental impact of the failure to cooperate.

D. For failure to exercise due care with regard to operation of the tank, the board shall reduce the amount of reimbursement by 25 to 50 percent upon consideration of the likely environmental impact of the failure to exercise due care.

Subp. 2. Cumulative application. The reduction percentages specified in subpart 1 shall be applied on a cumulative basis.

Subp. 3. Deviations. The board may increase or decrease the amount of reduction by up to 50 percent of the original amount of reimbursement if warranted upon consideration of the following factors:

A. the public interest;

B. the deterrent effect of the award reduction on other tank owners and operators;

Approved by Revisor _____

C. the amount of reimbursement reduction recommended by the commissioner; and

D. whether the noncompliance was knowing or willful.

2890.0070 ELIGIBLE COSTS.

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

[For text of items A to E, see M.R.]

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

[For text of subp 2, see M.R.]

2890.0090 APPLICATION PROCESS.

[For text of subps 1 and 2, see M.R.]

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~~ or $1,000,000, whichever is less.

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~~ or $1,000,000, whichever is less, regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

[For text of subp 4, see M.R.]

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

Approved by Revisor _____

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 _____.~~"

I certify that if I have submitted invoices for costs that I have incurred but that remain unpaid, I will pay those invoices within 30 days of receipt of reimbursement from the board. I understand that if I fail to do so, the board may demand return of all or any portion of reimbursement paid to me and that if I fail to comply with the board's demand, that the board may recover the reimbursement, plus administrative and legal expenses in a civil action in district court. I understand that I may also be subject to a civil penalty."

Additionally, if the responsible person is not an individual, the person authorized under subpart 4 shall make the following certification: "I further certify that I am authorized to sign and submit this application on behalf of (entity)."

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~~ paragraphs (b)~~, clauses (1) to (5)~~ and (c). 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.

2890.0110 RIGHT TO APPEAL.

~~A decision of the board is to be considered a final order,~~

Approved by Revisor _____

~~decision, or judgment for purposes of Rule 103.3 of the Rules of Civil Appellate Procedure.~~ If a request is denied, the responsible person may appeal the decision as a contested case hearing under chapter 14.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to the 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

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Reimbursement and Appeals

NOTICE OF INTENT ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State of Minnesota intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes, 115C.07, subdivision 3.

(2) All persons have 30 days in which to submit comment 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.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) 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. (6) Any person requesting a public 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Robin H. Hanson
Petroleum Tank Release Compensation Board
Department of Commerce
133 East 7th Street
St. Paul, MN 55101
(612)297-4017

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(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 rule has been prepared and is available from Robin Hanson upon request.

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

August 31, 1990
Date

Susan L. Bergh
Executive Director

CERTIFICATE OF THE
PETROLEUM TANK RELEASE COMPENSATION BOARD
AUTHORIZING RESOLUTION

I, Phil 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 the resolution adopted at a meeting of the Petroleum Tank Release Compensation Board duly and properly called and held on the 9th day of August 1990, 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 Susan Bergh, the executive director of the Petroleum Tank Release Compensation Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt rules without a public hearing governing Reimbursement and Appeals 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 _____ day of August, 1990.

F. P. Troutwine

Chairman of the Board

8/15/90 Kathleen L. Eule

Board Member

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : March 8, 1991

TO : **PATRICIA NOLTE**
Rule Review Section
500 Park

FROM : **KENNETH E. RASCHKE, JR.**
Assistant Attorney General

PHONE : 297-1141

SUBJECT : **Rules of the Petroleum Tank Release Compensation Board Governing Reimbursement and Appeals**

Enclosed please find copies of the following documents for review pursuant to Minn. Stat. § 14.26 in connection with the above-referenced rule.

A. Resolution of delegation of authority.

B. Copy of the proposed rules with a certificate of approval as to form by the revisor of statutes.

C. Notice of intent to adopt a rule without a public hearing.

D. Statement of need and reasonableness.

E. Affidavit of mailing the notice of intent to adopt a rule without a public hearing.

F. Copy of notice as published in the State Register.

G. Four copies of the rule as adopted.

H. Certificate of the resolution adopting the rule.

I. Findings of fact, conclusion, and order of adoption.

J. Written requests, submissions or comments on the rule.

K. Declaration of counsel.

As noted in the Declaration of Counsel, the notice of submission of the rule to the Attorney General and affidavit of mailing of that notice are not included but will be submitted separately. It appears to me impossible to submit to the Attorney General

simultaneously with the rule and supporting documents a truthful signed statement that the rule has been submitted.

KER:gpp

Enclosures

In the Matter of the Adoption
of the Rules of the Petroleum Tank
Release Compensation Board Governing
Reimbursement and Appeals.

DECLARATION OF COUNSEL

I, Kenneth E. Raschke Jr., 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. An amended notice of submission of the rule to the Attorney General and affidavit of mailing of that notice are not included at the present time inasmuch as at the time of my review the rule has not, in fact, been submitted. Those documents will be submitted immediately following submission of the rule.

KENNETH E. RASCHKE, JR.
Assistant Attorney General

Dated: March 8, 1991.

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** (hereinafter the "**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. Minn. Stat. § 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 Minn. Rule 2890 by incorporating amendments made to Chapter 115C by the 1990 Minnesota Legislature.

Further Minn. Stat. § 115C.09, subd. 2 direct the Board to reduce reimbursement of responsible persons for noncompliance. The rules as proposed set forth the criteria for determining the amount of reduction to be applied based upon the statutory mandate.

FACTS ESTABLISHING NEED AND REASONABLENESS

Part 2890.0010 Definitions.

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 23, 1989. The rule is amended to reflect the proper effective date of May 23, 1989 rather than May 22, 1989.

Part 2890.0060 Reimbursement of Costs.

Subpart 2a and Subpart 3. Amount of Reimbursement.

In 1990, Minn. Stat. § 115C.09 was amended to permit reimbursement up to $1 million. These sections only incorporate the statutory language as amended.

Part 2890.0065 Reduction of Reimbursement Amount

Subpart 1. Amount of Reduction.

Pursuant to Minn. Stat. § 115C.09, subd. 2, the Board is directed to reduce the amount of reimbursement to a noncompliant responsible person. In order to insure uniformity and systematic application of reductions, the Board has established a percentage range of reduction that the Board will apply for a failure to comply with each of the factors listed in Minn. Stat. § 115C.09, subd. 2(c)(1-4).

Subpart 2. Cumulative Application.

This section is added only to make it clear that reductions under Subpt. 1, (A-D) are to be added together to arrive at a final total reduction.

Subpart 3. Deviations.

Minn. Stat. § 115C.09, subd. 2(d)(1-4) directs the Board to consider certain factors in determining the amount of the

reimbursement reduction. This section permits the Board to deviate from the reductions set forth in subpt. 1 if consideration of the statutory factors warrants it. This section permits the Board some flexibility to take into account the individual facts of each application as they relate to the statutory factors.

Part 2890.0090. Application Process.

Subpart 5. Certification.

The Board has been notified that in certain cases responsible persons who have received reimbursement from the Petroleum Tank Release Compensation Fund ("Fund") have failed to pay contractors or consultants for outstanding cleanup costs. The Board feels this practice subverts the purpose of the Act and so proposes that responsible parties must certify that outstanding invoices will be paid. This added certification language makes it clear to responsible parties that they are required to pay all outstanding invoices within thirty (30) days of receipt of their reimbursement from the Fund. The Board's authority to recover payment under Minn. Stat. § 115C.09, subd. 5 is also outlined in this section.

Subpart 6. Report of the Commissioner.

In 1989, Minn. Stat. § 115C., subd. 2(b) was amended and renumbered. This section only incorporates the statutory renumbering.

Part 2890.0110. Right of Appeal.

The Act does not state the specific procedural basis for an appeal of the decision of the Board. The Board proposes this change because an adequate factual record for an appeal to the Court of Appeals is not presently created when the Board makes a decision on a particular application. By providing for a contested case hearing, both the responsible party and the Board's staff will have an opportunity to present factual evidence to support their respective positions. This will enable both the Board and, ultimately the Court of Appeals, to review the Board's initial decision with full presentation of the facts.

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. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered.

The EPA requires that certain tank owners show financial responsibility of $1 million. Many small businesses are unable to satisfy that requirement. The statute now provides assistance in meeting the financial responsibility requirement.

The Board has the authority to make reimbursement reductions for non-compliant responsible persons. In order to insure uniformity, a schedule for making reductions has been proposed. The purpose of these reductions is to encourage compliance with state pollution control laws. If the Board were

to adopt a lower schedule of reimbursement reductions for small businesses, it would undermine these laws.

The certification section of the rules makes it clear that any outstanding invoices are to be paid within thirty (30) days of receipt of payment from the Fund. Because the responsible person is not expected to pay until he or she has received the money from the Fund, this requirement should not impose any hardship on small businesses. In fact, it may make it easier for small businesses to get credit because banks, contractors, consultants, etc. will have more assurance that they will be paid.

The proposed change in the appeal process does not impact compliance standards or reporting requirements.

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