

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

NJM
5/4/92

RULE REVIEW CHECKLIST

File No. 1916
DATE RECEIVED 5-1-92
REVIEW DATE 5/11/92 (5/14/92)
DUE DATE 5/15/92
(DIS)APPROVED 5/14/92
WITHDRAWN

Docket No. 05.0009, 0142
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 5/4/92
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE ~~5/5/92~~ 5/14/92
RETURNED TO AGENCY 5-19-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
December 30, 1991 Date published in State Register
Comments

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution
January 14, 1992 Date adopted

✓ Proposed Rule
March 2, 1992 Revisor's Certificate

✓ Notice of Intent to Adopt Rule — ending Comment April 2, 1992
115C.07 3(c) Statutory Authority
~~m~~ Small Business Statement
Expenditure of public money statement
~~Dan~~ Virginia Hogan Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Feb 21, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
March 2, 1992 Date 30/25 days before adoption

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

✓ Resolution Adopting
April 23, 1992 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
April 23, 1992 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Ken Laschke Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Rules rel

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

OFFICE MEMORANDUM

DATE: May 14, 1992

TO: VIRGINIA K. HOGAN
Minnesota Department of Commerce--Petrofund
133 East 7th 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 Petrofund Corrective Action Costs

The above-referenced rule has been approved as to its legality by the Attorney General on May 14, 1992.

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:jj
Enclosures
cc: Kenneth E. Raschke, Jr.
William Brown, Chief Judge
MaryAnn Hruby
Mr. Paul Putzier

Department of Commerce

Adopted Permanent Rules Relating to Petrofund Corrective Action Costs

Rules as Adopted

2890.0010 DEFINITIONS.

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

Subp. 2a. **Board.** "Board" means the petroleum tank release compensation board.

[For text of subp 3, see M.R.]

Subp. 3a. **Consultant services.** "Consultant services" means professional consulting, investigation, or design services.

Subp. 3b. **Contractor services.** "Contractor services" means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical, plumbing, carpentry, and equipment.

[For text of subps 4 to 7, see M.R.]

2890.0075 DOCUMENTATION OF REASONABLENESS.

Subpart 1. **Generally.** The applicant shall prove the reasonableness of all incurred eligible costs. Effective for any contract entered into or commenced on or after the effective date of this part, the applicant shall solicit a minimum of two written competitive bids for each contractor service, and two written proposals for consultant services. The board shall pay only those costs it determines to be reasonable.

Subp. 2. **Contractor services; bids.** The applicant or its agent shall solicit, publicly or privately, a minimum of two written competitive bids in a form prescribed by the board based upon comparable unit costs for each contractor service performed in connection with corrective action from contractors considered by the applicant or its agent to be qualified and who shall have

all necessary licenses and government approvals for the work to be performed.

Copies of the written bids shall be submitted to the board with the application for reimbursement. Unit costs substantially in excess of those in the bid of the lowest qualified bidder shall be considered prima facie unreasonable by the board.

Subp. 3. **Consultant services; proposals.** The applicant shall solicit a minimum of two written proposals for consultant services from consultants considered by the applicant to be qualified in a form prescribed by the board setting forth the qualifications of the consultant and estimates of costs for consulting services. The applicant must make a good faith effort to assure that the costs in the proposal selected are reasonable considering the qualifications of the consultant and the services to be performed.

Copies of the written proposals shall be submitted to the board with the application for reimbursement. The board shall require the applicant to justify the reasonableness of the costs in the proposal selected if the reasonableness of the costs is not apparent in the documentation submitted with the application.

The applicant may present evidence of reasonableness by a showing that the lowest cost proposal was selected, or that the services to be performed or the selected consultant's qualifications, including, but not limited to, education, experience, certifications and registrations, health and safety training, insurance, availability and references, justified the selection of a higher cost proposal.

Subp. 4. **Exemptions.** The applicant shall be granted an exemption from the requirement that a minimum of two bids be obtained for each contractor service or a minimum of two proposals be obtained for consultant services:

A. if the board determines that the applicant has provided satisfactory evidence:

(1) that only one contractor or consultant was reasonably available to perform the necessary service and that

costs are not substantially in excess of costs charged for similar services by a comparable contractor or consultant in the same geographical area; or

(2) that the necessary services were required by an emergency, including the abatement of free product, for which there was not sufficient time to obtain bids or proposals; or

B. if the board makes an annual determination that the applicant has established that a standing contract that was entered into via a bidding or evaluation process will result in reasonable corrective action costs by providing to the board:

(1) documentation of the bidding process that led to the standing contract for contractor services or a written explanation of the evaluation process that led to the standing contract for consultant services; and

(2) a written explanation of why the standing contract results in lower corrective action costs than obtaining bids or proposals on a per job basis.

Subp. 5. **Reasonableness of incurred costs.** Notwithstanding subparts 1 to 4, the board may consider all invoice costs submitted for reimbursement to determine whether the costs incurred are 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. (1) for costs associated with corrective action related to soil contamination, a copy of the commissioner's approval of a soil corrective action plan, or evidence that a proposed soil corrective action plan has been submitted to the commissioner; or

(2) for costs associated with corrective action

that will address the entire release, including groundwater if necessary, a copy of the commissioner's approval of a comprehensive corrective action plan, or evidence that a proposed comprehensive corrective action plan has been submitted to the commissioner; or

(3) a closure letter issued by the commissioner;

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 solicitation of competitive bids or proposals or qualification for exemption as required by part 2890.0075.

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

REPEALER. Minnesota Rules, parts 2890.0060, subpart 5; and 2890.0070, subpart 2, are repealed.

APPROVED AS TO FORM AND LEGALITY
May 14 1992
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 14 1992

Joan Anderson Growe
Secretary of State

RC
12:13P

5-4-92

Office of Attorney General
Public Finance Division
525 Park Ave
St. Paul, MN 55103

Dear Sirs:

Please provide copy of AG decision, per attached Notice, to my attention:

Mr. Paul Putzier
151 W. Burnsville Pkwy
Burnsville, MN 55123
(612) 890-0665

Sincerely

RECEIVED

MAY 05 1992

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

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Adoption of the Rule of the State Petroleum Tank Release Compensation Board Governing Documentation of Reasonableness and the Application Process

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

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

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, May 1, 1992, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

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

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

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

Virginia K. Hogan
Executive Director
Petroleum Tank Release Compensation Board
133 East 7th Street
St. Paul, Minnesota 55101

Virginia K. Hogan
Virginia K. Hogan
Executive Director

Dated: May 1, 1992

RECEIVED

MAY 05 1992

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

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Rules
Governing the Documentation of Reasonableness
of Costs and the Application Process for
Petrofund Reimbursement, Minn. Rules
Parts 2890.0010; 2890.0060, Subpart 5,
2890.0070 Subpart 2, 2890.0075, and 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

Stat Authority 115C.07 subd. 3(c)
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.

SONAR - missing pages
page 4 to 5 -
no justification 2890.0075 Subp 5
subpart 4 weak - maybe missing page
what about 2890.0075 subp
2890.0090 subpart 1E. no justification
nothing about repealing parts
2890.0060 subpart 5

Findings of Fact
no statement if they received a request for the submission to the Attorney General

Reread a letter to obtain opinion of AG.

submitted SONAR with ~~page~~ sentence missing

Department of Commerce

Proposed Permanent Rules Relating to Petrofund Corrective Action Costs

Rules as Proposed

2890.0010 DEFINITIONS.

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

Subp. 2a. **Board.** "Board" means the petroleum tank release compensation board.

[For text of subp 3, see M.R.]

Subp. 3a. **Consultant services.** "Consultant services" means professional consulting, investigation, or design services.

Subp. 3b. **Contractor services.** "Contractor services" means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical, plumbing, carpentry, and equipment.

[For text of subps 4 to 7, see M.R.]

2890.0075 DOCUMENTATION OF REASONABLENESS.

Subpart 1. **Generally.** The applicant shall prove the reasonableness of all incurred eligible costs. Effective for any contract entered into or commenced on or after the effective date of this part, the applicant shall solicit a minimum of two written competitive bids for each contractor service, and two written proposals for consultant services. The board shall pay only those costs it determines to be reasonable.

Subp. 2. **Contractor services; bids.** The applicant or its agent shall solicit, publicly or privately, a minimum of two written competitive bids in a form prescribed by the board based upon comparable unit costs for each contractor service performed in connection with corrective action from contractors considered by the applicant or its agent to be qualified and who shall have

Approved by Revisor

all necessary licenses and government approvals for the work to be performed.

Copies of the written bids shall be submitted to the board with the application for reimbursement. Unit costs substantially in excess of those in the bid of the lowest qualified bidder shall be considered prima facie unreasonable by the board.

Subp. 3. **Consultant services; proposals.** The applicant shall solicit a minimum of two written proposals for consultant services from consultants considered by the applicant to be qualified in a form prescribed by the board setting forth the qualifications of the consultant and estimates of costs for consulting services. The applicant must make a good faith effort to assure that the costs in the proposal selected are reasonable considering the qualifications of the consultant and the services to be performed.

Copies of the written proposals shall be submitted to the board with the application for reimbursement. The board shall require the applicant to justify the reasonableness of the costs in the proposal selected if the reasonableness of the costs is not apparent in the documentation submitted with the application.

The applicant may present evidence of reasonableness by a showing that the lowest cost proposal was selected, or that the services to be performed or the selected consultant's qualifications, including, but not limited to, education, experience, certifications and registrations, health and safety training, insurance, availability and references, justified the selection of a higher cost proposal.

Subp. 4. **Exemptions.** The applicant shall be granted an exemption from the requirement that a minimum of two bids be obtained for each contractor service or a minimum of two proposals be obtained for consultant services:

A. if the board determines that the applicant has provided satisfactory evidence:

(1) that only one contractor or consultant was reasonably available to perform the necessary service and that

Approved by Revisor _____

costs are not substantially in excess of costs charged for similar services by a comparable contractor or consultant in the same geographical area; or

(2) that the necessary services were required by an emergency, including the abatement of free product, for which there was not sufficient time to obtain bids or proposals; or

B. if the board makes an annual determination that the applicant has established that a standing contract that was entered into via a bidding or evaluation process will result in reasonable corrective action costs by providing to the board:

(1) documentation of the bidding process that led to the standing contract for contractor services or a written explanation of the evaluation process that led to the standing contract for consultant services; and

(2) a written explanation of why the standing contract results in lower corrective action costs than obtaining bids or proposals on a per job basis.

Subp. 5. **Reasonableness of incurred costs.** Notwithstanding subparts 1 to 4, the board may consider all invoice costs submitted for reimbursement to determine whether the costs incurred are 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~~

(1) for costs associated with corrective action related to soil contamination, a copy of the commissioner's approval of a soil corrective action plan, or evidence that a proposed soil corrective action plan has been submitted to the

Approved by Revisor _____

commissioner; or

(2) for costs associated with corrective action that will address the entire release, including groundwater if necessary, a copy of the commissioner's approval of a comprehensive corrective action plan, or evidence that a proposed comprehensive corrective action plan has been submitted to the commissioner; or

(3) a closure letter issued by the commissioner;

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 solicitation of competitive bids or proposals or qualification for exemption as required by part 2890.0075.

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

REPEALER. Minnesota Rules, parts 2890.0060, subpart 5; and 2890.0070, subpart 2, are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Petrofund Corrective Action Costs

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2890

The attached rules are approved for publication in the State Register

Paul M. Marinac
Deputy Revisor

STATE OF MINNESOTA
Petroleum Tank Release Compensation Board

In the Matter of the Proposed
Rules Governing the Documentations
of Reasonableness of Costs and
the Application Process.

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION AND STATEMENT OF AUTHORITY.

Minnesota Statute Chapter 115C, the Petroleum Tank Release Clean-up Act, provides a mechanism for persons who take corrective action in response to petroleum tank releases to receive partial reimbursement for reasonable costs incurred in taking corrective action. The proposed rule changes are addressed to two separate issues, cost containment and the phased application process. The cost containment element defines and treats separately "contractor services" and professional "consultant services." With respect to both types of services, documentation of comparison of proposed prices or charges from two or more qualified providers is generally required. The portion of the rule addressed to the application process simply conforms Minn Rule pt. 2890.0090 to the 1991 statutory change which permits a phased application process.

Minn. Stat. § 115C.09, subd. 3(b) (Supp. 1991) provides:

> (b) A reimbursement may not be made from the account under this subdivision until the [Petroleum Tank Release Compensation] board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

The Board has long perceived a need for implementation of cost containment mechanisms which would help to assure that costs incurred by applicants for which reimbursement is sought are reasonable and competitive. To that end, a committee of the Board was established in 1990 to study measures, including competitive bidding

requirements, which might be implemented. The committee held numerous public meetings in which these issues were discussed at length.

General authority to adopt rules concerning both the application process and determination of reasonableness of costs eligible for reimbursement is provided by Minn. Stat. § 115C.07, subd. 3a (1990) which provides:

> 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.

By laws 1991 ch. 175 § 2 enacted May 24, 1991, the legislature further provided a specific mandate to the Board to adopt rules relative to cost containment:

> (c) The board shall adopt emergency rules within four months of May 25, 1991, and permanent rules within one year of May 25, 1991, 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.

Minn. Stat. § 115C.07,subd. 3(c) (Supp. 1991). On October 29, 1991, the Board adopted emergency rules addressed to that mandate. See Vol. 16, No. 25, Minn. State Reg. p. 1504.

In the process of adopting the emergency rules, and subsequent thereto in undertaking to draft permanent rules, the Board and its committee held a number of public meetings and formally solicited public comment. The resulting cost containment portion of the rules now proposed for adoption represent in part a refinement of the principles embodied in the emergency rules which addresses concerns and suggestions of the Board, staff board members and interested members of the public.

II. STATEMENT OF NEED.

Given the limited nature of the fund available for reimbursement to persons for taking corrective action and the large volume of claims submitted, it is important that measures be implemented to assist the Board and its staff in assuring that reimbursed costs are reasonable and competitively determined. The legislature, in requiring the Board to

adopt rules specifically including bidding requirements, has established, as a matter of law, the need for the portions of the rule directed to contractor bidding and competitive consultant selection. The proposed amendments to pts. 2890.0010, 2890.0075, and 2890.0090, subp. 1E, are addressed to this mandate while also clarifying the responsibility of the Board to review the reasonableness of all invoiced costs submitted for reimbursement.

In addition, the proposed amendment to pt. 2890.0090, subp. 1C, are required to make the rules comport with a 1991 statutory amendment which permits a phased application process in lieu of the previous requirement, reflected in the current rules, that a complete correction action plan be approved prior to reimbursement. See Minn. Laws 1991 ch. 175 § 4.

III. STATEMENT OF REASONABLENESS.

The general reasonableness of the requirement that an applicant obtain competing bids or proposals for corrective action work is clear. It is not possible for either the purchaser of services or the Board to judge whether costs submitted for payment or reimbursement are "reasonable" absent any comparison to other costs in the marketplace. Statutes commonly require cost comparisons for acquisition of personal property or for construction maintenance or repair of real property by government agencies. See, e.g., Minn. Stat. §§ 16B.07, 375.21, 412.311, 471.345 (1990).

In the case of "contractor services" where the work can be described in objective plans and specifications, it is reasonable for the Board to consider costs in excess of those proposed by the lowest qualified bidder to be, prima facie, unreasonable. Indeed, it is a common requirement in governmental contracting that the contract be awarded to the lowest qualified or responsible bidder. See, e.g., Minn. Stat. § 375.21, 412.311 (1990).

Much attention has been paid in the drafting process to the issue of professional "consulting services." Strong arguments have been presented to the Board in addressing the emergency rules and proposals for permanent rules that providers of services of a

professional nature cannot always be compared on price alone based upon objective specifications. The Board recognizes that in selecting a person to investigate a release, advise the tank owner and design a corrective action plan, subjective factors such as training and experience of the consultant relevant to the scope of services may need to be considered in addition to stated prices or fees. This distinction between services which may be objectively specified and evaluated and those which call for personal services involving particular skill or ability of a subjective nature is often drawn in applying competitive bidding requirements. See generally 10 McQuillin Municipal Corporations § 29.35 (3d ed.).

Even though factors other than price alone may legitimately enter into selection of a consultant, reasonable cost control requires that cost comparisons be available and that payment of higher charges be supported by good faith determination that selection of a higher priced consultant is reasonable in light of the qualifications needed to perform the needed services. Thus, in retaining a consultant, an applicant is required to consider at least two written proposals which set forth the estimated costs and qualifications of the consultants and may be required to support payment of charges which are not the lowest as justified by the qualifications of the consultant in relation to the nature of services anticipated.

The Board also recognizes that there may be circumstances in which, due to emergency or unavailability of multiple providers, it may not be feasible for an applicant to obtain bids or proposals. Thus, the Board provides for exemption in such circumstances.

Furthermore, there are situations in which parties reasonably anticipate numerous potential cleanups at various sites. It has been argued that, in such circumstances, it can be more cost effective to enter standing contracts with contractors or consultants than to let individual contracts on a job-by-job basis. If that is the case, the cost containment goals of the legislature can best be served by permitting the more economical practice. Thus, the

The changes in pt. 2890.0090, subp. 1c are reasonable inasmuch as they conform the rule to the statutory provision for a phased application process. Absent the change, the rules would continue to require a completed corrective action plan (CAP), even though the statute permits application for costs associated with soil cleanup, based on a CAP limited to soil only.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING.

Minn. Stat. § 14.115, subd. 2 (1990) requires the Board, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

a. the establishment of less stringent compliance or reporting requirements for small businesses;

b. the establishment of less stringent schedules or deadlines for compliance of reporting requirements for small businesses;

c. the consolidation or simplification of compliance or reporting requirements for small businesses;

d. the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

e. the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. § 14.115 (1990). As a result, the Board has considered the above-listed methods for reducing the impact of the rule on small businesses. The effect upon small business of the portion of the rule which permits phased submission of applications in accordance with the statute is in no respect adverse. It merely clarifies in rule the option to apply for reimbursement at an earlier state of cleanup than had been previously permitted.

In requiring that contracts be let upon bids or competitive proposals where feasible, the rule imposes minimal requirements upon applicants consistent with the reasonable purposes of the rule. Sound business practices would dictate that competing bids or proposals for work be solicited and analyzed in cases not exempted by the rule in any event.

In light of the need and purposes for the rule, as discussed above, neither establishment of less stringent requirements nor exemption of small businesses from its operation would be feasible or consistent with the statutory purposes furthered by the rule.

V. WITNESSES.

In support of the need for and reasonableness of the proposed rule the following witness will testify at the hearing:

Ms. Susan Bergh, Ms. Robin Hanson and Mr. Brian Ettesvald will testify to the foregoing material.

Based upon the foregoing, the proposed amendments are needed and reasonable.

Dated: 1-14, 1992.

Virginia K. Hogan

VIRGINIA K. HOGAN
Executive Director

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

GOVERNMENT SERVICES SECTION
525 PARK STREET
SUITE 500
ST. PAUL, MN 55103
TELEPHONE: (612) 297-2040
FACSIMILE: (612) 297-2576

April 30, 1992

Rec
May 1, 1992

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 the Proposed Adoption of the Rule of the State Petroleum Tank Release Compensation Board Governing Documentation of Reasonableness of Costs and Application Process

Dear Ms. Nolte:

On April 23, 1992, the Petroleum Tank Release Compensation Board adopted the above-captioned rules governing documentation of Reasonableness of costs and the application process. Enclosed for your review are the following:

1. Four copies of the rules as adopted.
2. Findings of fact, conclusions and order adopting rules (2 copies).
3. Certificate of resolution adopting rules.
4. Notice of intent to solicit outside opinion.
5. Copies of written materials received in connection with solicitation of outside opinion.
6. Certificate of authorizing resolution.
7. Notice of intent to adopt rules as published.
8. Comments received during the comment period.
9. Notice of intent to adopt rules as mailed.
10. Affidavit of mailing.
11. Rules as proposed.

Equal Opportunity Employer

Printed on Recycled Paper

12. Statement of need and reasonableness.

13. Declaration of counsel.

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

Very truly yours,

KENNETH E. RASCHKE, JR.
Assistant Attorney General

(612) 297-1141

KER/jl
Enclosures

CERTIFICATE OF THE
PETROLEUM TANK RELEASE COMPENSATION BOARD
RESOLUTION ADOPTING THE RULE

I, F. Philip 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 23rd day of April, 1992, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to Documentation of Reasonableness of Costs and the Application Process is approved and adopted, pursuant to authority vested in the Petroleum Tank Release Compensation Board by Minnesota Statutes §115C.07, subdivision 3. Virginia K. Hogan, the Executive Director of the Petroleum Tank Release Compensation Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."
>
> IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of April, 1992.

F. P. Troutwine
F. Philip Troutwine
Chairman

Attest by one other Board member

In the Matter of the Proposed Adoption of the Rule of the State Petroleum Tank Release Compensation Board Governing Documentation of Reasonableness of Costs and the Application Process

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

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Virginia K. Hogan, 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 Petroleum Tank Release Compensation Board rulemaking mailing list is accurate, complete, and current as of this 24th day of February, 1992.

That on the 21st day of February, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Hearing and Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the United States mail, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Virginia K. Hogan
Virginia K. Hogan
Executive Director,
Petroleum Tank Release
Compensation Board

Subscribed and sworn to before me
this 24th day of February, 1992
Cynthia L. Claason

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES FEBRUARY 13, 1998

Economic Development for administration of the program and funds awarded to units of general local government for planning and administration of their grants. No more than 20 percent of the block grant can be used for planning and administration.

To date, for the 1991 grant program, the Minnesota Department of Trade and Economic Development, Community Development Division, and the 1991 grant recipients budgeted slightly less than $1.1 million for planning and administration. These funds amount to just over five percent of the block grant, well below the 20.0 percent limit. Again, these figures were monitored and verified by HUD staff.

In addition to meeting one of the federal objectives listed above, economic development set aside grants must meet at least two of the following state objectives:

a) Creation or retention of permanent private sector jobs, with a minimum threshold of one job created or retained for each $20,000 of grant funds;

b) Leverage of private investment, with a minimum threshold of one dollar private funds for each grant dollar requested; and

c) Increase the local tax base, with a minimum threshold of an estimated 50 percent increase in the value of the parcel involved.

All economic development set aside grants awarded to date have met the state job creation/retention objective and the private investment objective. In addition, jobs will be held by, and/or available to low- and moderate-income persons.

Based upon analysis of the 1991 Small Cities Development Program, The Minnesota Department of Trade and Economic Development, Community Development Division, concludes that the 1991 grant program fully met state and national objectives for award of funds.

Petroleum Tank Release Compensation Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Documentation of Reasonableness

NOTICE IS HEREBY GIVEN that the State Petroleum Tank Release Compensation Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rules governing Documentation of Reasonableness. The adoption of the rule is authorized by *Minnesota Statutes*, section 115C.07, Subd. 3(c), which requires the board to adopt permanent rules designed to ensure that costs submitted to the Petroleum Tank Release Compensation Board for reimbursement are reasonable.

The State Petroleum Tank Release Compensation Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Virginia Hogan
Minnesota Department of Commerce
133 East 7th Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 297-1119 and in person at the above address.

All statements of information and opinions shall be accepted until January 13, 1992. Any written material received by the State Petroleum Tank Release Compensation Board shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 19 December 1991

Virginia Hogan
Executive Director,
Petroleum Tank Release
Compensation Board

Petroleum Tank Release Compensation Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Reduction of Reimbursement Amount

NOTICE IS HEREBY GIVEN that the State Petroleum Tank Release Compensation Board is seeking information or opinions

#1
REQUEST

MacNeil ENVIRONMENTAL, INC.

Environmental Health and Safety ▼ Consulting and Management

February 27, 1992

State of Minnesota

MAR 02 1992

Dept. of Commerce

Ms. Virginia K. Hogan
Minnesota Department of Commerce
Petrofund
133 East 7th Street
St. Paul, MN 55101

RE: Request for a public hearing
PROPOSED PERMANENT RULES GOVERNING THE DOCUMENTATION OF REASONABLENESS OF COSTS AND THE APPLICATION PROCESS FOR PETROFUND REIMBURSEMENT, MINNESOTA RULES PARTS 2890.0010, 2890.0060, SUBPART 5, 2890.0070 SUBPART 2, 2890.0075, AND 2890.0090

Dear Ms. Hogan:

The purpose of this letter is to request a public hearing for the adoption of the above referenced proposed permanent rules pursuant to Minnesota Statutes, section 14.25.

Please contact us with any further information.

Sincerely,

Christopher G. Bratsch

Christopher G. Bratsch
Environmental Engineer

CGB/slw

enclosure

cc: Tom Lamb

755 East Cliff Rd. • Burnsville, MN 55337 • 612-890-3452 • Fax 612-890-2991

#2
REQUEST

DULUTH MISSABE AND IRON RANGE RAILWAY COMPANY

ENGINEERING DEPARTMENT
329 SECOND STREET
PROCTOR, MN 55810-1091

March 30, 1992

State of Minnesota
APR 01 1992
Dept. of Commerce

Ms. Virginia K. Hogan
Executive Director
MINNESOTA DEPARTMENT OF COMMERCE
133 East 7th Street
St. Paul, MN 55101

PROPOSED PERMANENT RULES RELATING TO PETROFUND CORRECTIVE ACTION COSTS

We request a public hearing on these proposed rules and suggest adding the following:

2890.0075 Documentation of Reasonableness
Subp. 4 Exemptions
A.
(3) That the cost is substantially equivalent to that charged by a comparable person or persons in the same geographical area; or
(4) With a written explanation of why the costs are reasonable without obtaining competitive bids.

We understand the intent of the legislature and of these proposed rules is to control cleanup costs. We agree with that intent. The *Statement of Need and Reasonableness* cited the legislative mandate "(c) the board shall adopt. . . . permanent rules within one year of May 25, 1991, designed to ensure that costs submitted to the Board 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."

The legislative mandate clearly authorized the Board to establish rules and clearly allows leeway to determine where competitive bids are feasible or not.

The proposed rules, as currently written, are too narrow and cannot equitably cover all situations where competitive bids are not feasible. We feel the above suggested additions to *Subpart 4 Exemptions* will provide sufficient flexibility to make these rules workable.

We are concerned that the currently proposed rules will result in additional effort, expense, delays, confusion and rejections of proper claims. We feel the entire contamination cleanup issue is too complicated, to be adequately covered by inflexible rules such as these currently proposed.

We have been impressed that the existing system in Minnesota is a viable, working system that encourages responsible persons and companies to voluntarily come forward and cleanup environmental spills and leaks quickly before they become major problems. The system has been working well; people are encouraged to do the right thing because they know they can be reimbursed for most of the cost. They know they will not be bankrupted by performing environmental cleanups.

These proposed rules are tampering dangerously with a good system. The lack of sufficient flexibility in these rules threatens to drive us back to the old system where it was easier to ignore problems than solve them. The language of the emergency rules was more reasonable that these proposed permanent rules.

CONCLUSION:
CHANGE THE PROPOSED RULES TO INCREASE FLEXIBILITY IN DOCUMENTING THE REASONABLENESS OF THE COSTS. CHANGE THE PROPOSED RULES TO INCREASE FLEXIBILITY IN DOCUMENTING WHEN IT'S NOT FEASIBLE TO SOLICIT BIDS. THESE PROPOSED RULES, AS WRITTEN, SERIOUSLY UNDERMINE ALL ENVIRONMENTAL CLEANUP PROGRESS THAT HAS BEEN MADE IN THE PAST 5 YEARS. MAKE THE CHANGES TO MAKE THESE RULES REASONABLE, WORKABLE AND FAIR.

George C. LaValley

George C. LaValley, P.E.
Manager-Environmental Engineering

GCL:ps

c: W. H. Harrison
C. O. Ferner

MESSERLI & KRAMER

ATTORNEYS AT LAW

1800 NORTHLAND PLAZA BUILDING

3800 WEST 80TH STREET

MINNEAPOLIS, MINNESOTA 55431-4409

(612) 893-6650

FACSIMILE (612) 893-6755

WRITER'S DIRECT DIAL NUMBER

WILLIAM F. MESSERLI
ROSS E. KRAMER
TOM TOGAS
DAVID R. KRACUM
MARK A. LARSON
TIMOTHY J. SAUER
ROBERT G. RENNER, JR.
SANDRA L. NEREN
RANDOLPH W. MORRIS
CHRISTOPHER S. HUNT
JAMES C. WICKA
PAUL A. SORTLAND *
JOSEPH E. NIEPENBERG
WILLIAM G. HICKS **
DAVID G. BEAUDOIN ***
WILLIAM M. HASICHT
PAUL W. ANDERSON

WILLIAM G. TURKULA *
ANN M. BETNES
JOHN F. APITZ
ROLF A. SPONHEIM
CINDY L. DAVIS
ANNE L. JOHNSON
LEANNE G. LITFIN
PETER S. MAGNUSON
FLORENCE HUMPHREY BATCHELOR
MICHAEL L. WEAVER

* ALSO ADMITTED IN NORTH DAKOTA
* ALSO ADMITTED IN SOUTH DAKOTA
** ALSO ADMITTED IN WISCONSIN
* ALSO ADMITTED IN MONTANA

April 22, 1992

Virginia K. Hogan
Minnesota Department of Commerce - Petrofund
133 East 7th Street
St. Paul, MN 55101

RE: Comments on Proposed Permanent Rules Relating to Petrofund Corrective Action Costs

Dear Ms. Hogan:

I am writing on behalf of the Coalition for Effective Cost Containment, an association of leading environmental consulting firms, to provide comment to the subject rules.

As you are aware, during its recently concluded session, the Minnesota Legislature passed S. F. No. 2430 which, among other things, requires the registration of environmental consultants and contractors who seek reimbursement from the Petrofund Board. That bill includes definitions for the terms "**Consultant**" and "**Contractor**". In developing language for this bill, care was taken to make the definition of "contractor" consistent with the proposed Petrofund rules. It is a comprehensive definition that well articulates the activities of these entities.

At the same time, the bill includes a definition of "consultant" that is more comprehensive that the definition proposed in the rules. As drafted, the rules, in 2890.0010, Subp. 3a., propose a definition of "**Consultant services**" as stated, "'Consultant services' means professional consulting, investigation, or design services."

To assure consistency between the new statutory definition of "consultant" and the definition of "consultant services" as proposed in the rules, I would recommend amending the definition in the rules to read as follows:

> **Consultant services.** "Consultant services" means services provided by an individual, partnership, association, private corporation, or any other legal entity including the rendering of professional opinions, advice, or analysis regarding a release.

While this amended definition is not a major change to the proposed rules, its inclusion prior final publication should reduce potential confusion by those subject to the statute and rules and eliminate the need to amend the rules to correct these differences in the future.

Thank you for your consideration of this matter.

With best regards,

MESSERLI & KRAMER

John F. Apitz

JFA:jfx:1256_1.W51s

MINNESOTA PETROLEUM MARKETERS ASSOCIATION

2345 RICE STREET • SUITE 173
ST. PAUL, MINNESOTA 55113
612/484-7227

OFFICERS

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Executive Director

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Steve Loge
Merlin Robinson
Keith Madson
Jerry Deetz
Bernard Feils
Ardell Vilandre
Ed Uhlich
Marlin Besler

December 11, 1991

Brian Ettesvold
2522 Brenner Street
Roseville, MN 55113

Brian:

One of the concerns with the recently approved Competitive Bidding Rules is the various interpretations that may be applied to the following sentence:

> ...Where competitive bids are received, unit costs in excess of those in the bid of the lowest responsible bidder may be considered prima facie unreasonable by the Petroleum Tank Release Compensation Board...

Does this mean that each of the unit costs must be compared or that the total of the unit costs must be compared.

In our opinion the intent of the rules is to have the total of the unit costs be compared. If a comparison of individual unit costs is required it may be almost impossible for a responsible party to select only one cleanup contractor or consultant. Invariably each bidder will have some unit costs higher and some unit costs lower than other bidders.

In addition, the PetroFund Board staff will have to spend a lot of time comparing each of the unit costs when competitive bids are submitted as part of a reimbursement claim. The staff will also invariably find lower and higher individual unit costs in each bid comparison.

We suggest that the PetroFund Board have the minutes of the next board meeting reflect that the intent of the board is to interpret "unit costs" as the total of the unit costs.

We also suggest that the term "unit" as it relates to manpower requirements be clarified. For example: Preparing a remedial investigation report requires primarily research and writing time and unit could be considered the task as a whole or unit could be each hour necessary to complete the report.

In our opinion, the intent of the rules was to consider a billable hour as the unit and have competitive bids show the hourly fees involved.

Again we suggest that the PetroFund Board have the minutes of the next meeting reflect the intent of the Board to interpret "unit" in manpower requirements as the hourly fee that will be charged for each hour necessary to complete the task.

Thank you for considering our suggestions, and we hope that the meaning of unit costs can be clarified.

Sincerely,

Bob Krogman
Executive Director

BK/hjw

South Dakota Petroleum Release Compensation Fund

SEQUENCE OF EVENTS FOR PETROLEUM STORAGE TANKS

STEP #1 Make arrangements for new equipment and contractors.

STEP #2 Review the qualifications of at least **three** environmental consultants and hire the one that best suits your needs.

STEP #3 Submit consultant contract to the PRCF for review and approval.

STEP #4 Notify the DWNR of your intent to remove and/or upgrade your tanks.

STEP #5 Obtain recommendation from your consultant for best course of action.

STEP #6 Make arrangements for the disposal of contaminated soil.

STEP #7 Submit pre-assessment report to both the PRCF and the DWNR (only if an assessment is required).

STEP #8 Conduct preliminary investigation (test borings) or full site assessment, if appropriate.

STEP #9 Remove old tanks (install new tanks).

STEP #10 Limit excavation to the removal of visible contamination from the EXCAVATION AREA unless a corrective action that says otherwise plan has already been approved.

STEP #11 Complete a full site assessment if contamination is discovered.

STEP #12 Prepare a corrective action plan.

STEP #13 Implement remedial action.

330 S. POPLAR, C/O 500 E. CAPITOL, PIERRE, SOUTH DAKOTA 57501 • (605) 773-3769

South Dakota
GREAT FACES. GREAT PLACES.

PETROLEUM RELEASE COMPENSATION FUND

330 S. Poplar, c/o 500 E. Capitol
Pierre, South Dakota 57501-5070
(605)773-3769 • Fax (605)773-6048

ESTIMATE FOR
CONTRACTOR/EXCAVATION EXPENSES

APPLICANT: _____ PRCF #: _____ DENR #: _____

TYPE OF WORK	UNIT COST	TOTAL COST
Tank Removal, Purging, Cutting, Cleaning, and Disposal (For multiple tanks, multiply by the number of tanks. If all of the tanks are located together, subtract 35% from the incremental total amount.)		
Under 1,000 Gallons	$_____/tank x No. of Tanks____	$_____
1,000 - 4,000 Gallons	$_____/tank x No. of Tanks____	$_____
5,000 - 10,000 Gallons	$_____/tank x No. of Tanks____	$_____
Above 10,000 Gallons	$_____/tank x No. of Tanks____	$_____
Remove Surfacing (concrete and/or asphalt)		
4" Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
6" Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
7 - 9" Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
10" & Over Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
Concrete Curb	$_____/Linear Ft x No. of Ft._____	$_____
Add: w/Rebar	_____%	$_____
Add: For < 500 Sq Ft	_____%	$_____
Dump Fees (2 ton concrete/Cu Yd)	$_____/ton x Number of tons_____	$_____
Saw Concrete	$_____/Linear Ft x No. of Ft._____	$_____
Saw Asphalt	$_____/Linear Ft x No. of Ft._____	$_____
Remove Asphalt Pad	$_____/Sq Ft x No. of Sq. Ft._____	$_____
Remove Asphalt Curb	$_____/Linear Ft x No. of Ft._____	$_____
Add: For < 500 Sq Ft	_____%	$_____
Excavation and Haul		
Excavate Soil	$_____/Cu Yd x No. of Cu. Yd._____	$_____
Haul to Land Site	$_____/Cu Yd/Mi x No. of Cu Yd____ x No. of Miles____	$_____
Landfill (tipping fee)	$_____/Cu. Yd. x No. of Cu Yd_____	$_____
Landfarm (tipping fee)	$_____/Cu. Yd. x No. of Cu Yd_____	$_____
Fill, Haul, and Compact		
Fill -- Non-select Matr.	$_____/Cu Yd x No. of Cu. Yd._____	$_____
Haul to Excavation Site	$_____/Cu Yd/Mi x No. of Cu Yd____ x No. of Miles____	$_____
Compaction	$_____/Cu Yd x No. of Cu. Yd._____	$_____
Compaction Tests	$_____ (flat amount)	$_____
Resurfacing (4" concrete)		
Grade Site	$_____/Square Foot	
6" Rock Base	$_____/Square Foot	
Edge Forms	$_____/Square Foot	
Vapor Barrier	$_____/Square Foot	
Mesh	$_____/Square Foot	
Keyway	$_____/Square Foot	
Concrete in Place	$_____/Square Foot	
Float Finish	$_____/Square Foot	
Cure with Paper	$_____/Square Foot	
Total	$_____/Sq Ft x No. of Sq. Ft._____	$_____
Add: For each inch of Concrete	$_____/Sq Ft x No. of Sq. Ft._____	$_____
Less: Depreciation of Old Surface	_____% of Replacement Cost	($_____)

ESTIMATE FOR
CONTRACTOR/EXCAVATION EXPENSES

TYPE OF WORK	SOURCE	UNIT COST	TOTAL COST
Resurfacing (Asphalt)			
Asphalt Pad		$____/Sq Yd x No. of Sq. Yd.____	$____
Asphalt Curb and Gutter		$____/Linear Ft x No. of Ft.____	$____
Less: Depreciation of Old Surface		____% of Replacement Cost	($____)
Island Forms			
4' x 10' w/2' bumpers		$____ each x No. of Forms____	$____
4' x 16' w/2' bumpers		$____ each x No. of Forms____	$____
Other Misc.			
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
_____		$____ x _____	$____
		T O T A L	$____



South Dakota
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PETROLEUM RELEASE COMPENSATION FUND
330 S. Poplar, c/o 500 E. Capitol
Pierre, South Dakota 57501-5070
(605)773-3769 • Fax (605)773-6048

ESTIMATE FOR
CONTRACTOR/EXCAVATION EXPENSES

APPLICANT:_____ PRCF #:_____ DENR #:_____

TYPE OF WORK	UNIT COST	TOTAL COST
Tank Removal, Purging, Cutting, Cleaning, and Disposal (For multiple tanks, multiply by the number of tanks. If all of the tanks are located together, subtract 35% from the incremental total amount.)		
Under 1,000 Gallons	$_____/tank x No. of Tanks____	$_____
1,000 - 4,000 Gallons	$_____/tank x No. of Tanks____	$_____
5,000 - 10,000 Gallons	$_____/tank x No. of Tanks____	$_____
Above 10,000 Gallons	$_____/tank x No. of Tanks____	$_____
Remove Surfacing (concrete and/or asphalt)		
4" Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
6" Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
7 - 9" Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
10" & Over Concrete	$_____/Sq Yd. x No. of Sq. Yd.____	$_____
Concrete Curb	$_____/Linear Ft x No. of Ft._____	$_____
Add: w/Rebar	_____%	$_____
Add: For < 500 Sq Ft	_____%	$_____
Dump Fees (2 ton concrete/Cu Yd)	$_____/ton x Number of tons_____	$_____
Saw Concrete	$_____/Linear Ft x No. of Ft._____	$_____
Saw Asphalt	$_____/Linear Ft x No. of Ft._____	$_____
Remove Asphalt Pad	$_____/Sq Ft x No. of Sq. Ft._____	$_____
Remove Asphalt Curb	$_____/Linear Ft x No. of Ft._____	$_____
Add: For < 500 Sq Ft	_____%	$_____
Excavation and Haul		
Excavate Soil	$_____/Cu Yd x No. of Cu. Yd._____	$_____
Haul to Land Site	$_____/Cu Yd/Mi x No. of Cu Yd____ x No. of Miles____	$_____
Landfill (tipping fee)	$_____/Cu. Yd. x No. of Cu Yd_____	$_____
Landfarm (tipping fee)	$_____/Cu. Yd. x No. of Cu Yd_____	$_____
Fill, Haul, and Compact		
Fill -- Non-select Matr.	$_____/Cu Yd x No. of Cu. Yd._____	$_____
Haul to Excavation Site	$_____/Cu Yd/Mi x No. of Cu Yd____ x No. of Miles____	$_____
Compaction	$_____/Cu Yd x No. of Cu. Yd._____	$_____
Compaction Tests	$_____ (flat amount)	$_____
Resurfacing (4" concrete)		
Grade Site	$_____/Square Foot	
6" Rock Base	$_____/Square Foot	
Edge Forms	$_____/Square Foot	
Vapor Barrier	$_____/Square Foot	
Mesh	$_____/Square Foot	
Keyway	$_____/Square Foot	
Concrete in Place	$_____/Square Foot	
Float Finish	$_____/Square Foot	
Cure with Paper	$_____/Square Foot	
Total	$_____/Sq Ft x No. of Sq. Ft._____	$_____
Add: For each inch of Concrete	$_____/Sq Ft x No. of Sq. Ft._____	$_____
Less: Depreciation of Old Surface	_____% of Replacement Cost	($_____)

ESTIMATE FOR CONTRACTOR/EXCAVATION EXPENSES

TYPE OF WORK	SOURCE	UNIT COST	TOTAL COST
Resurfacing (Asphalt)			
Asphalt Pad		$_____/Sq Yd x No. of Sq. Yd._____	$_____
Asphalt Curb and Gutter		$_____/Linear Ft x No. of Ft._____	$_____
Less: Depreciation of Old Surface		_____% of Replacement Cost	($_____)
Island Forms			
4' x 10' w/2' bumpers		$_____ each x No. of Forms_____	$_____
4' x 16' w/2' bumpers		$_____ each x No. of Forms_____	$_____
Other Misc.			
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
_____		$_____ x _____	$_____
		T O T A L	$_____

South Dakota Petroleum Release Compensation Fund

ENVIRONMENTAL CONSULTANT QUESTIONNAIRE

DWNR FILE #_____ PRCF FILE #_____

Owner Information

_____ _____
Name of Firm or Business Telephone

_____
Address City State Zip

Consultant Information

_____ _____
Name of Firm or Business Telephone

_____
Address City State Zip

Type of Work Being Considered (check all that may apply)

___ Tank Removal/Abandonment ___ Tank Removal and Replacement/Upgrading
___ Remedial Work ___ Other _____

Areas Reviewed

1. What experience does the firm have in working with storage tanks or remediating petroleum releases in South Dakota? _____

_____

_____

_____

2. Does the firm have the ability to complete the work in a timely manner and meet the reporting time frames of the South Dakota Department of Water and Natural Resources (DWNR)? (Note: DWNR requires that a report be submitted within 60 days from the date the release is reported.)

___ Yes ___ No

* Estimate the date of availability of the firm: _____
Start Date

3. What are the education and/or experience qualifications of the person(s) responsible for working on the project? List both on and off site personnel.

_____
Name Title Education and/or yrs. experience

_____
Name Title Education and/or yrs. experience

_____
Name Title Education and/or yrs. experience

_____
Name Title Education and/or yrs. experience

4. If the person(s) responsible for working at the site of the project are not registered Professional Engineers or Registered Professional Geologists, is there one on staff who will be reviewing the reports prepared by the firm? ___ yes ___ no

   * If yes, _____
   Name Professional Credential(s)

   _____
   Name Professional Credential(s)

   _____
   Name Professional Credential(s)

5. Please list equipment held in inventory that is available to perform site assessments and remediation activities, e.g., field instrumentation, drilling rigs, survey equipment, etc. _____

   _____

   _____

6. Proposed Costs:
   a) Cost Per Hour:
      * Engineer/Hydrologist _____
      * Technician _____
      * Drilling Costs (Crew) _____
      * Overhead _____ Administration _____
      * Other _____
   b) Fixed Costs:
      * Expenses _____
      * Mileage _____
      * Laboratory Services _____
      * Other _____

7. Have personnel who will be on site completed the EPA Personal Protection and Safety Training Course (#165.2) or the OSHA equivalent?
   ___Yes ___No

How was the information from the consulting firm obtained?
___ Personal Interview ___ Telephone Conversation
___ Correspondence ___ Other _____

I hereby certify that the foregoing information is true and correct to the best of my knowledge and beliefs:

Signature: _____ Date: _____
(Consultant OR Owner)

8. Insurance

9. References

Coalition for Effective Cost Containment
drafted: 12/11/91

PROPOSED PERMANENT RULE

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, except for professional consulting, investigation and design services, 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 work performed in connection with the corrective action for which reimbursement is sought where the products or services within a scope of work can be defined by typical written plans and specifications including, but not being limited to: excavation, disposal of contaminated soil and water, soil borings and well installations, laboratory analyses, surveying, electrical, plumbing, carpentry, and equipment.

Where competitive bids are received, unit costs in excess of those in the bid of the lowest ~~responsible~~ qualified bidder may be considered prima facie unreasonable by the Petroleum Tank Release compensation Board.

Professional consulting and design investigation services will be selected by an evaluation process which considers factors such as qualifications, experience, certifications and registrations, health and safety training, insurance, references, availability and costs.

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 as 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;

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

D. evidence that the lowest qualified bidder for ~~professional work or other work~~ competitively bid products or services was ~~not qualified~~ selected to perform the necessary services; or

E. for professional consulting, investigation or design services, documentation of the solicitation of at least two proposals evidencing the qualifications of the provider and estimates of cost. Documentation shall be in a form and include information as prescribed by the Board.

Any person, firm, corporation, or governmental unit who is a responsible person as defined in Minnesota Statues, 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 an ~~bidding and~~ evaluation process. The documentation shall include a description of the evaluation process used by the applicant to enter into a standing contract.

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

Coalition for Effective Cost Containment
redrafted: 12/18/91

PROPOSED PERMANENT RULE

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, except for professional consulting, investigation and design services, 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 from vendors judged by the applicant or his agent to be qualified and able to meet minimum regulatory requirements for work performed in connection with the corrective action for which reimbursement is sought.

Competitive bids must be received where products or services are within a scope of work and can be defined by typical written plans and specifications including, but not being limited to: excavation, disposal of contaminated soil and water, soil borings and well installations, laboratory analyses, surveying, electrical, plumbing, carpentry, and equipment. Where competitive bids are received, unit costs in excess of those in the bid of the lowest ~~responsible~~ qualified bidder may be considered prima facie unreasonable by the ~~Petroleum Tank Release Compensation~~ Board.

Professional consulting, investigation and design services will be selected through an evaluation process which includes the solicitation of at least two proposals and which considers costs and qualifications such as education, experience, certifications and registrations, health and safety training, insurance, references, availability and costs. In

the evaluation process, the applicant or his agent must make a good faith effort to assure that the proposal selected is reasonable considering the proposed services and costs.

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

B. evidence that ~~only one party was~~ less than two parties were 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 or evaluate alternative proposals for professional consulting, investigation or design services; ~~or~~

D. evidence that the lowest qualified bidder for professional work or other work competitively bid products or services was ~~not qualified~~ selected to perform the necessary services.; or

E. documentation of the costs and the qualifications of the provider professional consulting, investigation or design services. Documentation shall be in a form and include information prescribed by the Board.

Any person, firm, corporation, or governmental unit who is a responsible person as defined in Minnesota Statues, 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 an ~~bidding and~~ evaluation process. The

documentation shall include a description of the evaluation process used by the applicant to enter into a standing contract.

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

JFA:erl:50_1.W51s

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

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 14th day of January, 1992, 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 VIRGINIA HOGAN, 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 proposed rules of the Board governing documentation of reasonableness of costs and the application process, Minn. Rules pt. 2890.0010, 2980.0060, subp. 5, 2890.0070, subp. 2, 2890.0075 and 2890.0090, to all person who have registered their names with the Board for that purpose and publish the notice and the proposed 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).

BE IT FURTHER RESOLVED, that the Executive Director of the Board is also granted the authority to call a hearing for the purpose of adopting the attached proposed rules of the Board governing documentation of reasonableness of costs and the application process, Minn. Rules pt. 2890.0010, 2980.0060, subp. 5, 2890.0070, subp. 2, 2890.0075 and 2890.0090, to sign the Notice thereof, to act as the Board's Representative at the hearing, 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 14th day of January, 1992.

P. Trautwine

PHIL TROUTWINE
Chairman of the Board

Brian Ettesvold

BOARD MEMBER

DEPARTMENT: ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE: May 6, 1992

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

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

PHONE: 297-1141

SUBJECT: **In the Matter of the Proposed Rules Governing the Documentations of Reasonableness of Costs and the Application Process**

Attached, as we discussed, is another copy of the Statement of Need and Reasonableness in connection with the above-referenced rules. It appears that the copy that was signed earlier erroneously included pages 5 and 6 from our earlier draft. The only difference I have identified is the first two lines on page 5 which simply refers to the exemption provided by the rule, the reason for which is addressed on page 4. Since the omission of this material in the signed copy, while confusing, is substantively inconsequential, I do not believe it should affect the consideration of the rule itself.

KER:gpp

Attachment

STATE OF MINNESOTA
Petroleum Tank Release Compensation Board

In the Matter of the Proposed
Rules Governing the Documentations
of Reasonableness of Costs and
the Application Process.

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION AND STATEMENT OF AUTHORITY.

Minnesota Statute Chapter 115C, the Petroleum Tank Release Clean-up Act, provides a mechanism for persons who take corrective action in response to petroleum tank releases to receive partial reimbursement for reasonable costs incurred in taking corrective action. The proposed rule changes are addressed to two separate issues, cost containment and the phased application process. The cost containment element defines and treats separately "contractor services" and professional "consultant services." With respect to both types of services, documentation of comparison of proposed prices or charges from two or more qualified providers is generally required. The portion of the rule addressed to the application process simply conforms Minn Rule pt. 2890.0090 to the 1991 statutory change which permits a phased application process.

Minn. Stat. § 115C.09, subd. 3(b) (Supp. 1991) provides:

> (b) A reimbursement may not be made from the account under this subdivision until the [Petroleum Tank Release Compensation] board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

The Board has long perceived a need for implementation of cost containment mechanisms which would help to assure that costs incurred by applicants for which reimbursement is sought are reasonable and competitive. To that end, a committee of the Board was established in 1990 to study measures, including competitive bidding

requirements, which might be implemented. The committee held numerous public meetings in which these issues were discussed at length.

General authority to adopt rules concerning both the application process and determination of reasonableness of costs eligible for reimbursement is provided by Minn. Stat. § 115C.07, subd. 3a (1990) which provides:

> 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.

By laws 1991 ch. 175 § 2 enacted May 24, 1991, the legislature further provided a specific mandate to the Board to adopt rules relative to cost containment:

> (c) The board shall adopt emergency rules within four months of May 25, 1991, and permanent rules within one year of May 25, 1991, 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.

Minn. Stat. § 115C.07,subd. 3(c) (Supp. 1991). On October 29, 1991, the Board adopted emergency rules addressed to that mandate. See Vol. 16, No. 25, Minn. State Reg. p. 1504.

In the process of adopting the emergency rules, and subsequent thereto in undertaking to draft permanent rules, the Board and its committee held a number of public meetings and formally solicited public comment. The resulting cost containment portion of the rules now proposed for adoption represent in part a refinement of the principles embodied in the emergency rules which addresses concerns and suggestions of the Board, staff board members and interested members of the public.

II. STATEMENT OF NEED.

Given the limited nature of the fund available for reimbursement to persons for taking corrective action and the large volume of claims submitted, it is important that measures be implemented to assist the Board and its staff in assuring that reimbursed costs are reasonable and competitively determined. The legislature, in requiring the Board to

adopt rules specifically including bidding requirements, has established, as a matter of law, the need for the portions of the rule directed to contractor bidding and competitive consultant selection. The proposed amendments to pts. 2890.0010, 2890.0075, and 2890.0090, subp. 1E, are addressed to this mandate while also clarifying the responsibility of the Board to review the reasonableness of all invoiced costs submitted for reimbursement.

In addition, the proposed amendment to pt. 2890.0090, subp. 1C, are required to make the rules comport with a 1991 statutory amendment which permits a phased application process in lieu of the previous requirement, reflected in the current rules, that a complete correction action plan be approved prior to reimbursement. See Minn. Laws 1991 ch. 175 § 4.

III. STATEMENT OF REASONABLENESS.

The general reasonableness of the requirement that an applicant obtain competing bids or proposals for corrective action work is clear. It is not possible for either the purchaser of services or the Board to judge whether costs submitted for payment or reimbursement are "reasonable" absent any comparison to other costs in the marketplace. Statutes commonly require cost comparisons for acquisition of personal property or for construction maintenance or repair of real property by government agencies. See, e.g., Minn. Stat. §§ 16B.07, 375.21, 412.311, 471.345 (1990).

In the case of "contractor services" where the work can be described in objective plans and specifications, it is reasonable for the Board to consider costs in excess of those proposed by the lowest qualified bidder to be, prima facie, unreasonable. Indeed, it is a common requirement in governmental contracting that the contract be awarded to the lowest qualified or responsible bidder. See, e.g., Minn. Stat. § 375.21, 412.311 (1990).

Much attention has been paid in the drafting process to the issue of professional "consulting services." Strong arguments have been presented to the Board in addressing the emergency rules and proposals for permanent rules that providers of services of a

professional nature cannot always be compared on price alone based upon objective specifications. The Board recognizes that in selecting a person to investigate a release, advise the tank owner and design a corrective action plan, subjective factors such as training and experience of the consultant relevant to the scope of services may need to be considered in addition to stated prices or fees. This distinction between services which may be objectively specified and evaluated and those which call for personal services involving particular skill or ability of a subjective nature is often drawn in applying competitive bidding requirements. See generally 10 McQuillin Municipal Corporations § 29.35 (3d ed.).

Even though factors other than price alone may legitimately enter into selection of a consultant, reasonable cost control requires that cost comparisons be available and that payment of higher charges be supported by good faith determination that selection of a higher priced consultant is reasonable in light of the qualifications needed to perform the needed services. Thus, in retaining a consultant, an applicant is required to consider at least two written proposals which set forth the estimated costs and qualifications of the consultants and may be required to support payment of charges which are not the lowest as justified by the qualifications of the consultant in relation to the nature of services anticipated.

The Board also recognizes that there may be circumstances in which, due to emergency or unavailability of multiple providers, it may not be feasible for an applicant to obtain bids or proposals. Thus, the Board provides for exemption in such circumstances.

Furthermore, there are situations in which parties reasonably anticipate numerous potential cleanups at various sites. It has been argued that, in such circumstances, it can be more cost effective to enter standing contracts with contractors or consultants than to let individual contracts on a job-by-job basis. If that is the case, the cost containment goals of the legislature can best be served by permitting the more economical practice. Thus, the

Board provides for an annual exemption from job-by-job bidding or evaluation process but only if the applicant can demonstrate that a standing contract is more economical.

The changes in pt. 2890.0090, subp. 1c are reasonable inasmuch as they conform the rule to the statutory provision for a phased application process. Absent the change, the rules would continue to require a completed corrective action plan (CAP), even though the statute permits application for costs associated with soil cleanup, based on a CAP limited to soil only.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING.

Minn. Stat. § 14.115, subd. 2 (1990) requires the Board, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

a. the establishment of less stringent compliance or reporting requirements for small businesses;

b. the establishment of less stringent schedules or deadlines for compliance of reporting requirements for small businesses;

c. the consolidation or simplification of compliance or reporting requirements for small businesses;

d. the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

e. the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minn. Stat. § 14.115 (1990). As a result, the Board has considered the above-listed methods for reducing the impact of the rule on small businesses. The effect upon small business of the portion of the rule which permits phased submission of applications in accordance with the statute is in no respect adverse. It merely clarifies in rule the option to apply for reimbursement at an earlier state of cleanup than had been previously permitted.

In requiring that contracts be let upon bids or competitive proposals where feasible, the rule imposes minimal requirements upon applicants consistent with the reasonable

purposes of the rule. Sound business practices would dictate that competing bids or proposals for work be solicited and analyzed in cases not exempted by the rule in any event. In light of the need and purposes for the rule, as discussed above, neither establishment of less stringent requirements nor exemption of small businesses from its operation would be feasible or consistent with the statutory purposes furthered by the rule.

V. WITNESSES.

In support of the need for and reasonableness of the proposed rule the following witness will testify at the hearing:

Ms. Susan Bergh, Ms. Robin Hanson and Mr. Brian Ettesvald will testify to the foregoing material.

Based upon the foregoing, the proposed amendments are needed and reasonable.

Dated: _____, 1992.

_____
VIRGINIA K. HOGAN
Executive Director

STATE OF MINNESOTA

PETROLEUM TANK RELEASE COMPENSATION BOARD

PROPOSED PERMANENT RULES GOVERNING THE DOCUMENTATION OF REASONABLENESS OF COSTS AND THE APPLICATION PROCESS FOR PETROFUND REIMBURSEMENT, MINNESOTA RULES PARTS 2890.0010, 2890.0060, SUBPART 5, 2890.0070 SUBPART 2, 2890.0075, AND 2890.0090

Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent to Adopt Rules with a Public Hearing if 25 or More Persons Request a Hearing With Respect to the Proposed Amendments, and Notice of Intent to Cancel Hearing on the Proposed Rules if Fewer Than 25 Persons Request a Hearing With Respect to the Proposed Rules.

I. EXPLANATION OF ALTERNATIVE NOTICES

The Petroleum Tank Release Compensation Board (hereinafter "Board") hereby gives notice of its intent to adopt rules without a public hearing under the non-controversial rulemaking procedure of Minnesota Statutes, section 14.22 to 14.28 (1990). However, in the event 25 or more persons request a hearing with respect to the proposed amendments to the rules, thereby necessitating that one be held pursuant to Minnesota Statutes, section 14.25 (1990), and in order to expedite the rulemaking process should that occur, the Board is at the same time giving notice of a hearing on the proposed rules pursuant to Minnesota Statutes, section 14.131 to 14.20 (1990). The hearing on the proposed rules will, of course, be cancelled if 25 or more persons do not request that a hearing be

held with respect to the proposed rules. With the comment period closing on April 2, 1992, there will be 14 days before the scheduled hearing date. The 14-day period will give interested persons time to contact the Board to find out whether the hearing will be held or cancelled.

II. NOTICE OF INTENT TO REPEAL AND ADOPT RULES WITHOUT A PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that the Petroleum Tank Release Compensation Board (hereinafter "Board") proposes to adopt the above-captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing with respect to the proposed rules. The Board has determined that the proposed rules will be non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28 (1990).

Interested persons shall have until April 2, 1992 to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed to the rules by the comment. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language of the rule as noticed.

In addition to submitting comments, interested persons may request in writing during the comment period that a hearing be held on the proposed rules. (6) Any person requesting a hearing should state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes they want made to the proposed rules. If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Board be informed of the specific portion of the rules on which a hearing is being requested at the time that the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. (7) A public hearing will be held if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by April 2, 1992. If a hearing is required, it will be held in accordance with the provisions of Minnesota Statutes, sections 14.14 to 14.20 (1990), and the hearing notice.

(8) Comments or written requests for a public hearing should be submitted to:

Virginia K. Hogan
Minnesota Department of Commerce - Petrofund
133 East 7th Street
St. Paul, MN 55101

The statutory authority of the Board to adopt the proposed rules is contained in Minnesota Statutes, section 115C.07, subdivision 3(c) (Supp. 1991).

The proposed rules if adopted will cover the requirement that bids or proposals be obtained and documented for reimbursable costs; a free copy of the rules may be obtained from the Board by contacting Virginia K. Hogan at the address listed above, and are attached herewith.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by contacting Virginia K. Hogan at the address listed above.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any adverse impact on agricultural land; therefore, no further information need be provided under Minnesota Statutes, section 14.11 (1991).

The Board is subject to Minnesota Statutes, section 14.115 (1990), regarding small business considerations in rulemaking. The Board's evaluation of the applicability of the methods contained in

Minnesota Statutes, section 14.115, subdivision 2(1990), reducing the impact of the proposed rules on small businesses are addressed in the **STATEMENT OF NEED AND REASONABLENESS.**

(9) Upon completion of proposed rules without a public hearing, the rules as proposed, this notice, the **STATEMENT OF NEED AND REASONABLENESS**, all written comments received, the rules as adopted, and a statement explaining any differences between the rules as proposed and adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. 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 rules as adopted should submit a written request to Virginia K. Hogan at the address listed above.

III. NOTICE OF INTENT TO REPEAL AND ADOPT RULES WITH A PUBLIC HEARING ON THE PROPOSED RULES IF 25 OR MORE PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE-CAPTIONED RULES WITHIN THE COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON APRIL 17, 1992, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned

rule will be held pursuant to Minnesota Statutes, sections 14.14 to 14.20 (1990), on April 17, 1992, commencing at 9:00 a.m. until 4:30 p.m., or until all interested persons have been heard, in the First Floor Conference Room, Minnesota Department of Commerce, 133 East 7th Street, St. Paul, Minnesota.

The hearing will continue, if necessary, at additional times and places as determined during the hearing by the Administrative Law Judge. The Administrative Law Judge assigned to conduct the hearing is Jon L. Lunde. Judge Lunde can be reached at the Office of Administrative Hearings, 500 Flour Exchange Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone number (612) 341-7645.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to the Administrative Law Judge. Unless a longer period, not to exceed 20 calendar days, is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the

hearing ends. All written materials submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period. This rules hearing procedure is governed by Minnesota Statutes, section 14.14 to 14.20 (1990), and by Minnesota Rules, parts 1400.0200 to 1400.1200 (1991). Questions about procedure may be directed to the Administrative Law Judge.

The subject of the hearing will be proposed rules which if adopted, will cover the requirement that bids or proposals be obtained and documented for reimbursable costs; a free copy of the rules may be obtained from the Board by contacting Virginia K. Hogan at the address listed above in Part II of this Notice, and are attached herewith.

The statutory authority of the Board to adopt the proposed rules is contained in Minnesota Statutes, section 115C.07, subdivision 3(c) (Supp. 1991).

The proposed rules may be modified as a result of the rule hearing

process. Those who are potentially affected in any manner by the substance of the proposed rules are therefore encouraged to participate in the process.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone number (612) 296-5148.

NOTICE IS HEREBY GIVEN that a **STATEMENT OF NEED AND REASONABLENESS** is now available for review at the Board and at the Office of Administrative Hearings. This **STATEMENT OF NEED AND REASONABLENESS** includeds a summary of all the evidence which the Board anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. The statement of need and reasonableness may be reviewed at the Board office by contacting Virginia K. Hogan at the address listed above in part II of this Notice or it may be reviewed at the Office of Administrative Hearings, and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

PLEASE NOTE that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Board may not take any final action on the

rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may require notification of the date on which any rules were adopted and filed with the Secretary of State. The Notice must be mailed on the same day that the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rules with the Secretary of State.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any adverse impact on agricultural land; therefore, no further information need be provided under Minnesota Statutes, section 14.11 (1990).

The Board is subject to Minnesota Statutes, section 14.115(1990), regarding small business considerations in rulemaking. The Board's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2(1990), for reducing the impact of the proposed rules on small businesses are addressed in the statement of need and reasonableness.

IV. NOTICE OF INTENT TO CANCEL THE HEARING WITH RESPECT TO THE RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED WITH RESPECT TO THE PROPOSED RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether a hearing noticed in Part III above will be held, please contact Virginia K. Hogan at the address listed above in part II of the Notice before March 19, 1992, and provide your name, address, and telephone number. You will be notified after April 2, 1992, if the hearing has been cancelled. You may also call Ms. Hogan at (612) 297-4815 after April 2, 1992 for oral confirmation regarding the scheduled hearing.

Date: February 11, 1992

Virginia K. Hogan

Virginia K. Hogan
Executive Director,
Petroleum Tank Release
Compensation Board

Proposed Rules

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

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

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

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

Department of Commerce

Proposed Permanent Rules Relating to Petrofund Corrective Action Costs

Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent to Adopt Rules with a Public Hearing if 25 or More Persons Request a Hearing With Respect to the Proposed Amendments, and Notice of Intent to Cancel Hearing on the Proposed Rules if Fewer Than 25 Persons Request a Hearing With Respect to the Proposed Rules

I. EXPLANATION OF ALTERNATIVE NOTICES

The Petroleum Tank Release Compensation Board (hereinafter "Board") hereby gives notice of its intent to adopt rules without a public hearing under the non-controversial rulemaking procedure of *Minnesota Statutes*, section 14.22 to 14.28 (1990). However, in the event 25 or more persons request a hearing with respect to the proposed amendments to the rules, thereby necessitating that one be held pursuant to *Minnesota Statutes*, section 14.25 (1990), and in order to expedite the rulemaking process should that occur, the Board is at the same time giving notice of a hearing on the proposed rules pursuant to *Minnesota Statutes*, section 14.131 to 14.20 (1990). The hearing on the proposed rules will, of course, be cancelled if 25 or more persons do not request that a hearing be held with respect to the proposed rules. With the comment period closing on April 2, 1992, there will be 14 days before the scheduled hearing date. The 14-day period will give interested persons time to contact the Board to find out whether the hearing will be held or cancelled.

II. NOTICE OF INTENT TO REPEAL AND ADOPT RULES WITHOUT A PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that the Petroleum Tank Release Compensation Board (hereinafter "Board") proposes to adopt the above-captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing with respect to the proposed rules. The Board has determined that the proposed rules will be non-controversial in nature and has elected to follow the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28 (1990).

Interested persons shall have until April 2, 1992 to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed to the rules by the comment. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language of the rule as noticed.

In addition to submitting comments, interested persons may request in writing during the comment period that a hearing be held on the proposed rules. Any person requesting a hearing should state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes they want made to the proposed rules. If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Board be informed of the specific portion of the rules on which a hearing is being requested at the time that the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by April 2, 1992. If a hearing is required, it will be held in accordance with the provisions of *Minnesota Statutes*, sections 14.14 to 14.20 (1990), and the hearing notice.

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

Virginia K. Hogan
Minnesota Department of Commerce—Petrofund

133 East 7th Street
St. Paul, MN 55101

The statutory authority of the Board to adopt the proposed rules is contained in *Minnesota Statutes*, section 115C.07, subdivision 3(c) (Supp. 1991).

The proposed rules if adopted will cover the requirement that bids or proposals be obtained and documented for reimbursable costs; a free copy of the rules may be obtained from the Board by contacting Virginia K. Hogan at the address listed above, and are published below.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Board by contacting Virginia K. Hogan at the address listed above.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any adverse impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes*, section 14.11 (1991).

The Board is subject to *Minnesota Statutes*, section 14.115 (1990), regarding small business considerations in rulemaking. The Board's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2 (1990), reducing the impact of the proposed rules on small businesses are addressed in the STATEMENT OF NEED AND REASONABLENESS.

Upon completion of proposed rules without a public hearing, the rules as proposed, this notice, the STATEMENT OF NEED AND REASONABLENESS, all written comments received, the rules as adopted, and a statement explaining any differences between the rules as proposed and adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. 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 rules as adopted should submit a written request to Virginia K. Hogan at the address listed above.

III. NOTICE OF INTENT TO REPEAL AND ADOPT RULES WITH A PUBLIC HEARING ON THE PROPOSED RULES IF 25 OR MORE PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE-CAPTIONED RULES WITHIN THE COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON APRIL 17, 1992, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned rule will be held pursuant to *Minnesota Statutes*, sections 14.14 to 14.20 (1990), on April 17, 1992, commencing at 9:00 a.m. until 4:30 p.m., or until all interested persons have been heard, in the First Floor Conference Room, Minnesota Department of Commerce, 133 East 7th Street, St. Paul, Minnesota.

The hearing will continue, if necessary, at additional times and places as determined during the hearing by the Administrative Law Judge. The Administrative Law Judge assigned to conduct the hearing is Jon L. Lunde. Judge Lunde can be reached at the Office of Administrative Hearings, 500 Flour Exchange Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone number (612) 341-7645.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to the Administrative Law Judge. Unless a longer period, not to exceed 20 calendar days, is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. All written materials submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period. This rules hearing procedure is governed by *Minnesota Statutes*, section 14.14 to 14.20 (1990), and by *Minnesota Rules*, parts 1400.0200 to 1400.1200 (1991). Questions about procedure may be directed to the Administrative Law Judge.

The subject of the hearing will be proposed rules which if adopted, will cover the requirement that bids or proposals be obtained and documented for reimbursable costs; a free copy of the rules may be obtained from the Board by contacting Virginia K. Hogan at the address listed above in Part II of this Notice, and are published below.

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

The statutory authority of the Board to adopt the proposed rules is contained in *Minnesota Statutes*, section 115C.07, subdivision 3(c) (Supp. 1991).

The proposed rules may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed rules are therefore encouraged to participate in the process.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone number (612) 296-5148.

NOTICE IS HEREBY GIVEN that a STATEMENT OF NEED AND REASONABLENESS is now available for review at the Board and at the Office of Administrative Hearings. This STATEMENT OF NEED AND REASONABLENESS includes a summary of all the evidence which the Board anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. The statement of need and reasonableness may be reviewed at the Board office by contacting Virginia K. Hogan at the address listed above in part II of this Notice or it may be reviewed at the Office of Administrative Hearings, and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

PLEASE NOTE that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Board may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may require notification of the date on which any rules were adopted and filed with the Secretary of State. The Notice must be mailed on the same day that the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rules with the Secretary of State.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any adverse impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes*, section 14.11 (1990).

The Board is subject to *Minnesota Statutes*, section 14.115 (1990), regarding small business considerations in rulemaking. The Board's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2 (1990), for reducing the impact of the proposed rules on small businesses are addressed in the statement of need and reasonableness.

IV. NOTICE OF INTENT TO CANCEL THE HEARING WITH RESPECT TO THE RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES.

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED WITH RESPECT TO THE PROPOSED RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether a hearing noticed in Part III above will be held, please contact Virginia K. Hogan at the address listed above in part II of the Notice before March 19, 1992, and provide your name, address, and telephone number. You will be notified after April 2, 1992, if the hearing has been cancelled. You may also call Ms. Hogan at (612) 297-4815 after April 2, 1992 for oral confirmation regarding the scheduled hearing.

Dated: 11 February 1992

Virginia K. Hogan
Executive Director,
Petroleum Tank Release
Compensation Board

Rules as Proposed

2890.0010 DEFINITIONS.

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

Subp. 2a. **Board.** "Board" means the petroleum tank release compensation board.

[For text of subp 3, see M.R.]

Subp. 3a. **Consultant services.** "Consultant services" means professional consulting, investigation, or design services.

Subp. 3b. **Contractor services.** "Contractor services" means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical, plumbing, carpentry, and equipment.

[For text of subps 4 to 7, see M.R.]

2890.0075 DOCUMENTATION OF REASONABLENESS.

Subpart 1. **Generally.** The applicant shall prove the reasonableness of all incurred eligible costs. Effective for any contract entered into or commenced on or after the effective date of this part, the applicant shall solicit a minimum of two written competitive bids

for each contractor service, and two written proposals for consultant services. The board shall pay only those costs it determines to be reasonable.

Subp. 2. **Contractor services; bids.** The applicant or its agent shall solicit, publicly or privately, a minimum of two written competitive bids in a form prescribed by the board based upon comparable unit costs for each contractor service performed in connection with corrective action from contractors considered by the applicant or its agent to be qualified and who shall have all necessary licenses and government approvals for the work to be performed.

Copies of the written bids shall be submitted to the board with the application for reimbursement. Unit costs substantially in excess of those in the bid of the lowest qualified bidder shall be considered prima facie unreasonable by the board.

Subp. 3. **Consultant services; proposals.** The applicant shall solicit a minimum of two written proposals for consultant services from consultants considered by the applicant to be qualified in a form prescribed by the board setting forth the qualifications of the consultant and estimates of costs for consulting services. The applicant must make a good faith effort to assure that the costs in the proposal selected are reasonable considering the qualifications of the consultant and the services to be performed.

Copies of the written proposals shall be submitted to the board with the application for reimbursement. The board shall require the applicant to justify the reasonableness of the costs in the proposal selected if the reasonableness of the costs is not apparent in the documentation submitted with the application.

The applicant may present evidence of reasonableness by a showing that the lowest cost proposal was selected, or that the services to be performed or the selected consultant's qualifications, including, but not limited to, education, experience, certifications and registrations, health and safety training, insurance, availability and references, justified the selection of a higher cost proposal.

Subp. 4. **Exemptions.** The applicant shall be granted an exemption from the requirement that a minimum of two bids be obtained for each contractor service or a minimum of two proposals be obtained for consultant services:

A. if the board determines that the applicant has provided satisfactory evidence:

(1) that only one contractor or consultant was reasonably available to perform the necessary service and that costs are not substantially in excess of costs charged for similar services by a comparable contractor or consultant in the same geographical area; or

(2) that the necessary services were required by an emergency, including the abatement of free product, for which there was not sufficient time to obtain bids or proposals; or

B. if the board makes an annual determination that the applicant has established that a standing contract that was entered into via a bidding or evaluation process will result in reasonable corrective action costs by providing to the board:

(1) documentation of the bidding process that led to the standing contract for contractor services or a written explanation of the evaluation process that led to the standing contract for consultant services; and

(2) a written explanation of why the standing contract results in lower corrective action costs than obtaining bids or proposals on a per job basis.

Subp. 5. **Reasonableness of incurred costs.** Notwithstanding subparts 1 to 4, the board may consider all invoice costs submitted for reimbursement to determine whether the costs incurred are 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~~

(1) for costs associated with corrective action related to soil contamination, a copy of the commissioner's approval of a soil corrective action plan, or evidence that a proposed soil corrective action plan has been submitted to the commissioner; or

(2) for costs associated with corrective action that will address the entire release, including groundwater if necessary, a copy of the commissioner's approval of a comprehensive corrective action plan, or evidence that a proposed comprehensive corrective action plan has been submitted to the commissioner; or

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

(3) a closure letter issued by the commissioner;

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 solicitation of competitive bids or proposals or qualification for exemption as required by part 2890.0075.

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

REPEALER. *Minnesota Rules*, parts 2890.0060, subpart 5; and 2890.0070, subpart 2, are repealed.

Minnesota Racing Commission

Proposed Permanent Rules Relating to Horses, Wagering, Licensing, Race Officials, Breeders' Funds, Prohibited Acts, and Variances

Notice of Proposed Adoption of a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28 (1990). The statutory authority to adopt the rule is *Minnesota Statutes*, section 240.23 (1990).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

Richard Krueger
Minnesota Racing Commission
7825 Washington Ave. So., Suite 800
Bloomington, MN 55439
Telephone: (612) 341-7555

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

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the Minnesota Racing Commission upon request.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is discussed in the Statement of Need and Reasonableness. The proposed rule will adjust certain Class C license fees and will establish late fees for certain breeder's fund registrations. The fees are discussed in the Statement of Need and Reasonableness.

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

Dated: 31 January 1992

Richard Krueger
Director
Minnesota Racing Commission

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Adoption of the Rule of the State Petroleum Tank Release Compensation Board Governing Documentation of Reasonableness of Costs and the Application Process

FINDING OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on March 2, 1992 and was sent by United States mail to all persons on the list maintained by the board pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 21, 1992. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) The agency received two requests for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn.

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

The above-captioned rule is needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as Documentation of Reasonableness of Costs and the Application Process is adopted this 23rd day of April, 1992, pursuant to authority vested in the Board by Minnesota Statutes, section 115C.07, subdivision 3.

Virginia K. Hogan

Virginia K. Hogan
Executive Director
Petroleum Tank Release Compensation Board

STATE OF MINNESOTA
PETROLEUM TANK RELEASE COMPENSATION BOARD

In the Matter of the Proposed Adoption of the Rule of the State Petroleum Tank Release Compensation Board Governing Documentation of Reasonableness of Costs and the Application Process	FINDING OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on March 2, 1992 and was sent by United States mail to all persons on the list maintained by the board pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on February 21, 1992. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency received two requests for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn.

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

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Documentation of Reasonableness of Costs and the Application Process is adopted this 23rd day of April, 1992, pursuant to authority vested in the Board by Minnesota Statutes, section 115C.07, subdivision 3.

Virginia K. Hogan
Executive Director
Petroleum Tank Release Compensation Board