

1 Department of Commerce

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3 Adopted Permanent Rules Relating to Petroleum Tank Release

4 Compensation Board

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6 Rules as Adopted

7 2890.0010 DEFINITIONS.

8 Subpart 1. **Scope.** For purposes of this chapter, the terms
9 in this part have the meanings given them.

10 Subp. 2. **Agency.** "Agency" means the Pollution Control
11 Agency.

12 Subp. 3. **Commissioner.** "Commissioner" means the
13 commissioner of the Pollution Control Agency.

14 Subp. 4. **Corrective action.** "Corrective action" means an
15 action taken to minimize, eliminate, or clean up a release to
16 protect the public health and welfare or the environment.

17 Subp. 5. **Person.** "Person" means an individual,
18 partnership, association, public or private corporation, or
19 other legal entity, including the United States government, an
20 interstate commission or other body, the state, or any agency,
21 board, bureau, office, department, or political subdivision of
22 the state.

23 Subp. 6. **Responsible person.** "Responsible person" means a
24 person who is an owner or operator of a tank at any time during
25 or after the release.

26 2890.0020 BOARD MEETINGS; TIME, PLACE, NOTICE.

27 Subpart 1. **Regular meetings.** A regular meeting of the
28 board must be scheduled at least four times a year. A scheduled
29 meeting may be canceled if there is insufficient business.

30 Subp. 2. Special meetings. A special meeting may be
31 called by the chair or by written request of three board
32 members. ~~Written notice of the meeting as to time and place~~
33 ~~must be given to board members at least five days before a~~
34 ~~regular meeting. Between regular meetings, business may be~~
35 ~~conducted by mail.~~

1 ~~Subp. 2. Special meetings. The chair shall attempt to~~
2 ~~give five days' notice before a special meeting. The board may~~
3 ~~waive the five-day notice requirement.~~

4 2890.0030 VICE-CHAIR.

5 A vice-chair shall be elected by the board. The vice-chair
6 shall preside at regular and special meetings in the absence of
7 the chair and perform other duties assigned by the board.

8 2890.0040 CONDUCT OF MEETINGS.

9 Subpart 1. Quorum. A quorum shall consist of three board
10 members.

11 Subp. 2. Proxies. ~~An absent member may assign a proxy, in~~
12 ~~writing, to another board member. Proxies shall count toward a~~
13 ~~quorum.~~

14 Subp. 3. Minutes. Meetings shall be tape recorded and
15 minutes prepared by staff.

16 Subp. 4. 3. Parliamentary procedure. Except as
17 specifically provided by statute or negotiation, Robert's Rules
18 of Order shall govern questions that may arise at a meeting of
19 the board.

20 2890.0050 CONFLICT OF INTEREST.

21 A member of the board who has a direct or indirect
22 financial or employment interest relating to a matter before the
23 board, which interest is reasonably likely to affect
24 impartiality or judgment in the matter, shall make known the
25 interest and shall refrain from participating in, or voting
26 upon, the matter. The abstention of a board member or members
27 shall not prevent the remaining members from conducting a legal
28 vote.

29 2890.0060 REIMBURSEMENT OF COSTS.

30 Subpart 1. Generally. Each responsible person who has
31 taken corrective action in response to a release reported on or
32 after June 4, 1987, may apply to the board for partial
33 reimbursement of eligible costs.

34 Subp. 2. Conditions for reimbursement. A reimbursement

1 may not be made unless the board determines that:

2 A. the commissioner has determined that the
3 corrective action has adequately addressed the release and that
4 the release no longer poses a threat to public health and
5 welfare or the environment;

6 B. at the time of the release the tank was in
7 compliance with state and federal rules and regulations
8 applicable to the tank, including rules or regulations relating
9 to financial responsibility.

10 C. the agency was given notice of the release as
11 required by Minnesota Statutes, section 115.061;

12 D. the responsible person, to the extent possible,
13 fully cooperated with the agency in responding to the release;
14 and

15 E. if the responsible person is an operator, the
16 person exercised due care with regard to operation of the tank,
17 including maintaining inventory control procedures.

18 **Subp. 3. Multiple responsible persons.** If there is more
19 than one responsible person who incurs eligible corrective
20 action costs for a single release or at a single corrective
21 action site, each responsible person must apply separately for
22 reimbursement. The reimbursement available to each applicant
23 shall be 75 percent of the applicant's total eligible costs
24 greater than \$10,000 and less than \$100,000.

25 2890.0070 ELIGIBLE COSTS.

26 Costs associated with the following corrective actions may
27 be eligible for reimbursement from the fund:

28 A. Emergency response and initial site hazard
29 mitigation. Costs may include, but are not limited to, those
30 necessary to abate acute risks to human health, safety, and the
31 environment.

32 B. Temporary site hazard control measures. Costs may
33 include, but are not limited to, temporary provision of drinking
34 water and housing, initial abatement of vapors, and removal of
35 free product.

1 C. Investigation and source identification including,
2 but not limited to, collecting and analyzing soil samples,
3 testing the groundwater, testing adjacent drinking water
4 supplies, tank integrity testing, and engineering services.

5 D. Development of a corrective action plan in
6 accordance with the commissioner's requirements.

7 E. Clean-up of releases including, but not limited
8 to, removal, treatment, or disposal of surface and subsurface
9 contamination and provision of a permanent alternative water
10 supply. Clean-up must be performed in accordance with a
11 corrective action plan approved by the commissioner.

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

14 It is the responsibility of the applicant to prove the
15 reasonableness of all incurred eligible costs.

16 2890.0080 INELIGIBLE COSTS.

17 All costs associated with actions that do not minimize,
18 eliminate, or clean up a release to protect the public health
19 and welfare or the environment are ineligible costs. Ineligible
20 costs include, but are not limited to, any costs related to the
21 permanent repair or replacement of a tank, upgrading tanks, loss
22 of income, attorney's fees, permanent relocation of residents,
23 decreased property values, reimbursement for the responsible
24 person's own time spent in planning and administering a
25 corrective action plan, aesthetic improvements, or any work
26 performed that is not in compliance with safety codes including
27 but not limited to Occupational Safety and Health Administration
28 requirements, well codes, and fire codes.

29 2890.0090 APPLICATION PROCESS.

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

35 A. the name of the responsible person making the

1 application;

2 B. a description of the site of the release;

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

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

9 Subp. 2. **Time of application.** The application and all
10 accompanying documentation must be received by the board's
11 office 30 days before a board meeting in order for reimbursement
12 to be considered at that meeting. The board may waive the
13 30-day requirement, if it finds that undue financial hardship to
14 the applicant will result if action is delayed until the next
15 regular meeting.

16 Subp. 3. **Subsequent applications.** An eligible responsible
17 person who has already obtained partial reimbursement from the
18 board and who has incurred additional or continuing eligible
19 costs due to the same release may reapply if:

20 A. the amount of the person's original reimbursement
21 was less than 75 percent of the eligible costs between \$10,000
22 and \$100,000.

23 B. the eligible costs submitted on a subsequent
24 application are not related to any new releases at the site.
25 The total reimbursement to a responsible person for a release
26 shall not exceed 75 percent of the total eligible costs between
27 \$10,000 and \$100,000 regardless of the number of applications
28 for reimbursement submitted by the responsible person.

29 Subp. 4. **Signatures.** An application must be signed as
30 follows:

31 A. for a corporation, by a principal executive
32 officer of at least the level of vice-president or the duly
33 authorized representative or agent of the executive officer if
34 the representative or agent is responsible for the overall
35 operation of the facility that is the subject of the application
36 or a person whom the board of directors designates by means of a

1 corporate resolution;

2 B. for a partnership, sole proprietorship or
3 individual, by a general partner, the proprietor, or individual
4 respectively; or

5 C. for a municipality, state, federal, or other
6 public agency, by either a principal, executive officer, or
7 ranking elected official.

8 Subp. 5. Certification. A person who signs an application
9 for reimbursement shall make the following certification: "I
10 certify under penalty of law that this document and all
11 attachments were prepared under my direction or supervision in
12 accordance with a system designed to assure that qualified
13 personnel properly gather and evaluate the information
14 submitted. Based on my inquiry of the person or persons who
15 manage the system, or those persons directly responsible for
16 gathering the information, the information submitted is, to the
17 best of my knowledge and belief, true, accurate, and complete.
18 I further certify that I have the authority to submit this
19 application on behalf of"

20 Subp. 6. Report of the commissioner. Upon notification by
21 the board's staff that a complete application has been received,
22 the commissioner shall, in a timely manner, provide the board
23 with a written report on the applicant's compliance or
24 noncompliance with Minnesota Statutes, section 115C.09,
25 subdivision 2, paragraph (b), clauses (1) to (5). The report
26 shall include documentation supporting the commissioner's
27 findings. The commissioner shall file the report with the board
28 no later than 15 days after notification.

29 In addition, the board may, as it deems necessary, request
30 additional information from the commissioner or can request
31 participation of agency staff at a board meeting. All responses
32 to requests for information shall be delivered in a timely
33 manner. The board may delegate these powers to its staff.

34 2890.0100 REVIEW AND DETERMINATION.

35 Subpart 1. Review. The board's staff shall review all

1 applications. If the staff finds that the application is
2 incomplete or otherwise deficient, the staff shall promptly
3 advise the applicant of the incompleteness or deficiency.
4 Further processing of the application affected by the deficiency
5 shall be suspended until the applicant has supplied the
6 necessary information or otherwise corrected the deficiency. A
7 complete application and the corresponding report of the
8 commissioner constitutes the written record.

9 Subp. 2. Staff recommendation. After a reimbursement
10 application is complete and the commissioner has provided the
11 information relevant to the application, the board's staff shall
12 make a recommendation as to the eligibility of the applicant and
13 the costs specified in the application.

14 Subp. 3. Board determination. The board shall determine
15 the amount of the reimbursement based on those costs it finds
16 are eligible, actually incurred, and reasonable. The
17 determination shall be made on the basis of the written record.
18 The board may also allow supplemental information explaining the
19 application to be presented orally. The board may establish a
20 fair and reasonable limit on time allowed for oral testimony
21 presentation.

22 The applicant shall be notified in writing within ten days
23 of the board's decision. If the board rejects any portion of
24 the request for reimbursement, a statement of the reasons for
25 rejection shall be included with the notification.

26 2890.0110 RIGHT TO APPEAL.

27 A decision of the board is to be considered a final order,
28 decision, or judgment for purposes of Rule 103.3 of the Rules of
29 Civil Appellate Procedure.

30 2890.0120 FUNDING OF MPCA ACTIONS.

31 In accordance with Minnesota Statutes, section 115C.10,
32 subdivision 1, paragraph (a), the agency may apply to the board
33 for money to pay for actions taken under Minnesota Statutes,
34 section 115C.03, if all other state and federal funds
35 appropriated for such actions have been exhausted. The

1 application shall consist of a written statement of proposed
2 corrective actions, an itemized estimate of costs for the
3 proposed actions, and documentation that applicable state
4 appropriations and federal awards have been exhausted by actions
5 authorized under Minnesota Statutes, section 115C.03.

6 The board shall pay the agency the cost of the proposed
7 actions if the board determines that:

8 A. applicable state and federal funds are exhausted;

9 B. the agency's proposed actions are authorized under
10 Minnesota Statutes, section 115C.03; and

11 C. an adequate amount exists in the fund to pay for
12 the proposed actions.