

1 Department of Commerce

2 Registration Division

3

4 Adopted Permanent Rules Governing the Petroleum Tank Release

5 Compensation Fund

6

7 Rules as Adopted

8 2890.0010 DEFINITIONS.

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

10 Subp. 2a. **Applicant.** "Applicant" means a person seeking
11 reimbursement of costs from the Minnesota petroleum tank release
12 compensation fund.

13 Subp. 2b. **Board.** "Board" means the petroleum tank release
14 compensation board.

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

16 Subp. 3a. **Consultant services.** "Consultant services"
17 means the rendering of professional opinion, advice, or analysis
18 regarding a release.

19 [For text of subps 3b and 4, see M.R.]

20 Subp. 4a. **Limited use applicant.** "Limited use applicant"
21 means an applicant who:

22 A. has not regularly sold petroleum to others;

23 B. seeks reimbursement for costs incurred in response
24 to a release from a tank containing no more than 10,000 gallons
25 of petroleum; and

26 C. is unlikely to have known of federal and state
27 regulations applicable to the tank because of the nature of the
28 applicant's business or use of the tank.

29 [For text of subps 5 to 7, see M.R.]

30 2890.0030 VICE-CHAIR.

31 A vice-chair shall be elected by the board at the first
32 regular board meeting of each calendar year. The vice-chair
33 shall preside at regular and special meetings in the absence of
34 the chair and perform other duties assigned by the board. If
35 the vice-chair position becomes vacant, a vice-chair shall be

1 elected at the next regularly scheduled board meeting.

2 2890.0060 REIMBURSEMENT OF COSTS.

3 Subpart 1. **Generally.** Each applicant eligible for
4 reimbursement may apply to the board for reimbursement of
5 eligible costs.

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

7 Subp. 2a. [See repealer.]

8 Subp. 2b. [See repealer.]

9 Subp. 3. **Multiple applicants.** If there is more than one
10 applicant who incurs reimbursable costs for a single release or
11 at a single corrective action site, each applicant must apply
12 separately for reimbursement. Not more than \$1,000,000 may be
13 reimbursed for costs associated with a single release,
14 regardless of the number of persons eligible for reimbursement.

15 Subp. 4. [See repealer.]

16 2890.0065 REDUCTION OF REIMBURSEMENT AMOUNT.

17 Subpart 1. **Amount of reduction.** Pursuant to Minnesota
18 Statutes, section 115C.09, subdivision 3, paragraph (f), the
19 board shall reduce the amount of reimbursement to be made to an
20 applicant as follows:

21 A. The board shall reduce the amount of reimbursement
22 for failure to comply with state and federal rules and
23 regulations applicable to the tank as follows:

24 (1) by 15 percent for failure to provide adequate
25 corrosion protection;

26 (2) by 15 percent for failure to provide release
27 detection;

28 (3) by 15 percent for failure to provide spill or
29 overfill control;

30 (4) by ten percent for failure to use a certified
31 contractor;

32 (5) by ten percent for failure to provide prior
33 notice of tank removal;

34 (6) by \$1,000 for failure to register an
35 aboveground or underground tank. The amount of the reduction

1 shall be \$200, rather than \$1,000, for a limited use applicant
2 unaware of the registration requirement; and

3 (7) by up to 50 percent for failure to comply
4 with any state or federal rules or regulations applicable to the
5 tank not specifically cited in this subpart.

6 B. For failure to report a release as required by
7 Minnesota Statutes, section 115.061, the board shall consider
8 the timeliness of the release reporting in determining the
9 amount of the reduction. The board shall reduce the amount of
10 reimbursement by a minimum of \$1,000. The minimum amount of the
11 reduction shall be \$200, rather than \$1,000, for a limited use
12 applicant unaware of the reporting requirement.

13 C. For failure to cooperate with the agency in
14 responding to the release, the board shall reduce the amount of
15 reimbursement by up to 50 percent.

16 D. For failure to exercise due care with regard to
17 operation of the tank, the board shall reduce the amount of
18 reimbursement by up to 50 percent.

19 Subp. 2. [See repealer.]

20 Subp. 2a. **Calculations of reductions.** Percentage or
21 dollar reductions shall be applied as specified in this
22 subpart. If the board imposes more than one dollar reduction on
23 an application, the dollar amounts shall be added together and
24 the total dollar amount of reduction shall be applied to the
25 application. If the board imposes more than one percentage
26 reduction on an application, the percentage amounts shall be
27 added together and then applied to the reimbursement request to
28 determine a dollar amount of the reduction. If the board
29 imposes both percentage and dollar amount reductions on an
30 application, the dollar amount reductions shall be applied after
31 the percentage reductions.

32 Subp. 3. **Deviations.** The board may increase or decrease
33 the amount of reduction by up to 50 percent of the original
34 amount of reimbursement, or use either dollar amounts or
35 percentages for any reduction, based on the following factors:

36 A. the likely environmental impact of the

1 noncompliance;

2 [For text of items B and C, see M.R.]

3 D. whether the noncompliance was negligent, knowing,
4 or willful.

5 Subp. 4. **Multiple applications.**

6 A. When the board imposes a reduction in the form of
7 a percentage, the percentage for that reduction shall continue
8 to be imposed on all subsequent applications for the same
9 release.

10 B. When the board imposes a reduction in the form of
11 a dollar amount, the amount of the reduction shall be a one-time
12 penalty. That dollar amount reduction shall not continue to be
13 imposed on subsequent applications unless necessary to fully
14 impose the reduction.

15 2890.0080 INELIGIBLE COSTS.

16 All costs associated with actions that do not minimize,
17 eliminate, or clean up a release to protect the public health
18 and welfare or the environment are ineligible costs. Ineligible
19 costs include, but are not limited to, any costs related to the
20 permanent repair or replacement of a tank, upgrading tanks,
21 removal of tanks, loss of income, attorney's fees, permanent
22 relocation of residents, decreased property values,
23 reimbursement for the applicant's own time spent in planning and
24 administering a corrective action plan, aesthetic improvements,
25 or any work performed that is not in compliance with safety
26 codes including but not limited to Occupational Safety and
27 Health Administration requirements, well codes, and fire codes.
28 Other ineligible costs include corrective action costs which are
29 covered under an insurance or other contract for initial and
30 supplemental applications received by the board after October
31 21, 1991.

32 2890.0090 APPLICATION PROCESS.

33 Subpart 1. **Applications.** An applicant shall complete,
34 sign, and submit to the board a written application. The
35 application shall be made on a form prescribed by the board and

1 shall contain at least the following:

2 [For text of items A to E, see M.R.]

3 [For text of subp 2, see M.R.]

4 Subp. 3. **Subsequent applications.** An applicant who has
5 already submitted to the board an application for reimbursement
6 and who has incurred additional or continuing eligible costs may
7 apply for reimbursement of those costs by filing a subsequent
8 application. An applicant may file a subsequent application
9 only if the applicant has not submitted the costs on a previous
10 application and the costs are not related to any new releases at
11 the site.

12 [For text of subp 4, see M.R.]

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

23 I certify that if I have submitted invoices for costs that
24 I have incurred but that remain unpaid, I will pay those
25 invoices within 30 days of receipt of reimbursement from the
26 board. I understand that if I fail to do so, the board may
27 demand return of all or any portion of reimbursement paid to me
28 and that if I fail to comply with the board's demand, that the
29 board may recover the reimbursement, plus administrative and
30 legal expenses in a civil action in district court. I
31 understand that I may also be subject to a civil penalty."

32 Additionally, if the applicant is not an individual, the
33 person authorized under subpart 4 shall make the following
34 certification: "I further certify that I am authorized to sign
35 and submit this application on behalf of (entity)."

36 [For text of subp 6, see M.R.]

1 2890.0100 REVIEW AND DETERMINATION.

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

3 Subp. 3. Board determination. The board shall determine
4 the amount of the reimbursement based on those costs it finds
5 are eligible, actually incurred, and reasonable. The
6 determination shall be made on the basis of the written record.
7 The board may also allow supplemental information explaining the
8 application to be presented orally. The board may establish a
9 fair and reasonable limit on time allowed for oral presentation.

10 The applicant shall be notified in writing within ten
11 business days of the board's decision. If the board rejects any
12 portion of the request for reimbursement, a statement of the
13 reasons for rejection shall be included with the notification.

14 2890.0110 RIGHT TO APPEAL.

15 A person may appeal within 30 days a determination by the
16 board as a contested case hearing under Minnesota Statutes,
17 chapter 14.

18 REPEALER. Minnesota Rules, parts 2890.0060, subparts 2a, 2b,
19 and 4; and 2890.0065, subpart 2, are repealed.