
SOUTH DAKOTA
PETROLEUM RELEASE COMPENSATION BOARD MEETING
Meeting Agenda – December 10, 2015
Foss Building, Matthew Training Center
Pierre, South Dakota

Thursday, December 10, 2015 1:30 PM

- I. Call to Order and Declare Quorum
- II. Review and Approve/Disapprove Minutes of December 11, 2014 Board Meeting
- III. Report on the Financial Status of the Fund - *briefing by Director of Engineering*
- IV. Annual Meeting with Representatives of the Insurance Industry
 - A. Purpose and preparations for meeting
 - B. Review of written comments
 - C. Comments from the floor and discussion
 - D. Board discussion and recommendation
- V. Update on Underground Storage Tank Operator Training – *briefing by Director of Engineering and Doug Miller*
- VI. Financial Responsibility Certificate – *briefing by Director of Engineering and Doug Miller*
- VII. EPA Fund Soundness Review – *briefing by Director of Engineering*
- VIII. Election of Officers
- IX. 2015 Legislature
- X. Other Business
- XI. Schedule Future Meetings
- XII. Executive Session – Litigation
- XIII. Adjourn

**SOUTH DAKOTA PETROLEUM RELEASE COMPENSATION
BOARD MEETING**

MINUTES OF December 11, 2014

The South Dakota Petroleum Release Compensation Board Meeting was called to order at 1:00 PM on December 11, 2014, and was held in the Foss Building, Matthew Training Center. A quorum was declared with all board members present.

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

Others Present: Alan Bakeberg; Dan Martin; Larry Headrick; John McVey; Doug Miller; James Feeney; Craig Eichstadt; Tom Harmon and Judy Zeigler.

Denny Rowley requested a motion to approve or disapprove the minutes of the September 23, 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 2014 was provided as a handout.

Chairman Denny Rowley opened the annual public meeting with the insurance industry representatives. SDCL 34-13-48 requires that the Board shall endeavor to integrate private insurance as the primary or secondary risk-takers. 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 insurance industry that expressed interest in the Board's activities; a list of all who received a letter is attached. Written responses were received by the PRCF from Pat Rounds, Petroleum Marketers Management Insurance Company, and Eric Lehrer, Federated Insurance. Discussion followed.

The Board's recommendation to the Governor is to continue the program under the same process that is presently in place. The board finds no reason to change their recommendation from last year. The board sees no advantage to the public or tank owners of going to private insurance to meet the financial assurance requirements for underground petroleum tank owners and to continue the program under the same process that is presently in place.

Doug Miller of the DENR gave the board an update on the UST owner/operator training that is provided under contract with the PRCF. A contract was signed for continued training for 2015. Dawna will send Alan the scheduled.

Election of officers; Rudy Gerstner motioned to have Denny Rowley continue as the Chairman and Dave Kallemeyn as Vice Chair. Motion was seconded by Don Meyers. All voted in favor. Motion carried.

The board set a tentative date of March 19, 2015 for the spring board meeting, and June 11, 2015 for the summer meeting.

Alan informed the board that future meetings will start at 1:30pm

Alan updated the board on the 2015 Legislative session. Alan noted that the Highway Fund Task Force is looking at the fund.

Motion was made by Dave Kallemeyn at 2:35pm to go into executive session to consult with counsel on pending litigation. Don Meyers seconded the motion. All voted in favor. Motioned carried.

The board came out of executive session at 3:38pm.

Meeting was adjourned at 3:39pm.

The meeting was digitally recorded and is available on the DENR website at:
<http://denr.sd.gov/boards/schedule.aspx>.

Denny Rowley, Chairman



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

November 5, 2015

denr.sd.gov

DAWNA LEITZKE
SD PETROLEUM MARKETERS ASSOC
PO BOX 1058
PIERRE SD 57501-1058

Re: Annual Meeting- Integration of Private Insurance as Primary or Secondary Risk-taker

Dear Ms. Leitzke:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 10, 2015. The purpose of the meeting is to determine the availability and affordability of private insurance for pollution coverage. The Board will hear oral comments from those in attendance, and written, submitted comments will be read into the record. I am requesting your comments regarding the practicality of transferring some or all of the pollution coverage for petroleum storage tanks to the private sector.

This meeting is mandated by SDCL 34A-13-48, which requires that the Petroleum Release Compensation Board endeavor to integrate private insurance as the primary or secondary risk taker. The results of the meeting will be summarized and submitted to the Governor and 2016 Legislature in early January.

The insurance meeting will commence at 1:30 p.m. CST in the Matthew Training Center on the first floor of the Foss Building at 523 East Capitol, Pierre, SD. The amount of time dedicated to this matter will depend on the response from industry officials and the general public.

A copy of last year's report is enclosed for your review. The Board's recommendation last year was to continue the program under the same process that is presently in place.

Thank you for your interest on this issue. Please let me know if you plan to attend the meeting so that I can assure that there is sufficient time scheduled to hear all comments. If you have any questions or would like additional information, please contact me at 605-773-3769.

Sincerely,

Alan W. Bakeberg
Director of Engineering

Enclosure

cc: PRC Board

Larry Deiter- Director, Division of Insurance, DLR w/enclosure

Dawna Leitzke
SD Petroleum Marketers Assoc
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Pierre SD 57501-1058

NAIFA SD
3916 N. Potsdam Ave., #2660
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Pat Rounds
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Brenda Forman
SD Assoc of Cooperatives
116 N Euclid Ave
Pierre SD 57501

Yvonne Taylor
SD Municipal League
208 Island Dr
Ft Pierre SD 57532

Kathy Zander
SD Agri-Business Association
320 East Capitol Avenue
Pierre SD 57501-2519

Bob Wilcox
SD Association of County Commissioners
211 E Prospect Ave
Pierre SD 57501

Myron Rau
SD Trucking Association
PO Box 89008
Sioux Falls SD 57109-9008

Curt Everson
SD Bankers Association
PO Box 1081
Pierre SD 57501

Michelle Kleven
SD Association of Realtors
204 N Euclid Ave
Pierre SD 57501

Jerry Diamond
Independent Insurance Agents of SD
305 Island Dr
Ft Pierre SD 57532-7304



November 16, 2015

RECEIVED
NOV 19 2015

PETROLEUM RELEASE FUND

Alan W. Bakeberg, Director of Engineering
Petroleum Release Compensation Fund
523 East Capital Avenue
Pierre, SD 57501-3182

Dear Mr. Bakeberg,

We received your annual letter regarding the availability and affordability of private insurance for pollution coverage.

As in the past, Federated continues to be a leading insurer of petroleum marketers and convenience stores. We provide specific products and services to meet the needs of this industry. Our PetroFLEX® program continues to provide key coverages needed by businesses in this industry. As in the past, Federated continues to have exclusive recommendations with the National Association of Convenience Stores (NACS), The Petroleum Marketers Association of America (PMAA), and the South Dakota Petroleum Marketers Association (SDPMA).

With respect to pollution coverage, Federated markets products primarily through TopTanx, Berkley and AIG. We also partner with Ace, Colony, Hudson, and XL Environmental to meet certain client needs.

While we continue to develop and maintain relationships with carriers that provide environmental coverage for our petroleum marketers and convenience stores, Federated continues to support State Funds as long as they provide our clients with adequate protection and remain financially sound. In many states, this continues to be a concern.

As in the past, if the State of South Dakota would have phase PRCF out of existence at some point in time, we feel that the private insurance industry would likely be available and affordable for most of our property and casualty clients.

However, there would be sites and certain accounts that likely would not be eligible for coverage under the programs we work with because of concerns including:

- Leaking tanks
- Sites where existing contamination is not yet fully defined

- Sites where tank quality or piping is questionable
- Accounts with poor tank management practices
- Accounts that do not purchase our property and casualty program

As long as the State of South Dakota continues using PRCF to provide storage tank cleanup and liability protection for our clients, our plan is to continue to offer additional environmental coverages to wrap around gaps left by the fund. We will continue to work with marketing representatives to discuss environmental issues with our clients to help them address their environmental needs.

If you have any further questions or concerns, please contact me. Thanks for your continued interest, Dennis.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Lehrer". The signature is fluid and cursive, with a large initial "E" and "L".

Eric Lehrer
Agency Manager
EL/twp



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

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denr.sd.gov



**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES**

2014 ANNUAL REPORT

**CURRENT STATUS OF THE
PETROLEUM RELEASE COMPENSATION FUND
AND
AVAILABILITY OF PRIVATE INSURANCE**

RECOMMENDATION

The Petroleum Release Compensation Board's recommendation is to continue having the South Dakota Petroleum Release Compensation Fund (PRCF) serve as the primary financial assurance mechanism in South Dakota as that will continue to provide the broadest coverage for all petroleum tanks in the state, and ensures a level playing field for all owners and operators of regulated petroleum underground storage tanks who must meet the federal financial assurance requirements.

BACKGROUND

In 1984, Congress enacted federal legislation requiring the US Environmental Protection Agency (EPA) to develop regulations to address the installation, use, and management of petroleum underground storage tanks. The resulting regulations included requirements to upgrade or replace operating underground storage tanks by December 22, 1998. The regulations also required that corrective action be taken if there was a release from an underground storage tank. In response to concerns regarding future unfunded environmental damages, additional federal legislation was enacted and regulations adopted establishing federal underground storage tank financial responsibility requirements. Owners or operators of petroleum underground storage tanks were required to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by releases. Most sites are required to demonstrate financial responsibility of at least \$1,000,000 per occurrence.

With the enactment of the federal regulations, private insurance essentially abandoned the pollution liability market in the late 1980's. The insurance industry responded to these requirements by adopting "pollution exclusion" clauses in their policies. With private pollution liability insurance essentially unavailable, most of the state's underground storage tank owners had few, if any options for demonstrating financial responsibility.

The South Dakota Petroleum Release Compensation Fund (PRCF) was established by the 1988 Legislature to fill the void left by private insurance, to financially assist tank owners with the cleanup costs of petroleum releases and to meet the federal and state environmental financial responsibility requirements for regulated underground tank owners. The EPA has approved the PRCF as an acceptable mechanism for tank owners to demonstrate financial responsibility for corrective action and third-party compensation as required by state and federal law. The EPA Region 8 further identified the PRCF as a "model program".

The PRCF cleanup coverage is comprehensive in that all petroleum tank sites, including abandoned tank sites and aboveground tank sites, as well as underground storage tanks, are covered. While other methods of demonstrating financial responsibility such as self-insurance or private insurance are available to a limited group, the PRCF is the only mechanism that is presently available to every petroleum tank owner or operator in the state.

A five-member advisory board appointed by the Governor makes recommendations on program policies. Revenues are generated by a \$0.02 per gallon tank inspection fee on petroleum products received in the state. While the fee generates about \$15 million per year, the PRCF receives 10.65% of the fee, or about \$1.75 million per year with the remainder going to the Ethanol Fuel Fund and the Capital Construction Fund.

The PRCF provides reimbursement of cleanup expenses and third-party liability claims up to \$990,000 (\$1,000,000 less a \$10,000 deductible). Only necessary and reasonable cleanup expenses incurred after April 1, 1988, are eligible for reimbursement. Reimbursement for third party claims can only be made for certain petroleum releases reported after April 1, 1990. The PRCF also pays for all tank removal and cleanup costs incurred through the Abandoned Tank Removal Program, which was enacted through Senate Bill 197 in the 2000 Legislature.

AVAILABILITY OF INSURANCE

Pursuant to SDCL 34A-13-48, "the board [Petroleum Release Compensation Board] shall endeavor to integrate private insurance as the primary or secondary risk taker... ". This statute also requires the board to meet at least annually with members of the insurance industry who have registered with the board. The purpose of the meeting is to evaluate the availability of private insurance coverage for petroleum contamination cleanup and third party liability coverage. After meeting with the public on this matter, the board is required to report its findings to the legislature by January 10th of each year. This year the meeting was held in Pierre, South Dakota on December 11, 2014.

Preparations for the Meeting

In preparation for the meeting, written invitations were extended to members of the insurance industry and associations representing industry groups in South Dakota with a possible interest in the program. This year input was sought from the following representatives of insurance and associations:

- Independent Insurance Agents of South Dakota;
- Western Dakota Insurors;
- Federated Insurance Company;
- National Association of Insurance and Financial Advisors;
- Petroleum Marketers Management Insurance Company;
- South Dakota Truckers Association;
- SD Association of Realtors;
- SD Municipal League;
- SD Bankers Association;
- SD Association of County Commissioners;
- SD Petroleum & Propane Marketers Association;
- SD Association of Cooperatives;
- SD Agri-Business Association; and
- SD Farm Bureau.

Comments from Insurance Industry Representatives

This year, written comments were received from Federated Insurance and Petroleum Marketers Management Insurance Company. The written comments from Federated Insurance indicate that they can provide pollution liability insurance for tank owners who meet their underwriting criteria and who purchase their property and casualty insurance coverage. Federated indicated there would be certain sites that would not be eligible for coverage due to concerns related to leaking tanks, existing contamination not fully defined, questionable tank or pipe quality, poor tank management practices, or accounts that do not purchase their property and casualty program. The written comments from Petroleum Marketers Management Insurance Company indicate that if South Dakota decides to integrate private insurance as a risk taker, they are interested in providing insurance coverage for petroleum tanks in South Dakota.

Discussion

Since its enactment in 1988, the PRCF has provided \$87.2 million for corrective action at 4,555 petroleum release sites in South Dakota. Under the direction of the five-member citizen board, the PRCF has accomplished this over the past 25 years while reducing annual cleanup costs from a high of nearly \$7 million to less than \$600,000, while reducing staff from a high of 15 to the current staff of five. Additionally over this time period the revenue allocations to the PRCF have been reduced from a high of \$0.02/gallon to about 1/5 of a penny per gallon. The PRCF has worked effectively with industry and federal, state and local regulators to accomplish risk-based cleanups at significantly less than the national average cost and completion time, and has one of the lowest average payment processing times nationally. In addition to paying for cleanups, the PRCF has also worked with industry and state regulators to provide training to owners and operators of

underground storage tanks to reduce the frequency and size of petroleum leaks. Currently 100% of the regulated underground tank owners and operators in South Dakota have received training in the proper operation and maintenance of underground tank systems.

While much of the past and on-going efforts have been to finance corrective action at old release sites, the PRCF's mission continues to be that of providing ongoing financial assurance for regulated underground storage tank owners so that they can demonstrate financial responsibility as required by state and federal law. In addition to providing the financial responsibility mechanism for regulated petroleum UST owners, the PRCF also covers cleanup costs for petroleum tanks that are not required to have a financial responsibility mechanism such as regulated above ground petroleum bulk tanks, and non-regulated gasoline, diesel fuel and heating oil underground and above ground storage tanks.

In reviewing the letters from Federated Insurance and Petroleum Marketers Management Insurance Company, and considering testimony and discussion at their meeting, the Board recognizes that private insurance may be available for some tank owners who meet qualifications of the insurance companies. However, dual coverage would be required for sites with existing releases and for those that did not meet the insurance companies' underwriting criteria. Additionally, tank owners not required by regulation to have a financial responsibility mechanism would not likely purchase insurance, and as a result many would not have the financial resources to pay for cleanups when a release occurs from their tank system. The Board concluded they could find no reason to change their recommendation from last year. The Board saw no advantage to the public or tank owners of going to private insurance to meet the financial assurance requirements for underground petroleum tank owners.