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State of Minnesota
Department of Commerce

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

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 compensation for the cost of the corrective action. Minnesota Statute 115C.07, Subd. 3(a) stipulates that the Petroleum Tank Release Compensation Board (hereinafter the "Board") shall adopt rules regarding its practices and procedures. The rules as proposed amend Minnesota Rule 2890 by incorporating amendments made to Chapter 115C by the 1989 Minnesota Legislature.

Further, Minnesota Statute § 115C.09 authorizes the Board to reimburse persons for costs incurred that were reasonable. The rules as proposed set forth the criteria for determining whether a cost is reasonable based upon the statutory mandate.

FACTS ESTABLISHING NEED AND REASONABLENESS

Part 2890.0010 Definitions.

Subpart 7. Volunteer. In 1989, Chapter 115C was amended to allow a property owner to volunteer to clean up a release site in the absence of the responsible person and be eligible for reimbursement. A volunteer is eligible to receive reimbursements for costs incurred after May 22, 1989. This subpart adopts the definition of a "volunteer" as stated in Minn. Stat. § 115C.09, Subd. 3b.

Part 2890.0060 Reimbursement of Costs.

Subpart 1. Generally and Subpart 2. Conditions for Reimbursement. These subparts simply repeat the requirements for reimbursement established by statute. A responsible person and volunteer may apply to the Board for a partial reimbursement of eligible costs when the commissioner has approved a corrective action plan.

Subpart 2a. Amount of Reimbursement and Subpart 2b. Reduced Reimbursement. These subparts authorize the Board to reimburse an eligible responsible person or volunteer for 90 percent of the portion of the total reimbursable costs less than \$250,000. This section spells out under what conditions the Board may reduce a reimbursement. This section only incorporates the statutory language as amended.

Subpart 3. Multiple Responsible Persons. This subpart provides that no more than \$250,000 may be reimbursed for costs associated with a single release, as stated in Chapter 115C. Any number of people may apply for reimbursement from the Petrofund for costs incurred for the cleanup of a site, but no more than \$250,000 can be reimbursed for one particular release site.

Part 2890.0070 Eligible Costs.

Subpart 2. Documentation of Reasonableness. This part requires the responsible person or volunteer, at the request of the Board or the Board's staff, to document the reasonableness of any costs included on the reimbursement application. This would require the applicant to provide evidence that the work was performed by a person at a competitive price or that there was only one person available or qualified to perform the necessary work. The legislative intent of this Act was to defray costs for individuals who take

responsible, appropriate actions in the event of a leak. The intent was not, however, to allow persons to reap excess profits from the program.

Accordingly, the Board is seeking to establish more specific guidelines for applicants to follow to ensure that they meet the reasonableness test.

Part 2890.0090 Application Process.

Subpart 1. Applications and Subpart 3. Subsequent Applications. These subparts simply repeat the requirements for reimbursements established by statute as amended in 1989. An eligible responsible person or volunteer may request reimbursement for 90% of eligible costs incurred up to \$250,000.

Small Business Consideration

Minnesota Statutes § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

In drafting the proposed rules, the Board considered whether the provisions of the rule might be modified to accommodate the interests of small businesses. Since the statute establishes the reimbursement formula, the Board has no authority to alter the amount of the reimbursement based on financial need.

The rules pertaining to reasonable costs allow for the fact that larger companies may be able to secure certain services at a better price. Applicants are only required to show evidence that their business could not have secured a better price for a particular service. In addition, the application process was designed to enable small businesses to complete the application without the aid of an attorney or consultant.

Each of the methods described at Minnesota Statutes § 15.115, subdivision 2(a)-3 was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative process.