

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Missed Deadline by 4 month from effective date MJM 11/14/91

RULE REVIEW CHECKLIST

File No. 1867
DATE RECEIVED 11/13/91
REVIEW DATE 11/25/91
DUE DATE 11/25/91
~~(DIS)~~APPROVED NOV 25 91
WITHDRAWN

Docket No. 05,0009,0142
ADOPTED W/O HEARING
EMERGENCY RULE ✓
TO REVISOR ON 11/14/91
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE 11/26/91
RETURNED TO AGENCY 11/26/91

✓ 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 22, 1991 Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- MN Laws 1991 Statutory Authority Chapter 175, section 2
- No Statement Small Business Statement
- Expenditure of public money statement
- August 30, 1991 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- September 9, 1991 Dated 30/25 days before adoption
- ✓ Notice attached indicates it is attached
- Copy of rule or summary attached

Publication in State Register
- September 9, 1991 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)
- missed deadline effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
- October 29, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- Oct 29, 1991 Date

✓ Written Requests, Submissions or Comments

Declaration of Attorney
- Ken Raschke Name of SAAG representing agency

✓ Notice of Submission to Attorney General (if applicable)

✓ Affidavit of Mailing Notice to Attorney General (if applicable)

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: November 26, 1991

TO: DENNIS J. POPPENHAGEN
Executive Director
Petroleum Tank Release Compensaton Board
133 East Seventh Street
St. Paul

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

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

The above-referenced rule has been approved as to its legality by the Attorney General on November 25, 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.

MJM:sc
Enclosures
cc: Kenneth E. Raschke, Jr.
William Brown, Chief Judge
MaryAnn Hruby

Department of Commerce

Adopted Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Adopted

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Documentation of reasonableness; bidding required.** The applicant shall prove the reasonableness of all incurred eligible costs. Effective for any contract entered into or commenced on or after December 1, 1991, whenever feasible the applicant or an agent of the applicant must solicit, privately or publicly, a minimum of two written competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, unit costs in excess of those in the ~~proposal~~ bid of the lowest responsible bidder ~~shall~~ may be considered prima facie unreasonable by the Petroleum Tank Release Compensation Board.

The applicant must 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 competitive bid procedure; the evidence shall include copies of all bids received or other documentation of all bids received; ~~or~~

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed~~.~~;

C. evidence that the necessary work was required by

Approved by Revisor PMM

an emergency, including the abatement or cleanup of free product, for which there was not sufficient time to solicit competitive bids; or

D. evidence that the lowest bidder for professional work or other work was not qualified to perform the necessary services.

Any person, firm, corporation, or governmental unit who is a responsible person as defined in Minnesota Statutes, chapter 115C, may apply to the Petroleum Tank Release Compensation Board for an annual exemption to this part by providing documentation of standing contracts that were entered into via a bidding and evaluation process.

The board shall reimburse or pay only those costs 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. a description of the site of the release;

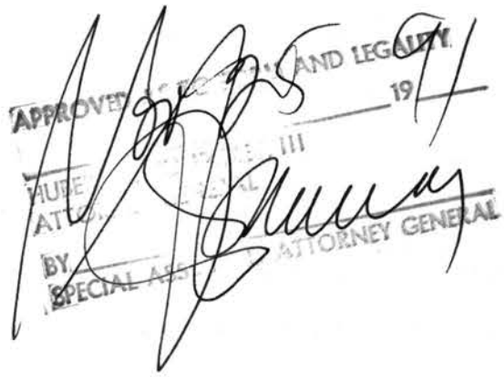
C. a copy of the corrective action plan and the commissioner's approval of the plan;

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

E. documentation of the solicitation of competitive bids or the unfeasibility of soliciting competitive bids as required by part 2890.0060, subpart 5.

[For text of subps 2 to 6, see M.R.]

Approved by Revisor _____



STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV 26 1991

Joan Anderson Growe
Secretary of State

9:45 AM

P.R.B.

ent unless the vehicle: (1) has been inspected by a state trooper or other n authorized to conduct inspections under section 169.781, subdivision 3, raph (a), who is an employee of the department of public safety or trans- tion, and the person inspecting the vehicle has determined that the vehicle afely be operated; or (2) a waiver has been granted under subdivision 2.

ec. 8. Minnesota Statutes 1990, section 171.02, is amended by adding a vision to read:

ubd. 2a. **HAZARDOUS MATERIALS; EXCEPTION.** Notwithstanding vision 2, a hazardous materials endorsement is not required to operate a vehicle with a gross weight of not more than 26,000 pounds, carrying in nks a total of not more than 200 gallons of petroleum products or liquid er or pesticide.

c. 9. Laws 1990, chapter 563, section 11, is amended to read:

c. 11. **EFFECTIVE DATE.**

Section 1, subdivisions 1 and 3 to 8, and sections 2 to 10 are effective 1990.

Except as provided in paragraph (c), section 1, subdivision 2, is ~~effective~~ spended until July 1, 1991.

Section 1, subdivision 2, is effective April 1, 1992, for any registered ck with a registered gross weight of not more than 57,000 pounds while erated within a radius of 75 miles of the home post office of the owner.

10. **EFFECTIVE DATE.**

ions 1 to 8 are effective the day following final enactment. Section 9 is retroactively to April 1, 1991.

ented to the governor May 21, 1991

ed by the governor May 24, 1991, 4:40 p.m.

CHAPTER 175—H.F.No. 744

relating to the environment; petrofund; amending Minnesota Statutes 1990, sec- 07, subdivision 3; 115C.09, subdivisions 1, 2, 3, 3b, 5, and by adding subdivisions; oding for new law in Minnesota Statutes, chapter 103I.

ACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

n 1. **[103I.222] USE OF POLYVINYL CHLORIDE.**

The department shall adopt emergency rules within six months, and permanent rules within one year, of the effective date of this section designed to allow use of flush threaded polyvinyl chloride casing and screens used for leak detection and monitoring wells at underground or aboveground petroleum storage tank sites.

Sec. 2. Minnesota Statutes 1990, section 115C.07, subdivision 3, is amended to read:

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.

(c) The board shall adopt emergency rules within four months of the effective date of this section, and permanent rules within one year of the effective date of this section, designed to ensure that costs submitted to the board for reimbursement are reasonable. The rules shall include a requirement that persons taking corrective action solicit competitive bids, based on unit service costs, except in circumstances where the board determines that such solicitation is not feasible.

(d) The board may adopt rules requiring certification of environmental consultants.

Sec. 3. Minnesota Statutes 1990, section 115C.09, subdivision 1, is amended to read:

Subdivision 1. **REIMBURSABLE COSTS.** (a) The board shall provide partial reimbursement to eligible responsible persons for reimbursable costs incurred after June 4, 1987.

(b) The following costs are reimbursable for purposes of this section:

(1) corrective action costs incurred by the responsible person, except the costs related to the physical removal of a tank; ~~and~~

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury or property damage caused by a release if the responsible person's liability for the costs has been established by a court order or a consent decree; and

(3) up to 180 days worth of interest costs, incurred after the effective date of this section, associated with the financing of corrective action. Interest costs are not eligible for reimbursement to the extent they exceed two percentage points above the adjusted prime rate charged by banks, as defined in section 270.75, subdivision 5, at the time the financing contract was executed.

(b) If a reimbursement under this subdivision is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the ~~responsible person~~ applicant. If the board's demand for return of the reimbursement is based on willful actions of the ~~responsible person~~ applicant, the ~~responsible person~~ applicant shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

Sec. 8. Minnesota Statutes 1990, section 115C.09, is amended by adding a subdivision to read:

Subd. 6. **CONSULTANT AND CONTRACTOR FRAUD.** If a person, with intent to defraud, issues an invoice or other demand for payment with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to the board for reimbursement:

(1) that person shall be considered to have presented a false claim to a public body under section 609.465; and

(2) the board may demand that the person return any money received as a result of a reimbursement made on the basis of the false invoice or other demand for payment. If the money is not returned upon demand by the board, the board may recover the money, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the person. The person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the money received by the person on the basis of the false invoice or other demand for payment.

Sec. 9. Minnesota Statutes 1990, section 115C.09, is amended by adding a subdivision to read:

Subd. 7. **DUTY TO PROVIDE INFORMATION.** A person who submits an application to the board for reimbursement, or who has issued invoices or other demands for payment which are the basis of an application, shall furnish to the board copies of any financial records which the board requests and which are relevant to determining the validity of the costs listed in the application, or shall make the financial records reasonably available to the board for inspection and auditing.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective on the day following final enactment, except for section 4, subdivision 2, paragraph (b), which is effective on October 1, 1991.

Presented to the governor May 21, 1991

Signed by the governor May 24, 1991, 5:40 p.m.

CHAPTER 176—

An act relating to state lands; prohibiting sa ment of natural resources to any employee of th in Minnesota Statutes, chapter 92.

BE IT ENACTED BY THE LEGISLATUR

Section 1. **[92.71] DIRECT SALE PROHIBITED.**

An employee of the department of na chasing land owned or formerly owned department for six months following the organization or person not an employee

Presented to the governor May 21, 1

Signed by the governor May 24, 199

CHAPTER 177-

An act relating to local government; per White to establish a joint east range economic

BE IT ENACTED BY THE LEGISLATU

Section 1. **CITY OF BIWABIK, TC OF ECONOMIC DEVELOPMENT AU**

A public body corporate and politic nomic development authority, is creat and duties of an economic developme sections 469.091 to 469.108, except as purposes of sections 1 to 4, "authorit development authority. For the purpos tions 469.091 to 469.108, to the autho White each have all of the powers an board and the Biwabik city council eac city council, except for bond issuance vided in this act. The authority may e development authority, including those 469.101.

Sec. 2. **AREA OF OPERATION.**

The area of operation of the autho

Stat. Authority
Attached authority

End of comment period Oct 4, 1991

Changes in Findings of Fact - @ 2890.0060
subd 5 - changing shall to may
when do they consider prima facie
unreasonable

Change in 2890.0060 subd 5 C and D
add two exemptions - C Emergency should
have been better defined

There are almost as many changes as
there were in the original rules. I can see why
they made so many changes based on the comments.

Findings of Fact
missing 2010.0400 @ J. (4) - submission
to AG submission - since they did I
guess they aren't ~~seeing~~ required to state
if they have - only ~~they~~ that they haven't
received notice of submission

Important effective period May 6 days
June
July
August
September

must adopt emergency rules within 4
months of effective period - did not
adopt rules within 4 months

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

November 12, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

525 PARK STREET
SUITE 200
ST. PAUL, MN 55103
TELEPHONE: (612) 297-1050
FACSIMILE: (612) 297-1235

rec'd 11-13-91

Patricia Nolte
Legal Assistant
Public Finance Division
Attorney General's Office
525 Park Street, Suite 500
St. Paul, MN 55103

Re: In the Matter of Proposed Emergency Rules Governing Reimbursement of Costs, Minn. Rules Parts 2890.0060; 2890.0090

Dear Ms. Nolte:

On October 29, 1991, the Petroleum Tank Release Compensation Board adopted the above-captioned emergency rules governing reimbursement of costs. Enclosed for your review are the following:

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 emergency rules.

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

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

F. Four copies of the rule as adopted.

G. Certificate of the resolution adopting the rule.

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

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

J. Declaration of counsel.

Equal Opportunity Employer

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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.

Very truly yours,

KENNETH E. RASCHKE, JR.
Assistant Attorney General

(612) 297-1141

KER/rlb
Enclosures

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 of Costs Minn. Rules Part 2890.00600, Subp. 5; Part 2890.0090, Subp. 1E.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULES

(1) The above-entitled matter came on for decision before the Petroleum Tank Release Compensation Board ("Board") on the 29th day of October, 1991. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of emergency rules, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

(1) 1. Notice of the Board's intent to adopt the above-entitled emergency rules without a public hearing was published in the State Register on September 9, 1991, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§ 14.30 (1990) on September 9, 1990.

(2) 2. All persons were given the opportunity to submit comments on the rules for 25 days after notice of proposed rulemaking. The 25 day comment period, as set out in the notice, expired on October 4, 1991.

3. During the comment period the Board received 17 written comments.

(3) 4. The Agency finds that certain modifications to the proposed rules are justified by the record in this proceeding, as follows:

A. In the first paragraph of Part 2890.0060, Subp. 5 language is added setting forth December 1, 1991 as the date after which the bidding requirements will be in effect. This provision is needed and reasonable to avoid confusion concerning contracts entered prior to the effective date of the rule.

B. In the same paragraph, language is added to clarify that two bids publicly or privately solicited by the applicant or agent will suffice to satisfy the bidding requirements.

C. In the same paragraph, the provision that the Board "shall" consider costs in excess of the lowest bid to be unreasonable is modified to permit discretion in the Board to judge each situation on its merits. It is necessary and reasonable for the Board to exercise its judgment in such matters.

D. Other modifications are made in the same paragraph which clarify the language in form rather than substance.

E. Paragraph A of the same subpart is modified to permit submission of documents other than the bids themselves. It is necessary and reasonable to provide a means for substantiating bids in the event the original bids are not available.

F. Paragraph C of the same subpart provides a necessary and reasonable exemptions for the performance of emergency work.

G. Paragraph D of the same subpart permits the applicant to demonstrate that the lowest bidder was not qualified to perform the work required. This provision is needed and reasonable to prevent mandating acceptance of low bid from an unqualified person whose inadequate qualifications could increase costs in the long run.

H. The last paragraph provides for an annual exemptions from requiring that each cleanup be bid where a responsible person has a standing contract for multiple

potential cleanups. This exception is needed and reasonable because such contracts potentially provide lower costs than the bidding of individual site contracts.

5. These modifications were made as a result of comment received by the Board.

6. The modifications do not affect any class of person who would not be expected otherwise to have commented on the rule as originally proposed.

7. The modifications do not introduce any new subject matter which is not contained or implied in the rule as originally proposed modifications do not make any substantial change which could not have been anticipated or which would reasonably invite any reaction other than that received by the board upon which the modifications are based.

CONCLUSIONS

1. The Petroleum Tank Release Compensation Board duly acquired and has jurisdiction over this proceeding.

2. The Board published and served due, timely, and adequate notice of the intent to adopt the emergency rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed emergency rules are supported by the record and do not result in a substantial change in the proposed rules.

5. The Rules as modified are needed and reasonable. (8)

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached emergency rules, Minn. Rules Pts. 2890.0060, subp. 5, 2890.--96, sub. 1.E., governing the reimbursement of costs, as modified, are adopted this 29th day of October, 1991, pursuant to the authority vested in the Board by Minn. Stat. 115C.07, subd. 3 as amended by Minn. Laws 1991, ch. 175, § 2.

Robin Hanson
Acting Executive Director

Minn. Rules pt. 2890.0060 is amended by adding subpart 5 as follows:

Subp. 5. Documentation of reasonableness, bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Effective for any contract entered into or commenced on or after December 1, 1991, whenever feasible the applicant or an agent of the applicant must solicit, privately or publicly a minimum of two (2) written competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, unit costs in excess of those in the ~~proposal~~ bid of the lowest responsible bidder ~~shall~~ may be considered prima facie unreasonable by the Petroleum Tank Release Compensation Board.

The applicant must 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 competitive bid procedure. Such evidence shall include copies of all bids received or other documentation of all bids received.

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

C. evidence that the necessary work was required by an emergency, including the abatement or cleanup of free product, for which there was not sufficient time to solicit competitive bids.

D. evidence that the lowest bidder for professional work or other work was not qualified to perform the necessary services.

Any person, firm, corporation, or governmental unit who is a responsible person as defined in Minn. Stat. Chapter 115 C may apply to the Petroleum Tank Release Compensation Board for an annual exemption to this rule by providing documentation of standing contracts which were entered into via a bidding and evaluation process.

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

Minn. Rules pt. 2890.0090, subp.1, is amended as follows:

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

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

B. a description of the site of the release;

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

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

E. Documentation of the solicitation of competitive bids or the unfeasibility of soliciting competitive bids as required by part 2890.0060, subp. 5.

RESOLUTION ADOPTING EMERGENCY RULES

BE IT RESOLVED, that the Petroleum Tank Release Compensation Board (Board) hereby approves and adopts the attached emergency rules relating to reimbursement of costs pursuant to the authority vested in the Board by Minn. Stat. § 115C.07, subd. 3 (1990), as amended by Minn. Laws 1991 ch. 175 § 2.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, Robin Hanson, Acting Executive Director of the Board, is authorized to make any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1990), and to modify the rules if necessary to obtain the approval of the rules by the Attorney General.

BE IT FURTHER RESOLVED, that the Acting Executive Director is hereby granted the authority to take the steps required by Minn. Stat. § 14.35 (1991) to continue the adopted emergency rules in effect for up to 180 days after the original expiration date of the adopted emergency rules.

BE IT FURTHER RESOLVED, that the Board adopts the attached Findings of Fact, Conclusions, and Order Adopting Emergency Rules and that the Acting Executive Director is hereby authorized to sign the above-mentioned document on behalf of the Board and to perform the necessary acts to provide that the rule shall have the force and effect of law.

CERTIFICATE OF THE

PETROLEUM TANK RELEASE COMPENSATION BOARD

RESOLUTION ADOPTING THE EMERGENCY RULE

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 a resolution adopted at a meeting of the Petroleum Tank Release Compensation Board, duly and properly called and held on the 29th day of October, 1991, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

BE IT RESOLVED, that the Petroleum Tank Release Compensation Board (Board) hereby approves and adopts the attached emergency rules relating to reimbursement of costs pursuant to the authority vested in the Board by Minn. Stat. § 115C.07, subd. 3 (1990), as amended by Minn. Laws 1991 ch. 175 § 2.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, Robin Hanson, Acting Executive Director of the Board, is authorized to make any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1990), and to modify the rules if necessary to obtain the approval of the rules by the Attorney General.

BE IT FURTHER RESOLVED, that the Acting Executive Director is hereby granted the authority to take the steps required by Minn. Stat. § 14.35 (1991) to continue the adopted emergency rules in effect for up to 180 days after the original expiration date of the adopted emergency rules.

BE IT FURTHER RESOLVED, that the Board adopts the attached Findings of Fact, Conclusions, and Order Adopting Emergency Rules and that the Acting Executive Director is hereby authorized to sign the above-mentioned document on behalf of the Board 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 29th day of October, 1991.

P. P. Troutwine

PHIL TROUTWINE
Chairman of the Board

BOARD MEMBER

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST.

Petroleum Tank Release Compensation Board

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Governing Reimbursement of Costs by the Petroleum Tank Release Compensation Board

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE, AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Dennis J. Poppenhagen, 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 Petroleum Tank Release Compensation Board rulemaking mailing list is accurate, complete, and current as of this 9th day of September, 1991.

That on the 9th day of September, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule by depositing in the State of Minnesota Central Mail system for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board

Subscribed and sworn to before me
this 9th day of September, 1991.

Cynthia L. Claason

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

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

MEMORANDUM

DATE: September 9, 1991

TO: All Interested Parties On Petrofund Mailing List

FROM: Dennis J. Poppenhagen
Director, Petroleum Tank Release Compensation Board

RE: Proposed Permanent Rules

On September 19, 1991, at 9:00 a.m., there will be an informal meeting held in Room 400 North at the State Office Building for the purpose of discussion and input as respects the adoption of permanent rules relating to the mandate put forth in the recently passed H.F. 744 which stated in part, ". . .The rules shall include a requirement that persons taking corrective action, solicit competitive bids based on unit service costs,. . ."

All interested persons are invited to participate.

DJP:bso

PETROFUND MAILING LIST AS OF 9/5/91

Dave Read
Agriculture Dept.
90 West Plato Blvd.
St. Paul, MN 55107

Arlene M. Ryndak, Loss Control Dept.
Alliance of American Insurers
1501 Woodfield Road, Suite 400 West
Schaumburg, Illinois 60173-4980

Terry Swor
American Engin. Testing, Inc.
2102 University Avenue West
St. Paul, MN 55114

Rebecca Kulas
Amoco Oil Company-Southgate Office Pl
5001 West 80th Street, Suite 890
Minneapolis, MN 55437

Kirk Steinle
Amoco Oil Company
5001 West 80th Street, Suite 890
Bloomington, MN 55437

Elmer Anderson
Anderson 66
P.O. Box 225
Karlstad, MN 56732

Attention: Tom
Applied Engineering
2905 Oak Lee Terrace
Wayzata, MN 55391

Brad Kulberg 5/91
APTUS
P.O. Box 550
Lakeville, MN 55044

Ward Tongen
ATEC Environmental Consultants
23 Empire Drive
St. Paul, MN 55103

D.F. Peterson
Austin Mutual Insurance Company
1111 Third Avenue South
Minneapolis, MN 55404-1098

Susan Kram
B & F Distributing
3706 Enterprise Drive SW
Rochester, MN 55902

Don Erickson
Bay West, Inc.
5 Empire Drive
St. Paul, MN 55103

Randi C. Erickson
Bay West, Inc.
5 Empire Drive
St. Paul, MN 55103

Marianne Curry
Bay West Inc.
Five Empire Drive
St. Paul, MN 55103-1867

Peter Westerhaus
BioTrol, Inc.
11 Peavey Road
Chaska, MN 55318

Bob Mathews
RR #2, Box 233
Glencoe, MN 55336

Mark A Collins
Braun Environmental Laboratories
6800 South TH-169/PO Box 36108
Minneapolis, MN 55439

Mark Collins
Braun Environmental Laboratories, Inc.
1345 Northland Drive
Mendota Heights, MN 55120-1141

Diane B. Ray
Briggs & Morgan
2200 1st National Bank Bldg.
St. Paul, MN 55101

Neil A. Katzenmeyer, Director
Brownton Oil Company
Brownton, MN 55312

James Graham
Bruce A. Liesch Associates, Inc.
13400 15th Avenue North
Plymouth, MN 55441

Larry Berndt
Bruce A. Liesch Associates, Inc.
13400 15th Avenue North
Plymouth, MN 55441

Dana Wagner
Bruce A. Liesch & Associates
13400 15th Avenue North
Plymouth, MN 55441

Charlie Blixt 6/91
RR #1, Box 148
Erhard, MN 56534

Ginny Spann
Coastal Mortgage Inc.
9 Greenway Plaza, #1990
Houston, Texas 77046

Gary Turgeon
Dahl & Associates, Inc.
4390 McMenemy Road
St. Paul, MN 55127

Mark Dahl
Dahl & Associates
4390 McMenemy Road
St. Paul, MN 55127

Mike Griffith
Delta Environmental Consultants
1801 Highway 8, #114
New Brighton, MN 55112

Dave Brown
Delta Environmental Consultants
1801 Highway 8, Suite 114
St. Paul, MN 55112

David M. Ronnei
Delta Environmental Consultants, Inc.
1801 Highway 8, Suite 114
New Brighton, MN 55112

Paul Goudreault
Delta Environmental Consultants, Inc.
1801 Highway 8, Suite 114
St. Paul, MN 55112

Thomas J. Norris, EIL Dept/AESIC
Dixie Terminal Bldg., Suite 923
49 East Fourth Street
Cincinnati, OH 45202

Dosen, Laurie
7821 Vincent Avenue North
Brooklyn Park, MN 55444

Rob Wahlstrom
DPRA
E-1500 1st Nat'l Bank Bldg.
332 Minnesota Street
St. Paul, MN 55101

Bob Shalko
Edwards Oil
Hoover Road
Virginia, MN 55792

William Anderson/VP
Employers Mutual Companies
P.O. Box 1252
Minneapolis, MN 55440-1252

Jamie Willard
ENPRO Assessment Corp.
375 E. Kellogg Blvd
St. Paul, MN 55101

David Novak
Environmental Geological Services
648 Lowy Avenue NE
Minneapolis, MN 55418

Jeanne Hankerson
Federated Insurance
121 E. Park Square
Owatonna, MN 55060

Ross Plaetzer
First Bank Building, Suite 1700
St. Paul, MN 55101

Fred Doran
Foth & Van Dyke
10340 Viking Drive, Suite 100
Eden Prairie, MN 55344

Dennis Coyne
Fredrikson & Byron
1100 Intern'l Cntr/900 2nd Ave. South
Minneapolis, MN 55402-3397

Robert Hawley
Gehl Oil Company, Inc.
835 3rd Avenue West
Pine City, MN 55063

Robert Christen
GME Consultants
314 Garfield Avenue
Duluth, MN 55802

Sandra Forrest
GME Consultants, Inc.
14000 21st Avenue North
Minneapolis, MN 55447

Mark Millsop
GME Consultants, Inc.
Box 250
Crosby, Mn 56441

Tom Ames
Grigges Contracting
530 Shoreview Park Road
Shoreview, MN 55126

Groundwater Technology 5/91
151 W. Burnsville Pkwy #201C
Burnsville, MN 55337

Algie J. Hanson
Hanson Oil Company
Red Lake Falls, MN 56750

David Boeke
Harland's Tire & Auto Centers
211 West Main
Owatonna, MN 55060

Kathleen Mock
Insurance Federation of Minnesota
1310 Pioneer Bldg./336 North Robert Street
St. Paul, MN 55101

Robert Schmitz
James F. Dunn & Associates
1510 Minnesota World Trade Ctr
30 E. 7th Street
St. Paul, MN 55105

Sean E. Hade
Jardine, Logan & O'Brien
2100 Meritor Tower
St. Paul, MN 55101

Jay Brothers, Inc.
P.O. Box 12473
St. Paul, MN 55112

Robert L. Johnson
Johnson Motors, Inc.
410 10th Street East
Glencoe, MN 55336

Michele Swanson, Commission Secretary
Leg. Comm. to Review Admin. Rules
55 State Office Building
St.Paul, MN 55155-1201

Scott M. Lapham, Sr. Hydrologist
Leggette, Brashears & Graham, Inc.
1210 W. County Road E, Suite 700
St. Paul, MN 55112

J. Kevin Powers
Leggette, Brashears & Graham, Inc.
1210 West Count Road E, Suite 700
St. Paul, MN 55112

M. Cathcart/A. DeWitt
Legislative Reference Library
645 State Office Building
St. Paul, MN 55155-1050

Tim Meyerson
Leonard, Street & Deinard
150 South 5th Street, #2200
Minneapolis, MN 55402

Wm. P. Birchen
Local Oil Company
PO Box 605
Hastings, MN 55033

Chris Bratsch
MacNeil Environmental
755 E. Cliff Road
Burnsville, MN 55337

Russell Maloney
Maloney Construction, Inc.
15690 Upper 194th St. East
Hastings, MN 55033

Leslie H. Mateffy, Jr.
Mateffy Engineering, Inc.
663 Old Highway 8
New Brighton, MN 55112

G. Matson
Matson Oil Company
1221 1st Avenue North
Moorhead, MN 56560

Laura Hanson
Meagher & Geer
4200 Multifoods Tower-33 So. 6th St.
Minneapolis, MN 55402

Charles Spevacek
Meagher & Geer
4200 Multifoods Tower-33 So. 6th St.
Minneapolis, MN 55402

Jeff Groen
MECC
3901 University Avenue NE
Minneapolis, MN 55421

Ross L. Ohman
MECC
3901 University Avenue
Minneapolis, MN 55421

A.L. Anlauf, President
Mille Lacs Oil Company
76 East 1st Street
Cambridge, MN 55008

Karen Lampert
Minnegasco
P.O. Box 1165
Minneapolis, MN 55440

Harry Roscamp
Minnesota Service Station Assoc
1705 Marion Street
Roseville, MN 55113

G.R. Moberg
Moberg's Inc.
317 South Second Street
Marshall, MN 56258

Dave Gosen
Montgomery Engineering
545 Indianmound
Wayzata, MN 55391

John Holck
MPCA
520 Lafayette Road
St. Paul, MN 55155

Dave Richfield
MPCA
520 Lafayette Rd. N.
St. Paul, MN 55155

Barbara Freese
MPCA
520 Lafayette Rd., #200
St. Paul, MN 55155

Dave Plante
MPCA
520 Lafayette Road
St. Paul, MN 55155

Chester A. Zinn, Jr.
MSI
P.O. Box 64035
St. Paul, MN 55164

Tom Kraemer
MSI Insurance
P.O. Box 64035
St. Paul, MN 55164

Jim Sullivan, Branch Claims Office
National Farmers Union P & C Companies
P.O. 6509
St. Paul, MN 55106

Mike Johnson
NOVA Environmental Services, Inc.
1107 Hazeltine Blvd., #420
Chaska, MN 55318

Bob Krogman
NW Petroleum Association
2345 N. Rice Street
St. Paul, MN 55113

Richard D. Olsen
Olsen Bulk Service, Inc.
304 County Road #69
Mankato, MN 56001

Bob LaBombard
PACE Laboratories, Inc.
1710 Douglas Drive North
Minneapolis, MN 55422

Ken and Cathy Patterson
Pattersons Polegama Lake Store
6501 Highway 169 South
Grand Rapids, MN 55744

Mike Johnson 5/91
Peer, Inc.
11 Peavy Road
Chaska, MN 55318

Cathy Nelson
Petro Tank Services
1047 Raymond Avenue
St. Paul, MN 55104

Kellen Sullivan
ProAct
P.O. Box 64366
St. Paul, MN 55164-0366

David Kill
Recovery Equipment Supply
Box 322
Maple Grove, MN 55369

Richard B. Allyn
Robins, Kaplan, Miller & Ciresi
1800 International Centre/900 2nd Ave. So
Minneapolis, MN 55402

Rollie's Sales & Service
Highway 27 West
Osakis, MN 56360

David C. Moody
Schmidt, Thompson, Thompson, Johnson & Moody
Crown Center/7th St. & W. Litchfield Ave.
Willmar, MN 56201-0913

Wilmer Schmidtke
Schmidtke Oil Company
PO Box 347
Morristown, MN 55052

Schultz, Paula
663 Old Highway 8
New Brighton, MN 55112

Chris Thompson
SEACOR
1660 South Highway 100
Minneapolis, MN 55416

SERCO Laboratories
1931 W. County Road C-2
St. Paul, MN 55113

J. Patrick Wilcox
Severson, Wilcox & Sheldon, P.A.
600 Midway National Bank Bldg/7300 W. 147th St
Apple Valley, MN 55124

Ed Herman
Southland Corp./Legal Dept.
2828 N. Haskell
Dallas, TX 75204

Peter Therrien
St. Paul Fire and Marine Ins. Co.
385 Washington Street
St. Paul, MN 55102

Alan Staples
Staples Oil Co., Inc.
Box 243
Windom, MN 56101

Stewart Energy Products
Box 219
Stewart, MN 55385

Donna Strusinski
Strusinski & Associates
525 Park, Suite 303
St. Paul, MN 55103

Robert L. DeGroot, P.E.
STS Consultants, Ltd.
3650 Annapolis Lane
Minneapolis, MN 55447

Laneles C. Iwerson
Super Stores, Inc.
1250 N. Frontage Road
Hastings, MN 55033

Michael Wilder
SuperAmerica
P.O. Box 14000
Lexington, KY 40512

Ken Olson 5/91
SuperAmerica
1240 West 98th Street, #890
Bloomington, MN 55431

Tom Gapinske
Terracon Environmental, Inc.
3535 Hoffman Road East
White Bear Lake, MN 55110

George Kucera
Texaco Bulk Storage Plant
1128 3rd Avenue NW
Faribault, MN 55021

R.P. Gillis, Area Manager
The UNO-VEN Company
4940 Viking Drive
Minneapolis, MN 55435

Richard A. Paulson
Trail Dodge, Inc.
4665 South Robert Trail & Hwy. 110
Inver Grove Heights, MN 55077

Attention: Jim
Tripp Oil Company
817 Vandalia Street
St. Paul, MN 55114

Kevin Pierson
Twin City Testing Corp.
737 Pelham Boulevard
St. Paul, MN 55114

David A. Luick
Twin City Testing
662 Cromwell Avenue
St. Paul, MN 55114

Rick Palm 5/91
Twin Ports Testing
1301 North Third Street
Superior, WI 54880

Jim Bakke
Twin City Testing
662 Cromwell Avenue
St. Paul, MN 55114

Gilbert Gabanski
Warzyn Engineering, Inc.
715 Florida Avenue South #209
Minneapolis, MN 55426

Norman Wenck
Wenck Associates
1800 Pioneer Creek Drive
Maple Plain, MN 55359

Jim VanAlstine
West Central Env. Consultants
P.O. Box 594
Morris, MN 56267

Office of the Revisor of Statutes
Administrative Rules

Paul M. Marinac
Assistant Deputy Revisor
296-0948

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

October 30, 1991

Robin Hanson
Department of Commerce
133 East 7th Street
St. Paul, MN 55101

RE: File No. 1931

Dear Ms. Hanson:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Paul

Paul M. Marinac

PROPOSED EMERGENCY RULES RELATING TO PETROLEUM TANK RELEASE COMPENSATION BOARD

Petroleum Tank Release Compensation Board

In the Matter of the Proposed Adoption
of Emergency Rule of the State of Minnesota
Governing Reimbursement of Costs
by the Petroleum Tank Release Compensation Board

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

(1) Notice is hereby given that the State of Minnesota intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, section 115C.07, Subd. 3 (c), added in Minnesota Laws 1991, chapter 175, section 2. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

(2) All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. (3) Any comments must be submitted to:

Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East Seventh Street
St. Paul, MN 55101-2362
(612) 297-4815

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

(5) Free copy of proposed emergency rule is available by contacting Dennis J. Poppenhagen.

(6) The proposed emergency 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 emergency rule as noticed.

(7) Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent 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 Dennis J. Poppenhagen.

(8) The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

August 30, 1991
Date

Dennis J. Poppenhagen
Executive Director

The Minnesota
State Register

Department of Administration—Print Communications Division



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Contents

Minnesota Rules: Amendments & Additions

Issues 1-11 inclusive (issues #1-52 appeared in #52, Vol. 15) 540

Adopted Rules

Housing Finance Agency
Accessibility deferred and home improvement loan program 542

Labor and Industry Department
Occupational safety and health; hoppers 542

Technical Colleges Board
Postsecondary program teacher licenses 545

Emergency Rules

Commerce Department
Reimbursement of costs by the petroleum tank release compensation board 546

Official Notices

Comprehensive Health Association
Notice of outreach meetings 547

Higher Education Facilities Authority
Notice of public hearing 549

Historical Society
Notice of State Review Board meeting 549

Pollution Control Agency
Proposals sought for contracting services 549
Opinions sought on prohibitions on selected toxics in packaging 550

Public Employees Retirement Association
Notice of Board of Trustees meetings 550

Transportation Department
Opinion sought on establishment of minimum safety standards for private grade crossings 550
Opinion sought on establishment of minimum standards for visibility at public grade crossings 551

State Grants

Education Department
Proposals sought for available grant funds 552

Professional, Technical & Consulting Contracts

Administration Department
Proposals sought for computer programming services ... 552

Health Department
Proposals sought for program evaluation consultation services 553
Proposal sought for actuarial-based cost analysis of House File 2—The Conference Committee Report 553

Human Services Department
Proposals sought for Families First services 555
Proposals sought for compulsive gambling programs ... 555

Metropolitan Waste Control Commission
Seeking prequalifications for engineering services 555

Natural Resources Department
Proposals sought to contract for public relations agency services 556
Proposals sought to conduct study of snowmobile gasoline consumption 557

Public Safety Department
Contract employee sought to produce promotional videotape 558

State Contracts & Advertised Bids

Administration Department
Materials Management Division: Commodities and requisitions open for bid 559

Announcements 562

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*: and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Commerce

Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the State of Minnesota intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Minnesota Statutes*, section 115C.07, Subd. 3 (c), added in *Minnesota Laws 1991*, chapter 175, section 2. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East Seventh Street
St. Paul, MN 55101-2362
(612) 297-4815

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

Free copy of proposed emergency rule is available by contacting Dennis J. Poppenhagen.

The proposed emergency 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 emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent 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 Dennis J. Poppenhagen.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Dated: 30 August 1991

Dennis J. Poppenhagen
Executive Director

Rules as Proposed

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Documentation of reasonableness; bidding required.** The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

The applicant must 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 competitive bid procedure; the evidence shall include copies of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

The board shall reimburse or pay only those costs 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. a description of the site of the release;

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

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

E. documentation of the solicitation of competitive bids or the unfeasibility of soliciting competitive bids as required by part 2890.0060, subpart 5.

[For text of subps 2 to 6, see M.R.]

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota Comprehensive Health Association

Notice of Outreach Meetings

NOTICE IS HEREBY GIVEN that the executive director of the Minnesota Comprehensive Health Association and a representative of the Minnesota Department of Commerce will be holding a series of outreach meetings across the state of Minnesota, as indicated below. The purpose of the meetings will be to provide general information on laws passed by the 1991 Minnesota Legislature that impact the Minnesota Comprehensive Health Association. A period will also be provided for the public to ask questions and comments about MCHA, in general.

For additional information, call the MCHA Executive office at (612) 593-9609

Albert Lea, Minnesota	Monday, September 16, 1991 Senior Citizen's Center Activity Room 146 West College Albert Lea, Minnesota	12:00 p.m.

Department of Commerce

Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Documentation of reasonableness; bidding required.** The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

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B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

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

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Approved by Revisor PMM

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A. the name of the person making the application;

B. a description of the site of the release;

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

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

E. documentation of the solicitation of competitive bids or the unfeasibility of soliciting competitive bids as required by part 2890.0060, subpart 5.

[For text of subps 2 to 6, see M.R.]

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by 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

CERTIFICATE OF BOARD'S 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 22nd day of August, 1991, 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 Dennis Poppenhagen, Executive Director of the Petroleum Tank Release Compensation Board (Board) is hereby granted the authority to sign and to give notice of the Board's intent to adopt without a public hearing, the attached emergency rules, Minn. Rules pt. 2890.0060, subp. 5 and pt. 2890.0090, subp. 1, to all person who have registered their names with the Board for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of August, 1991.

P. Troutwine

PHIL TROUTWINE
Chairman of the Board

Board Member

AUTHORIZATION TO PROCEED WITH ADOPTION OF EMERGENCY RULES

BE IT RESOLVED, that Dennis Poppenhagen, Executive Director of the Petroleum Tank Release Compensation Board (Board) is hereby granted the authority to sign and to give notice of the Board's intent to adopt without a public hearing, the attached emergency rules, Minn. Rules pt. 2890.0060, subp. 5 and pt. 2890.0090, subp. 1, to all person who have registered their names with the Board for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

Minn. Rules pt. 2890.0060 is amended by adding subpart 5 as follows:

Subp. 5. Documentation of reasonableness, bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder will be considered prima facie unreasonable.

The applicant must 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 competitive bid procedure. Such evidence shall include copies of all bids received.

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

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

Minn. Rules pt. 2890.0090, subp.1, is amended as follows:

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

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

B. a description of the site of the release;

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

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

E. Documentation of the solicitation of competitive bids or the unfeasibility of soliciting competitive bids as required by part 2890.0060, subp. 5.

Fax copy was received 10-4-91

Nova
Environmental Services, Inc.

S.B. Cummings
President
J.E. Findley
Chief Executive Officer

State of Minnesota
OCT 7 1991
Dept. of Commerce

October 4, 1991

Ms. Robin Hanson – Petrofund
State of Minnesota
133 East 7th Street
St. Paul, MN 55101

RE: Petrofund Reimbursements

Ms. Hanson:

We appreciate the time you and Mr. Poppenhagen spent with us on Wednesday. David and I have discussed the Petrofund Reimbursement issues extensively and have seen some of the difficulties facing you in your task.

Based on our meetings, we perceive the primary task of the Board is to develop a program for reimbursing petroleum release clean ups that reduces the potential for "abuse" of the reimbursement program. The petrofund has proven to be an effective incentive to industry, paid for by industry, to mitigate UST issues. It is unfortunate that the success of the program has created opportunity for misappropriation. Nova supports and encourages the efforts of the Petroboard to evolve Petrofund into a clearly defined and easily administrated program for its continued success.

We have outlined some of our thoughts in the attachments labeled Approach #1 and Approach #2. Recognize that these are concepts, and obviously are not a final solution to your efforts.

If we can be of further assistance, please call Dave Koubsky or myself at 448–9393.

Sincerely,

NOVA ENVIRONMENTAL SERVICES, INC.

Robert J. Havrilak, P.E.
Vice President

APPROACH #1

Proposed rule #2890.0060 clearly states that documentation of a competitive bid process will be required to demonstrate the reasonableness of the charges associated with a project, and that costs in excess of the lowest bid will be considered unreasonable. We perceive the bid review process will create a significant burden on the time of the Petroboard, which could subsequently impact already lengthy reimbursement time.

The added administrative burden could be eliminated on roughly 90% of the reimbursement requests by establishing, in advance, reasonable unit rates for "common" charges. The Petroboard has data available to determine reasonable common costs for items like:

- Mobilization $/Mile
- Excavation $/CY
- Transportation $/Ton Mile
- Soil Disposal/Treatment $/CY
- Water Disposal $/Gal
- Analytical $/Sample
- Soil Boring $/Ft
- Well Installation $/Ft
- Field Supervision $/Hr
- Closure Report $/Report

The potential list could be expanded to include all the common charges expected for the average job. Charges for which reimbursement is sought could be checked against the common charge rates. Excesses could be automatically exempted from reimbursement unless accompanied by a reasonable explanation.

Most (roughly 90%) of the Petrofund reimbursement requests Nova submits are for the minor (<200 CY) contaminated soil removal with no ground water impact. This type of project normally requires immediate attention, and the contractor on site doing the non-reimbursable tank removal is usually the most cost effective remediation alternative. Unless unusual circumstances present themselves, the cost associated with this type of effort are easily charged with unit rates. Reasonable subcontractor markup by a prime contractor would need to be considered either in the unit rate, or in a separate acceptable percentage overhead category.

If the Petroboard uses the statistical data base available to define a fair rate (fair days pay for a fair days work) Nova, and we suspect our clients, would be satisfied with the reimbursement.

The reimbursement rate would not be intended to "fix" the costs of cost of services, but to simply define what has been determined to be a "reasonable competitive price" for reimbursement purposed. The reimbursement rates could be published and updated annually.

This process of establishing rates is not uncommon in the construction trades. We have attached the introduction pages of the "1990 Means Repair & Remodeling Cost Data". This book assigns rates to labor and materials and defines durations of tasks commonly associated with the building trades. These figures allow generation of "reasonable" costs estimates. The discussion in the introduction describes what we perceive as the Petroboard's task.

This approach could be satisfactory 90% of the time, and would probably satisfy a majority of the vendors and clients in the UST business. More sophisticated remediation efforts could be dealt with through a competitive bid review process because of the time required to move the program forward.

APPROACH #2

For work performed in connection with corrective action for which reimbursement is sought, after (date) the applicant shall be responsible to prove the reasonableness of all incurred eligible costs if requested by the board. Whenever feasible the applicant must solicit competitive bids based upon unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder may be considered prima facie unreasonable.

The applicant must document the reasonableness of any cost included on the reimbursement application and may be required to provide the board with one or more of the following:

A. Evidence that the work was performed by a person or persons whose services were solicited through competitive bid procedure; the evidence shall include copies of all bids received; or

B. A description of the bidding or qualification process used in selecting a qualified contractor or environmental consultant and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. Evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

BIDDING REQUIREMENTS

Proof of the reasonableness of all incurred eligible costs may be required at the following stages of corrective action:

A. TANK REMOVAL

The board may require proof of a competitive bid process as outlined in Subp.5. if a release of petroleum was suspected by the responsible person prior to tank removal. If petroleum impacted soil is encountered during the tank removal, bids will be required for all soil disposal or treatment.

B. REMEDIAL INVESTIGATION

If a remedial investigation is required by the commissioner, the board may require proof of a competitive bid process as outlined in Subp.5. If additional remedial investigation work not outlined in the original bid is required by the commissioner to comply with current MPCA

guidance documents relating to petroleum release sites, the work shall be completed at the unit rates defined in the original bid, or a new bid must be solicited for the additional work.

C. LONG TERM GROUND WATER MONITORING

If long term ground water monitoring is required by the commissioner, the board may require proof of a competitive bid process as outlined in Subp.5. The scope of work included in the bid shall be based on the commissioners corrective action approval letter and may include anticipated costs for up to one year. If additional ground water monitoring is required by the commissioner after one year, the additional monitoring shall be performed at the unit rates defined in the original bid which may be adjusted to reflect a reasonable cost of living adjustment, or a new bid must be solicited at least yearly for additional monitoring required by the commissioner.

D. ACTIVE GROUND WATER OR IN-SITU SOIL REMEDIATION

If ground water or in-situ soil remediation is required by the commissioner, the board may require proof of a competitive bid process as outlined in Subp.5. The scope of work included in the bid shall be based on the commissioners corrective action approval letter and may include system maintenance for up to one year. If the commissioner requires that the remediation system remains operational for more than one year, operation of the remediation system shall be completed at the unit rates described in the original bid which may be adjusted to reflect a reasonable cost of living adjustment, or a new bid must be solicited yearly for the additional work required by the commissioner.

APPLICATION PROCESS

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

A. the name of the person making the application;
B. a description of the site of the release;
C. a copy of the commissioners approval of the corrective action plan
D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action; and
E. documentation of the solicitation of competitive bids or the infeasibility of soliciting bids as required by part 2890.0060, subpart 5. if requested by the board.

General comments regarding the proposed emergency rules relating to petroleum tank release compensation board.

1. What is the effective date of the rule?
2. Will it include work that is currently being performed or is scheduled to be performed that is under contract?

3. Who is responsible for educating the tank owners of the new rule?

4. What is the consultant or tank contractors responsibility of informing the tank owner that a competitive bid process is required by the board when they are asked to perform work?

5. Do not put bid sheets (if that is the boards intention) into the rule. Utilize wording such as "on a form prescribed by the board". This will allow the board the flexibility to make alterations in the form without changing the rule.

6. Line 17, page 1 of the proposed rule, who decides who is a responsible bidder? I would leave that up to the tank owner.

7. What if a tank owner did not go though a bid solicitation process through either lack of knowledge of the rule or by their own choosing?

8. Line 5,C. page 2, The board defines corrective action as "any action taken to minimize, eliminate, or clean-up a release to protect the public health and welfare or the environment".

   This definition when applied to line 5. C. page 2 of the rule suggests a work plan for all work relating to a petroleum release must be submitted to the commissioner for approval. Currently, the MPCA will not review a work plan that falls short of a clean-up or a no more action proposal. This recommendation is typically included in the recommendation section of the engineers report.

9. If the board requires competitive bidding at all phases of remedial investigation work and corrective action (clean-up), several consultants and contractors may be involved with the project and a duplication of work may result.

MEANS REPAIR & REMODELING COST DATA

Commercial/Residential

1990

TABLE OF CONTENTS

Foreword	ii
How To Use This Book	iii
Unit Price Section	viii
Crew Listings	1
Unit Price Pages	
Assemblies Section	237
Reference Section	345
Appendix	392
Historical Cost Index	393
City Cost Indexes	402
Abbreviations	405
Job Scheduling	410
Index	

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Marion Schofield
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Graphics
Carl W. Linde

First Printing

WORK

THE COMPANY AND THE EDITORS

Since 1942, R.S. Means Company, Inc. has been actively engaged in construction cost publishing and consulting throughout North America. The primary objective of the company is to provide the construction industry professional — the contractor, the owner, the architect, the engineer, the facilities manager — with current and comprehensive construction cost data.

A thoroughly experienced and highly qualified staff of professionals at R.S. Means work daily at collecting, analyzing and disseminating reliable cost information for your needs. These staff members have years of practical construction experience and engineering training prior to joining the firm. Each contributes to the maintenance of a complete, continually-updated construction cost data system.

With the constant flow of new construction methods and materials, the construction professional often cannot find enough time to examine and evaluate all the diverse construction cost possibilities. R.S. Means performs this function by analyzing all facets of the industry. Data is collected and organized into a format that is instantly accessible. The data is useful for all phases of construction cost determination — from the preliminary budget to the detailed unit price estimate.

The Means organization is always prepared to assist you and help in the solution of construction problems through the services of its four major divisions; Construction and Cost Data Publishing, Computer Data and Software Services, Consulting Services and Educational Seminars.

DEVELOPMENT OF COST DATA

The staff at R.S. Means Company, Inc. continuously monitors developments in the construction industry in order to ensure reliable, thorough and up-to-date cost information. While *overall* construction costs may vary relative to general economic conditions, price fluctuations within the industry are dependent upon many other factors. Individual price variations may, in fact, be opposite to overall economic trends. Therefore, costs are monitored and updated and new items are added in response to industry changes.

All costs represent U.S. national averages and are given in U.S. dollars. The Means City Cost Indexes can be used to convert costs to a particular location. The City Cost Indexes for Canada can be used to convert U.S. national averages to local costs in Canadian dollars.

Material Costs are determined by contacting manufacturers, dealers, distributors, and contractors throughout the United States. If current material costs are available for a specific location, adjustments can be made to reflect differences from the national average. Material costs do not include sales tax.

Labor Costs are based on the average of wage rates from 30 major U.S. cities. Rates are determined from agreements or prevailing wages for construction trades for the current year. Rates are listed on the inside back cover of this book. If wage rates in your area vary from those used in this book, or if rate increases are expected within a given year, labor costs should be adjusted accordingly.

Labor costs reflect productivity based on actual working conditions. These figures include time spent during a normal work day on items other than actual installation such as material receiving and handling, mobilization, site movement, breaks, and cleanup. Productivity data is developed over an extended period so as not to be influenced by abnormal variations, and reflects a typical average.

Equipment Costs as presented include not only rental costs, but also operating costs. Equipment prices are obtained from industry sources throughout the country — contractors, suppliers, dealers and manufacturers.

FACTORS AFFECTING COSTS

Quality: The prices for materials and the workmanship upon which productivity is based are in line with U.S. Government specifications and represent good sound construction.

Overtime: No allowance has been made for overtime. If premium time or work during other than normal working hours is anticipated, adjustments to labor costs should be made accordingly.

Productivity: The productivity, daily output and man-hour figures for each line item are based on working an eight hour day in daylight hours. For other than normal work hours, productivity may decrease.

Size of Project: The size and type of construction project can have a significant impact on cost. Economy of scale can reduce costs for large projects. Conversely, costs may be higher for small projects due to higher percentage overhead costs, small quantity material purchases and minimum labor and/or equipment charges. Costs in this book are intended for the size and type of project as described in the "How To Use This Book" pages. Costs for projects of a significantly different size or type should be adjusted accordingly.

Location: Material prices are for metropolitan areas. Beyond a 20 mile radius of large cities, extra trucking or other transportation charges will increase the material costs slightly. This material increase may be offset by lower wage rates. Both of these factors should be considered when preparing an estimate, especially if the job site is remote. Highly specialized subcontract items may require high travel and per diem expenses for mechanics.

Other factors affecting costs are season of year, contractor management, weather, local union restrictions, building code requirements, and the availability of adequate energy, skilled labor, and building materials. General business conditions influence the "in-place" cost of all items. Substitute materials and construction methods may have to be employed, and these may increase the installed cost and/or life cycle costs. Such factors are difficult to evaluate and cannot be predicted on the basis of the job's location in a particular section of the country. Thus, there may be a significant, but unavoidable cost variation where these factors are concerned.

CSI MASTERFORMAT

Unit price data in this book is organized according to the MASTERFORMAT system of classification and numbering as developed by the Construction Specifications Institute (CSI) and Construction Specifications Canada. This system, widely accepted in the industry, is used extensively by architects and engineers for construction specifications, by contractors for estimating and record keeping, and by manufacturers and suppliers for categorization of construction materials and products. R.S. Means has organized unit price data in this system to help construction professionals categorize all aspects of the construction process.

OW TO USF THIS BOOK

HOW THE BOOK IS ARRANGED

This book is divided into four sections: Unit Price, Assemblies, Reference and an Appendix.

Unit Price Section: All cost information has been divided into the 16 CSI divisions. These divisions are patterned after the MASTERFORMAT created and adopted by the Construction Specifications Institute, Inc. This system is widely used by most segments of the building construction industry.

A listing of all divisions and an outline of their subdivisions is shown in the Table of Contents page at the beginning of the Unit Price Section.

Each unit price line item has been assigned a 10 digit code. A graphic explanation of the numbering system is shown on the "How to Use Unit Price" page.

Descriptions Each line item number is followed by a description of the item. Sub-items and additional sizes are indented beneath appropriate line items. The first line or two of the main (bold face) item often contain descriptive information that pertains to all line items beneath this bold face listing.

Crew The first column after the description lists the typical crew needed to install the item. Typical crews are defined and listed at the beginning of the Unit Price Section. When an installation is done by one trade and requires no power equipment, the appropriate trade is listed in the crew column. For example, "2 Carp" indicates that the installation is done with 2 carpenters. If, however, the installing crew is listed as "C-2", it is made up of 1 carpenter foreman, 4 carpenters, 1 building laborer, plus an allowance for power tools. The crew costs are listed both with bare labor rates, and with the installing contractor's overhead and profit. For each, the total cost per eight-hour day and the composite hourly cost for the crew are listed.

Crew Equipment Cost The power equipment required for each crew is included in the crew cost. The daily cost for crew equipment is based on dividing the weekly bare rental rate by 5 (number of working days per week), and then adding the hourly operating cost times 8 (hours per day). This "Crew Equipment Cost" is listed in Division 016.

Daily Output To the right of every "Crew" code listing, a "Daily Output" figure is given. This is the number of units that the listed crew will install in a normal 8-hour day.

Man-hours The column following "Daily Output" is "Man-hours". This figure represents the man-hours required to install one "unit" of work. Unit man-hours are calculated by dividing the total daily crew hours (as seen in the Crew Tables) by the Daily Output.

Unit To the right of the "Man-hour" column is the "Unit" column. The abbreviated designations indicate the unit upon which the price, production and crew are based. See the Appendix for a complete list of abbreviations.

Material The first column under the "Bare Cost" heading lists the unit material cost for the line item. This figure is the "bare" material cost with no overhead and profit allowances included. This cost is developed by contacting manufacturers, dealers, distributors and contractors throughout the United States. Prices shown reflect the national average of these quoted prices for January of the current year.

Labor The second column under the "Bare Cost" heading is the unit labor cost. This cost is derived by dividing the daily labor cost by the daily output. The wage rates used are 30 city union averages and are listed on the inside back cover.

Equipment The third column under the "Bare Cost" heading lists the unit equipment cost. This figure is the daily crew equipment cost divided by the daily output.

Total The last column under the "Bare Cost" heading lists the total bare cost of the item. This is the arithmetic total of the three previous columns: "Material", "Labor", and "Equipment".

Total Incl. O&P The figure in this column is the sum of three components: the bare material cost plus 10%; the bare labor cost plus overhead and profit (per the billing rate table on the inside back cover); and the bare equipment cost plus 10%. A sample calculation is shown on the "How to Use Unit Price" page preceding the Unit Price Section.

Assemblies Section: This section uses an "Assemblies" format that groups all the functional elements of a building into 12 "Uniformat" Construction Divisions.

At the top of each "Assembly" cost table is an illustration, a brief description, and the design criteria used to develop the cost. Each of the components and its contributing cost to the system is shown. For a complete breakdown and explanation of a typical "Assemblies" page, see "How to Use Assemblies Cost Tables" at the beginning of this section.

Material These cost figures include a standard 10% markup for "handling". They are national average material costs as of January of the current year and include delivery to the jobsite.

Installation The installation costs include labor and equipment, plus a markup for the installing contractor's overhead and profit.

Reference Section: Following the items in the "Unit Price" pages, there are frequently found large numbers in circles. These numbers refer the reader to information and data in this Reference Section. This material includes estimating procedures, alternate pricing methods, technical data and cost derivations. These derivations illustrate the development of costs and may be of value in listing materials for purchase. This section also includes information on design and economy in construction.

Appendix: Included in this section are Historical and City Cost Indexes, a Project Schedule (CPM) example, a list of abbreviations and a comprehensive index.

Historical Cost Index This index provides data to adjust construction costs over time.

City Cost Indexes These indexes provide data to adjust the "national average" costs in this book to 162 major cities throughout the U.S. and Canada.

CPM (Critical Path Method) A brief review of project scheduling is included in the Appendix. By following the example, it can be seen that even a small project can benefit from CPM scheduling. Realistic duration times for activities are developed using the crews and man-hours shown in the line items of the manual.

Abbreviations/Index A listing of the abbreviations used throughout this book, along with the terms they represent is included. Following the abbreviations list is an index for all sections.

Minimum Labor/Equipment Charge When preparing a repair and remodeling estimate, it is a good idea to carefully evaluate the "Minimum" Labor and Equipment figures listed within the Unit Price section of the book.

An estimate that has a bottom line Labor or Equipment cost LESS THAN the "Minimum" amounts listed at the bottom of specific sections of cost figures should be adjusted upward to the "Minimum" figures shown. The "Minimum" figures are included as a guide for that area of construction. Bid figures for any job must be adjusted and allowances made for the contractor to recover the expense connected with losing a portion of a normal work day. This allowance is usually needed to allow for set-up cost, clean-up and/or travel time.

Materials add a cost to an estimate over and above Labor and Equipment costs; therefore, Material costs should never be confused with this adjustment to "Minimum" Labor and Equipment figures. When Labor and Equipment costs have been developed for a specific item, ALWAYS ADJUST FIGURES UP TO THE "MINIMUM" AMOUNT SHOWN. An example is shown below:

EXAMPLE: Establish the bid price to replace a casement window unit. Assume installation of a 2' x 5' Metal Clad Window with Insulating Glass.

	086 100 | Wood Windows		CREW	DAILY OUTPUT	MAN-HOURS	UNIT	BARE COSTS MAT.	BARE COSTS LABOR	BARE COSTS EQUIP.	BARE COSTS TOTAL	TOTAL INCL O&P	
120	0010 2080	CASEMENT WINDOW including frame, screen, and exterior trim Metal clad, deluxe, insulating glass, 2'-0" x 5'-0" high	1 Carp	8	1	Ea.	173	22		195	225	120
	9000	Minimum labor/equipment charge		3	2.670	Job		58		58	93	

SOLUTION:

STEP ONE: Develop Material Cost and Labor Cost separately.

Material Cost for Line Number [086-120-2080] = $173

Labor Cost for Line Number [086-120-2080] = $22.00

Total Incl. O&P for Line Number [086-120-2080] = [Material + 10%] + [Labor + 61.8%] = [$173 + $17] + [$22 + $13] = [$190] + [$35] = $225

STEP TWO: Evaluate Minimum Labor and Equipment Figure

Minimum Labor/Equipment Figure for this section = $58 (Compare to $22]

Minimum Labor/Equipment Figure Incl. O&P for this section = $93

Add Material Cost plus a 10% mark-up to the Minimum Labor/Equipment Cost listed in the Total Incl. O&P Column.

[$173 + 10%] + [$93] = [$190 + $93] = $283

ANSWER: $283 is the correct figure to use. This sum takes into consideration the Minimum Labor/Equipment figure (with O&P included), plus Material Cost (with 10% for O&P).

PROJECT SIZE

The book is aimed primarily at residential, industrial, and commercial repair/remodeling projects costing $5,000 to $500,000. With reasonable exercise of judgment the figures can be used for any repair/remodeling project but do not apply to civil engineering structures such as bridges, dams, highways or the like.

ESTIMATING PRECISION

When creating an engineering estimate, ignore the cents column. Only give the total per unit cost to the nearest dollar. The cents will average in a column of figures. An engineering estimate of $257,323.37 is ridiculous. A figure of $257,325 is certainly more sensible and $257,000 is better and just as likely to be right.

If you follow this simple instruction, the time saved is tremendous with an added important advantage. Using round figures, your mind is left free to exercise judgment and common sense rather than being overcome and befuddled by a mass of computations.

When you have finished, roughly check the big items for location of decimal point. That is important. A large error can creep in if you write down $300 when it should be $3,000. Also check the list to be sure you have not omitted any large item. A common error is to overlook, let us say, heating or to forget finished flooring or painting or otherwise commit a gross omission. No amount of accuracy in prices can compensate for such an oversight.

It is important to keep the bare costs and costs that already include the sub's O & P separate since different mark-ups will have to be applied to each category. Organize your estimating procedures to minimize confusion and simplify checking to insure against omissions and/or duplications.

ESTIMATING GUIDELINES

Here are a few simplified rules for handling numbers and measurements when preparing a repair and remodeling estimate. These suggestions are made to enable the estimator to perform unit price and systems estimating in a logical, easy to check and thorough manner.

1. The estimator should always visit the job site and analyze available job site data to be certain that any contingencies that pertain to the project are accounted for. Division 010-032-0010 through 2350 in the Unit Price section lists some of the factors that must be added to construction costs for particular job requirements.
2. Use preprinted forms for orderly sequence of dimensions and locations and for recording telephone dimensions.
3. Be consistent with listing dimensions, for example: Length x Width x Height. This helps in re-checking to insure that, say, the total length of partitions is appropriate for the building area.
4. Use printed (rather than measured) dimensions where given.
5. Add up multiple printed dimensions for a single entry where possible.
6. Measure all other dimensions carefully.
7. Use each set of dimensions to calculate multiple related quantities.
8. Convert foot and inch measurements to decimal feet when listing. Memorize decimal equivalents to .01 parts of a foot (1/8" equals approximately .01').
9. Do not "round off" quantities until final summary.
10. Mark drawings with different colors as items are taken off.
11. Keep similar items together; different items separate.
12. Identify location and drawing numbers to aid in future checking for completeness.
13. Measure or list everything on the drawings or mentioned in the specifications.
14. It may be necessary to list items not called for to make the job complete.
15. Be alert for: notes on plans such as N.T.S. (not to scale); changes in scale throughout the drawings; reduced size drawings; discrepancies between the specifications and the drawings.
16. Develop a consistent pattern of performing an estimate, for example:
    a. Start the quantity take-off at the lower floors and move on to the next highest floor.
    b. Proceed from the main section of the building to the wings.
    c. Move consistently through the plans south to north or vice versa.
    d. Move consistently clockwise or counterclockwise.
    e. Take off floor plan quantities first, elevations next, then the detail drawings.
17. List all gross dimensions that can be either used again for different quantities, or used as a rough-check of other quantities for vertification (exterior perimeter, gross floor area, individual floor areas, etc.).
18. Utilize design symmetry or repetition:
    Repetitive floors
    Repetitive wings
    Symmetrical design around a center line
    Similar room layouts
    Note: Great care must be exercised, otherwise entire wings or floors can be omitted rather easily. This is one area to keep checking as the estimate progresses. Refer back to total floor area listed on the plan's posted sheet or gross dimensions.
19. Do not convert units until the final total is obtained. For instance, when estimating concrete work, keep all units to the nearest cubic foot, then and convert to cubic yards.
20. When figuring alternates, it is best to total all items involved in the basic system, then total all items involved in the alternates. Thus you work with positive numbers in all cases. When adds and deducts are used, it often is confusing whether to add or subtract a given item, especially on a complicated or involved alternate.

ROUNDING OF COSTS

In general, all unit prices in excess of $5.00 have been rounded to make them easier to use and still maintain adequate precision of the results. The rounding rules are as follows:

Price from $5.01 to $20.00 rounded to the nearest 5¢
Price from $20.01 to $100.00 rounded to the nearest $1
Price from $100.01 to $1,000.00 rounded to the nearest $5
Price from $1,000.01 to $10,000.00 rounded to the nearest $25
Price from $10,000.01 to $50,000.00 rounded to the nearest $100
Price over $50,000.01 rounded to the nearest $500

HOW TO USE UNIT PRICE PAGES

Important
Prices in this section are listed in two ways: as bare costs and as costs including overhead and profit of the installing contractor. In most cases, if the work is to be subcontracted, it is best for a general contractor to add an additional 10% to the figures found in the column titled **"TOTAL INCL. O&P".**

Unit
The unit of measure listed here reflects the material being used in the line item. For example: headers over openings are defined in linear feet (L.F.).

Productivity
The daily output represents typical total daily amount of work that the designated crew will produce. Man-hours are a unit of measure for the labor involved in performing a task. To derive the total man-hours for a task, multiply the quantity of the item involved times the man-hour figure shown.

Line Number Determination
Each line item is identified by a unique ten-digit number.

MASTERFORMAT
Division
061 128 2050
Subdivision

MASTERFORMAT
Mediumscope
061 100
061 **128** 2050
Major Classification

061 128 **2050**
Individual Line Number

Description
The meaning of this line item is 2" x 8" headers over openings will be installed by an F-2 crew at a rate of .047 man-hours per linear foot.

(86) Circle Reference Number
These reference numbers refer to charts, tables, estimating data, cost derivations and other information which may be useful to the user of this book. This information is located in the Reference Section of this book.

Crew F-2

Crew F-2	Hr.	Daily	Hr.	Daily	Bare Costs	Incl. O&P
2 Carpenters	$21.60	$345.60	$34.95	$559.20	$21.60	$34.95
Power Tools		15.60		17.15	.97	1.07
16 M.H., Daily Totals		$361.20		$576.35	$22.57	$36.02

Bare Costs are developed as follows for line no. **061-128-2050**
Mat. is **Bare Material Cost ($.56)**
Labor for Crew F2 = Man-hour Cost **($21.60)** × Man-hour Units **(.047)** = **$1.02**
Equip. for Crew F2 = Equip. Hour Cost **($.97)** × Man-hour Units **(.047)** = **$.05**
Total = Mat. Cost ($.56) + Labor Cost ($1.02) + Equip. Cost ($.05) = $1.63 each.
(**Note:** When a Crew is indicated Equipment and Labor costs are derived from the Crew Tables. See example above.)

Total Costs Including O&P are developed as follows:
Mat. is **Bare Material Cost** + 10% = **$.56 + $.06 = $.62**
Labor for Crew F2 = Man-hour Cost **($34.95)** × Man-hour Units **(.047)** = **$1.64**
Equip. is **Bare Equipment Cost** + 10% = **$.05 + $.01 = $.06**
Total = Mat. Cost ($.62) + Labor Cost ($1.64) + Equip. Cost ($.06) = $2.32
(**Note:** Where a crew is indicated, Equipment and Labor costs are derived from the Crew Tables. See example at top of this page. **"Total"** line costs are rounded.)

061 | Rough Carpentry

061 100 | Wood Framing

				CREW	DAILY OUTPUT	MAN-HOURS	UNIT	BARE COSTS MAT.	BARE COSTS LABOR	BARE COSTS EQUIP.	BARE COSTS TOTAL	TOTAL INCL O&P	
126	1000	Canopy or soffit framing, 1" x 4"		F-2	900	.018	L.F.	.19	.38	.02	.59	.85	126
	1040	1" x 8"			750	.021		.38	.46	.02	.86	1.19	
	1100	2" x 4"			820	.026		.27	.56	.03	.86	1.23	
	1140	2" x 8"			500	.032		.56	.69	.03	1.28	1.77	
	1200	3" x 4"			500	.032		.64	.69	.03	1.36	1.85	
	1240	3" x 10"			300	.053		1.59	1.15	.05	2.79	3.67	
	9000	Minimum labor/equipment charge		1 Carp	4	2	Job		43		43	70	
128	0010	FRAMING, WALLS											128
	0020												
	2000	Headers over openings, 2" x 6"	(86)	F-2	360	.044	L.F.	.42	.96	.04	1.42	2.06	
	2050	2" x 8"			340	.047		.56	1.02	.05	1.63	2.32	
	2110	2" x 10"	(87)		320	.050		.87	1.08	.05	2	2.76	
	2150	2" x 12"			300	.053		1.04	1.15	.05	2.24	3.06	
	2200	4" x 12"			190	.084		2.55	1.82	.08	4.45	5.85	
	2250	6" x 12"			140	.114		4.42	2.47	.11	7	9	
	5000	Plates, untreated, 2" x 3"			850	.019		.21	.41	.02	.64	.91	
	5020	2" x 4"			800	.020		.27	.43	.02	.72	1.02	
	5040	2" x 6"			750	.021		.42	.46	.02	.90	1.23	
	5120	Studs, 8' high wall, 2" x 3"			1,200	.013		.21	.29	.01	.51	.71	
	5140	2" x 4"			1,100	.015		.27	.31	.01	.59	.82	
	5160	2" x 6"			1,000	.016		.41	.35	.02	.78	1.03	
	5180	3" x 4"			800	.020		.56	.43	.02	1.01	1.34	
	8200	For 12' high wall, deduct							5%				
	8220	For stub wall, 6' high, add							20%				
	8240	3' high, add							40%				
	8250	For second story & above, add							5%				
	8300	Dormer & gable, add							15%				
	9000	Minimum labor/equipment charge		1 Carp	4	2	Job		43		43	70	
130	0010	FURRING Wood strips, on walls, 1" x 2", on wood		1 Carp	550	.015	L.F.	.10	.31		.41	.62	130
	0300	On masonry			495	.016		.11	.35		.46	.69	
	0400	On concrete			260	.031		.11	.66		.77	1.20	
	0500	1" x 3", wood strips, on walls, on wood			550	.015		.14	.31		.45	.66	
	0700	On masonry			495	.016		.15	.35		.50	.73	
	0800	On concrete			260	.031		.15	.66		.81	1.24	

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

October 3, 1991

Mr. Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East Seventh Street
St. Paul, Minnesota 55101-2362

Dear Mr. Poppenhagen:

RE: Proposed Emergency Rules Relating to Reimbursement of Petrofund Costs

The staff of the Minnesota Pollution Control Agency (MPCA) Tanks and Spills Section has reviewed the proposed emergency rules. The MPCA staff share the Petro Board's concerns regarding the cost associated with investigations and cleanups of leaking petroleum storage tanks.

The MPCA staff's primary concerns with the above-referenced rulemaking are:

1. Defining competitive bids, in part, as those coming from able companies, ie. consultants/contractors who have demonstrated appropriate experience and training as well as the ability to finish a project within specifications, bid and time schedules.

2. Realizing that competitive bidding's usefulness is limited to certain costs involving comparable units. Specifically, our experience has shown that the cost-effectiveness of certain work performed by environmental consultants, ie., investigation design and data interpretation and corrective action feasibility assessment and design, is difficult to compare on a per unit basis. We have noted that well-qualified consultants, who may be higher priced, have the ability to design more efficient soil and ground water investigation and remediation systems--systems that accomplish cleanup faster and, therefore, incur lower total initial operation and maintenance costs. Considering the quality of an environmental consultant's past work products (per 1. above) serves as a more useful means for ensuring the cost-effectiveness of these consulting services.

3. Require competitive bidding to include at least: 1) Soil excavation (cost per cubic yard removed); 2) soil treatment (cost per cubic yard, including transportation, sampling and monitoring); 3) installation of a comprehensive corrective action system; and 4) operation and maintenance costs of a comprehensive corrective action system. It should be noted that the items which would remain subject to the bidding process typically make up the bulk of the cleanup costs at a site.

4. Any site work that constitutes a public health or environmental emergency should be exempt from competitive bidding ie., defined as not within the "feasible" category for bidding. This includes free product removal prior to the initiation of a "permanent" free product recovery system.

5. To facilitate comparing the scope of work by responsible parties, completion of standardized competitive bidding form or worksheet should be submitted to the Department of Commerce by all bidders. (This form would be available from the Petrofund office.)

Thank you for the consideration of our comments. If you have any questions regarding this correspondence, please contact Dave Richfield of my staff at 612/297-8574.

Sincerely,

Michael Kanner

Michael Kanner, Manager
Tanks and Spills Section
Hazardous Waste Division

MK:mmm

Enclosure

cc: Phil Troutwine, Petro Board Member
Margaret Reagan, Petro Board Member
Burt McKafy, Petro Board Member
Ken Rashke, Petro Board Member
Brian Ettesvold, Petro Board Member
Richard Svanda, Petro Board Member

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Petroleum Tank Release Compensation Board
133 East Seventh Street
St. Paul, Minnesota 55101-2362

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Richard Svanda, Petro Board Member

DAHL
& ASSOCIATES, INC.
Environmental Consultants, Contractors & Engineers
Minnesota • Illinois • Arizona

October 2, 1991

Mr. Dennis Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East 7th Street
St. Paul, Minnesota 55101-2362

Dear Mr. Poppenhagen:

RE: Proposed Emergency Cost Containment Rule.

I'm enclosing a draft of rule language which Dahl & Associates, Inc. (DAHL) has drafted to reflect our position and recommendations for the emergency rule regarding cost containment. DAHL believes that this draft addresses the statutory requirements and yet allows contractors, consultants, and responsible parties to continue the investigation and clean up of releases.

The draft includes language on prequalification including an insurance requirement. We believe these issues are critical to maintain a responsible business environment, and should be acted on as soon as possible. DAHL welcomes the opportunity to offer further input on any other proposed rule language if asked by the Board or Petro Fund Staff. If you want further information please call our office at 490-2905.

Sincerely,

Gary Turgeon
Director of Sales Administration

GET

Enclosure: Draft Cost Containment Emergency Rule

cc: Brian Ettesvold
Donna Struzinski
Phil Troutwine

4390 McMenemy Road • Saint Paul, Minnesota 55127 • (612) 490-2905 • FAX (612) 490-3777

Department of Commerce

Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must provide evidence that a contract was awarded through a selection process based upon comparable unit costs, and contractor or consultant pre-qualification.

The applicant must document the reasonableness of any costs included on the reimbursement application and incurred after December 1, 1991 by providing one or more of the following:

A. An affidavit or other evidence provided by the applicant that a selection process was used based on comparable unit costs and consultant pre-qualification.

1. evidence of reasonable costs based on unit cost ranges that might be incurred for a given corrective action service. Cost ranges could be determined by the Board through industry surveys, and its own records. Costs which were in excess of the published cost ranges could be considered unreasonable, and require further documentation to establish their reasonableness.

2. evidence of consultant pre-qualification.

a.) Education and experience:

1.) any remedial investigation work be performed or directed by an individual with at a minimum a bachelor's degree from an accredited college or university in the physical sciences or a related field and successful management of five UST or environmental remediation projects within the past three years;

2.) any corrective action work beyond the excavation of contaminated soils, be performed under the supervision of a Minnesota Registered Professional Engineer (P.E.) with successful design and installation of five UST release corrective action systems in the past three years.

b.) Insurance coverage requirements: contractors and consultant must demonstrate ability to compensate third parties for personal and property damage resulting from their own negligence by:

1.) demonstrating insurance coverage with the following minimum limits: general liability insurance $1,000.000 and vehicle liability insurance $1,000,000.

2). Consultants must also show proof of professional liability insurance coverage including errors and omissions coverage.

B. evidence that only one pre-qualified consultant was reasonably available to perform the necessary work, or that the work was carried out in response to an emergency which didn't allow sufficient time to carry out a selection process, and that the cost was within the cost ranges set by the Board.

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

Strusinski & Associates, P.A.

Attorneys at Law

DONNA L. STRUSINSKI
LESLIE L. KIMES
MICHAEL J. BURKE
JONATHAN C. LEWIS

September 27, 1991

VIA FACSIMILE

Mr. Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East 7th Street
St. Paul, MN 55101-2362

Re: Proposed Emergency Rules with regard to bidding

Dear Mr. Poppenhagen:

I enclose suggested written modifications to the proposed Emergency Rules regarding reimbursement of costs by the Petroleum Tank Release Compensation Board. These proposed modifications are submitted on behalf of my client, the Northwest Petroleum Association and have been endorsed by Gary Persian, Counsel for the Minnesota Service Station Association.

Bold faced print is language we propose to add to the rules. Italicized words are those we propose to delete from the proposed rules. For the sake of clarity, I have numbered the lines the same as the original rule, and I am also enclosing a draft of the rule as it would appear if our language were to be adopted in its entirety.

Because of our serious concerns regarding the proposed language of the rules, I respectfully request that you consider the enclosed changes to the proposed emergency rules, along with the following notations supporting our reasons for the proposed changes. I will address those proposed changes by reference to the line numbers of the original, published emergency rule language.

Line 13: We propose that the words, "a minimum of two" and "privately or publicly be inserted prior to "competitive bids." This suggestion is in recognition of the fact that many out-state locations simply do not have the plethora of potential bidders that exists in the metropolitan area and other more urban areas of the state. In addition, the proposed rule makes no statement as to the number of required bids, which will lead to uncertainty for Responsible Parties who are trying to comply with the Rules. The words "privately or publicly" make it clear that a Responsible Party may, but need not solicit public bids.

The Capitol Office Building • Suite 303
525 Park St., St. Paul, MN 55103 (612) 224-0447 FAX (612) 293-1709

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Line 14: We propose eliminating the words "performed in connection with corrective action for which reimbursement is sought" and replacing them as noted. This gives the Petro Board the ability to develop a list of items it wants to include in the competitive bidding process. We believe that one of the items of some concensus, as a result of the 9/19/91 informal hearing was that such a "bid list" would provide more certainty to Responsible Parties as well as to Consultants.

I am enclosing a suggestion for such a bid list, which could either be included as a part of the rule, or could be provided to the Responsible Party along with the PCA's standard LEAK letter.

Finally, with regard to line 14, we suggest putting in a dollar limitation below which bids need not be sought. We believe this will streamline the bidding process for all concerned.

Line 16: Since the bidding approach lends itself to unit costs, we propose the addition of the word "unit" prior to the word "costs" in this line. It is clear that costs associated with a cleanup can, indeed, be reduced to unit costs. For instance, installation of monitoring wells can be reduced to "x" number of dollars per foot, just as the services of an environmental consultant and their staff people can be quantified in terms of dollars per hour. It is my understanding that the Petro Board staff currently makes extensive use of unit costs in their evaluation of applications.

Line 17: We suggest replacing the word "responsible" with the word "qualified." This addresses some of the concerns of the environmental consultants as expressed at the informal hearing on 9/19/91.

Use of the word "may" rather than "shall" and removing "prima facia" in line 17 will give the Petro Board considerable discretion in making a determination as to reasonableness of costs during the term of the emergency rule. We believe this is appropriate, since the duration of the emergency rule will serve as a training ground, so to speak, for all concerned.

Lines 19 and 20: We propose the elimination of the words "or more" at the end of line 19 and beginning of line 20. The reason for this will be clear to you once you consider the next paragraph with regard to proposed changes to line 26. In other words, there really would be only two potential realities with regard to the bidding process. Either the pollution event that is being addressed is one that requires immediate attention, such as a sudden release, or the event will be one involving remedial investigation, tank removal or corrective actions, all of which can be bid.

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Line 22: Change the word "bid" to "bids."

Line 23: Delete the word "procedure."

Line 26: We propose changing paragraph B by replacing the words following "necessary work," as noted. We believe this to be necessary because proving, after the fact, that a cost was substantially equivalent to that charged by a comparable person will necessarily entail soliciting bids months, or in some cases even years, after the work was performed. In addition, in some outstate areas, there may not be a comparable person in the same geographic area. We believe that enough experience in addressing environmental concerns has been gained such that the Petro Board, the consultants and responsible parties can all recognize the environmental events which require immediate attention and which do not lend themselves to the delays caused by the bidding process. In those cases, a letter explaining the situation to the Board should be sufficient for the Board to determine reasonableness of the request for reimbursement of the costs. Finally, eliminating this language removes a conflict with part 2890.0090, Subpart 1, Paragraph E, which speaks only of competitive bids and of the "unfeasibility" of soliciting competitive bids.

Line 12 of Paragraph E referred to directly above: We would propose replacing the words "unfeasibility of soliciting" with the words "inability to solicit" for the sake of clarity.

Finally, we believe the Emergency Rule should state an effective date, and we propose that it be December 1, 1991. The notice of adoption of the rule ties the effective date to approval by the attorney general's office, but since the notice does not become a part of the rule itself, we believe stating a date in the rule will enhance compliance capabilities.

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Thank you for considering these proposed changes to the emergency rule. Should you have any questions regarding them, please call me, Bob Krogman (484-7227) or Gary E. Persian (339-6733).

Sincerely,

STRUSINSKI & ASSOCIATES, P.A.

Donna L. Strusinski

DLS/ddc

Enclosures

cc: Robert Krogman, Executive Director NWPA

Gary E. Persian
Smith, Persian, MacGregor & Thompson
The Ivy Tower
1115 Second Avenue South
Minneapolis, MN 55403

RCV BY:Xerox Telecopier 7020 ; 9-27-91 ; 5:04PM ; 6122931708→ DEPT. OF COMMERCE:# 5

Department of Commerce

Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. Documentation of reasonableness; bidding required. **Effective for any project commenced on or after December 1, 1991,** the applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit **privately or publicly a minimum of two (2)** competitive bids based upon comparable unit costs for all work performed **in excess of $1,000.00** *in connection with corrective action for which reimbursement is sought* **specified by the Petroleum Tank Release Compensation Board.** Where competitive bids are received, **unit** costs in excess of those in the proposal of the lowest *responsible* **qualified** bidder *shall* **may** be considered *prima facie* unreasonable.

The applicant must document the reasonableness of any costs included on the reimbursement application by providing one *or more* of the following:

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A. evidence that the work was performed by a person or persons whose services were solicited through competitive bids procedure; the evidence shall include copies of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work **or that the necessary work was required by an emergency for which there was not sufficient time to solicit competitive bids** *and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.*

The board shall reimburse or pay only those costs 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 provided by the board and shall contain at least the following:

A. the name of the person making the application;

B. a description of the site of the release;

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

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

E. documentation of the solicitation of competitive bids or the *unfeasibility of soliciting* **inability to solicit** competitive bids as required by part 2890.0060, subpart 5.

[For text of sups 2 to 6, see M.R.]

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PRESITE ASSESSMENT

1. Permits and Fees to Minnesota Department of Health _____

2. Travel costs for drill rig @ $_____ per hour, estimated total number of hours _____ _____

3. Travel costs for drill rig crew @ $_____ per hour, estimated total number of hours _____ _____

4. Boring _____ holes to ground water; sealing borings as per Department of Health requirements @ _____ per foot _____

Additional for removing concrete/asphalt overlay

5. Collection of _____ soil samples _____

6. Collection of _____ water samples _____

7. Laboratory analysis of water samples @ $_____ per sample, soil samples @ $_____ per sample _____

8. Preparation of site report total estimated time @ $_____ per hour _____

TOTAL COST _____

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REMOVAL OF CONTAMINATED SOIL

1. Contact MPCA, required permits and fees _____

2. Excavate contaminated soil @ $_____ per cubic yard _____

3. Soil vapor analysis during excavation @ _____ per hour _____

4. Stock pile soil, tarp and berm @ _____ per cubic yard _____

5. Obtain _____ soil samples at $_____ per sample for lab analysis

6. Laboratory analysis @ _____ per sample _____

(Indicate Disposal Method)

7. Land farming @ $_____ per cubic yard _____

8. Incineration @ $_____ per cubic yard _____

9. Trucking of contaminated soil @ $_____ per cubic yard _____

10. Replace, fill, compact and fill to grade @ $_____ per cubic yard _____

11. Periodic laboratory analysis of land farmed soil per MPCA directions @ $_____ per sampling period _____

12. Prepare site report for submittal to MPCA _____

13. Personnel on site - estimate total number of hours for all personnel and itemize hourly charges (please include a standard rate sheet if available) _____

_____

_____

TOTAL _____

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REMEDIAL INVESTIGATION

1. Permits, fees _____

2. Travel cost drill rig @ $_____ per hour, estimated total number of hours _____ _____

3. Travel costs drill rig crew @ $_____ per hour, estimate total crew number of hours _____ _____

4. Administrative and/or supervisory personnel @ $_____ per hour, estimated number of hours _____ _____

5. Soil boring @ _____ per foot includes development of boring logs and abandonment Estimate number of borings needed _____ _____

6. Collection and Head Space screening of soil samples, includes PID and technician @ $_____ per hour. _____

7. Installation and development of _____ monitoring wells @ $_____ per foot to ground water; Estimate number of wells needed _____ _____

8. Collection of _____ water samples and developing ground water data @ $_____ per sample/hour _____

9. Laboratory analysis of water samples @ $_____ per sample

10. Collecting, mapping and evaluating public information on neighboring properties, underground utilities and potential receptors, _____ hours at $_____ per hour _____

11. Preparing site report for the MPCA estimated time _____ hours @ $_____ per hour _____

12. Preparing a Corrective Action Design for MPCA approval, estimated _____ hours @ $_____ per hour _____

13. Preparing Petrofund Reimbursement Form, estimated time _____ hours @ $_____ per hour _____

14. Abandonment of monitoring wells @ _____ per well. _____

TOTAL COST _____

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Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed by Northwest Petroleum Association and Minnesota Service Station Association

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. Effective for any project commenced on or after December 1, 1991, the applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit privately or publicly a minimum of two (2) competitive bids based upon comparable unit costs for all work performed in excess of $1,000.00 specified by the Petroleum Tank Release Compensation Board. Where competitive bids are received, unit costs in excess of those in the proposal of the lowest qualified bidder may be considered unreasonable.

The applicant must document the reasonableness of any costs included on the reimbursement application by providing one of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through competitive bids; the evidence shall include copies of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work or that the necessary work was

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required by an emergency for which there was not sufficient time to solicit competitive bids.

The board shall reimburse or pay only those costs 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 provided by the board and shall contain at least the following:

A. the name of the person making the application;

B. a description of the site of the release;

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

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

E. documentation of the solicitation of competitive bids or the inability to solicit competitive bids as required by part 2890.0060, subpart 5.

[For text of sups 2 to 6, see M.R.]

RCV BY:Xerox Telecopier 7020 ; 8-27-91 ; 5:08PM ; 8122931708→ DEPT. OF COMMERCE:#13

DULUTH MISSABE AND IRON RANGE RAILWAY COMPANY

ENGINEERING DEPARTMENT
329 SECOND STREET
PROCTOR, MN 55810-1091

September 24, 1991

FILE: 1900.145

State of Minnesota
SEP 27 1991
Dept. of Commerce

Mr. Dennis J. Poppenhagen
Executive Director
PETROLEUM TANK RELEASE COMPENSATION BOARD
133 East Seventh Street
St. Paul, MN 55101-2362

Dear Mr. Poppenhagen:

SUBJECT: PROPOSED EMERGENCY AMENDMENTS TO PERMANENT RULES RELATING TO REIMBURSEMENT OF COSTS BY THE PETROLEUM TANK RELEASE COMPENSATION BOARD

We assume these proposed rules are an attempt to control cleanup costs. We certainly agree with the cost saving intent. As a large fuel consumer we contribute a disproportionate share to the Petrofund while receiving very little in return. *However, we do not feel that a bidding requirement will necessarily reduce the cost of the work. In many cases, it will increase the cost!!*

Please consider the following:

1. **PERFORMING THE WORK "IN-HOUSE"**
   We and other companies who employ qualified skilled personnel to perform the work "in-house" will be required to obtain bids. How can we bid against ourselves? Often our "in-house" costs are lower than contractors' rates. If required to use contractors, *that will increase cost!!*

2. **BIDDING PROCESS - PROBLEMS & COMPLEXITIES**
   The bidding process is very time consuming and costly. How can you accurately bid for contaminated soil removal if you don't

know how much (if any) exists prior to tank removal? *Does the bidding requirement mean that every project will require drilling and boring prior to tank removals? That will increase costs!!*

If contractors are responsible for unknown quantities, in lump sum bids, the bids will be higher to cover the cost of unknowns. *This will increase costs.*

If contractors provide unit prices for contamination cleanup, how will the owner award the contract? Will the owner be required to hire the contractor with the lowest contamination cleanup prices when such contractor is the highest bidder on the total project? *That makes no sense! That will increase costs!*

3. <u>OBTAINING CONSULTANTS</u>
Will owners be required to obtain consultants based on bidding. How do you bid for consultants' services? Hourly rates can be misleading and project complexities differ. It's virtually impossible to bid for engineering services without a scope of work. The scope of work may not be known until <u>after</u> all the work is done.

4. <u>UNKNOWN OR EMERGENCY SITUATIONS</u>
A responsible person does not have time to request formal bids after contamination is first discovered in a UST removal project. These proposed rules would require a service station to close down for perhaps weeks or months after discovering contamination, while bids are received. Presumably he would be required to hire another contractor if the original contractor was not the low bidder on contamination cleanup.

In an emergency situation, MPCA Rules and Minnesota Statutes require the responsible party to respond immediately. How can one receive bids for this when immediate response is required?

5. **QUALITY OF WORK AND ADMINISTRATIVE COSTS SAVINGS**
We often utilize a contractor on a time-and-materials basis in order to insure that the project is done properly. With our proper in-field supervision, we have successfully completed many projects at substantial savings over bid prices because the contractor is only paid for the work performed and we save the administrative, engineering, and clerical costs associated with bidding.

How would the proposed Petrofund bidding requirements consider the administrative costs of the bidding process? Would they be reimbursable? *That would increase costs, particularly in our case.* What portion of the bidding process would relate to contamination cleanup? If Petrofund requires bidding, would the entire bid development cost be reimbursable?

SUMMARY

We feel that the proposed bidding requirements will discriminate against owners who perform their work with qualified "in-house" personnel.

These proposed bidding requirement will needlessly complicate and confuse the existing process.

These proposed bidding requirements *will increase the costs of cleanup*.

We feel that these proposed bidding requirements are poorly thought out, ill-conceived, totally out of touch with the real world, and totally unworkable.

These proposed emergency rules should be dropped from consideration! They should be replaced with the typical permanent rule making process which should include considerable thought, research, public meetings, public hearings, and private sector input before rule formulation.

For example the following are recommended changes that could be made to make this rule more reasonable.

RECOMMENDED CHANGES

Subpart 5. DOCUMENTATION OF REASONABLENESS; BIDDING RECOMMENDED (CHANGE AND ADD AS FOLLOWS):

C. Evidence that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

D. A tank owner/operator performing cleanup in accordance with all applicable MPCA rules at his own facility is not required to hire an outside consultant or contractor, nor is he required to submit competitive bids, when using his own qualified supervisors to conduct the work. Such tank owner/operator may be reimbursed only for the costs that are substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar wok performed.

Subpart 6. THE PETROFUND BOARD

Shall publish a list of the range of prices for all the types of work performed for which reimbursement can be authorized. The list of prices shall be organized by geographical area, shall be compiled based on typical observed prices received by Petrofund for reimbursement, and shall be updated twice annually. The maximum price allowable for reimbursement shall be adjusted annually to reflect increases or decreases due to inflation. Such maximum price shall be used for comparison in Subpart 5, Subsection B, C, or D.

No reimbursement will be allowed for costs above these maximum prices without proper justification.

These provisions will become effective six months following their adoption to insure that projects started prior to adoption of these rules will not be required to meet these new requirements.

We appreciate the opportunity to comment on these proposed emergency rules. If these proposed emergency rules are forwarded to the Attorney General for enactment, we request notification at such submission.

Sincerely,

W H Harrison

W. H. Harrison
Chief Engineer

c: G. C. LaValley

BRAUN[SM]
INTERTEC

Braun Intertec Environmental, Inc.
1345 Northland Drive
Mendota Heights, Minnesota 55120-1141
612-683-8700 Fax: 683-8888

Engineers and Scientists Serving
the Built and Natural Environments

October 1, 1991

State of Minnesota
OCT 03 1991
Dept. of Commerce

Mr. Dennis Poppenhagen
Director, Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101

Dear Mr. Poppenhagen:

This letter constitutes the written comments of Braun Intertec to the Proposed Emergency Rules published by the Department of Commerce on September 9, 1991 relating to the Minnesota Petroleum Tank Release Compensation Board's (the "Board") reimbursement process and competitive bidding. We are addressing the competitive bidding requirement and implementation of the proposed rules separately.

I. Competitive Bidding. The Proposed Rules require that an applicant must, where feasible, seek competitive bids for all work performed relating to a corrective action in order for those expenses to be reimbursable by the Board. We believe that a blanket requirement of competitive bidding for all aspects of work associated with a corrective action is counter-productive and unworkable. We recognize that there are certain aspects of corrective actions which are amenable to a competitive bidding process and should be competitively bid. Items of work which have a defined scope and can be described by plans and specifications can be competitively bid. Biddable items include such things as excavation, soil disposal, soil borings and monitoring well installation, laboratory testing, plumbing, electrical work and other construction related items.

Professional environmental consulting services are not the type of service that can be competitively bid. There are a number of reasons for this. Professional consulting services, by their nature, require the professional to exercise professional judgment. In the context of corrective actions, an environmental consultant is required to make these judgments at many stages. For example, decisions regarding the analysis of soil and water samples, the number and type of monitoring wells and borings required and the method of remediation including design of a remediation system are all items which require the exercise of professional judgment. Therefore, while it is possible to determine and bid the cost per foot for a boring, it is not possible to determine, at the time of contracting with an environmental consultant, the number of borings that will be required at a site.

This is particularly true in the context of corrective actions. The process of a corrective action usually begins with a site owner determining that he may have a release. The owner then hires an environmental consultant to evaluate the site, and design and implement a remedial action. At the time that the owner contracts with an environmental consultant, the nature and

Fax was rec'd 10-1-91

extent of the problem and any necessary response actions are unknown. The scope of the project is undefined. It is therefore unrealistic, at that point, to competitively bid a complete corrective action since the full scope of work is unknown and unknowable.

The cost of services for an environmental consultant is a function of the hourly rates charged and the time required to complete the scope of work. Hourly rates are controlled by a number of factors but, in general, reflect the qualifications of the individuals involved. The time requirements are also dependent on many factors, not the least of which are the experience and skill of the consultant. Similarly, experienced and skillful consultants will tend to develop more efficient investigations and corrective actions than those less qualified. Thus, to focus solely on hourly rates will not necessarily control costs, and could lead to negative impacts on both quality and cost.

We recognize the Board's concern for cost containment and support effective efforts to achieve that objective. We support competitive bidding where practical. However, it is important to keep in mind that cost is not the only issue at stake in corrective actions. The scope of work must be appropriate to the complexity of the site and the risks to human health and the environment. The corrective action should utilize appropriate technology and must be environmentally sound. Thus, in selecting an environmental consultant, the responsible parties must be allowed to consider not only cost but also the experience and ability of the consultant to provide a cost effective corrective action.

Environmental consulting services should be procured using a qualifications based system. A qualifications based selection begins with a request for qualifications (RFQ) in which the consulting firm lists their qualifications, experience performing similar work, as well as cost information (usually a schedule of fees). This allows the client to evaluate consultants based not only on their fees, but also their ability to perform the work. Cost control is achieved through the fee schedule (i.e., competitiveness in the market place) and subsequent negotiated scope(s) of work (i.e., proposals and work plans).

II. Implementation. The Proposed Emergency Rules raise a number of concerns relating to their implementation.

1. Application of Rules. The Proposed Emergency Rules do not address the issue of which reimbursement applications the rules will affect. In other words, it is not clear whether the rules are intended to apply to reimbursement applications submitted after enactment of the rules, regardless of whether contracts had been entered into or services performed prior to enactment or whether they will only apply to those applications which contain requests for reimbursement for which contracts were entered into or services performed after the enactment of the rules. We believe that the rules should be clarified to make it clear that the rules apply only to those applications that contain requests for reimbursement for services contracted for after the date of enactment of the rules.

2. Definitions. There are a number of terms used in the Proposed Emergency Rules that are undefined and will cause confusion in implementation. In line two of the proposed rules the word "feasible" is used. That term is undefined. This raises

numerous questions, such as how does an applicant determine when it is feasible to solicit competitive bids. When is that determination made? Can the Board determine that it was feasible for an applicant to competitively bid certain services after the fact or will there be a process for making that the determination prior to contracting. Also, the term "comparable unit costs" is not defined. If these provisions are intended to apply to environmental consulting services, it is unclear how the Board would define "comparable unit costs" as applied to those services. Finally, it is unclear from the proposed rules at what point or points in the process an applicant would be required to competitively bid services. Does an applicant have to rebid for services every time the scope of work changes based on the discoveries made during the course of an investigation? Such a requirement would clearly be extremely burdensome and, by causing significant delays to projects, would likely result in increased costs in the long run.

As drafted, the Proposed Emergency Rules would cause confusion and uncertainty in the reimbursement application process. It is impossible to bid environmental consulting services competitively, at least in the traditional sense that construction work is competitively bid. In view of these difficulties, we believe that the enclosed Proposed Revised Emergency Rules provide a workable framework for implementing more cost control into the reimbursement application process, at least on an interim basis. The proposed rules provide a definition of "comparable unit costs", provide for competitive bidding of certain construction related activities and services and provide that environmental consulting services be procured based on qualifications taking into account cost factors. These Proposed Revised Emergency Rules were drafted and adopted by the Consulting Engineers Council of Minnesota, Petrofund Task Force.

Sincerely,

Richard M. Johnston
Vice President

Enclosure

cc: Mr. Kenneth Raschke
Mr. David Oxley, CEC/M

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Comparable unit costs are defined as costs for products and work activities which can be accurately described by typical written plans and specifications such as those established by the Minnesota Department of Transportation or the Construction Specifications Institute. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

Professional services such as work plan designs, site investigations, analysis of results, corrective action designs, administration of corrective actions and similar services shall be selected by evaluating the qualifications, including consideration of costs, of one or more persons or firms and selecting a person or firm deemed to be qualified. Whenever possible, the applicant should consider the qualifications of at least two persons or firms providing such services.

The applicant must 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 competitive bid procedure; the evidence shall include copies or other documentation of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

Delta
Environmental
Consultants, Inc.

3900 Northwoods Drive
Suite 200
St. Paul, MN 55112
612/486-8022
FAX: 612/486-8021

October 2, 1991

Ms. Robin Hansen
Executive Director
Petroleum Tank Release Compensation Board
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101-2362

State of Minnesota
OCT 3 1991
Dept. of Commerce

Dear Ms. Hansen:

Delta Environmental Consultants, Inc. (Delta), has reviewed the Proposed Emergency Rules drafted by the Petroboard to address cost containment issues. We are concerned that the Proposed Emergency Rules leave several critical issues unanswered, and may result in considerable confusion among responsible parties involved in the reimbursement process. We have also reviewed the Proposed Revised Emergency Rules prepared by the Consulting Engineers Council of Minnesota (CEC/M) and feel that these rules help to clarify several of the questions raised in the original version.

The Proposed Emergency Rules drafted by the Petroboard do not address the question of what services can be feasibly bid on a competitive basis. An environmental remediation project requires that the environmental consultant exercise professional judgement throughout the project to determine the scope of services required to address the problem at hand. The scope of work required to adequately address a given project cannot be known prior to the initiation of work on the project. For a given project, the scope of work required is commonly adjusted as additional information becomes available. For these reasons and others, it is not feasible for a responsible party to obtain competitive bids for environmental consulting services. A more thorough discussion of the implications of competitively bidding professional consulting services was provided to the Cost Containment Subcommittee of the Petroboard in a letter from Delta dated February 4, 1991.

We at Delta recognize the importance of cost control in an environmental remediation project. We support the proposed requirement that would require competitive bidding whenever feasible. Activities which it is feasible to bid include those services for which there is a defined scope of work. This includes drilling, excavating, trucking, electrical, plumbing, and analytical services. For these activities, the environmental consultant prepares a scope of work, and requests competitive bids from selected contractors.

The Proposed Revised Emergency Rules drafted by CEC/M clarify the competitive bidding requirement to allow qualification-based selection of professional services while considering a cost component. We feel the Proposed Revised Emergency Rules will serve as an effective guideline while the Petroboard prepares permanent rules to address this issue.

Sincerely,

DELTA ENVIRONMENTAL CONSULTANTS, INC.

Robert M. Karls
Regional Manager/Vice President

RMK/grw

Fax was Rec'd on 10-2-91

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Comparable unit costs are defined as costs for products and work activities which can be accurately described by typical written plans and specifications such as those established by the Minnesota Department of Transportation or the Construction Specifications Institute. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

Professional services such as work plan designs, site investigations, analysis of results, corrective action designs, administration of corrective actions and similar services shall be selected by evaluating the qualifications, including consideration of costs, of one or more persons or firms and selecting a person or firm deemed to be qualified. Whenever possible, the applicant should consider the qualifications of at least two persons or firms providing such services.

The applicant must document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

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B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

CONSULTING ENGINEERS COUNCIL OF MINNESOTA

SUITE A / 5407 EXCELSIOR BOULEVARD / MINNEAPOLIS, MINNESOTA 55416 / 612-922-9696

October 1, 1991

TO: Members of the Petroleum Tank Release Compensation Board

FROM: David E. Oxley, CEC/M Executive Director

RE: Proposed Revised Emergency Rules

The Consulting Engineers Council of Minnesota (CEC/M) is an organization representing 130 private consulting engineering firms in the State of Minnesota. A task force on the Petroleum Task Release Compensation Board formed by CEC/M has adopted the enclosed proposed revised emergency rules in response to the proposed emergency rules published by the Department of Commerce on September 9, 1991.

The task force feels the proposed revised emergency rules would better serve the Petro Board and responsible parties in achieving cost containment and environmentally sound corrective actions. These proposed revised emergency rules are the result of the task force's review of the proposed rules provided by the Department of Commerce and comments gathered at the September 19, 1991 hearing held to discuss the emergency rules. The task force believes that the revised rules represent a fair and equitable solution to the cost containment problem.

We wish to confirm the understanding of the board's formal interest for CEC/M participation on the Cost Containment Committee. CEC/M is also prepared to formally participate with the board in developing permanent rules.

If you have any questions or comments, please contact me at 612/922-9696.

Sincerely,

David E. Oxley
CEC/M Executive Director

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 3
To D. Poppenhagen	From D. Oxley
Co. Dept. Commerce	Co. CEC
Dept.	Phone # 922-9696
Fax # 296-4328	Fax # 927-8705

"Dedicated to serve its members in achieving business and professional practices that meet the expectations of clients, employees and the public."

Member ACEC

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Executive Director: DAVID OXLEY, 5407 Excelsior Blvd., Suite A, Minneapolis, MN 55416, 612/922-9696 / 612/927-8705

2890.0060 REIMBURSEMENT OF COSTS.

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The applicant must document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

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B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

Barr
Engineering Company

7803 Glenroy Road
Minneapolis, MN 55439-3123
612/830-0555
612/835-0186 (Facsimile)

October 2, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Comments on Proposed Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

We have reviewed the August 27, 1991 Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board. We have concerns about the emergency amendments as proposed and believe that the draft amendments prepared by the Consulting Engineers Council (CEC; copy enclosed) meet the legislative intent and address many of the concerns expressed in public meetings concerning the amendments. We feel that the CEC's draft amendments will provide an interim guideline for development of permanent rules.

In summary, we support the CEC's draft amendments to the reimbursement rules. Thank you for considering our comments.

Sincerely,

Doug Connell, CPG

c: Bob DeGroot, CEC
Enclosure

RCV BY:Xerox Telecopier 7020 ;10- 2-91 ; 2:34PM ;612 835 0186 → DEPT. OF COMMERCE;# 2

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Comparable unit costs are defined as costs for products and work activities which can be accurately described by typical written plans and specifications such as those established by the Minnesota Department of Transportation or the Construction Specifications Institute. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

Professional services such as work plan designs, site investigations, analysis of results, corrective action designs, administration of corrective actions and similar services shall be selected by evaluating the qualifications, including consideration of costs, of one or more persons or firms and selecting a person or firm deemed to be qualified. Whenever possible, the applicant should consider the qualifications of at least two persons or firms providing such services.

The applicant must 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 competitive bid procedure; the evidence shall include copies or other documentation of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

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Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

BRUCE A. LIESCH ASSOCIATES, INC.
HYDROGEOLOGISTS • ENGINEERS • ENVIRONMENTAL SCIENTISTS

13400 15th Avenue No. • Plymouth, MN 55441 • 612-559-1423 • FAX No: 559-2202

October 1, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

We have reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. We have significant concerns about the emergency rules as proposed. Concerns about the proposed rules were expressed during the public hearing held September 19, 1991.

We have also reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe that the language proposed will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, we strongly support the CEC position and Proposed Revised Emergency Rules with they have submitted. Thank you for your consideration of our comments.

Sincerely,

BRUCE A. LIESCH ASSOCIATES, INC.

James de Lambert
President

maw:GO/ltr10-1a

Foth & Van Dyke

10340 Viking Drive, Suite 100
Eden Prairie, MN 55344
612/942-0396
FAX: 612/942-0865

October 2, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

Foth & Van Dyke has reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. We have concerns about the emergency rules as proposed. These concerns were also expressed during the public hearing held on September 19, 1991.

We have also reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe the language proposed by the CEC will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, we support the CEC position and the Proposed Revised Emergency Rules which they have submitted. Selecting the lowest bid on an individual aspect of an environmental project does not always equate to a quality work product and the lowest overall project cost. Thank you for consideration of our comments.

Sincerely,

FOTH & VAN DYKE

Fred J. Doran, P.E.
Division Manager

RCV BY:Xerox Telecopier 7020 ;10- 2-91 ;10:52PM ; 612 942 0865→ DEPT. OF COMMERCE:# 2

▲ **Northern Environmental**
Hydrologists • Engineers • Geologists

572 West County Road D
New Brighton, MN 55112
1-612-635-9100

October 2, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101

RE: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

Northern Environmental staff have reviewed the "Proposed Emergency Rules" prepared by the Petroleum Tank Release Compensation Board staff. While acknowledging that cost containment is important to continuation of the Petrofund reimbursement program, we have concerns about the emergency rules as proposed. It is our understanding that concerns were also expressed by others at the public hearing held on September 19, 1991.

As a member of the Consulting Engineer's Council (CEC) through our parent company Bonestroo and Associates, we have also reviewed the CEC's "Proposed Revised Emergency Rules" which have been submitted to the Petroboard and Board Members. We support the language of the CEC's "Proposed Revised Emergency Rules." We believe the CEC's "Proposed Revised Emergency Rules" meet the legislative intent of the proposed rule while addressing many of our concerns and the concerns of others expressed at the September 19, 1991 public hearing. We therefore support the CEC position and "Proposed Revised Emergency Rules" and thank you for your consideration of our position.

Sincerely,
Northern Environmental
Technologies, Incorporated

Bruce Rehwaldt, P.E.
Director of Operations

APPLIED ENGINEERING

2905 OAK LEA TERRACE
WAYZATA, MINNESOTA 55391-2533
FAX/TEL (612) 939-9095

October 4, 1991

State of Minnesota
OCT 09 1991
Dept. of Commerce

State of Minnesota
Petrofund Chairperson
Department of Commerce
133 E. 7th St
St Paul, MN 55101
FAX Transmittal ✓

Re: Consultant Qualifications; Emergency Enactment of New Regulations

Having spent ten years in the gasoline service station industry, I have replaced hundreds of underground storage tanks. With this experience, I started my own business and I employ two field technicians and a Hydrogeologist.

Over the last two years, we have worked on about 80 petroleum release sites. We have met every requirement in MPCA guidelines at these sites without a broad staff of specialists found in large environmental companies. In those few cases when a project becomes too complex for our capabilities, I defer it to a larger environmental company.

My prices are low and most of my customers are those with very little money. In one case, a project originally estimated by others at $125,000 was completed by Applied Engineering and closed out by the MPCA for less than $7,000.

I enjoy helping these people and I'm proud to be responsible for the livelihoods of my employees. However, I have a concern about any requirements being considered by the Petroboard for consultant qualifications. Excessively restrictive requirements will reduce market place competition and will unnecessarily raise costs. If a qualification standard is established, I request that it be done very carefully so that I and others are not unjustly forced out of business.

If you desire, I am willing to participate in any board hearings to provide recommendations or further details.

Thomas A. Greene

Thomas A. Greene

Pager # 526-7078
Fax Sent 10-4-91

twin city testing corporation
662 CROMWELL AVENUE
ST. PAUL, MN 55114
PHONE 612/645-3601

October 2, 1991

Mr. Dennis J. Poppenhagen
Director, Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Subj: Revised Emergency Rules
Relating to Petroleum Tank Release
Compensation Board

Dear Mr. Poppenhagen:

Twin City Testing Corporation (TCT) wishes to support both the testimony (September 19, 1991) and written communication (October 1, 1991) of the Consulting Engineers Council of Minnesota (CEC/M) regarding guidelines for procurement of professional services in connection with Petrofund-reimbursed projects.

From our perspective, the key reason why the CEC/M recommendations should be accepted is that qualifications, as well as cost, are extremely important when selecting an environmental consultant to perform work plans and corrective action designs, arrange site closure with the MPCA, and similar services. The Emergency Rules should not reduce such judgement/experience-based activities to a cost-only decision.

If you have any questions, or if we can be of further assistance, please call me at 659-7563.

Very truly yours,

David A. Byfield
Vice President, Environmental Services

DAB:klh

pc: Petroleum Tank Release Compensation Board Members

October 1, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Re: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

STS Consultants, Ltd. (STS) has reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. STS is concerned about the emergency rules as proposed. Concerns about the proposed rules were also expressed during the public hearing held September 19, 1991.

STS is directly involved in the Consulting Engineers Council (CEC) Subcommittee created to respond to the "Proposed Emergency Rules". STS, on behalf of the CEC, expressed concerns about the proposed rules during the public hearing held September 19, 1991. STS has assisted in developing and reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe that the language proposed will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, STS strongly supports the CEC position and Proposed Revised Emergency Rules which they have submitted. Please include this letter in your files regarding public comment on the "Proposed Emergency Rules". Thank you for your consideration of our comments.

Sincerely,

STS CONSULTANTS, LTD.

Robert L. DeGroot, P.E.
Principal Engineer

RLD/dn

STS Consultants Ltd.
Consulting Engineers

3650 Annapolis Lane
Minneapolis, Minnesota 55447
612.559.1900/Fax 612.559.4507

GERAGHTY
& MILLER, INC.
Environmental Services

Ground Water *Engineering* *Hydrocarbon* *Remediation* *Education*

October 2, 1991

FAXED 10-2-91

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

State of Minnesota
OCT 03 1991
Dept. of Commerce

Re: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

We have reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. We have concerns about the emergency rules as proposed. Concerns about the proposed rules were also expressed during the public hearing held September 19, 1991.

We have also reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe that the language proposed will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, we support the CEC position and Proposed Revised Emergency Rules which they have submitted. Thank you for your consideration of our comments.

Sincerely,

GERAGHTY & MILLER, INC.

Gary Hokkanen, P.E.
Associate

f:\office\mise\odell.ltr

105 Fifth Avenue South, Suite 350 • Minneapolis, Minnesota 55401 • (612) 339-9434 • FAX (612) 336-4538

Fax Copy Was
Received

Nova
Environmental Services, Inc.

S.B. Cummings
President
J.E. Findley
Chief Executive Officer

State of Minnesota
OCT 7
Dept. of Commerce

October 4, 1991

Ms. Robin Hanson – Petrofund
State of Minnesota
133 East 7th Street
St. Paul, MN 55101

RE: Petrofund Reimbursements

Ms. Hanson:

We appreciate the time you and Mr. Poppenhagen spent with us on Wednesday. David and I have discussed the Petrofund Reimbursement issues extensively and have seen some of the difficulties facing you in your task.

Based on our meetings, we perceive the primary task of the Board is to develop a program for reimbursing petroleum release clean ups that reduces the potential for "abuse" of the reimbursement program. The petrofund has proven to be an effective incentive to industry, paid for by industry, to mitigate UST issues. It is unfortunate that the success of the program has created opportunity for misappropriation. Nova supports and encourages the efforts of the Petroboard to evolve Petrofund into a clearly defined and easily administrated program for its continued success.

We have outlined some of our thoughts in the attachments labeled Approach #1 and Approach #2. Recognize that these are concepts, and obviously are not a final solution to your efforts.

If we can be of further assistance, please call Dave Koubsky or myself at 448–9393.

Sincerely,

NOVA ENVIRONMENTAL SERVICES, INC.

Robert J. Havrilak, P.E.
Vice President

APPROACH #1

Proposed rule #2890.0060 clearly states that documentation of a competitive bid process will be required to demonstrate the reasonableness of the charges associated with a project, and that costs in excess of the lowest bid will be considered unreasonable. We perceive the bid review process will create a significant burden on the time of the Petroboard, which could subsequently impact already lengthy reimbursement time.

The added administrative burden could be eliminated on roughly 90% of the reimbursement requests by establishing, in advance, reasonable unit rates for "common" charges. The Petroboard has data available to determine reasonable common costs for items like:

- Mobilization $/Mile
- Excavation $/CY
- Transportation $/Ton Mile
- Soil Disposal/Treatment $/CY
- Water Disposal $/Gal
- Analytical $/Sample
- Soil Boring $/Ft
- Well Installation $/Ft
- Field Supervision $/Hr
- Closure Report $/Report

The potential list could be expanded to include all the common charges expected for the average job. Charges for which reimbursement is sought could be checked against the common charge rates. Excesses could be automatically exempted from reimbursement unless accompanied by a reasonable explanation.

Most (roughly 90%) of the Petrofund reimbursement requests Nova submits are for the minor (<200 CY) contaminated soil removal with no ground water impact. This type of project normally requires immediate attention, and the contractor on site doing the non-reimbursable tank removal is usually the most cost effective remediation alternative. Unless unusual circumstances present themselves, the cost associated with this type of effort are easily charged with unit rates. Reasonable subcontractor markup by a prime contractor would need to be considered either in the unit rate, or in a separate acceptable percentage overhead category.

If the Petroboard uses the statistical data base available to define a fair rate (fair days pay for a fair days work) Nova, and we suspect our clients, would be satisfied with the reimbursement.

The reimbursement rate would not be intended to "fix" the costs of cost of services, but to simply define what has been determined to be a "reasonable competitive price" for reimbursement purposed. The reimbursement rates could be published and updated annually.

This process of establishing rates is not uncommon in the construction trades. We have attached the introduction pages of the "1990 Means Repair & Remodeling Cost Data". This book assigns rates to labor and materials and defines durations of tasks commonly associated with the building trades. These figures allow generation of "reasonable" costs estimates. The discussion in the introduction describes what we perceive as the Petroboard's task.

This approach could be satisfactory 90% of the time, and would probably satisfy a majority of the vendors and clients in the UST business. More sophisticated remediation efforts could be dealt with through a competitive bid review process because of the time required to move the program forward.

APPROACH #2

For work performed in connection with corrective action for which reimbursement is sought, after (date) the applicant shall be responsible to prove the reasonableness of all incurred eligible costs if requested by the board. Whenever feasible the applicant must solicit competitive bids based upon unit costs for all work performed in connection with corrective action for which reimbursement is sought. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder may be considered prima facie unreasonable.

The applicant must document the reasonableness of any cost included on the reimbursement application and may be required to provide the board with one or more of the following:

A. Evidence that the work was performed by a person or persons whose services were solicited through competitive bid procedure; the evidence shall include copies of all bids received; or

B. A description of the bidding or qualification process used in selecting a qualified contractor or environmental consultant and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. Evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

BIDDING REQUIREMENTS

Proof of the reasonableness of all incurred eligible costs may be required at the following stages of corrective action:

A. TANK REMOVAL

The board may require proof of a competitive bid process as outlined in Subp.5. if a release of petroleum was suspected by the responsible person prior to tank removal. If petroleum impacted soil is encountered during the tank removal, bids will be required for all soil disposal or treatment.

B. REMEDIAL INVESTIGATION

If a remedial investigation is required by the commissioner, the board may require proof of a competitive bid process as outlined in Subp.5. If additional remedial investigation work not outlined in the original bid is required by the commissioner to comply with current MPCA

guidance documents relating to petroleum release sites, the work shall be completed at the unit rates defined in the original bid, or a new bid must be solicited for the additional work.

C. LONG TERM GROUND WATER MONITORING

If long term ground water monitoring is required by the commissioner, the board may require proof of a competitive bid process as outlined in Subp.5. The scope of work included in the bid shall be based on the commissioners corrective action approval letter and may include anticipated costs for up to one year. If additional ground water monitoring is required by the commissioner after one year, the additional monitoring shall be performed at the unit rates defined in the original bid which may be adjusted to reflect a reasonable cost of living adjustment, or a new bid must be solicited at least yearly for additional monitoring required by the commissioner.

D. ACTIVE GROUND WATER OR IN-SITU SOIL REMEDIATION

If ground water or in-situ soil remediation is required by the commissioner, the board may require proof of a competitive bid process as outlined in Subp.5. The scope of work included in the bid shall be based on the commissioners corrective action approval letter and may include system maintenance for up to one year. If the commissioner requires that the remediation system remains operational for more than one year, operation of the remediation system shall be completed at the unit rates described in the original bid which may be adjusted to reflect a reasonable cost of living adjustment, or a new bid must be solicited yearly for the additional work required by the commissioner.

APPLICATION PROCESS

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

A. the name of the person making the application;
B. a description of the site of the release;
C. a copy of the commissioners approval of the corrective action plan
D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action; and
E. documentation of the solicitation of competitive bids or the infeasibility of soliciting bids as required by part 2890.0060, subpart 5. if requested by the board.

General comments regarding the proposed emergency rules relating to petroleum tank release compensation board.

1. What is the effective date of the rule?
2. Will it include work that is currently being performed or is scheduled to be performed that is under contract?

3. Who is responsible for educating the tank owners of the new rule?

4. What is the consultant or tank contractors responsibility of informing the tank owner that a competitive bid process is required by the board when they are asked to perform work?

5. Do not put bid sheets (if that is the boards intention) into the rule. Utilize wording such as "on a form prescribed by the board". This will allow the board the flexibility to make alterations in the form without changing the rule.

6. Line 17, page 1 of the proposed rule, who decides who is a responsible bidder? I would leave that up to the tank owner.

7. What if a tank owner did not go though a bid solicitation process through either lack of knowledge of the rule or by their own choosing?

8. Line 5,C. page 2, The board defines corrective action as "any action taken to minimize, eliminate, or clean-up a release to protect the public health and welfare or the environment".

   This definition when applied to line 5. C. page 2 of the rule suggests a work plan for all work relating to a petroleum release must be submitted to the commissioner for approval. Currently, the MPCA will not review a work plan that falls short of a clean-up or a no more action proposal. This recommendation is typically included in the recommendation section of the engineers report.

9. If the board requires competitive bidding at all phases of remedial investigation work and corrective action (clean-up), several consultants and contractors may be involved with the project and a duplication of work may result.

MEANS REPAIR & REMODELING COST DATA

Commercial/Residential

1990

TABLE OF CONTENTS

Foreword	ii
How To Use This Book	iii
Unit Price Section	viii
Crew Listings	1
Unit Price Pages	237
Assemblies Section	345
Reference Section	392
Appendix	393
Historical Cost Index	402
City Cost Indexes	405
Abbreviations	410
Job Scheduling	
Index	

Editor-In-Chief
William D. Mahoney

Senior Editor
Allan B. Cleveland

Contributing Editors
Donald D. Denzer
Jeffrey M. Goldman
Dwayne R. Lehigh
Alan E. Lew
Melville J. Mossman
John J. Moylan
Jeannene D. Murphy
Kenneth M. Randall
Kornelis Smit
Edward B. Wetherill
Ernest T. Williams
Rory Woolsey
David M. Zuniga

Technical Coordinators
Marion Schofield
Wayne D. Anderson

Graphics
Carl W. Linde

First Printing

FOREWORD

THE COMPANY AND THE EDITORS

Since 1942, R.S. Means Company, Inc. has been actively engaged in construction cost publishing and consulting throughout North America. The primary objective of the company is to provide the construction industry professional — the contractor, the owner, the architect, the engineer, the facilities manager — with current and comprehensive construction cost data.

A thoroughly experienced and highly qualified staff of professionals at R.S. Means work daily at collecting, analyzing and disseminating reliable cost information for your needs. These staff members have years of practical construction experience and engineering training prior to joining the firm. Each contributes to the maintenance of a complete, continually-updated construction cost data system.

With the constant flow of new construction methods and materials, the construction professional often cannot find enough time to examine and evaluate all the diverse construction cost possibilities. R.S. Means performs this function by analyzing all facets of the industry. Data is collected and organized into a format that is instantly accessible. The data is useful for all phases of construction cost determination — from the preliminary budget to the detailed unit price estimate.

The Means organization is always prepared to assist you and help in the solution of construction problems through the services of its four major divisions; Construction and Cost Data Publishing, Computer Data and Software Services, Consulting Services and Educational Seminars.

DEVELOPMENT OF COST DATA

The staff at R.S. Means Company, Inc. continuously monitors developments in the construction industry in order to ensure reliable, thorough and up-to-date cost information. While *overall* construction costs may vary relative to general economic conditions, price fluctuations within the industry are dependent upon many other factors. Individual price variations may, in fact, be opposite to overall economic trends. Therefore, costs are monitored and updated and new items are added in response to industry changes.

All costs represent U.S. national averages and are given in U.S. dollars. The Means City Cost Indexes can be used to convert costs to a particular location. The City Cost Indexes for Canada can be used to convert U.S. national averages to local costs in Canadian dollars.

Material Costs are determined by contacting manufacturers, dealers, distributors, and contractors throughout the United States. If current material costs are available for a specific location, adjustments can be made to reflect differences from the national average. Material costs do not include sales tax.

Labor Costs are based on the average of wage rates from 30 major U.S. cities. Rates are determined from agreements or prevailing wages for construction trades for the current year. Rates are listed on the inside back cover of this book. If wage rates in your area vary from those used in this book, or if rate increases are expected within a given year, labor costs should be adjusted accordingly.

Labor costs reflect productivity based on actual working conditions. These figures include time spent during a normal work day on items other than actual installation such as material receiving and handling, mobilization, site movement, breaks, and cleanup. Productivity data is developed over an extended period so as not to be influenced by abnormal variations, and reflects a typical average.

Equipment Costs as presented include not only rental costs, but also operating costs. Equipment prices are obtained from industry sources throughout the country — contractors, suppliers, dealers and manufacturers.

FACTORS AFFECTING COSTS

Quality: The prices for materials and the workmanship upon which productivity is based are in line with U.S. Government specifications and represent good sound construction.

Overtime: No allowance has been made for overtime. If premium time or work during other than normal working hours is anticipated, adjustments to labor costs should be made accordingly.

Productivity: The productivity, daily output and man-hour figures for each line item are based on working an eight hour day in daylight hours. For other than normal work hours, productivity may decrease.

Size of Project: The size and type of construction project can have a significant impact on cost. Economy of scale can reduce costs for large projects. Conversely, costs may be higher for small projects due to higher percentage overhead costs, small quantity material purchases and minimum labor and/or equipment charges. Costs in this book are intended for the size and type of project as described in the "How To Use This Book" pages. Costs for projects of a significantly different size or type should be adjusted accordingly.

Location: Material prices are for metropolitan areas. Beyond a 20 mile radius of large cities, extra trucking or other transportation charges will increase the material costs slightly. This material increase may be offset by lower wage rates. Both of these factors should be considered when preparing an estimate, especially if the job site is remote. Highly specialized subcontract items may require high travel and per diem expenses for mechanics.

Other factors affecting costs are season of year, contractor management, weather, local union restrictions, building code requirements, and the availability of adequate energy, skilled labor, and building materials. General business conditions influence the "in-place" cost of all items. Substitute materials and construction methods may have to be employed, and these may increase the installed cost and/or life cycle costs. Such factors are difficult to evaluate and cannot be predicted on the basis of the job's location in a particular section of the country. Thus, there may be a significant, but unavoidable cost variation where these factors are concerned.

CSI MASTERFORMAT

Unit price data in this book is organized according to the MASTERFORMAT system of classification and numbering as developed by the Construction Specifications Institute (CSI) and Construction Specifications Canada. This system, widely accepted in the industry, is used extensively by architects and engineers for construction specifications, by contractors for estimating and record keeping, and by manufacturers and suppliers for categorization of construction materials and products. R.S. Means has organized unit price data in this system to help construction professionals categorize all aspects of the construction process.

HOW TO USE THIS BOOK

HOW THE BOOK IS ARRANGED

This book is divided into four sections: Unit Price, Assemblies, Reference and an Appendix.

Unit Price Section: All cost information has been divided into the 16 CSI divisions. These divisions are patterned after the MASTERFORMAT created and adopted by the Construction Specifications Institute, Inc. This system is widely used by most segments of the building construction industry.

A listing of all divisions and an outline of their subdivisions is shown in the Table of Contents page at the beginning of the Unit Price Section.

Each unit price line item has been assigned a 10 digit code. A graphic explanation of the numbering system is shown on the "How to Use Unit Price" page.

Descriptions Each line item number is followed by a description of the item. Sub-items and additional sizes are indented beneath appropriate line items. The first line or two of the main (bold face) item often contain descriptive information that pertains to all line items beneath this bold face listing.

Crew The first column after the description lists the typical crew needed to install the item. Typical crews are defined and listed at the beginning of the Unit Price Section. When an installation is done by one trade and requires no power equipment, the appropriate trade is listed in the crew column. For example, "2 Carp" indicates that the installation is done with 2 carpenters. If, however, the installing crew is listed as "C-2", it is made up of 1 carpenter foreman, 4 carpenters, 1 building laborer, plus an allowance for power tools. The crew costs are listed both with bare labor rates, and with the installing contractor's overhead and profit. For each, the total cost per eight-hour day and the composite hourly cost for the crew are listed.

Crew Equipment Cost The power equipment required for each crew is included in the crew cost. The daily cost for crew equipment is based on dividing the weekly bare rental rate by 5 (number of working days per week), and then adding the hourly operating cost times 8 (hours per day). This "Crew Equipment Cost" is listed in Division 016.

Daily Output To the right of every "Crew" code listing, a "Daily Output" figure is given. This is the number of units that the listed crew will install in a normal 8-hour day.

Man-hours The column following "Daily Output" is "Man-hours". This figure represents the man-hours required to install one "unit" of work. Unit man-hours are calculated by dividing the total daily crew hours (as seen in the Crew Tables) by the Daily Output.

Unit To the right of the "Man-hour" column is the "Unit" column. The abbreviated designations indicate the unit upon which the price, production and crew are based. See the Appendix for a complete list of abbreviations.

Material The first column under the "Bare Cost" heading lists the unit material cost for the line item. This figure is the "bare" material cost with no overhead and profit allowances included. This cost is developed by contacting manufacturers, dealers, distributors and contractors throughout the United States. Prices shown reflect the national average of these quoted prices for January of the current year.

Labor The second column under the "Bare Cost" heading is the unit labor cost. This cost is derived by dividing the daily labor cost by the daily output. The wage rates used are 30 city union averages and are listed on the inside back cover.

Equipment The third column under the "Bare Cost" heading lists the unit equipment cost. This figure is the daily crew equipment cost divided by the daily output.

Total The last column under the "Bare Cost" heading lists the total bare cost of the item. This is the arithmetic total of the three previous columns: "Material", "Labor", and "Equipment".

Total Incl. O&P The figure in this column is the sum of three components: the bare material cost plus 10%; the bare labor cost plus overhead and profit (per the billing rate table on the inside back cover); and the bare equipment cost plus 10%. A sample calculation is shown on the "How to Use Unit Price" page preceding the Unit Price Section.

Assemblies Section: This section uses an "Assemblies" format that groups all the functional elements of a building into 12 "Uniformat" Construction Divisions.

At the top of each "Assembly" cost table is an illustration, a brief description, and the design criteria used to develop the cost. Each of the components and its contributing cost to the system is shown. For a complete breakdown and explanation of a typical "Assemblies" page, see "How to Use Assemblies Cost Tables" at the beginning of this section.

Material These cost figures include a standard 10% markup for "handling". They are national average material costs as of January of the current year and include delivery to the jobsite.

Installation The installation costs include labor and equipment, plus a markup for the installing contractor's overhead and profit.

Reference Section: Following the items in the "Unit Price" pages, there are frequently found large numbers in circles. These numbers refer the reader to information and data in this Reference Section. This material includes estimating procedures, alternate pricing methods, technical data and cost derivations. These derivations illustrate the development of costs and may be of value in listing materials for purchase. This section also includes information on design and economy in construction.

Appendix: Included in this section are Historical and City Cost Indexes, a Project Schedule (CPM) example, a list of abbreviations and a comprehensive index.

Historical Cost Index This index provides data to adjust construction costs over time.

City Cost Indexes These indexes provide data to adjust the "national average" costs in this book to 162 major cities throughout the U.S. and Canada.

CPM (Critical Path Method) A brief review of project scheduling is included in the Appendix. By following the example, it can be seen that even a small project can benefit from CPM scheduling. Realistic duration times for activities are developed using the crews and man-hours shown in the line items of the manual.

Abbreviations/Index A listing of the abbreviations used throughout this book, along with the terms they represent is included. Following the abbreviations list is an index for all sections.

Minimum Labor/Equipment Charge When preparing a repair and remodeling estimate, it is a good idea to carefully evaluate the "Minimum" Labor and Equipment figures listed within the Unit Price section of the book.

An estimate that has a bottom line Labor or Equipment cost LESS THAN the "Minimum" amounts listed at the bottom of specific sections of cost figures should be adjusted upward to the "Minimum" figures shown. The "Minimum" figures are included as a guide for that area of construction. Bid figures for any job must be adjusted and allowances made for the contractor to recover the expense connected with losing a portion of a normal work day. This allowance is usually needed to allow for set-up cost, clean-up and/or travel time.

Materials add a cost to an estimate over and above Labor and Equipment costs; therefore, Material costs should never be confused with this adjustment to "Minimum" Labor and Equipment figures. When Labor and Equipment costs have been developed for a specific item, ALWAYS ADJUST FIGURES UP TO THE "MINIMUM" AMOUNT SHOWN. An example is shown below:

EXAMPLE: Establish the bid price to replace a casement window unit. Assume installation of a 2' x 5' Metal Clad Window with Insulating Glass.

	086 100 | Wood Windows		CREW	DAILY OUTPUT	MAN-HOURS	UNIT	BARE COSTS MAT.	BARE COSTS LABOR	BARE COSTS EQUIP.	BARE COSTS TOTAL	TOTAL INCL O&P	
120	0010 2080	CASEMENT WINDOW including frame, screen, and exterior trim Metal clad, deluxe, insulating glass, 2'-0" x 5'-0" high	1 Carp	8	1	Ea.	173	22		195	225	120
	9000	Minimum labor/equipment charge		3	2.670	Job		58		58	93	

SOLUTION:

STEP ONE: Develop Material Cost and Labor Cost separately.

Material Cost for Line Number [086-120-2080] = $173

Labor Cost for Line Number [086-120-2080] = $22.00

Total Incl. O&P for Line Number [086-120-2080] = [Material + 10%] + [Labor + 61.8%] = [$173 + $17] + [$22 + $13] = [$190] + [$35] = $225

STEP TWO: Evaluate Minimum Labor and Equipment Figure

Minimum Labor/Equipment Figure for this section = $58 (Compare to $22]

Minimum Labor/Equipment Figure Incl. O&P for this section = $93

Add Material Cost plus a 10% mark-up to the Minimum Labor/Equipment Cost listed in the Total Incl. O&P Column.

[$173 + 10%] + [$93] = [$190 + $93] = $283

ANSWER: $283 is the correct figure to use. This sum takes into consideration the Minimum Labor/Equipment figure (with O&P included), plus Material Cost (with 10% for O&P).

PROJECT SIZE

The book is aimed primarily at residential, industrial, and commercial repair/remodeling projects costing $5,000 to $500,000. With reasonable exercise of judgment the figures can be used for any repair/remodeling project but do not apply to civil engineering structures such as bridges, dams, highways or the like.

ESTIMATING PRECISION

When creating an engineering estimate, ignore the cents column. Only give the total per unit cost to the nearest dollar. The cents will average in a column of figures. An engineering estimate of $257,323.37 is ridiculous. A figure of $257,325 is certainly more sensible and $257,000 is better and just as likely to be right.

If you follow this simple instruction, the time saved is tremendous with an added important advantage. Using round figures, your mind is left free to exercise judgment and common sense rather than being overcome and befuddled by a mass of computations.

When you have finished, roughly check the big items for location of decimal point. That is important. A large error can creep in if you write down $300 when it should be $3,000. Also check the list to be sure you have not omitted any large item. A common error is to overlook, let us say, heating or to forget finished flooring or painting or otherwise commit a gross omission. No amount of accuracy in prices can compensate for such an oversight.

It is important to keep the bare costs and costs that already include the sub's O & P separate since different mark-ups will have to be applied to each category. Organize your estimating procedures to minimize confusion and simplify checking to insure against omissions and/or duplications.

ESTIMATING GUIDELINES

Here are a few simplified rules for handling numbers and measurements when preparing a repair and remodeling estimate. These suggestions are made to enable the estimator to perform unit price and systems estimating in a logical, easy to check and thorough manner.

1. The estimator should always visit the job site and analyze available job site data to be certain that any contingencies that pertain to the project are accounted for. Division 010-032-0010 through 2350 in the Unit Price section lists some of the factors that must be added to construction costs for particular job requirements.
2. Use preprinted forms for orderly sequence of dimensions and locations and for recording telephone dimensions.
3. Be consistent with listing dimensions, for example: Length x Width x Height. This helps in re-checking to insure that, say, the total length of partitions is appropriate for the building area.
4. Use printed (rather than measured) dimensions where given.
5. Add up multiple printed dimensions for a single entry where possible.
6. Measure all other dimensions carefully.
7. Use each set of dimensions to calculate multiple related quantities.
8. Convert foot and inch measurements to decimal feet when listing. Memorize decimal equivalents to .01 parts of a foot (1/8" equals approximately .01').
9. Do not "round off" quantities until final summary.
10. Mark drawings with different colors as items are taken off.
11. Keep similar items together; different items separate.
12. Identify location and drawing numbers to aid in future checking for completeness.
13. Measure or list everything on the drawings or mentioned in the specifications.
14. It may be necessary to list items not called for to make the job complete.
15. Be alert for: notes on plans such as N.T.S. (not to scale); changes in scale throughout the drawings; reduced size drawings; discrepancies between the specifications and the drawings.
16. Develop a consistent pattern of performing an estimate, for example:
    a. Start the quantity take-off at the lower floors and move on to the next highest floor.
    b. Proceed from the main section of the building to the wings.
    c. Move consistently through the plans south to north or vice versa.
    d. Move consistently clockwise or counterclockwise.
    e. Take off floor plan quantities first, elevations next, then the detail drawings.
17. List all gross dimensions that can be either used again for different quantities, or used as a rough-check of other quantities for vertification (exterior perimeter, gross floor area, individual floor areas, etc.).
18. Utilize design symmetry or repetition:
    Repetitive floors
    Repetitive wings
    Symmetrical design around a center line
    Similar room layouts
    Note: Great care must be exercised, otherwise entire wings or floors can be omitted rather easily. This is one area to keep checking as the estimate progresses. Refer back to total floor area listed on the plan's posted sheet or gross dimensions.
19. Do not convert units until the final total is obtained. For instance, when estimating concrete work, keep all units to the nearest cubic foot, then and convert to cubic yards.
20. When figuring alternates, it is best to total all items involved in the basic system, then total all items involved in the alternates. Thus you work with positive numbers in all cases. When adds and deducts are used, it often is confusing whether to add or subtract a given item, especially on a complicated or involved alternate.

ROUNDING OF COSTS

In general, all unit prices in excess of $5.00 have been rounded to make them easier to use and still maintain adequate precision of the results. The rounding rules are as follows:

Price from $5.01 to $20.00 rounded to the nearest 5¢
Price from $20.01 to $100.00 rounded to the nearest $1
Price from $100.01 to $1,000.00 rounded to the nearest $5
Price from $1,000.01 to $10,000.00 rounded to the nearest $25
Price from $10,000.01 to $50,000.00 rounded to the nearest $100
Price over $50,000.01 rounded to the nearest $500

HOW TO USE UNIT PRICE PAGES

Important
Prices in this section are listed in two ways: as bare costs and as costs including overhead and profit of the installing contractor. In most cases, if the work is to be subcontracted, it is best for a general contractor to add an additional 10% to the figures found in the column titled **"TOTAL INCL. O&P"**.

Unit
The unit of measure listed here reflects the material being used in the line item. For example: headers over openings are defined in linear feet (L.F.).

Productivity
The daily output represents typical total daily amount of work that the designated crew will produce. Man-hours are a unit of measure for the labor involved in performing a task. To derive the total man-hours for a task, multiply the quantity of the item involved times the man-hour figure shown.

Line Number Determination
Each line item is identified by a unique ten-digit number.

MASTERFORMAT
Division
061 128 2050
Subdivision

MASTERFORMAT
Mediumscope
061 100
061 128 2050
Major Classification

061 128 2050
Individual Line Number

Description
The meaning of this line item is 2" x 8" headers over openings will be installed by an F-2 crew at a rate of .047 man-hours per linear foot.

(86) Circle Reference Number
These reference numbers refer to charts, tables, estimating data, cost derivations and other information which may be useful to the user of this book. This information is located in the Reference Section of this book.

Crew F-2

Crew F-2	Hr.	Daily	Hr.	Daily	Bare Costs	Incl. O&P
2 Carpenters	$21.60	$345.60	$34.95	$559.20	$21.60	$34.95
Power Tools		15.60		17.15	.97	1.07
16 M.H., Daily Totals		$361.20		$576.35	$22.57	$36.02

Bare Costs are developed as follows for line no. **061-128-2050**
Mat. is **Bare Material Cost ($.56)**
Labor for Crew F2 = Man-hour Cost **($21.60)** × Man-hour Units **(.047)** = **$1.02**
Equip. for Crew F2 = Equip. Hour Cost **($.97)** × Man-hour Units **(.047)** = **$.05**
Total = Mat. Cost ($.56) + Labor Cost ($1.02) + Equip. Cost ($.05) = $1.63 each.
(**Note:** When a Crew is indicated Equipment and Labor costs are derived from the Crew Tables. See example above.)

Total Costs Including O&P are developed as follows:
Mat. is **Bare Material Cost** + 10% = **$.56 + $.06 = $.62**
Labor for Crew F2 = Man-hour Cost **($34.95)** × Man-hour Units **(.047)** = **$1.64**
Equip. is **Bare Equipment Cost** + 10% = **$.05 + $.01 = $.06**
Total = Mat. Cost ($.62) + Labor Cost ($1.64) + Equip. Cost ($.06) = $2.32
(**Note:** Where a crew is indicated, Equipment and Labor costs are derived from the Crew Tables. See example at top of this page. **"Total"** line costs are rounded.)

061 | Rough Carpentry

061 100 | Wood Framing

			Crew	Daily Output	Man-Hours	Unit	Bare Costs Mat.	Labor	Equip.	Total	Total Incl. O&P	
126	1000	Canopy or soffit framing, 1" x 4"	F-2	900	.018	L.F.	.19	.38	.02	.59	.85	126
	1040	1" x 8"		750	.021		.38	.46	.02	.86	1.19	
	1100	2" x 4"		820	.025		.27	.56	.03	.86	1.23	
	1140	2" x 8"		500	.032		.56	.69	.03	1.28	1.77	
	1200	3" x 4"		500	.032		.64	.69	.03	1.36	1.85	
	1240	3" x 10"		300	.053		1.59	1.15	.05	2.79	3.67	
	9000	Minimum labor/equipment charge	1 Carp	4	2	Job		43		43	70	
128	0010	FRAMING, WALLS										128
	0020											
	2000	Headers over openings, 2" x 6" (86)	F-2	360	.044	L.F.	.42	.96	.04	1.42	2.06	
	2050	2" x 8"		340	.047		.56	1.02	.05	1.63	2.32	
	2110	2" x 10" (87)		320	.050		.87	1.08	.05	2	2.78	
	2150	2" x 12"		300	.053		1.04	1.15	.05	2.24	3.06	
	2200	4" x 12"		190	.084		2.55	1.82	.08	4.45	5.85	
	2250	6" x 12"		140	.114		4.42	2.47	.11	7	9	
	5000	Plates, untreated, 2" x 3"		850	.019		.21	.41	.02	.64	.91	
	5020	2" x 4"		800	.020		.27	.43	.02	.72	1.02	
	5040	2" x 6"		750	.021		.42	.46	.02	.90	1.23	
	5120	Studs, 8' high wall, 2" x 3"		1,200	.013		.21	.29	.01	.51	.71	
	5140	2" x 4"		1,100	.015		.27	.31	.01	.59	.82	
	5160	2" x 6"		1,000	.016		.41	.35	.02	.78	1.03	
	5180	3" x 4"		800	.020		.56	.43	.02	1.01	1.34	
	8200	For 12' high wall, deduct						5%				
	8220	For stub wall, 6' high, add						20%				
	8240	3' high, add						40%				
	8250	For second story & above, add						5%				
	8300	Dormer & gable, add						15%				
	9000	Minimum labor/equipment charge	1 Carp	4	2	Job		43		43	70	
130	0010	FURRING Wood strips, on walls, 1" x 2", on wood	1 Carp	550	.015	L.F.	.10	.31		.41	.62	130
	0300	On masonry		495	.016		.11	.35		.46	.69	
	0400	On concrete		260	.031		.11	.66		.77	1.20	
	0500	1" x 3", wood strips, on walls, on wood		550	.015		.14	.31		.45	.66	
	0700	On masonry		495	.016		.15	.35		.50	.73	
	0800	On concrete		260	.031		.15	.66		.81	1.24	

Bay West

Bay West Inc.
Five Empire Drive
St. Paul, Minnesota
55103-1867

612-291-0456
FAX 291-0099

October 2, 1991

7.35 gm CDL

State of Minnesota

OCT 02 1991

Dept. of Commerce

Mr. Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East Seventh Street
St. Paul, MN 55101-2362

Re: Comments Regarding Proposed Emergency Rules Relating to Petroleum Tank Release Compensation Board

Dear Mr. Poppenhagen:

We recognize the need for the referenced rules and appreciate this opportunity to comment. Our concerns are listed below:

Competitive Bidding

The issue of quality vs. cost must be considered. According to the proposed language, "...costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable."

Without a definition of "responsible bidder" in the above language, there are no guidelines for determining appropriate qualifications.

In addition, this language is restrictive since any applicant who does not accept the lowest bid will be responsible for all costs in excess of that lowest bid. Making cost the primary issue severely limits the applicant's choices by precluding him from considering such things as bidder qualifications, past experience, availability, etc.

Specifics of Bidding Procedure

The following items should be addressed to clarify the bidding procedure to be followed.

. **Geographic bidding area** - This is especially important with regard to rural areas where contractor/consultant services are limited--from what area must contractors/consultants be solicited if they are to be considered "reasonably available"?

. **Procedure for soliciting bids** - Verbal? Written? Bid form prepared by Petrofund?

- **Successive bidding** - If a consultant is selected through competitive bidding and a contractor's services are required later, must the contractor also be selected through this bidding process; and would this process then funnel down to subcontractors as well?

- **Items to be bid** - Must **every** item be bid--for example, if initial need is merely to cover a dirt pile with poly?

Criteria for Judging Consultant/Contractor Qualifications

Guidelines would be helpful, especially for owners/ operators of small service stations.

Additional Work Required after Initial Bidding

Frequently changes in scope of work are required that cannot be foreseen at project inception, and/or further work is mandated by the MPCA. Provisions should be made to clarify how these situations will be handled.

Eligibility

The rules should stipulate to which corrective actions they apply:

- only those bid after the effective date of the rules?
- ongoing projects that may require further work?

Exceptions

The proposed language is not clear regarding exceptions to the bidding process, e.g., as in the case of an emergency response where competitive bidding could be time restrictive and/or create safety/health hazards.

We suggest the inclusion of a "DEFINITIONS" section to include the following items. It is especially important to provide this type of clarification now, since the rules will remain in effect for a minimum of 180 days (360 days if continued) and will then serve as the basis for the implementation of permanent rules at a later date.

- **reasonable/reasonableness** - what is considered reasonable and by what criteria will this be judged?
- **feasible** - who will judge whether or not it is feasible to solicit bids, and what criteria will be used to judge this feasibility?
- **reasonably available or qualified** - will the Petrofund provide guidelines for judging this?

In addition, to limit the use of legalese and make these rules as understandable as possible for all concerned, perhaps consideration could be given to rewording the following:

> "Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable."

Further, we want to point out that the practice of many companies is to work with a contractor under a General Services Agreement, which pre-qualifies the contractor for a number of services, thereby saving time and money in the preparation of many project proposals. The bidding process, as proposed, will cause companies unnecessary delays and expenses in completing work on tanks and spills, particularly for emergency situations.

We appreciate the opportunity to comment on these proposed rules and would welcome further discussion at your request.

Sincerely,

Rondi C Erickson

Rondi C. Erickson
President

njo

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

October 3, 1991

Mr. Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East Seventh Street
St. Paul, Minnesota 55101-2362

Dear Mr. Poppenhagen:

RE: Proposed Emergency Rules Relating to Reimbursement of Petrofund Costs

The staff of the Minnesota Pollution Control Agency (MPCA) Tanks and Spills Section has reviewed the proposed emergency rules. The MPCA staff share the Petro Board's concerns regarding the cost associated with investigations and cleanups of leaking petroleum storage tanks.

The MPCA staff's primary concerns with the above-referenced rulemaking are:

1. Defining competitive bids, in part, as those coming from able companies, ie. consultants/contractors who have demonstrated appropriate experience and training as well as the ability to finish a project within specifications, bid and time schedules.

2. Realizing that competitive bidding's usefulness is limited to certain costs involving comparable units. Specifically, our experience has shown that the cost-effectiveness of certain work performed by environmental consultants, ie., investigation design and data interpretation and corrective action feasibility assessment and design, is difficult to compare on a per unit basis. We have noted that well-qualified consultants, who may be higher priced, have the ability to design more efficient soil and ground water investigation and remediation systems--systems that accomplish cleanup faster and, therefore, incur lower total initial operation and maintenance costs. Considering the quality of an environmental consultant's past work products (per 1. above) serves as a more useful means for ensuring the cost-effectiveness of these consulting services.

3. Require competitive bidding to include at least: 1) Soil excavation (cost per cubic yard removed); 2) soil treatment (cost per cubic yard, including transportation, sampling and monitoring); 3) installation of a comprehensive corrective action system; and 4) operation and maintenance costs of a comprehensive corrective action system. It should be noted that the items which would remain subject to the bidding process typically make up the bulk of the cleanup costs at a site.

4. Any site work that constitutes a public health or environmental emergency should be exempt from competitive bidding ie., defined as not within the "feasible" category for bidding. This includes free product removal prior to the initiation of a "permanent" free product recovery system.

5. To facilitate comparing the scope of work by responsible parties, completion of standardized competitive bidding form or worksheet should be submitted to the Department of Commerce by all bidders. (This form would be available from the Petrofund office.)

Thank you for the consideration of our comments. If you have any questions regarding this correspondence, please contact Dave Richfield of my staff at 612/297-8574.

Sincerely,

Michael Kanner

Michael Kanner, Manager
Tanks and Spills Section
Hazardous Waste Division

MK:mmm

Enclosure

cc: Phil Troutwine, Petro Board Member
Margaret Reagan, Petro Board Member
Burt McKafy, Petro Board Member
Ken Rashke, Petro Board Member
Brian Ettesvold, Petro Board Member
Richard Svanda, Petro Board Member

DAHL
& ASSOCIATES, INC.
Environmental Consultants, Contractors & Engineers
Minnesota • Illinois • Arizona

October 2, 1991

Mr. Dennis Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East 7th Street
St. Paul, Minnesota 55101-2362

Dear Mr. Poppenhagen:

RE: Proposed Emergency Cost Containment Rule.

I'm enclosing a draft of rule language which Dahl & Associates, Inc. (DAHL) has drafted to reflect our position and recommendations for the emergency rule regarding cost containment. DAHL believes that this draft addresses the statutory requirements and yet allows contractors, consultants, and responsible parties to continue the investigation and clean up of releases.

The draft includes language on prequalification including an insurance requirement. We believe these issues are critical to maintain a responsible business environment, and should be acted on as soon as possible. DAHL welcomes the opportunity to offer further input on any other proposed rule language if asked by the Board or Petro Fund Staff. If you want further information please call our office at 490-2905.

Sincerely,

Gary Turgeon
Director of Sales Administration

GET

Enclosure: Draft Cost Containment Emergency Rule

cc: Brian Ettesvold
Donna Struzinski
Phil Troutwine

4390 McMenemy Road • Saint Paul, Minnesota 55127 • (612) 490-2905 • FAX (612) 490-3777

Department of Commerce

Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must provide evidence that a contract was awarded through a selection process based upon comparable unit costs, and contractor or consultant pre-qualification.

The applicant must document the reasonableness of any costs included on the reimbursement application and incurred after December 1, 1991 by providing one or more of the following:

A. An affidavit or other evidence provided by the applicant that a selection process was used based on comparable unit costs and consultant pre-qualification.

1. evidence of reasonable costs based on unit cost ranges that might be incurred for a given corrective action service. Cost ranges could be determined by the Board through industry surveys, and its own records. Costs which were in excess of the published cost ranges could be considered unreasonable, and require further documentation to establish their reasonableness.

2. evidence of consultant pre-qualification.

a.) Education and experience:

1.) any remedial investigation work be performed or directed by an individual with at a minimum a bachelor's degree from an accredited college or university in the physical sciences or a related field and successful management of five UST or environmental remediation projects within the past three years;

2.) any corrective action work beyond the excavation of contaminated soils, be performed under the supervision of a Minnesota Registered Professional Engineer (P.E.) with successful design and installation of five UST release corrective action systems in the past three years.

b.) Insurance coverage requirements: contractors and consultant must demonstrate ability to compensate third parties for personal and property damage resulting from their own negligence by:

1.) demonstrating insurance coverage with the following minimum limits: general liability insurance $1,000.000 and vehicle liability insurance $1,000,000.

2). Consultants must also show proof of professional liability insurance coverage including errors and omissions coverage.

B. evidence that only one pre-qualified consultant was reasonably available to perform the necessary work, or that the work was carried out in response to an emergency which didn't allow sufficient time to carry out a selection process, and that the cost was within the cost ranges set by the Board.

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

Strusinski & Associates, P.A.

Attorneys at Law

DONNA L. STRUSINSKI
LESLIE L. KIMES
MICHAEL J. BURKE
JONATHAN C. LEWIS

September 27, 1991

VIA FACSIMILE

Mr. Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release Compensation Board
133 East 7th Street
St. Paul, MN 55101-2362

Re: Proposed Emergency Rules with regard to bidding

Dear Mr. Poppenhagen:

I enclose suggested written modifications to the proposed Emergency Rules regarding reimbursement of costs by the Petroleum Tank Release Compensation Board. These proposed modifications are submitted on behalf of my client, the Northwest Petroleum Association and have been endorsed by Gary Persian, Counsel for the Minnesota Service Station Association.

Bold faced print is language we propose to add to the rules. Italicized words are those we propose to delete from the proposed rules. For the sake of clarity, I have numbered the lines the same as the original rule, and I am also enclosing a draft of the rule as it would appear if our language were to be adopted in its entirety.

Because of our serious concerns regarding the proposed language of the rules, I respectfully request that you consider the enclosed changes to the proposed emergency rules, along with the following notations supporting our reasons for the proposed changes. I will address those proposed changes by reference to the line numbers of the original, published emergency rule language.

Line 13: We propose that the words, "a minimum of two" and "privately or publicly be inserted prior to "competitive bids." This suggestion is in recognition of the fact that many out-state locations simply do not have the plethora of potential bidders that exists in the metropolitan area and other more urban areas of the state. In addition, the proposed rule makes no statement as to the number of required bids, which will lead to uncertainty for Responsible Parties who are trying to comply with the Rules. The words "privately or publicly" make it clear that a Responsible Party may, but need not solicit public bids.

The Capitol Office Building • Suite 303
525 Park St., St. Paul, MN 55103 (612) 224-0447 FAX (612) 293-1709

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Line 14: We propose eliminating the words "performed in connection with corrective action for which reimbursement is sought" and replacing them as noted. This gives the Petro Board the ability to develop a list of items it wants to include in the competitive bidding process. We believe that one of the items of some concensus, as a result of the 9/19/91 informal hearing was that such a "bid list" would provide more certainty to Responsible Parties as well as to Consultants.

I am enclosing a suggestion for such a bid list, which could either be included as a part of the rule, or could be provided to the Responsible Party along with the PCA's standard LEAK letter.

Finally, with regard to line 14, we suggest putting in a dollar limitation below which bids need not be sought. We believe this will streamline the bidding process for all concerned.

Line 16: Since the bidding approach lends itself to unit costs, we propose the addition of the word "unit" prior to the word "costs" in this line. It is clear that costs associated with a cleanup can, indeed, be reduced to unit costs. For instance, installation of monitoring wells can be reduced to "x" number of dollars per foot, just as the services of an environmental consultant and their staff people can be quantified in terms of dollars per hour. It is my understanding that the Petro Board staff currently makes extensive use of unit costs in their evaluation of applications.

Line 17: We suggest replacing the word "responsible" with the word "qualified." This addresses some of the concerns of the environmental consultants as expressed at the informal hearing on 9/19/91.

Use of the word "may" rather than "shall" and removing "prima facia" in line 17 will give the Petro Board considerable discretion in making a determination as to reasonableness of costs during the term of the emergency rule. We believe this is appropriate, since the duration of the emergency rule will serve as a training ground, so to speak, for all concerned.

Lines 19 and 20: We propose the elimination of the words "or more" at the end of line 19 and beginning of line 20. The reason for this will be clear to you once you consider the next paragraph with regard to proposed changes to line 26. In other words, there really would be only two potential realities with regard to the bidding process. Either the pollution event that is being addressed is one that requires immediate attention, such as a sudden release, or the event will be one involving remedial investigation, tank removal or corrective actions, all of which can be bid.

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Line 22: Change the word "bid" to "bids."

Line 23: Delete the word "procedure."

Line 26: We propose changing paragraph B by replacing the words following "necessary work," as noted. We believe this to be necessary because proving, after the fact, that a cost was substantially equivalent to that charged by a comparable person will necessarily entail soliciting bids months, or in some cases even years, after the work was performed. In addition, in some outstate areas, there may not be a comparable person in the same geographic area. We believe that enough experience in addressing environmental concerns has been gained such that the Petro Board, the consultants and responsible parties can all recognize the environmental events which require immediate attention and which do not lend themselves to the delays caused by the bidding process. In those cases, a letter explaining the situation to the Board should be sufficient for the Board to determine reasonableness of the request for reimbursement of the costs. Finally, eliminating this language removes a conflict with part 2890.0090, Subpart 1, Paragraph E, which speaks only of competitive bids and of the "unfeasibility" of soliciting competitive bids.

Line 12 of Paragraph E referred to directly above: We would propose replacing the words "unfeasibility of soliciting" with the words "inability to solicit" for the sake of clarity.

Finally, we believe the Emergency Rule should state an effective date, and we propose that it be December 1, 1991. The notice of adoption of the rule ties the effective date to approval by the attorney general's office, but since the notice does not become a part of the rule itself, we believe stating a date in the rule will enhance compliance capabilities.

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Thank you for considering these proposed changes to the emergency rule. Should you have any questions regarding them, please call me, Bob Krogman (484-7227) or Gary E. Persian (339-6733).

Sincerely,

STRUSINSKI & ASSOCIATES, P.A.

Donna L. Strusinski

DLS/ddc

Enclosures

cc: Robert Krogman, Executive Director NWPA

Gary E. Persian
Smith, Persian, MacGregor & Thompson
The Ivy Tower
1115 Second Avenue South
Minneapolis, MN 55403

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Department of Commerce

Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed

2890.0060 REIMBURSEMENT OF COSTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. Documentation of reasonableness; bidding required. **Effective for any project commenced on or after December 1, 1991,** the applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit **privately or publicly a minimum of two (2)** competitive bids based upon comparable unit costs for all work performed **in excess of $1,000.00** *in connection with corrective action for which reimbursement is sought* **specified by the Petroleum Tank Release Compensation Board.** Where competitive bids are received, **unit** costs in excess of those in the proposal of the lowest *responsible* **qualified** bidder *shall* **may** be considered *prima facie* unreasonable.

The applicant must document the reasonableness of any costs included on the reimbursement application by providing one *or more* of the following:

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A. evidence that the work was performed by a person or persons whose services were solicited through competitive bids *procedure*; the evidence shall include copies of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work **or that the necessary work was required by an emergency for which there was not sufficient time to solicit competitive bids** *and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.*

The board shall reimburse or pay only those costs 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 provided by the board and shall contain at least the following:

A. the name of the person making the application;

B. a description of the site of the release;

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

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

E. documentation of the solicitation of competitive bids or the *unfeasibility of soliciting* **inability to solicit** competitive bids as required by part 2890.0060, subpart 5.

[For text of sups 2 to 6, see M.R.]

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PRESITE ASSESSMENT

1. Permits and Fees to Minnesota Department of Health _____

2. Travel costs for drill rig @ $_____ per hour, estimated total number of hours _____ _____

3. Travel costs for drill rig crew @ $_____ per hour, estimated total number of hours _____ _____

4. Boring _____ holes to ground water; sealing borings as per Department of Health requirements @ _____ per foot _____

Additional for removing concrete/asphalt overlay

5. Collection of _____ soil samples _____

6. Collection of _____ water samples _____

7. Laboratory analysis of water samples @ $_____ per sample, soil samples @ $_____ per sample _____

8. Preparation of site report total estimated time @ $_____ per hour _____

TOTAL COST _____

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REMOVAL OF CONTAMINATED SOIL

1. Contact MPCA, required permits and fees _____

2. Excavate contaminated soil @ $_____ per cubic yard _____

3. Soil vapor analysis during excavation @ _____ per hour _____

4. Stock pile soil, tarp and berm @ _____ per cubic yard _____

5. Obtain _____ soil samples at $_____ per sample for lab analysis

6. Laboratory analysis @ _____ per sample _____

(Indicate Disposal Method)

7. Land farming @ $_____ per cubic yard _____

8. Incineration @ $_____ per cubic yard _____

9. Trucking of contaminated soil @ $_____ per cubic yard _____

10. Replace, fill, compact and fill to grade @ $_____ per cubic yard _____

11. Periodic laboratory analysis of land farmed soil per MPCA directions @ $_____ per sampling period _____

12. Prepare site report for submittal to MPCA _____

13. Personnel on site - estimate total number of hours for all personnel and itemize hourly charges (please include a standard rate sheet if available) _____

_____

_____

TOTAL _____

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REMEDIAL INVESTIGATION

1. Permits, fees _____

2. Travel cost drill rig @ $_____ per hour, estimated total number of hours _____ _____

3. Travel costs drill rig crew @ $_____ per hour, estimate total crew number of hours _____ _____

4. Administrative and/or supervisory personnel @ $_____ per hour, estimated number of hours _____ _____

5. Soil boring @ _____ per foot includes development of boring logs and abandonment Estimate number of borings needed _____ _____

6. Collection and Head Space screening of soil samples, includes PID and technician @ $_____ per hour. _____

7. Installation and development of _____ monitoring wells @ $_____ per foot to ground water; Estimate number of wells needed _____ _____

8. Collection of _____ water samples and developing ground water data @ $_____ per sample/hour _____

9. Laboratory analysis of water samples @ $_____ per sample

10. Collecting, mapping and evaluating public information on neighboring properties, underground utilities and potential receptors, _____ hours at $_____ per hour _____

11. Preparing site report for the MPCA estimated time _____ hours @ $_____ per hour _____

12. Preparing a Corrective Action Design for MPCA approval, estimated _____ hours @ $_____ per hour _____

13. Preparing Petrofund Reimbursement Form, estimated time _____ hours @ $_____ per hour _____

14. Abandonment of monitoring wells @ _____ per well. _____

TOTAL COST _____

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Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board

Rules as Proposed by Northwest Petroleum Association and Minnesota Service Station Association

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. Effective for any project commenced on or after December 1, 1991, the applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit privately or publicly a minimum of two (2) competitive bids based upon comparable unit costs for all work performed in excess of $1,000.00 specified by the Petroleum Tank Release Compensation Board. Where competitive bids are received, unit costs in excess of those in the proposal of the lowest qualified bidder may be considered unreasonable.

The applicant must document the reasonableness of any costs included on the reimbursement application by providing one of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through competitive bids; the evidence shall include copies of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work or that the necessary work was

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required by an emergency for which there was not sufficient time to solicit competitive bids.

The board shall reimburse or pay only those costs 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 provided by the board and shall contain at least the following:

A. the name of the person making the application;

B. a description of the site of the release;

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

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

E. documentation of the solicitation of competitive bids or the inability to solicit competitive bids as required by part 2890.0060, subpart 5.

[For text of sups 2 to 6, see M.R.]

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DULUTH MISSABE AND IRON RANGE RAILWAY COMPANY

ENGINEERING DEPARTMENT
329 SECOND STREET
PROCTOR, MN 55810-1091

September 24, 1991

FILE: 1900.145

State of Minnesota
SEP 27 1991
Dept. of Commerce

Mr. Dennis J. Poppenhagen
Executive Director
PETROLEUM TANK RELEASE COMPENSATION BOARD
133 East Seventh Street
St. Paul, MN 55101-2362

Dear Mr. Poppenhagen:

SUBJECT: PROPOSED EMERGENCY AMENDMENTS TO PERMANENT RULES RELATING TO REIMBURSEMENT OF COSTS BY THE PETROLEUM TANK RELEASE COMPENSATION BOARD

We assume these proposed rules are an attempt to control cleanup costs. We certainly agree with the cost saving intent. As a large fuel consumer we contribute a disproportionate share to the Petrofund while receiving very little in return. *However, we do not feel that a bidding requirement will necessarily reduce the cost of the work. In many cases, it will increase the cost!!*

Please consider the following:

1. **PERFORMING THE WORK "IN-HOUSE"**
   We and other companies who employ qualified skilled personnel to perform the work "in-house" will be required to obtain bids. How can we bid against ourselves? Often our "in-house" costs are lower than contractors' rates. If required to use contractors, *that will increase cost!!*

2. **BIDDING PROCESS - PROBLEMS & COMPLEXITIES**
   The bidding process is very time consuming and costly. How can you accurately bid for contaminated soil removal if you don't

know how much (if any) exists prior to tank removal? *Does the bidding requirement mean that every project will require drilling and boring prior to tank removals? That will increase costs!!*

If contractors are responsible for unknown quantities, in lump sum bids, the bids will be higher to cover the cost of unknowns. *This will increase costs.*

If contractors provide unit prices for contamination cleanup, how will the owner award the contract? Will the owner be required to hire the contractor with the lowest contamination cleanup prices when such contractor is the highest bidder on the total project? *That makes no sense! That will increase costs!*

3. **OBTAINING CONSULTANTS**
Will owners be required to obtain consultants based on bidding. How do you bid for consultants' services? Hourly rates can be misleading and project complexities differ. It's virtually impossible to bid for engineering services without a scope of work. The scope of work may not be known until after all the work is done.

4. **UNKNOWN OR EMERGENCY SITUATIONS**
A responsible person does not have time to request formal bids after contamination is first discovered in a UST removal project. These proposed rules would require a service station to close down for perhaps weeks or months after discovering contamination, while bids are received. Presumably he would be required to hire another contractor if the original contractor was not the low bidder on contamination cleanup.

In an emergency situation, MPCA Rules and Minnesota Statutes require the responsible party to respond immediately. How can one receive bids for this when immediate response is required?

5. QUALITY OF WORK AND ADMINISTRATIVE COSTS SAVINGS
We often utilize a contractor on a time-and-materials basis in order to insure that the project is done properly. With our proper in-field supervision, we have successfully completed many projects at substantial savings over bid prices because the contractor is only paid for the work performed and we save the administrative, engineering, and clerical costs associated with bidding.

How would the proposed Petrofund bidding requirements consider the administrative costs of the bidding process? Would they be reimbursable? *That would increase costs, particularly in our case.* What portion of the bidding process would relate to contamination cleanup? If Petrofund requires bidding, would the entire bid development cost be reimbursable?

SUMMARY

We feel that the proposed bidding requirements will discriminate against owners who perform their work with qualified "in-house" personnel.

These proposed bidding requirement will needlessly complicate and confuse the existing process.

These proposed bidding requirements *will increase the costs of cleanup.*

We feel that these proposed bidding requirements are poorly thought out, ill-conceived, totally out of touch with the real world, and totally unworkable.

These proposed emergency rules should be dropped from consideration! They should be replaced with the typical permanent rule making process which should include considerable thought, research, public meetings, public hearings, and private sector input before rule formulation.

For example the following are recommended changes that could be made to make this rule more reasonable.

RECOMMENDED CHANGES

Subpart 5. DOCUMENTATION OF REASONABLENESS; BIDDING RECOMMENDED (CHANGE AND ADD AS FOLLOWS):

C. Evidence that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed.

D. A tank owner/operator performing cleanup in accordance with all applicable MPCA rules at his own facility is not required to hire an outside consultant or contractor, nor is he required to submit competitive bids, when using his own qualified supervisors to conduct the work. Such tank owner/operator may be reimbursed only for the costs that are substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar wok performed.

Subpart 6. THE PETROFUND BOARD

Shall publish a list of the range of prices for all the types of work performed for which reimbursement can be authorized. The list of prices shall be organized by geographical area, shall be compiled based on typical observed prices received by Petrofund for reimbursement, and shall be updated twice annually. The maximum price allowable for reimbursement shall be adjusted annually to reflect increases or decreases due to inflation. Such maximum price shall be used for comparison in Subpart 5, Subsection B, C, or D.

No reimbursement will be allowed for costs above these maximum prices without proper justification.

These provisions will become effective six months following their adoption to insure that projects started prior to adoption of these rules will not be required to meet these new requirements.

We appreciate the opportunity to comment on these proposed emergency rules. If these proposed emergency rules are forwarded to the Attorney General for enactment, we request notification at such submission.

Sincerely,

W H Harrison

W. H. Harrison
Chief Engineer

c: G. C. LaValley

BRAUN[SM]
INTERTEC

Braun Intertec Environmental, Inc.
1345 Northland Drive
Mendota Heights, Minnesota 55120-1141
612-683-8700 Fax: 683-8888

Engineers and Scientists Serving the Built and Natural Environments

October 1, 1991

State of Minnesota
OCT 03 1991
Dept. of Commerce

Mr. Dennis Poppenhagen
Director, Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101

Dear Mr. Poppenhagen:

This letter constitutes the written comments of Braun Intertec to the Proposed Emergency Rules published by the Department of Commerce on September 9, 1991 relating to the Minnesota Petroleum Tank Release Compensation Board's (the "Board") reimbursement process and competitive bidding. We are addressing the competitive bidding requirement and implementation of the proposed rules separately.

I. Competitive Bidding. The Proposed Rules require that an applicant must, where feasible, seek competitive bids for all work performed relating to a corrective action in order for those expenses to be reimbursable by the Board. We believe that a blanket requirement of competitive bidding for all aspects of work associated with a corrective action is counter-productive and unworkable. We recognize that there are certain aspects of corrective actions which are amenable to a competitive bidding process and should be competitively bid. Items of work which have a defined scope and can be described by plans and specifications can be competitively bid. Biddable items include such things as excavation, soil disposal, soil borings and monitoring well installation, laboratory testing, plumbing, electrical work and other construction related items.

Professional environmental consulting services are not the type of service that can be competitively bid. There are a number of reasons for this. Professional consulting services, by their nature, require the professional to exercise professional judgment. In the context of corrective actions, an environmental consultant is required to make these judgments at many stages. For example, decisions regarding the analysis of soil and water samples, the number and type of monitoring wells and borings required and the method of remediation including design of a remediation system are all items which require the exercise of professional judgment. Therefore, while it is possible to determine and bid the cost per foot for a boring, it is not possible to determine, at the time of contracting with an environmental consultant, the number of borings that will be required at a site.

This is particularly true in the context of corrective actions. The process of a corrective action usually begins with a site owner determining that he may have a release. The owner then hires an environmental consultant to evaluate the site, and design and implement a remedial action. At the time that the owner contracts with an environmental consultant, the nature and

Fax was Rec'd 10-1-91

extent of the problem and any necessary response actions are unknown. The scope of the project is undefined. It is therefore unrealistic, at that point, to competitively bid a complete corrective action since the full scope of work is unknown and unknowable.

The cost of services for an environmental consultant is a function of the hourly rates charged and the time required to complete the scope of work. Hourly rates are controlled by a number of factors but, in general, reflect the qualifications of the individuals involved. The time requirements are also dependent on many factors, not the least of which are the experience and skill of the consultant. Similarly, experienced and skillful consultants will tend to develop more efficient investigations and corrective actions than those less qualified. Thus, to focus solely on hourly rates will not necessarily control costs, and could lead to negative impacts on both quality and cost.

We recognize the Board's concern for cost containment and support effective efforts to achieve that objective. We support competitive bidding where practical. However, it is important to keep in mind that cost is not the only issue at stake in corrective actions. The scope of work must be appropriate to the complexity of the site and the risks to human health and the environment. The corrective action should utilize appropriate technology and must be environmentally sound. Thus, in selecting an environmental consultant, the responsible parties must be allowed to consider not only cost but also the experience and ability of the consultant to provide a cost effective corrective action.

Environmental consulting services should be procured using a qualifications based system. A qualifications based selection begins with a request for qualifications (RFQ) in which the consulting firm lists their qualifications, experience performing similar work, as well as cost information (usually a schedule of fees). This allows the client to evaluate consultants based not only on their fees, but also their ability to perform the work. Cost control is achieved through the fee schedule (i.e., competitiveness in the market place) and subsequent negotiated scope(s) of work (i.e., proposals and work plans).

II. Implementation. The Proposed Emergency Rules raise a number of concerns relating to their implementation.

1. Application of Rules. The Proposed Emergency Rules do not address the issue of which reimbursement applications the rules will affect. In other words, it is not clear whether the rules are intended to apply to reimbursement applications submitted after enactment of the rules, regardless of whether contracts had been entered into or services performed prior to enactment or whether they will only apply to those applications which contain requests for reimbursement for which contracts were entered into or services performed after the enactment of the rules. We believe that the rules should be clarified to make it clear that the rules apply only to those applications that contain requests for reimbursement for services contracted for after the date of enactment of the rules.

2. Definitions. There are a number of terms used in the Proposed Emergency Rules that are undefined and will cause confusion in implementation. In line two of the proposed rules the word "feasible" is used. That term is undefined. This raises

numerous questions, such as how does an applicant determine when it is feasible to solicit competitive bids. When is that determination made? Can the Board determine that it was feasible for an applicant to competitively bid certain services after the fact or will there be a process for making that the determination prior to contracting. Also, the term "comparable unit costs" is not defined. If these provisions are intended to apply to environmental consulting services, it is unclear how the Board would define "comparable unit costs" as applied to those services. Finally, it is unclear from the proposed rules at what point or points in the process an applicant would be required to competitively bid services. Does an applicant have to rebid for services every time the scope of work changes based on the discoveries made during the course of an investigation? Such a requirement would clearly be extremely burdensome and, by causing significant delays to projects, would likely result in increased costs in the long run.

As drafted, the Proposed Emergency Rules would cause confusion and uncertainty in the reimbursement application process. It is impossible to bid environmental consulting services competitively, at least in the traditional sense that construction work is competitively bid. In view of these difficulties, we believe that the enclosed Proposed Revised Emergency Rules provide a workable framework for implementing more cost control into the reimbursement application process, at least on an interim basis. The proposed rules provide a definition of "comparable unit costs", provide for competitive bidding of certain construction related activities and services and provide that environmental consulting services be procured based on qualifications taking into account cost factors. These Proposed Revised Emergency Rules were drafted and adopted by the Consulting Engineers Council of Minnesota, Petrofund Task Force.

Sincerely,

Richard M. Johnston
Vice President

Enclosure

cc: Mr. Kenneth Raschke
Mr. David Oxley, CEC/M

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Comparable unit costs are defined as costs for products and work activities which can be accurately described by typical written plans and specifications such as those established by the Minnesota Department of Transportation or the Construction Specifications Institute. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

Professional services such as work plan designs, site investigations, analysis of results, corrective action designs, administration of corrective actions and similar services shall be selected by evaluating the qualifications, including consideration of costs, of one or more persons or firms and selecting a person or firm deemed to be qualified. Whenever possible, the applicant should consider the qualifications of at least two persons or firms providing such services.

The applicant must 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 competitive bid procedure; the evidence shall include copies or other documentation of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

Delta
Environmental
Consultants, Inc.

3900 Northwoods Drive
Suite 200
St. Paul, MN 55112
612/486-8022
FAX: 612/486-8021

October 2, 1991

Ms. Robin Hansen
Executive Director
Petroleum Tank Release Compensation Board
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101-2362

State of Minnesota
OCT 3 1991
Dept. of Commerce

Dear Ms. Hansen:

Delta Environmental Consultants, Inc. (Delta), has reviewed the Proposed Emergency Rules drafted by the Petroboard to address cost containment issues. We are concerned that the Proposed Emergency Rules leave several critical issues unanswered, and may result in considerable confusion among responsible parties involved in the reimbursement process. We have also reviewed the Proposed Revised Emergency Rules prepared by the Consulting Engineers Council of Minnesota (CEC/M) and feel that these rules help to clarify several of the questions raised in the original version.

The Proposed Emergency Rules drafted by the Petroboard do not address the question of what services can be feasibly bid on a competitive basis. An environmental remediation project requires that the environmental consultant exercise professional judgement throughout the project to determine the scope of services required to address the problem at hand. The scope of work required to adequately address a given project cannot be known prior to the initiation of work on the project. For a given project, the scope of work required is commonly adjusted as additional information becomes available. For these reasons and others, it is not feasible for a responsible party to obtain competitive bids for environmental consulting services. A more thorough discussion of the implications of competitively bidding professional consulting services was provided to the Cost Containment Subcommittee of the Petroboard in a letter from Delta dated February 4, 1991.

We at Delta recognize the importance of cost control in an environmental remediation project. We support the proposed requirement that would require competitive bidding whenever feasible. Activities which it is feasible to bid include those services for which there is a defined scope of work. This includes drilling, excavating, trucking, electrical, plumbing, and analytical services. For these activities, the environmental consultant prepares a scope of work, and requests competitive bids from selected contractors.

The Proposed Revised Emergency Rules drafted by CEC/M clarify the competitive bidding requirement to allow qualification-based selection of professional services while considering a cost component. We feel the Proposed Revised Emergency Rules will serve as an effective guideline while the Petroboard prepares permanent rules to address this issue.

Sincerely,

DELTA ENVIRONMENTAL CONSULTANTS, INC.

Robert M. Karls
Regional Manager/Vice President

RMK/grw

FEL WAS RECD 10-2-91

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Comparable unit costs are defined as costs for products and work activities which can be accurately described by typical written plans and specifications such as those established by the Minnesota Department of Transportation or the Construction Specifications Institute. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

Professional services such as work plan designs, site investigations, analysis of results, corrective action designs, administration of corrective actions and similar services shall be selected by evaluating the qualifications, including consideration of costs, of one or more persons or firms and selecting a person or firm deemed to be qualified. Whenever possible, the applicant should consider the qualifications of at least two persons or firms providing such services.

The applicant must 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 competitive bid procedure; the evidence shall include copies or other documentation of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

CONSULTING ENGINEERS COUNCIL OF MINNESOTA

SUITE A / 5407 EXCELSIOR BOULEVARD / MINNEAPOLIS, MINNESOTA 55416 / 612-922-9696

October 1, 1991

TO: Members of the Petroleum Tank Release Compensation Board

FROM: David E. Oxley, CEC/M Executive Director

RE: Proposed Revised Emergency Rules

The Consulting Engineers Council of Minnesota (CEC/M) is an organization representing 130 private consulting engineering firms in the State of Minnesota. A task force on the Petroleum Task Release Compensation Board formed by CEC/M has adopted the enclosed proposed revised emergency rules in response to the proposed emergency rules published by the Department of Commerce on September 9, 1991.

The task force feels the proposed revised emergency rules would better serve the Petro Board and responsible parties in achieving cost containment and environmentally sound corrective actions. These proposed revised emergency rules are the result of the task force's review of the proposed rules provided by the Department of Commerce and comments gathered at the September 19, 1991 hearing held to discuss the emergency rules. The task force believes that the revised rules represent a fair and equitable solution to the cost containment problem.

We wish to confirm the understanding of the board's formal interest for CEC/M participation on the Cost Containment Committee. CEC/M is also prepared to formally participate with the board in developing permanent rules.

If you have any questions or comments, please contact me at 612/922-9696.

Sincerely,

David E. Oxley
CEC/M Executive Director

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 3
To D. Peppenhagen	From D. Oxley
Co. Dept. Commerce	Co. CEC
Dept.	Phone # 922-9696
Fax # 296-4328	Fax # 927-8705

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Member ACEC

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Executive Director: DAVID OXLEY, 5407 Excelsior Blvd., Suite A, Minneapolis, MN 55416, 612/922-9696 / 612/927-8705

2890.0060 REIMBURSEMENT OF COSTS.

Subp. 5. Documentation of reasonableness; bidding required. The applicant shall prove the reasonableness of all incurred eligible costs. Whenever feasible the applicant must solicit competitive bids based upon comparable unit costs for all work performed in connection with corrective action for which reimbursement is sought. Comparable unit costs are defined as costs for products and work activities which can be accurately described by typical written plans and specifications such as those established by the Minnesota Department of Transportation or the Construction Specifications Institute. Where competitive bids are received, costs in excess of those in the proposal of the lowest responsible bidder shall be considered prima facie unreasonable.

Professional services such as work plan designs, site investigations, analysis of results, corrective action designs, administration of corrective actions and similar services shall be selected by evaluating the qualifications, including consideration of costs, of one or more persons or firms and selecting a person or firm deemed to be qualified. Whenever possible, the applicant should consider the qualifications of at least two persons or firms providing such services.

The applicant must 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 competitive bid procedure; the evidence shall include copies or other documentation of all bids received; or

B. evidence that only one party was reasonably available or qualified to perform the necessary work and that the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area for similar work performed; or

C. evidence that professional services were selected based on qualifications.

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

Subp. 6. Effective Date. The provisions of Subp. 5 shall be effective on the date of enactment. Nothing in these provisions shall be construed to affect any claim for reimbursement by an applicant based on a contract or activity entered into, negotiated, or completed prior to the enactment of Subp. 5.

Barr
Engineering Company

7803 Glenroy Road
Minneapolis, MN 55439-3123
612/830-0555
612/835-0186 (Facsimile)

October 2, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Comments on Proposed Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

We have reviewed the August 27, 1991 Proposed Emergency Amendments to Permanent Rules Relating to Reimbursement of Costs by the Petroleum Tank Release Compensation Board. We have concerns about the emergency amendments as proposed and believe that the draft amendments prepared by the Consulting Engineers Council (CEC; copy enclosed) meet the legislative intent and address many of the concerns expressed in public meetings concerning the amendments. We feel that the CEC's draft amendments will provide an interim guideline for development of permanent rules.

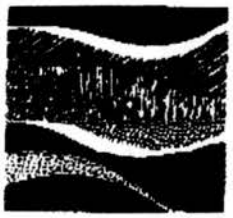
In summary, we support the CEC's draft amendments to the reimbursement rules. Thank you for considering our comments.

Sincerely,

Doug Connell, CPG

c: Bob DeGroot, CEC
Enclosure

RCV BY:Xerox Telecopier 7020 ;10- 2-91 ; 2:34PM ;612 835 0186 → DEPT. OF COMMERCE;# 2



BRUCE A. LIESCH ASSOCIATES, INC.
HYDROGEOLOGISTS • ENGINEERS • ENVIRONMENTAL SCIENTISTS

13400 15th Avenue No. • Plymouth, MN 55441 • 612-559-1423 • FAX No: 559-2202

October 1, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

We have reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. We have significant concerns about the emergency rules as proposed. Concerns about the proposed rules were expressed during the public hearing held September 19, 1991.

We have also reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe that the language proposed will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, we strongly support the CEC position and Proposed Revised Emergency Rules with they have submitted. Thank you for your consideration of our comments.

Sincerely,

BRUCE A. LIESCH ASSOCIATES, INC.

James de Lambert
President

maw:GO/ltr10-1a

Foth & Van Dyke

10340 Viking Drive, Suite 100
Eden Prairie, MN 55344
612/942-0396
FAX: 612/942-0865

October 2, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

RE: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

Foth & Van Dyke has reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. We have concerns about the emergency rules as proposed. These concerns were also expressed during the public hearing held on September 19, 1991.

We have also reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe the language proposed by the CEC will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, we support the CEC position and the Proposed Revised Emergency Rules which they have submitted. Selecting the lowest bid on an individual aspect of an environmental project does not always equate to a quality work product and the lowest overall project cost. Thank you for consideration of our comments.

Sincerely,

FOTH & VAN DYKE

Fred J. Doran, P.E.
Division Manager

RCV BY:Xerox Telecopier 7020 ;10- 2-91 ;10:52PM ; 612 942 0865→ DEPT. OF COMMERCE:# 2

▲ **Northern Environmental**
Hydrologists • Engineers • Geologists

572 West County Road D
New Brighton, MN 55112
1-612-635-9100

October 2, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, Minnesota 55101

RE: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

Northern Environmental staff have reviewed the "Proposed Emergency Rules" prepared by the Petroleum Tank Release Compensation Board staff. While acknowledging that cost containment is important to continuation of the Petrofund reimbursement program, we have concerns about the emergency rules as proposed. It is our understanding that concerns were also expressed by others at the public hearing held on September 19, 1991.

As a member of the Consulting Engineer's Council (CEC) through our parent company Bonestroo and Associates, we have also reviewed the CEC's "Proposed Revised Emergency Rules" which have been submitted to the Petroboard and Board Members. We support the language of the CEC's "Proposed Revised Emergency Rules." We believe the CEC's "Proposed Revised Emergency Rules" meet the legislative intent of the proposed rule while addressing many of our concerns and the concerns of others expressed at the September 19, 1991 public hearing. We therefore support the CEC position and "Proposed Revised Emergency Rules" and thank you for your consideration of our position.

Sincerely,
Northern Environmental
Technologies, Incorporated

Bruce Rehwaldt, P.E.
Director of Operations

APPLIED ENGINEERING

2905 OAK LEA TERRACE
WAYZATA, MINNESOTA 55391-2533
FAX/TEL (612) 939-9095

October 4, 1991

State of Minnesota
OCT 09 199
Dept. of Commerce

State of Minnesota
Petrofund Chairperson
Department of Commerce
133 E. 7th St
St Paul, MN 55101
FAX Transmittal ✓

Re: Consultant Qualifications; Emergency Enactment of New Regulations

Having spent ten years in the gasoline service station industry, I have replaced hundreds of underground storage tanks. With this experience, I started my own business and I employ two field technicians and a Hydrogeologist.

Over the last two years, we have worked on about 80 petroleum release sites. We have met every requirement in MPCA guidelines at these sites without a broad staff of specialists found in large environmental companies. In those few cases when a project becomes too complex for our capabilities, I defer it to a larger environmental company.

My prices are low and most of my customers are those with very little money. In one case, a project originally estimated by others at $125,000 was completed by Applied Engineering and closed out by the MPCA for less than $7,000.

I enjoy helping these people and I'm proud to be responsible for the livelihoods of my employees. However, I have a concern about any requirements being considered by the Petroboard for consultant qualifications. Excessively restrictive requirements will reduce market place competition and will unnecessarily raise costs. If a qualification standard is established, I request that it be done very carefully so that I and others are not unjustly forced out of business.

If you desire, I am willing to participate in any board hearings to provide recommendations or further details.

Thomas A. Greene
Thomas A. Greene

Page # 520-1[illegible]
Fax Sent 10-4-91

twin city testing corporation
662 CROMWELL AVENUE
ST. PAUL, MN 55114
PHONE 612/645-3601

October 2, 1991

Mr. Dennis J. Poppenhagen
Director, Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Subj: Revised Emergency Rules
Relating to Petroleum Tank Release
Compensation Board

Dear Mr. Poppenhagen:

Twin City Testing Corporation (TCT) wishes to support both the testimony (September 19, 1991) and written communication (October 1, 1991) of the Consulting Engineers Council of Minnesota (CEC/M) regarding guidelines for procurement of professional services in connection with Petrofund-reimbursed projects.

From our perspective, the key reason why the CEC/M recommendations should be accepted is that qualifications, as well as cost, are extremely important when selecting an environmental consultant to perform work plans and corrective action designs, arrange site closure with the MPCA, and similar services. The Emergency Rules should not reduce such judgement/experience-based activities to a cost-only decision.

If you have any questions, or if we can be of further assistance, please call me at 659-7563.

Very truly yours,

David A. Byfield
Vice President, Environmental Services

DAB:klh

pc: Petroleum Tank Release Compensation Board Members

October 1, 1991

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

Re: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

STS Consultants, Ltd. (STS) has reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. STS is concerned about the emergency rules as proposed. Concerns about the proposed rules were also expressed during the public hearing held September 19, 1991.

STS is directly involved in the Consulting Engineers Council (CEC) Subcommittee created to respond to the "Proposed Emergency Rules". STS, on behalf of the CEC, expressed concerns about the proposed rules during the public hearing held September 19, 1991. STS has assisted in developing and reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe that the language proposed will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, STS strongly supports the CEC position and Proposed Revised Emergency Rules which they have submitted. Please include this letter in your files regarding public comment on the "Proposed Emergency Rules". Thank you for your consideration of our comments.

Sincerely,

STS CONSULTANTS, LTD.

Robert L. DeGroot, P.E.
Principal Engineer

RLD/dn

STS Consultants Ltd.
Consulting Engineers

3650 Annapolis Lane
Minneapolis, Minnesota 55447
612.559.1900/Fax 612.559.4507

GERAGHTY
& MILLER, INC.
Environmental Services

Ground Water *Engineering* *Hydrocarbon* *Remediation* *Education*

October 2, 1991

FAXED 10-2 91

Mr. Dennis J. Poppenhagen
Director - Petrofund
Minnesota Department of Commerce
133 East Seventh Street
St. Paul, MN 55101

State of Minnesota
OCT 03 1991
Dept. of Commerce

Re: Comments on Emergency Rules for Cost Containment

Dear Mr. Poppenhagen:

We have reviewed the "Proposed Emergency Rules" to address cost containment prepared by the Petroleum Tank Release Compensation Board staff. We have concerns about the emergency rules as proposed. Concerns about the proposed rules were also expressed during the public hearing held September 19, 1991.

We have also reviewed the "Proposed Revised Emergency Rules" prepared by the Minnesota Consulting Engineers Council (CEC). We believe that the language proposed will meet the legislative intent and address many of the concerns expressed during the public hearing. The "Proposed Revised Emergency Rules" will provide an interim guideline for development of the permanent rules.

In summary, we support the CEC position and Proposed Revised Emergency Rules which they have submitted. Thank you for your consideration of our comments.

Sincerely,

GERAGHTY & MILLER, INC.

Gary Hokkanen

Gary Hokkanen, P.E.
Associate

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STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Emergency Rules Governing Reimbursement of Costs, Minn. Rules Parts 2890.0060, 2890.0090.

NOTICE OF SUBMISSION EMERGENCY RULES TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rules as adopted has been submitted to the Office of the Attorney General on the date of this notice, November 13, 1991, for review as to legality and form to the extent form relates to legality. The proposed emergency rules, the rules as adopted, all the notices, all written comments, and other required documents also have been submitted to the Attorney General.

The proposed rules which were published in the State Register and made available to the public on September 9, 1991, have been modified. A copy of the rules as modified is enclosed with this notice.

The rules must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rules. You may submit written comments to the attorney general on the legality of the rules. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address only the issue of legality of the rules or the legality of the specific parts or subparts of the rules. 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:

Robin H. Hanson
Petroleum Tank Release Compensation Fund
Minnesota Department of Commerce
133 East 7th Street
Saint Paul, Minnesota 55101
Telephone Number: (612) 297-4017

Robin H. Hanson

Robin H. Hanson
Acting Executive Director
Petroleum Tank Release Compensation Fund

Dated: November 13, 1991

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION FUND

In the Matter of the Proposed Emergency Rules Governing Reimbursement of Costs, Minn. Rules Parts 2890.0060, 2890.0090.

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF EMERGENCY RULES TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Robin H. Hanson being sworn says:

That on the 13th day of November, 1991, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached 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.

Robin H. Hanson

Robin H. Hanson
Acting Executive Director
Petroleum Tank Release Compensation Fund

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

Subscribed and sworn to before me this 13th day of November, 1991.

Cynthia L. Clarson

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Rules
Governing Reimbursement of Costs,
Minn. Rules Parts 2890.0060; 2890.0090

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 ch. 2010 have been followed, except that the notice of submission to the Attorney General has not yet been mailed. For Attorney General billing purposes, the four-digit docket client code is 0142.

KENNETH E. RASCHKE, JR.
Assistant Attorney General

SERCO Laboratories

St. Paul, Minnesota

1931 West County Road C2
St. Paul, Minnesota 55113
Phone: (612) 636-7173 FAX (612) 636-7178

State of Minnesota

SEP 16 1991

Dept. of Commerce

September 11, 1991

Mr. Dennis J. Poppenhagen
Executive Director
Petroleum Tank Release
Compensation Board
133 East Seventh Street
St. Paul, MN 55101-2362

Dear Mr. Poppenhagen:

Please advise me of the date of submission to the Minnesota Attorney General, for the following emergency rule: Emergency amendments to permanent rules relating to reimbursement of costs by the Petroleum Tank Release Compensation Board.

Thank you.

Sincerely,
SERCO Laboratories

Chris Wilson
Client Services Manager

CW/jo