

**STATE OF MINNESOTA
Petroleum Tank Release Compensation Board**

IN THE MATTER OF THE PROPOSED)
RULES GOVERNING THE PETROLEUM)
TANK RELEASE COMPENSATION FUND)

**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 amendments to Chapter 2890 of the Minnesota Rules provide the Board with standards for reimbursement reductions, conform the rules to the statute and add or change time lines.

Minnesota Statute § 115C.09, subdivision 3(f) requires the Board to reduce the amount of a reimbursement if it finds that a responsible person has not complied with certain statutory requirements. Pursuant to Minnesota Statute § 115C.09, subdivision 3b, volunteers are required to comply with the same conditions and requirements of reimbursement as those imposed on a responsible person, which means that they

too are subject to reductions in reimbursement for failure to comply with the requirements found in Minnesota Statute § 115C.09, subdivision 3(f).

The statute sets forth certain considerations to aid the Board in determining the amount of the reimbursement reductions and the current rule provides a percentage range for each of the violations. The Board has recognized that it is difficult to apply reductions uniformly when there is a wide percentage range for the reductions. Further, the Board is aware that the current reduction ranges do not necessarily relate to the severity of the violations. The amendments to Minnesota Rule Part 2890.0065 address the Board's need for greater certainty and uniformity in the imposition of reductions and the Board's concern that the reduction amounts set forth in the current rule are somewhat severe.

While reviewing the rules, the Board took note of provisions which do not comport with the statute or which merely repeat statutory language. The Board is proposing that these provisions be repealed.

Finally, the Board is aware of three sections in the rules where time lines or dates are either missing or inappropriate. The Board has prepared amendments which

deal with this problem as well.

The Rules Committee of the Board held numerous public meetings on the proposed rules where testimony was solicited and considered.

Rulemaking authority for these amendments is found in Minnesota Statute § 115C.07, subdivision 3(a) (1992) which provides that:

The Board shall adopt rules regarding its practices and procedures, the form and procedure for application for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.

II. STATEMENT OF NEED AND REASONABLENESS.

Part 2890.0010 DEFINITIONS.

Subpart 2a. Applicant. When the Petroleum Tank Release Clean-Up Act came into existence only responsible persons could apply for reimbursement. The legislature has added other categories of applicants for reimbursement. The new definition of "applicant" will cover all categories of persons seeking reimbursement from the fund.

Subpart 3a. Consultant Services. This proposed change will conform the definition of consultant services in the rule to the language found in Minnesota Statute § 115C.02, subdivision 5(b).

Subpart 4a. Limited Use Applicant. The Board is introducing this definition to carve out applicants who do not market petroleum, are applying for reimbursement for a release from a tank containing not more than 10,000 gallons of petroleum and are unlikely to know of federal and state tank regulations from all other applicants. The definition is necessary because the Board has determined that in some situations these "limited use applicants" should be distinguished from those applicants who are more sophisticated and therefore, should be aware of applicable regulations.

Part 2890.0030 VICE-CHAIR.

Although the current rule provides for the election of a vice-chair, it does not say when that vice-chair should be elected or how long the vice-chair term should be.

The Board perceived a need to add a specific term of office to this part and a date for election as well as a

provision which addresses a vacancy in the vice-chair position.

Part 2890.0060 REIMBURSEMENT OF COSTS.

The changes to this Part are necessary and reasonable because they either make the rule consistent with the statute or repeal subparts which are already in the statute.

Subpart 1. Generally. The proposed amendment changes the term "responsible person" to "applicant" which reflects that fact that the statute allows other categories of individuals and entities to apply for reimbursement. The stricken language is not necessary because that language appears in Minnesota Statute § 115C.09, subdivision 2(a) and 3b.

Subparts 2a. and 2b. These subparts are being repealed because they merely repeat language found in Minnesota Statute § 115C.09, subdivision 3(a), 3(f) and 3(g).

Subpart 3. Multiple Applicants. This amendment again substitutes the term "applicant" for "responsible person" or "volunteer."

Part 2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

Subpart 1. Amount of Reduction. Subpart 1 of the rule deals with reductions in reimbursement for failure to comply with state and federal rules and regulations applicable to the tank. The current rule allows the Board to reduce the reimbursement by 10 to 25 percent for failure to comply with tank regulations. The only guidance the rules provide to the Board in determining the appropriate amount of the reduction is that there must be a consideration of the likely environmental impact of the failure to comply. The proposed changes are needed because they will allow the Board to act in a consistent fashion and will enable applicants to know what to expect from the Board. The reduction amounts are appropriate because they bear a reasonable relationship to the specific violations.

The proposed changes to the first paragraph of Subpart 1 correct the statutory cite and substitute "an applicant" for "a noncompliant responsible person."

The language in Subpart 1A (1)-(6) sets forth specific reduction amounts for the most commonly violated rules and regulations related to petroleum tanks: failure to provide adequate corrosion protection, failure to

provide release detection, failure to provide spill or overfill control, failure to use a certified contractor, failure to provide prior notice of tank removal and failure to register an above ground or underground tank. The amendment sets fixed percentage reduction amounts. The Board has determined that these reduction amounts are reasonable because they are significant enough to provide an incentive to the applicant to comply with tank regulations without being overly punitive.

Subitem 6 sets the reduction for failure to register a tank at \$1,000 or \$200 for a limited use applicant unaware of the registration requirement. These are reasonable reductions because the failure to register a tank is a violation which does not directly affect prevention or clean up of a spill and does not warrant as severe a penalty as those violations set forth in items 1-5. The provision also recognizes that it is reasonable to treat a marketer of petroleum or large tank operator differently than a non-marketer of petroleum and small tank operator. Someone who routinely sells petroleum or who owns large tanks should be aware of the registration requirements and therefore, should not be treated as leniently as the "limited use applicant."

Item 7 is a necessary addition because it will allow

the Board to impose reductions for tank violations not specifically cited in this subpart. Because these potential violations may be more severe than those specifically listed in the rule, the Board is given the discretion to impose reductions up to 50 percent of the reimbursement amount.

Item B deals with reductions for failure to report a release. The amendment requires the Board to consider the timeliness of the release reporting in determining the amount of the reduction. It sets a minimum reduction of \$1,000 or \$200 in the case of a limited use applicant. It is appropriate that the Board have discretion to set lesser penalties when making this reduction because a failure to report a release for several weeks or months can have much more serious results than a failure to report for a day. The rule again gives the Board authority to treat limited use applicants who were unaware of the reporting requirement more leniently than other applicants.

The amendments to Item C. and Item D. change the reduction amounts for failure to cooperate with the agency in responding to a release and for failure to exercise due care with regard to operation of a tank from the current "25 to 50 percent" to "up to 50 percent."

Again, because these violations could be quite serious in some cases and minor in others, the Board is given greater discretion in imposing the reduction. Also the current floor of 25 percent for these reductions could discourage the Board from imposing any reduction at all in cases where a small reduction is warranted.

Subpart 2. Repealer. The current language in Subpart 2 should be repealed because proposed Subpart 4 addresses cumulative applications.

Subpart 2a. Calculations of Reductions. This subpart instructs the Board on how to calculate reductions when more than one dollar amount reduction is imposed, more than one percentage amount is imposed or when both a dollar amount and a percentage amount is imposed. Once again the rule is necessary to enable the Board to act in a consistent manner when imposing reductions. The proposed rule adopts the common sense approach of adding together dollar reduction amounts. Percentage reductions are calculated by adding the percentages before applying the reduction to the reimbursement so that the amount of the reduction for each rule violation, or other cause of reduction, does not decrease as the applicant receives more than one reduction. For the same reason, percentage reductions

are applied before flat dollar amount reductions.

Subpart 3. Deviations. The first amendment to this subpart gives the Board discretion to use either dollar amounts or percentages for any reduction. It is necessary and reasonable to allow either type of reduction if the Board determines that the factors in Items A through D of this subpart warrant it. The proposed changes to Items A and D conform the rule to Minnesota Statute § 115C.09, subdivision 3(g).

Subpart 4. Multiple Applications Although the Act did not originally allow the applicant to seek reimbursement in phases, current law does provide for this. See Minnesota Statute § 115.09, subdivision 2(a). This subpart allows the Board to treat all cases where there are reductions imposed on subsequent applications uniformly and provides a predictable result for applicants. Also, if percentage reductions were not imposed on subsequent applications, the actual amount of reduction would vary based solely on the amount of reimbursement being requested on each application, which would produce arbitrary results. Similarly, if percentage reductions were not imposed on subsequent applications, applicants would have an incentive to submit more subsequent applications and/or submit lesser

amounts on the original application solely for the purpose of evading a larger reduction amount.

Part 2890.0080 INELIGIBLE COSTS.

The current language makes a responsible person's own time spent in planning and administering a corrective action plan ineligible for reimbursement. Again this rule was promulgated at a time when only responsible persons could apply for reimbursement. Since other categories of applicants have been added, the term applicant should be used so that it is clear that all applicants are treated uniformly in determining ineligible costs.

Part 2890.0090 APPLICATION PROCESS.

Subpart 1. Applications. This change substitutes the term "applicant" for "A person who requests compensation from the fund." It is a technical change which makes the language in this rule consistent with the other rules.

Subpart 3. Subsequent Applications. The proposed changes to this subpart are technical and do not change the procedure for submitting subsequent

applications in any way. The changes clarify the process and delete language which is repetitive of the statute.

Subpart 5. This subpart contains the certification which must accompany all applications for reimbursement. The proposed change again substitutes the term "applicant" for "responsible person."

Part 2890.0100 REVIEW AND DETERMINATION

Subpart 3. Board Determination. Under this subpart, the Board is obligated to notify an applicant of its reimbursement decision within ten days. The Board has approved up to 300 applications at certain board meetings. It is difficult for staff to process this many notifications in ten calendar days. The change to 10 business days gives the staff the additional time it needs to provide the notification while continuing to provide the applicant with reasonable notice of the Board's decision.

2890.0110 RIGHT TO APPEAL.

The current rule does not expressly provide a deadline for appeals from the Board's decisions. This proposed rule clarifies the 30 day time limit on appeals

that was impliedly carried over from the Rules of Appellate Procedure when this subpart was amended. A 30 day deadline for appeals is necessary so that at some point the Board and staff know that the decision is final. The 30 day deadline is reasonable because it is consistent with the appeal period in other areas of Minnesota administrative law.

III. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING.

Minnesota Statute § 14.115, subdivision 2 (1992) 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 or 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 Minnesota Statute § 14.115 (1992). As a result, the Board has considered the above-listed methods for reducing the impact of the rule on small businesses.

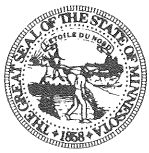
The rule amendments will have a positive effect on small businesses in that they will provide greater certainty and uniformity for small businesses applying for reimbursement. In response to a consideration of Items a-e, the rules also provide for more lenient reductions in the case of limited use applicants. The definition of limited use applicant is drafted so that it will include small businesses.

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

Dated: August 12, 1993.



Patricia L. Peterson
Executive Director



OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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August 23, 1993

Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, MN 55155
ATTN: Michelle

Re: Proposed Rules Governing the Petroleum Tank Release Compensation Fund

Dear Michelle:

Pursuant to Minnesota Statutes Section §14.23 we enclose a copy of the Statement of Need and Reasonableness for the proposed rules relating the above-referenced rules.

Should you have any questions about these rules, please call me at 297-1118.

Sincerely,

BERT J. McKASY
Commissioner of Commerce

By:

A handwritten signature in cursive script that reads "Donna M. Watz".

Donna M. Watz
Staff Attorney

DMW:joc