

4/22/91

State of Minnesota
Petroleum Tank Release Compensation Board

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

AMENDED
STATEMENT OF NEED
AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statute Chapter 115C, the Petroleum Tank Release Clean-up Act, provides a mechanism for persons who take corrective action in response to petroleum tank releases to receive partial reimbursement for the cost of the corrective action. Minn. Stat. § 115C.07, subd. 3(a) stipulates that the Petroleum Tank Release Compensation Board (hereinafter the "Board") shall adopt rules specifying the costs that are eligible for reimbursement from the fund. The proposed rule excluding the costs of removing a tank as an eligible cost incorporates the amendment made to Chapter 115C by the 1990 Legislature, Minn. Laws 1990 Chapter 501, Section 5.

The latter part of the rule as proposed amends Minn. Rule 2890 by designating costs covered by insurance as ineligible costs. The Court of Appeals has already held that the Board has statutory authority to adopt this rule. In Re the Application of Crown CoCo, Inc., 458 N.W. 2d 132, 136 (Minn. App. 1990).

FACTS ESTABLISHING NEED AND REASONABLENESS

Part 2890.0080 Ineligible Costs.

In 1990, Minn. Stat. § 115C.09 was amended to exclude the costs related to the physical removal of a

tank as a reimbursable cost. This section only incorporates this statutory change.

The second proposed change in the rule eliminates costs covered by insurance as eligible costs. The purpose of the Minnesota Petroleum Tank Release Compensation Act is to promote effective detection of leaking underground storage tanks and efficient cleanup of petroleum releases through cooperation from the tank owners. To engender this cooperation the Act uses an incentive approach. If tank owners cooperate and cleanup the releases, they get reimbursed; if they do not, the Minnesota Pollution Control Agency does the cleanup and charges the tank owners for the cost. Minn. Stat. §§ 115C.04 and 115.09 (1990). The statute limits reimbursement to certain eligible persons: 1) responsible parties, i.e. owners of the tanks, 2) persons ordered or requested by the Commissioner of the Pollution Control Agency to take corrective action who are subsequently determined not to be responsible persons, and 3) owners of property where releases occur who are not responsible persons but who voluntarily take corrective action.

The need for this rule is clear. Eligible persons with insurance coverage do not need and will not be affected by the incentive of reimbursement, since their costs are already covered. If reimbursement is allowed, the money will ultimately go to the insurer of the eligible person, or the eligible person enjoys a double recovery of his

costs. To permit the insurer to recover would simply allow it to avoid a risk for which it contracted and received premiums. The limited funds available are intended to go to eligible persons who need an incentive to cleanup, and to help reduce the out-of-pocket costs incurred by eligible persons who take needed corrective action. Those funds are not intended to compensate insurance companies for fulfilling their compensated contractual obligations to eligible persons, or to enable eligible persons to realize a profit from an environmental spill through double recovery for the same costs.

In addition, the Court of Appeals has already held that the Board's proposed rule excluding costs covered by insurance bears a rational relationship to the purpose of the Act. In Re the Application of Crown CoCo, Inc. 458 N.W. 2d 132, 138 (Minn. App. 1990).

Small Business Consideration

Minnesota Statutes § 14.115 requires that the impact of the rules on small businesses be considered in regard to any rulemaking procedure. Specifically, the statute requires that less stringent compliance standards and reporting requirements for, or exemption of, small businesses be considered.

The ineligibility of tank-removal costs is mandated by statute and thus may not be modified or ignored for small businesses.

The proposed exclusion of insurance costs as

an eligible cost does not affect compliance standards or reporting requirements. Few small businesses currently have petroleum liability coverage (such insurance appears to be no longer available in Minnesota), and the effect of the proposed rule on those small businesses which continue to have such insurance would merely be to prevent double recovery from both an insurance company and the Petroleum Tank Release Compensation Fund. In light of the need and purposes for the rule, as discussed above, exemption of small businesses from its operation would not be feasible or consistent with the statutory purposes furthered by the rule.

Witnesses

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

Ms. Susan Bergh will testify to the foregoing material concerning the purposes of the reimbursement fund and the reasons that Board reimbursement of costs covered by insurance are contrary to those purposes.

CONCLUSION

Based upon the foregoing, the proposed amendments to Minn. Rules, pt. 2890.0080 are needed and reasonable.

Dated January 9, 1991



SUSAN BERGH
Executive Director

State of Minnesota
Department of Commerce

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The latter part of the rule as proposed amends Minn. Rule 2890 by designating costs covered by insurance as ineligible costs. The Court of Appeals has already held that the Board has statutory authority to adopt this rule. In Re the Application of Crown CoCo, Inc., 458 N.W.2d 132, 136 (Minn. App. 1990).

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The need for this rule is clear. Responsible parties with insurance coverage do not need the incentive of reimbursement, since their costs are already covered. If reimbursement is allowed, the money will ultimately go to the insurer of the responsible person or the person enjoys a double recovery of his costs. To permit the insurer to recover would simply allow it to collect premiums on a nonexistent risk and then receive reimbursement of any claims paid. The limited funds available should go to responsible parties who need an incentive to cleanup, not insurance companies.

In addition, the Court of Appeals has already held that the Board's proposed rule excluding costs covered by insurance bears a rational relationship to the purpose of the Act. In Re

the Application of Crown CoCo, Inc., 458 N.W.2d 132,
138 (Minn. App. 1990).

Small Business Consideration

Minnesota Statutes § 14.115 requires that the impact of the rules upon small businesses be considered in regard to any rulemaking procedure. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered.

This proposed exclusion of insurance costs as eligible costs does not affect compliance standards or reporting requirements so Minn. Stat. § 14.115, subd. 2 is not applicable. Moreover, few, if any, small businesses have insurance policies that cover cleanup of petroleum releases so the impact of this rule on small businesses should be slight.

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