



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

TO: See Distribution
FROM: Steve Pirner, Secretary
DATE: May 24, 2016
SUBJECT: Agenda for Petroleum Release Compensation Conference Call Meeting – June 2, 2016

You are invited to attend the upcoming meeting of the South Dakota Petroleum Release Compensation Conference Call on June 2, 2016. Enclosed is the tentative agenda. The meeting will be called to order at 1:30 PM in the Foss Building, Matthew Training Center, 523 East Capitol, Pierre, SD. Visit <http://denr.sd.gov/boards/schedule.aspx> for more information or contact Vicki Hanson, DENR/PRCF (605) 773-3769.

Enclosure

Distribution: Petroleum Release Compensation Board
James Feeney -DENR
Craig Eichstadt -Deputy Attorney General
Tim Kenyon -Leggette, Brashears & Graham, Inc.
Gregg Greenfield -Greenfield Rotert Law, P.C.
Dan Hanson -GeoTek Engineering & Testing
Scot Keith -Tetra Tech, Rapid City
Brenda Forman -SD Assoc of Cooperatives
Dawna Leitzke -SD Petroleum Marketers Assoc.
Bill Markley -DENR
Doug Miller -DENR
Tom Harmon -Harmon Law Office
Judith K. Zeigler -Judith K. Zeigler Law Office
Doug Schueller -American Engineering Testing, Inc. Pierre
Roger Hodson -American Engineering Testing, Inc. Rapid City
Ron Ness -ND Petroleum Council
Steve Willard -American Petroleum Institute
Bob Mercer -Reporter
Carolyn Trautman -SD Assoc. of Environmental Professionals

SOUTH DAKOTA
PETROLEUM RELEASE COMPENSATION BOARD MEETING
Conference Call Agenda – June 2, 2016
Foss Building, Matthew Training Center
Pierre, South Dakota

Thursday, June 2, 2016 1:30 PM

- I. Call to Order and Declare Quorum
- II. Review and Approve/Disapprove Minutes of December 10, 2015 Board Meeting
- III. Report on the Financial Status of the Fund – *briefing by Director of Engineering*
 - a. Transfer of \$3.5 million
 - b. How the transfer will effect ATP Program
- IV. Review of Cases Where costs Will Exceed \$200,000 - *Director of Engineering*
- V. Conflicts Legislation For Boards
- VI. Executive Session
 - a. Litigation
- VII. Adjourn

A limited number of phone lines are available for this call. Interested parties who wish to participate in the telephone conference call should contact DENR at 605.773.3769 not later than 3:00 p.m. CDT on Wednesday, June 1, 2016.

Interested parties may also participate at the following location:

Department of Environment and Natural Resources
Matthew Training Center
523 East Capitol Avenue
Pierre, South Dakota

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources at 605.773.4216 at least 48 hours before the meeting if you have a disability for which special arrangements must be made.

**DRAFT MINUTES OF THE
SOUTH DAKOTA PETROLEUM RELEASE COMPENSATION
BOARD MEETING**

December 10, 2015

The South Dakota Petroleum Release Compensation Board Meeting was called to order at 1:30 PM on December 10, 2015, and was held in the Foss Building, Matthew Training Center. A quorum was declared with four board members present.

Members Present: David Kallemeyn, Rudy Gerstner, Don Meyers and Bert Olson.

Member Absent: Dennis Rowley.

Others Present: Alan Bakeberg, Dan Martin, Brett Schutte, Doug Miller and James Feeney, DENR; Craig Eichstadt, Attorney General's Office; Tom Harmon, Harmon Law Office; Dawna Leitzke, South Dakota Petroleum & Propane Marketers Association; and, Jerry Diamond, Independent Insurance Agents of South Dakota.

David Kallemeyn, vice chair requested a motion to approve or disapprove the minutes of the December 11, 2014 meeting. A motion was made by Rudy Gerstner to approve the minutes. Bert Olson seconded the motion. All voted in favor. Motion carried.

Alan Bakeberg reported on the financial status of the fund, a quarterly fund statistics fact sheet for September through November 2015 was provided as a handout (attached below).

Vice Chairman David Kallemeyn opened the annual public meeting with the insurance industry representatives. SDCL 34A-13-48 provides that:

34A-13-48. The Board shall endeavor to integrate private insurance as the primary or secondary risk-taker. The board and insurance industry officials representing pollution coverage who have registered with the board shall meet at least annually to determine the availability, affordability, and progress made to identify potential private companies to provide insurance coverage for resident businesses or individuals for pollution coverage. A report of these findings shall be submitted by the board to the Legislature by January tenth of each year.

Letters were sent in November of this year to those in the industry that expressed interest in the Board's activities. A copy of the letter and mailing list was provided as a handout, along with a copy of last year's annual report. Written responses were received by the PRCF from Pat Rounds, Petroleum Marketers Management Insurance Company, and Eric Lehrer, Federated Insurance. Copies of the documents referenced above are available at:

<http://boardsandcommissions.sd.gov/bcuploads/prc1215pktrev.pdf>

<http://boardsandcommissions.sd.gov/bcuploads/prc1215pktrevadd.pdf>

Discussion followed: PRCF pollution coverage is provided to not only the regulated underground storage tank (UST) facilities required to have coverage, but also to all the non-regulated UST facilities and the above-ground storage tank (AST) facilities that are not required to have coverage. If PRCF coverage ended for the regulated UST owners and private insurance took over that market, it is likely that very few of the unregulated tank owners would buy insurance and something would have to be done for those systems. UST sites with previously identified problems would not likely be covered by private insurance, or at the very least coverage by private insurance would be complicated for sites that have had releases in the past, or that have older tank systems. The discussion included the DENR presentation to the legislative Government Operations and Audit Committee (GOAC) to provide an

overview of the PRCF program and budget, and the likelihood that claims will increase in the relatively near future due to the aging tank population and new regulations enacted by EPA.

A motion was made by Rudy Gerstner to recommend that the PRCF continue the program under the same process that is presently in place. Don Meyers seconded the motion. David Kallemeyn suggested that staff include a statement in the annual report about the expectation that increased claims are expected in the near future due to the aging tank population and the new federal UST regulations that will come into effect in the next few years. All voted in favor. Motion carried.

Doug Miller of the DENR gave the board an update on the UST owner/operator training that is provided under contract with the PRCF. Dawna Leitzke, South Dakota Petroleum and Propane Marketers Association, also reported on how successful the UST owner/operator training has been and expressed the need for ongoing training.

Alan Bakeberg updated the board on the Certificate of Financial Responsibility forms that were sent to all regulated petroleum UST facilities.

Alan Bakeberg briefed the board on the EPA's Annual Soundness Review of the PRCF for state fiscal year 2014.

Election of officers: Rudy Gerstner moved to have Dennis Rowley continue as the chairman and David Kallemeyn as vice chair. Motion was seconded by Bert Olson. All voted in favor. Motion carried.

Jim Feeney briefed the board on the Governor's budget address proposal to use funds from the Petroleum Release Compensation Fund and other sources for various one-time expenses. Slides from the Governor's budget address were provided as handouts.

The board set tentative dates of March 17, 2016 for the spring board meeting, June 9, 2016 for the summer meeting, September 20, 2016 for the fall meeting to be held in conjunction with the Petroleum Marketers Convention and December 8, 2016 for the annual Insurance Meeting with representatives of the insurance industry.

Motion was made by David Kallemeyn at 3:27 p.m. to go into executive session to be briefed by legal counsel on litigation matters. Bert Olson seconded the motion. All voted in favor. Motioned carried.

The board came out of executive session at 4:15 pm.

Meeting was adjourned at 4:15 pm.

The meeting was digitally recorded and is available on the DENR website at:

<http://boardsandcommissions.sd.gov/bcuploads/prcf1210.mp3>

Dennis Rowley, Chairman

South Dakota
Petroleum Release Compensation Fund
First Quarter 2016 Fund Statistics

PRCF
523 E Capitol Ave
Pierre SD 57501
(605) 773-3769
www.sd.gov/prcf

Amount Paid Since Fund Began (4635 sites)	\$87.8 million
PRCF Balance	\$5,449,210
Amount of Tank Inspection Fee Distributed to PRCF last quarter	\$401,985
Claims Processed During Quarter (25 pay requests)	\$91,137
Avg. Days in Office for Claims Processed in Past Quarter	7 Days
<u>Current Involvement - Regular Program (Excluding ATP Sites)</u>	
Active Cases	39 Sites
Active/Monitoring Cases	26 Sites
Pending Cases (spill report not yet filed)	3 Sites
TOTAL	68 Sites
<u>Past Involvement - Regular Program (Excluding ATP Sites)</u>	
Closed-Active Cases	45 Sites
Closed-Inactive Cases (sites closed and all claims settled)	1,476 Sites
Closed-No Pymt Cases (sites reviewed, but closed without PRCF payment)	2,437 Sites
Total Regular Program Payments	\$77.5 million
Average Payment Per Site - Regular Program Only	\$51,170
<u>Abandoned Tank Removal Program</u>	
Total Applications (includes 250 applications that have been withdrawn)	3,393 Sites
Completed Sites (tanks removed)	3,121 Sites
Total Abandoned Tank Program Payments	\$10.3 million
Average Payment Per Site- Abandoned Tank Program	\$3,304
<u>Projected Future Obligations</u>	
Cost Remaining for Sites that have Received at Least One PRCF Payment	\$286,300
Projected Costs for Release Sites Where No Payment Has Yet Been Made	\$2,300,000
Estimated Remaining Costs for Abandoned Tank Removal Program	\$600,000

Breakdown of Payments Made to Date

Type of Facility	No. of Sites Receiving Payments to Date	Cleanup Payments Made to Date
Abandoned Sites (Includes ATP Sites)	3,296	\$18,163,717
Commercial, Co-op	149	\$9,874,208
Commercial, Petroleum	597	\$38,335,466
Commercial, End User	337	\$12,028,801
Farmers	4	\$65,977
Federal Government	9	\$121,519
Local Government	149	\$5,092,398
State Government	79	\$3,792,140
Non-Profit	13	\$285,117
Residential	2	\$21,878
	4,635	\$87,781,221

AN ACT

ENTITLED, An Act to regulate conflicts of interest for authority, board, or commission members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

No elected or appointed member of a state authority, board, or commission may have an interest in any contract or derive a direct benefit from any contract with the state which is within the jurisdiction or relates to the subject matter of the state authority, board or commission or with a political subdivision of the state if the political subdivision administers or executes similar subject matter programs as the state authority, board or commission, nor may the member have an interest in any contract or derive a direct benefit from any contract for one year after the end of the member's term on the authority, board, or commission except as provided in section 3 and section 4 of this Act.

Section 2. That the code be amended by adding a NEW SECTION to read:

An elected or appointed member of an authority, board, or commission derives a direct benefit from a contract if the state authority, board, or commission member, the authority, board, or commission member's spouse, or any other persons the authority, board, or commission member lives with and commingles assets:

- (1) Has more than a five percent ownership or other interest in an entity that is a party to the contract;
- (2) Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
- (3) Acquires property under the contract; or
- (4) Serves on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

An authority, board, or commission member does not derive a direct benefit from a contract

based solely on the value associated with the authority, board, or commission member's investments or holdings, or the investments or holdings of other persons the authority, board, or commission member lives with and commingles assets. A member of an authority, board, or commission does not have an interest in a contract nor does the member receive a direct benefit by participating in a vote or a decision where the member's only interest is the effect of an act of general application.

Section 3. That the code be amended by adding a NEW SECTION to read:

Any elected or appointed authority, board, or commission may authorize an authority, board, or commission member to have an interest in a contract or to derive a direct benefit from a contract if:

- (1) The authority, board, or commission member has provided full written disclosure to the authority, board, or commission;
- (2) The authority, board, or commission has reviewed the essential terms of the transaction or contract and the authority, board, or commission member's role in the contract or transaction; and
- (3) The transaction and the terms of the contract are fair, reasonable, and not contrary to the public interest.

No member of a state authority, board, or commission may participate in or vote upon a decision of the state authority, board, or commission relating to a matter in which the member has an interest or derives a direct benefit.

The authorization shall be in writing. Any authorization given pursuant to this section is a public record. Each authorization shall be filed with the auditor-general. The auditor-general shall compile the authorizations and present them annually for review by the Government Operations and Audit Committee. A member of an authority, board, or commission may comply with this section if: the authority, board, or commission puts on its regular meeting agenda an inquiry for conflicts disclosure prior to the consideration of any substantive matters; the member publicly discloses his or her

interest in a contract, direct benefits, or other conflict with any matter on the agenda; the member is excused from discussion and consideration of the matter; the board determines the matter underlying the conflict is fair, reasonable, and not contrary to the public interest; and the disclosure is included in the minutes which are publicly available.

Section 4. That the code be amended by adding a NEW SECTION to read:

Within the one-year period prohibiting any contract with an elected or appointed authority, board, or commission, the authority, board, or commission may approve a former authority, board, or commission member to contract with the elected or appointed authority, board, or commission if the authority, board, or commission determines that the transaction and the terms of the contract are fair, reasonable, and are in the best interests of the public. The authorization shall be in writing.

Any approval given pursuant to this section is a public record. Each approval shall be filed with the auditor-general. The auditor-general shall compile the approvals and present them annually for review by the Government Operations and Audit Committee.

Section 5. That the code be amended by adding a NEW SECTION to read:

Any elected or appointed authority, board, or commission member who knowingly violates sections 1 to 4, inclusive, of this Act, shall be removed from the authority, board, or commission and is guilty of a Class 1 misdemeanor. Any benefit to the authority, board, or commission member in violation of sections 1 and 2 of this Act is subject to forfeiture and any contract made in violation of this Act is voidable by the authority, board, or commission.

Section 6. That the code be amended by adding a NEW SECTION to read:

No board member, fiscal agent, officer, or executive of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity that receives money from or through the state may have an interest in a contract nor receive a direct benefit from a contract that the local service agency,

school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity is a party to the contract except as provided in section 8 of this Act.

Section 7. That the code be amended by adding a NEW SECTION to read:

A person described in section 6 of this Act derives a direct benefit from a contract if the person, the person's spouse, or other persons the person lives with and commingles assets:

- (1) Has more than a five percent ownership or other interest in an entity that is a party to the contract;
- (2) Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
- (3) Acquires property under the contract; or
- (4) Serves on the board of directors of an entity that derives income directly from the contract or acquires property under the contract.

A person does not derive a direct benefit from a contract based solely on the value associated with the person's investments or holdings, or the investments or holdings of other persons the state officer or employee lives with and commingles assets.

Section 8. That the code be amended by adding a NEW SECTION to read:

A local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may authorize a board member, fiscal agent, officer, or executive to have an interest in a contract or derive a direct benefit from a contract if:

- (1) The person has provided full written disclosure to the agency, district, or unit governing board;
- (2) The governing board has reviewed the essential terms of the transaction or contract and

the person's role in the contract or transaction; and

- (3) The transaction or the terms of the contract are fair, reasonable, and not contrary to the public interest.

No member of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may participate in or vote upon a decision of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity relating to a matter in which the member has an interest or derives a direct benefit.

The authorization shall be in writing. Any authorization given pursuant to this section is a public record. Each authorization shall be filed with the auditor-general. The auditor-general shall compile the authorizations and present them annually for review by the Government Operations and Audit Committee. A board member, fiscal agent, officer, or executive of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may comply with this section if: the local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity puts on its regular meeting agenda an inquiry for conflicts disclosure prior to the consideration of any substantive matters; the person subject to this Act publicly discloses his or her interest in a contract, direct benefit, or other conflict with any matter on the agenda; the person is excused from discussion and consideration of such matters; the board determines the matter underlying the conflict is fair, reasonable, and not contrary to the public interest; and the disclosure is included in the minutes which are publicly available.

Section 9. That the code be amended by adding a NEW SECTION to read:

Any person who knowingly violates sections 6 to 8, inclusive, of this Act shall be removed from office or employment and is guilty of a Class 1 misdemeanor. Any benefit to a person derived from the person's knowing violation of sections 6 to 8, inclusive, of this Act is subject to forfeiture. Any contract made in violation of sections 6 to 8, inclusive, of this Act is voidable by the governing body of the local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity.

Section 10. That the code be amended by adding a NEW SECTION to read:

The following authorities, boards, or commissions are subject to this Act:

- (1) South Dakota Building Authority;
- (2) Board of Economic Development;
- (3) South Dakota Housing Development Authority;
- (4) South Dakota Health and Education Facilities Authority;
- (5) Science and Technology Authority Board of Directors;
- (6) South Dakota Ellsworth Development Authority;
- (7) South Dakota Commission on Gaming;
- (8) South Dakota Lottery Commission;
- (9) State Brand Board;
- (10) Game, Fish and Parks Commission;
- (11) Banking Commission;
- (12) Board of Trustees of the South Dakota Retirement System;
- (13) Aeronautics Commission;
- (14) South Dakota State Railroad Board;
- (15) Transportation Commission;
- (16) South Dakota Board of Education;

- (17) Board of Regents;
- (18) Board of Pardons and Paroles;
- (19) Board of Minerals and Environment;
- (20) Board of Water and Natural Resources;
- (21) South Dakota Railroad Authority; and
- (22) Board of Water Management.

Section 11. That the code be amended by adding a NEW SECTION to read:

Any entity established pursuant to § 13-3-76 to 13-3-81 not subject to an audit requirement under § 13-5-33.2 shall be audited annually. Each audit required under state law shall be done to confirm compliance with sections 3 and 8 of this Act according to guidelines established by the auditor-general.

An Act to regulate conflicts of interest for authority, board, or commission members.

=====
I certify that the attached Act
originated in the
HOUSE as Bill No. 1214

Chief Clerk
=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1214
File No. _____
Chapter No. _____

=====
Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

=====
STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State