
SOUTH DAKOTA
PETROLEUM RELEASE COMPENSATION BOARD MEETING
Meeting Agenda – December 14, 2017
Foss Building, Matthew Training Center
Pierre, South Dakota

Live audio of the meeting and the full board packet can be found on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=73>

Thursday, December 14, 2017 1:30 PM

- I. Call to Order and Declare Quorum
- II. Review and Approve/Disapprove Minutes of December 15, 2016, 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 Doug Miller (DENR) and Dawna Leitzke (SDP₂MA)*
- VI. EPA Fund Soundness Review – *briefing by Director of Engineering*
- VII. Election of Officers
- VIII. 2018 Legislation
- IX. Other Business
- X. Schedule Future Meetings
- XI. Adjourn

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

December 15, 2016

The South Dakota Petroleum Release Compensation Board Meeting was called to order by Chairman Dennis Rowley at 1:30 PM on December 15, 2016, and was held in the Foss Building, Matthew Training Center. A quorum was declared with all board members present.

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

Others Present: Alan Bakeberg, John McVey, 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 Shane Mattheis, Division of Insurance.

Chairman Dennis Rowley requested a motion to approve or disapprove the minutes of the June 2, 2016, meeting. A motion was made by Don Meyers to approve the minutes. Dave Kallemeyn seconded the motion. All voted in favor. Motion carried.

Alan Bakeberg reported on the financial status of the fund from the October 2016 fund statistics report in the Board packet.

Chairman Dennis Rowley 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 to the parties that have expressed interest in the Board's activities. A copy of the letter and mailing list was provided in the Board packet, along with a copy of last year's annual report. Written responses were received from Pat Rounds, Petroleum Marketers Management Insurance Company (PMMIC), Ronald Johnson, Western Dakota Insurors and Eric Lehrer, Federated Insurance. Copies of the written responses are available at:

<http://boardsandcommissions.sd.gov/bcuploads/prc1216pkt1.pdf>

Discussion followed: As in the past, the responses from the insurance companies indicate private insurance is available for petroleum tanks, and there is interest in working with the State of South Dakota to integrate private insurance with the Fund, if the state were to stop providing coverage. However, as in the past the underwriting criteria would result in a great degree of disparity in coverage and premiums due to preexisting conditions and other factors. If private insurance were integrated, the State would still need to maintain a Fund to cover costs for current and past contamination, which the private insurance companies will not cover. In addition, the Fund currently covers all petroleum tanks in the state to include regulated and unregulated underground and aboveground storage tanks. By statute, only federally regulated underground storage tanks are required to maintain financial assurance. If the Fund stopped coverage for petroleum tanks, only the regulated underground tank owners would be required to buy insurance. If not required to buy insurance, it is anticipated that a

significant percentage of other petroleum tank owners would not buy insurance, which would result in spills not being cleaned up due to lack of financial resources. As a result, the State would need to maintain a Fund to address risks caused by uninsured tanks. The Board asked to include information in the annual report detailing the coverage currently being provided to tank owners who would not be required to maintain financial assurance. The Board believes it is not in the best interest of the citizens of South Dakota to attempt to integrate private insurance as a primary or secondary risk taker.

A motion was made by Rudy Gerstner to recommend that the PRCF continue the program under the same process that is presently in place. Bert Olson seconded the motion.

All voted in favor. Motion carried.

Dawna Leitzke, South Dakota Petroleum and Propane Marketers gave the board an update on the UST owner/operator training and reported on how successful the training has been and expressed the need for ongoing training. DENR has renewed the contract with the Petroleum and Propane Marketers to provide training in calendar year 2017.

Alan Bakeberg briefed the board on the EPA's Annual Soundness Review of the PRCF for state fiscal year 2015. Discussion followed. EPA has approved the PRCF to continue as the financial assurance mechanism for the federally regulated UST owners in the state.

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

There is no known legislation right now that would affect the PRCF.

Under other business, Dave Kallemeyn asked about the UST rules the EPA has promulgated. Doug Miller explained that EPA passed the new rule changes in July of 2015, and states have up to three years to implement the new rules. However, EPA wants to have South Dakota's program approval done by 2018, so Doug's goal is to have the new rules implemented before the fall of 2017.

The board set tentative dates of March 16, 2017, and June 15, 2017, as future meetings.

Motion was made to adjourn by Bert Olson and seconded by Rudy Gerstner. All voted in favor.

Motion carried.

Meeting was adjourned at 3:00 pm.

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

<http://boardsandcommissions.sd.gov/Meetings.aspx?Boardid=73>

Dennis Rowley, Chairman

**South Dakota
Petroleum Release Compensation Fund
October 2017 Fund Statistics**

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

| | |
|---|----------------|
| Total Tank Inspection Fee Revenue Collected in October 2017 | \$1,389,137 |
| Amount of October 2017 Tank Inspection Fee Distributed to PRCF | \$146,464 |
| PRCF Balance (November 1, 2017) | \$2,955,071 |
| Average Payment Per Site - Regular Program Only | \$51,316 |
| Average Payment Per Site- Abandoned Tank Program | \$3,385 |
| <u>Current Involvement - Regular Program (Does not include Abandoned Tank Program Sites)</u> | |
| Active Cases | 30 Sites |
| Active/Monitoring Cases | 24 Sites |
| Pending Cases (spill report not yet filed) | 0 Sites |
| TOTAL | 54 Sites |
| <u>Past Involvement - Regular Program (Does not include Abandoned Tank Program Sites)</u> | |
| Closed-Active Cases | 43 Sites |
| Closed-Inactive Cases (sites closed and all claims settled) | 1,484 Sites |
| Closed-No Pymt Cases (sites opened, but closed without PRCF payment) | 2,511 Sites |
| TOTAL | 4,038 Sites |
| <u>Abandoned Tank Removal Program</u> | |
| Total Applications (includes 264 applications that have been withdrawn) | 3,469 Sites |
| Completed Sites (tanks removed) | 3,191 Sites |
| Total Paid to Date | \$10.8 million |
| <u>Projected Future Obligations</u> | |
| Amount of Claims in Office Pending Review (2 claims) | \$4,797 |
| Cost Remaining for Sites that have Received at Least One PRCF Payment | \$358,000 |
| Projected Costs for Release Sites Where No Payment Has Yet Been Made | \$1,700,000 |
| Estimated Remaining Costs for Abandoned Tank Removal Program | \$600,000 |
| <u>This Past Month's Activity</u> | |
| Claims Received During Month (12 pay requests) | \$38,167 |
| Claims Processed by Staff (11 pay requests) | \$35,889 |
| Avg. Days in Office for Claims Processed in Past Month | 1 Days |
| Amount Paid Since Fund Began (4715 sites) | \$89.0 million |

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) | 3,366 | \$18,482,972 |
| Commercial, Co-op | 150 | \$9,885,575 |
| Commercial, Petroleum | 619 | \$39,572,436 |
| Commercial, End User | 322 | \$11,500,085 |
| Farmers | 4 | \$65,977 |
| Federal Government | 9 | \$121,519 |
| Local Government | 151 | \$5,278,750 |
| State Government | 79 | \$3,792,140 |
| Non-Profit | 13 | \$285,117 |
| Residential | 2 | \$21,878 |
| | 4,715 | \$89,006,447 |

Annual PRCF Insurance Letter Mailing List

Dawna Leitzke
SD Petroleum Marketers Assoc
PO Box 1058
Pierre SD 57501-1058

NAIFA SD
3619 N. Potsdam Ave., #2660
Sioux Falls SD 57104

Ronald L Johnson
Western Dakota Insurors
PO Box 1300
Rapid City SD 57709

Eric Lehrer
Federated Insurance
121 E Park Square
Owatonna MN 55060

Krystil Smit
SD Farm Bureau
PO Box 1426
Huron SD 57350-1426

Pat Rounds
PMMIC
PO Box 7528
Urbandale IA 50323

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 Realty
204 N Euclid Ave
Pierre SD 57501

Carolyn Hofer
Independent Insurance Agents of SD
305 Island Dr
Ft Pierre SD 57532-7304



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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

denr.sd.gov

November 6, 2017

Dawna Leitzke
SD Petroleum Marketers Assoc.
PO Box 1058
Pierre, SD 57501-1058

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

Dear Dawna:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2017. 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 2018 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
Petroleum Release Compensation Fund

Enclosure

cc: PRC Board, w/enclosure
Larry Deiter– Director, Division of Insurance, DLR w/enclosure



**DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov

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

2016 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 ensure a level playing field for all owners and operators of regulated petroleum underground storage tanks who must meet the federal financial assurance requirements. In addition to providing the financial responsibility mechanism for federally regulated petroleum underground storage tanks (UST), the PRCF also covers cleanup costs for petroleum tanks that are not required to have a financial responsibility mechanism, such as aboveground petroleum tanks and non-regulated gasoline, diesel fuel and heating oil tanks. Over the past ten years, more than 55% of the nearly \$7 million spent by the PRCF on cleanups has been for petroleum releases at sites that are not required to demonstrate financial assurance.

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 were 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 1980s. 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. 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. The fee generates about \$17 million per year, and the PRCF receives about \$0.002 per gallon of the fee, or about \$1.8 million per year, with the balance going to the Ethanol Fuel Fund and the Capital Construction Fund (CCF). SDCL 5-27-6 transfers 71.8 percent of the CCF deposits to the Water and Environment Fund (WEF). The WEF provides funding assistance for water and wastewater infrastructure projects that protect human health and the environment.

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 created by the 2000 Legislature (see SDCL 34A-13-49).

In 2005, Congress passed the Energy Policy Act, which included a new requirement that owners and operators of regulated underground storage tanks be trained to reduce spills and leaks. Since 2011, the PRCF has funded storage tank training at various locations throughout the state through a contractor. More than 1,900 people have attended the training, and South Dakota maintains a 99.5 percent training compliance rate for facilities operating underground storage tanks.

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 15, 2016.

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 Western Dakota Insurors, Federated Insurance, and Petroleum Marketers Management Insurance Company. The written comments from Western Dakota Insurors indicate that they believe the intent was to have a sunset clause for the Fund, and that private pollution and environmental coverage is available along with cleanup coverage. 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 Insurance 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, but that the existing liabilities for known and unknown releases would need to be addressed and capped.

Discussion

Since its enactment in 1988, the PRCF has provided \$88.4 million for corrective action at 4,679 petroleum release sites in South Dakota. Under the direction of the five-member citizen board, the PRCF has accomplished this over the past 29 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.

Although much of the past and ongoing efforts have been to finance corrective action at old release sites, the PRCF's primary mission continues to be that of providing ongoing financial assurance for federally 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 federally 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 aboveground petroleum tanks, and non-regulated gasoline, diesel fuel and heating oil tanks. As shown in the table below, over 55% of the nearly \$7 million spent by the Fund on cleanup over the past ten years has been for costs associated with sites that are not required to demonstrate financial assurance.

| FY | Non-Regulated Tanks | | Federally Regulated Tanks | | Total |
|--------|---------------------|-------|---------------------------|-------|--------------|
| | Amount | % | Amount | % | |
| 2007 | \$679,905 | 58.1% | \$490,397 | 41.9% | \$1,170,301 |
| 2008 | \$303,953 | 45.8% | \$360,293 | 54.2% | \$664,247 |
| 2009 | \$340,111 | 39.3% | \$525,739 | 60.7% | \$865,850 |
| 2010 | \$383,313 | 53.1% | \$338,174 | 46.9% | \$721,487 |
| 2011 | \$290,996 | 68.5% | \$133,949 | 31.5% | \$424,944 |
| 2012 | \$557,346 | 80.6% | \$134,190 | 19.4% | \$691,536 |
| 2013 | \$267,674 | 53.2% | \$235,111 | 46.8% | \$502,785 |
| 2014 | \$386,490 | 53.8% | \$331,436 | 46.2% | \$717,926 |
| 2015 | \$295,647 | 50.3% | \$291,941 | 49.7% | \$587,588 |
| 2016 | \$342,523 | 57.1% | \$256,998 | 42.9% | \$599,521 |
| Totals | \$ 3,847,959 | 55.4% | \$ 3,098,226 | 44.6% | \$ 6,946,185 |

While there has been a significant reduction in claims since the early 2000s, the Petroleum Release Compensation board believes that this trend will reverse in the

near future due to the age of the tank systems in South Dakota and new regulations for underground storage tanks. Currently the average age of the tank systems in South Dakota is about 25 years. While there are no regulatory or industry standards dictating or establishing the useful life of a petroleum tank system, the longer tank systems are in service the more likely they are to fail and leak. In addition to the aging tank systems, the Environmental Protection Agency recently enacted new regulations for underground storage tank systems that the State must implement by 2018. These regulations will require many of the existing underground storage tank systems to upgrade certain components, which will likely result in discovery of petroleum releases that are currently unknown.

In reviewing the letters from Western Dakota Insurers, 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 on going to private insurance to meet the financial assurance requirements for underground petroleum tank owners.



RECEIVED

NOV 13 2017

PETROLEUM RELEASE FUND

November 8, 2017

Alan W. Bakeberg, Director of Engineering
Petroleum Release Compensation Fund
523 East Capital Ave
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 PetroSHIELD® program continues to provide key coverages needed by businesses in this industry. As in the past, Federated continues to have exclusive recommendations with the Petroleum Marketers Association of America (PMAA), and the South Dakota Petroleum & Propane Marketers Association (SDPMA).

With respect to pollution coverage, Federated markets products primarily through its in-house agency and utilizing carriers such as TopTanx, Berkley and AIG. We also partner with carriers Philadelphia, 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 phased 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.

(Continued)

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, Alan.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric Lehrer', with a long horizontal flourish extending to the right.

Eric Lehrer
Agency Manager

EL/lwp

PETROLEUM MARKETERS MANAGEMENT INSURANCE COMPANY
2894 106th St., Ste. 220, PO Box 7628, Urbandale, Iowa 50323
Ph: 800/942-1000, 515/334-3001 Fax: 515/334-3013



December 5, 2017

Mr. Alan Bakeberg
Director of Engineering
South Dakota Petroleum Release Compensation Fund
Department of Environment and Natural Resources
523 East Capitol
Pierre, SD 57501-3182

RE: Annual Meeting: Integration of Private Insurance as Primary or Secondary Risktaker

Dear Mr. Bakeberg,

Thank you for the opportunity to provide input to the PRCF on the availability and affordability of pollution liability insurance coverage for petroleum storage tanks.

Petroleum Marketers Management Insurance Company (PMMIC) provides pollution liability and third party liability coverage to owners of petroleum storage tank facilities located in states throughout the US. We offer coverage for UST sites and AST sites including regulated and non-regulated petroleum tanks. Our coverage satisfies the federal financial responsibility requirements for USTs while integrating insurance with operator training and annual loss control inspections. We are interested in the South Dakota market.

Based upon our analysis of your tank population, competitively priced coverage is readily available in the private market for all of South Dakota's active petroleum storage tank systems, including both regulated and non-regulated tanks, using the same eligibility criteria established by the PRCF. Coverage is available for tank systems of all ages. The existence of an open claim with the PRCF will not impact the availability of coverage.

As the successor of the Iowa UST insurance fund, we understand what is necessary to integrate private insurance as a risk taker while protecting the interests of the tank owners and the citizens of the state. With proper planning, a structured integration would ensure that PRCF liabilities are adequately addressed and capped, while tank owners will be prepared for and readily assimilated in to a private insurance market. There would not be any requirement to maintain dual coverage. The integration of private insurance will not require mandatory soil and groundwater testing and existing liabilities can be capped and transferred to the private market.

If you decide to consider options to integrate private insurance as a risktaker, we are prepared to outline how private insurance can be successfully integrated as a financial responsibility mechanism for the South Dakota petroleum storage tank industry.

If you have any questions, or would like additional information on our insurance products, please contact us.

Sincerely,

Patrick Rounds
President

Board of Directors

Ron Burmeister, Chairman; M.J. Dolan; Randy Meyer; Randy Woodard; Eli Wirtz; Jerry Woods; Jeff Yurgae



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

RECEIVED
JUN 05 2017

PETROLEUM RELEASE FUND

Ref: 8P-R

Mr. Alan Bakeberg
Director of Engineering
Petroleum Release Compensation Fund
South Dakota Department of Environment and Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501

Re: 2017 Annual Soundness Review of the South Dakota Petroleum Release Compensation Fund
Fiscal Year (FY) 2016

Dear Mr. Bakeberg:

Enclosed is the U.S. Environmental Protection Agency's soundness review of the South Dakota Petroleum Release Compensation Fund (State Fund).

On June 30, 2016, \$3.5 million was transferred out of the South Dakota State Fund to South Dakota's General Fund. The South Dakota State Fund ended 2016 with \$2,054,583 unspent, which is a significant decrease in dollars unspent when compared to funds unspent from 2010-2016. The \$3.5 million transfer out of the fund may have left the South Dakota State Fund more vulnerable and possibly underfunded if there is an expensive emergency release. Nevertheless, the data submitted by South Dakota indicates that as of June 30, 2016, the South Dakota State Fund has enough money to pay for existing open releases.

The EPA will continue to monitor the balance of the fund to ensure that there is enough money to cleanup existing releases and new releases coming on line. The EPA appreciates the positive working relationship and collaboration between your program and ours.

If you would like to discuss this with me I can be reached at (303) 312-6421. If you require more specific information, the most knowledgeable person on my staff is Theresa Martella, who can be reached at (303) 312-6329 or at martella.theresa@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Morlock".

Nancy Morlock, Director
Resource Conservation and Recovery Program
Office of Partnerships and Regulatory Assistance

Enclosure

**South Dakota Petroleum Release Compensation Fund
Annual Soundness Review
Fiscal Year 2016**

JUN 05 2017

PETROLEUM RELEASE FUND

May 23, 2017

The U. S. Environmental Protection Agency (EPA) annually reviews and assesses the soundness of state cleanup funds established to fulfill the federal financial responsibility requirements for owners and/or operators of federally-regulated underground storage tanks (USTs). The EPA's fiscal year (FY) 2016 annual review and assessment of the South Dakota Petroleum Release Compensation Fund (South Dakota State Fund) follows below.

The South Dakota State Fund Soundness Workbook Charts displaying the data the EPA has considered in this assessment are provided in Appendix 1 and are based on South Dakota's fiscal year July 1, 2015, through June 30, 2016. More detail about the operational setting of the South Dakota State Fund can be found in Appendix 2.

Findings and Next Steps

On June 30, 2016, \$3.5 million was transferred out of the South Dakota State Fund to South Dakota's General Fund. The South Dakota State Fund ended 2016 with \$2,054,583 unspent, which is a significant decrease in dollars unspent when compared to funds unspent from 2010-2016. The \$3.5 million transfer out of the fund may have left the South Dakota State Fund more vulnerable and possibly underfunded if there is an expensive emergency release. Nevertheless, the data submitted by South Dakota indicates that as of June 30, 2016, the South Dakota State Fund has enough money to pay for existing open releases.

The \$3.5 million transfer was more than 50% of the end of year balance of 2015. The EPA will continue to monitor the balance of the fund to ensure that there is enough money to cleanup existing releases and new releases coming on line. The EPA encourages South Dakota to consider replenishing the balance to a reasonable amount in order to have funds on hand, not just for existing releases, but for emergencies and/or unexpected releases that may require a large amount of funds.

What share of the state's backlog does the South Dakota State Fund cover?

In FY 2016, the South Dakota State Fund covered 98 percent of all federally-regulated USTs. (See Appendix 1, Chart 1). The South Dakota State Fund share of open releases continues to decline from a high of 476 in FY 2011 to 58 in FY 2016. A large portion of this decrease was due to the culling out of non-federally-regulated releases. At the end of FY 2016, there were 82 open releases from all federally-regulated fund-eligible (FRFE) releases, with 24 of these releases not eligible for the South Dakota State Fund.

In FY 2016, there were 11 more new releases than in FY 2015, for a total of 42 new releases. Of the 58 open FRFE cleanups, 28 (52 percent) received a payment from the South Dakota State Fund during FY 2016 (See Appendix 1, Chart 2). According to South Dakota, the number of releases from regular sites (i.e. gas stations) remained about the same. But, there were 11 additional releases reported from regulated tanks removed under the Abandoned Tank Program.

How quickly is the South Dakota State Fund addressing its open FRFE UST releases?

South Dakota continues to clean up releases quickly, with the average length of cleanup taking 39 months, (3 ¼ years) from the date the release is reported. In addition, the length of cleanup time decreased by 2 months from 2015 to 2016 (Appendix 1, Chart 5). Other evidence to support this includes FY 2016 data that demonstrates the South Dakota State Fund is making progress cleaning up open releases, with 48 releases cleaned up in 2016. The net overall number of FRFE releases decreased to 52 by the end of the year.

The number of open FRFE releases at the beginning of the fiscal year declined by 126 releases (69%) from FY 2014 to FY 2016. There were 48 cleanups completed and 42 new releases reported in FY 2016, with an overall net change of six open FRFE releases. South Dakota demonstrated a 76% percent reduction in open FRFE releases from the end of FY 2014. In addition, the total number of cleanups completed more than doubled from FY 2015 to FY 2016, from 23 in FY 2015 to 48 in FY 2016 (See Appendix 1, Chart 3). At the end of FY 2016, South Dakota had 52 open FRFE releases compared with 89 at the end of FY 2015 and 216 at the end of FY 2014. This trend demonstrates steady progress in cleaning up FRFE releases in South Dakota.

There were 32 cleanups completed in 2016 that were financed by the South Dakota State Fund. This represents a tripling of cleanups completed using the South Dakota State Fund from 2015 when 11 cleanups were completed. The remaining universe of open FRFE cleanups (52) is now proportionally smaller than it was in FY 2014.

There were 16 cleanups completed that never received payment from the South Dakota State Fund. This may be because many of the open cleanups may not have met the \$10,000 deductible during the fiscal year. (See Appendix 1, Chart 4).

Has the South Dakota State Fund had enough money to address its open FRFE release cleanups?

The South Dakota State Fund's adjusted end-of-year balance as of June 30, 2016, was \$2,054,583, which is a 49% decrease from what the fund had on June 30, 2015. This large decrease is due to the transfer on June 30, 2016, of \$3.5 million out of the South Dakota State Fund to South Dakota's General Fund (Appendix 1, Chart 6).

Is the South Dakota State Fund financed to further reduce its open FRFE release cleanups?

Income and spending levels from FY 2012 to FY 2015 demonstrate that the South Dakota State Fund had sufficient financing available to reduce the number of open FRFE cleanups. Based upon the data provided by the South Dakota Department of Environment and Natural Resources (SD DENR), EPA calculates that approximately \$512,613 was needed to work on all open FRFE releases in FY2016 and only \$333,198 if the average cleanup takes five years. The South Dakota State Fund had \$6,682,485 available for spending in 2016, which was more than enough to reduce its open FRFE releases (Appendix 1, Chart 7) even when considering the \$3.5 million was transferred out. Total spending in FY 2016 was \$4,627,902, which included the \$3,500,000 transfer out of the fund (Appendix 1, Chart 7).

The South Dakota State Fund ended 2016 with \$2,054,583 unspent, which is a significant decrease when compared to unspent funds from 2010-2016 (see revised Unspent Balance table.) The \$3.5 million transfer out of the fund may have left the South Dakota State Fund more vulnerable and possibly

underfunded if there is an expensive emergency release. Nevertheless, the data submitted by South Dakota indicates that as of June 30, 2016, the South Dakota State Fund has enough money to pay for existing open releases.

| South Dakota State Fund Unspent Balances (FY 10-FY 16) | | | | | | |
|---|--------------|--------------|--------------|--------------|--------------|--------------|
| FY 10 | FY 11 | FY 12 | FY 13 | FY 14 | FY 15 | FY 16 |
| \$5,123,618 | \$3,276,560 | \$3,782,551 | \$5,413,466 | \$4,033,415 | \$4,749,291 | \$2,054,583 |

South Dakota reported to the EPA in August 2016 that the State Legislature transferred \$3.5 million from the South Dakota State Fund to South Dakota’s General Fund. This lowered the fund balance to \$2,054,583 at the end of FY 2016.

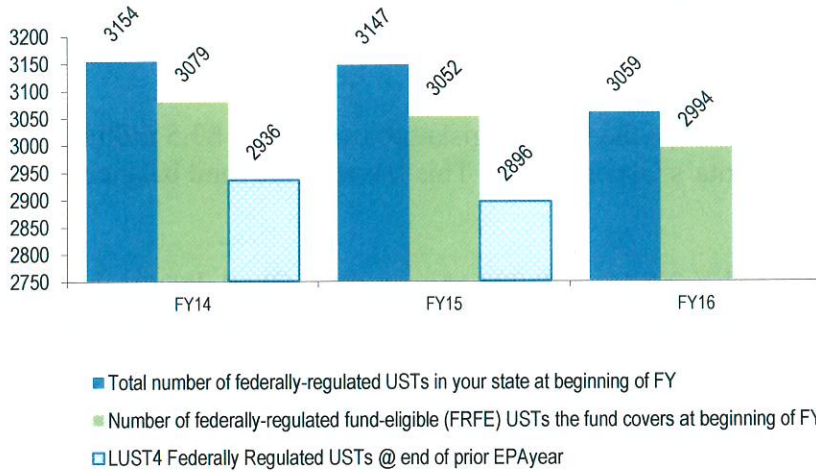
The average cost of cleanup in South Dakota in FY 2016 is \$28,724 (Appendix 1, Chart 7a) which, as reported in previous reports, is well below the national average of \$157,347.¹ South Dakota uses risk-based closure for releases and this lowers the cost of the average cleanup. However, because of the large variance between the national average and the South Dakota average, as well as the 3.5 million taken out of the South Dakota State Fund in 2016, the EPA will continue to closely monitor the cost of cleanup in FY 2017 and FY 2018.

¹ Average cost of UST cleanup: \$157,347, ASTSWMO, “State Fund Survey Results 2015 Summary.” http://astswmo.org/files/policies/Tanks/2015_State_Funds_Survey/CV.2015%20.summary.table.pdf

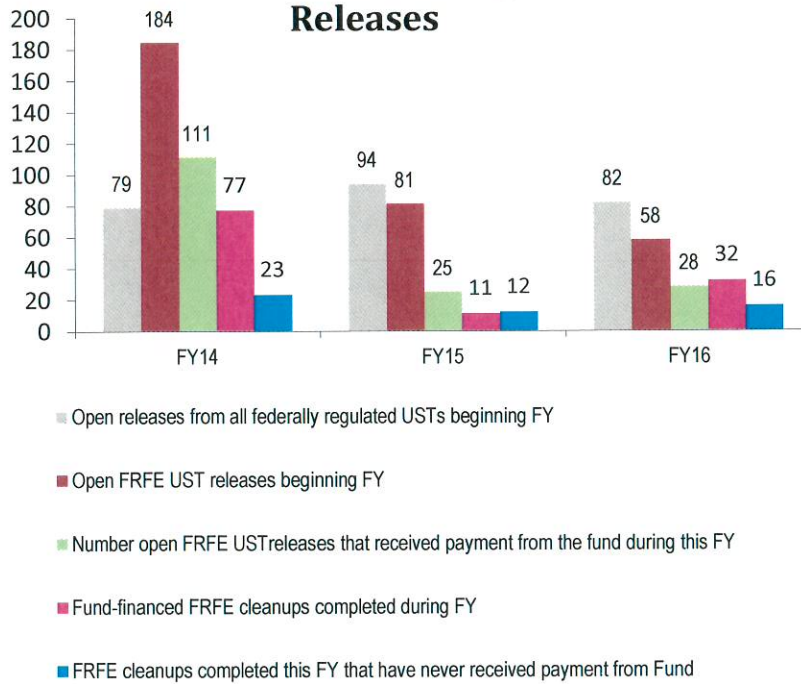
Appendix 1: Data and Charts from South Dakota State Fund

FY 2016 Soundness Workbook

1. USTs Covered By The Fund

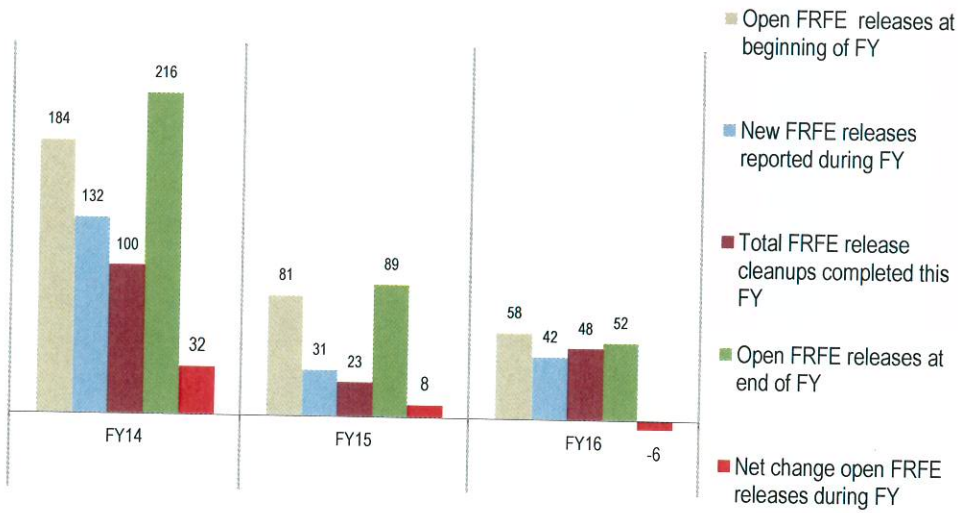


2. The Fund's Share Of Open UST Releases

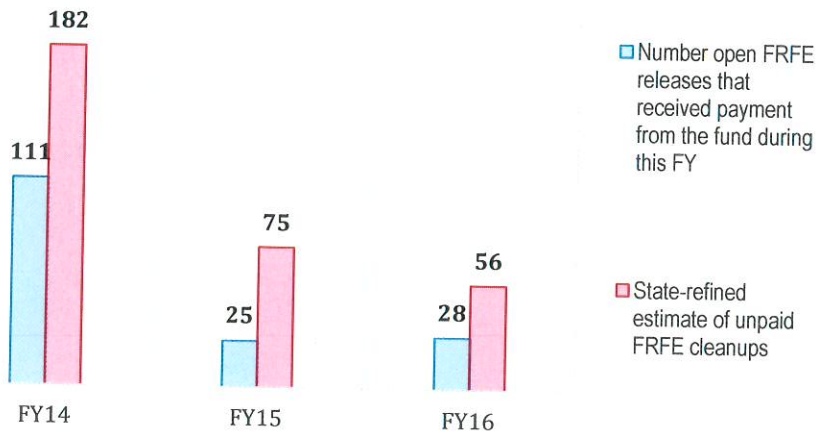


Cleanups Completed

3.a FRFE Cleanup Progress



4. Paid & Estimated Unpaid FRFE Cleanups



5. Cleanup Pipeline Time

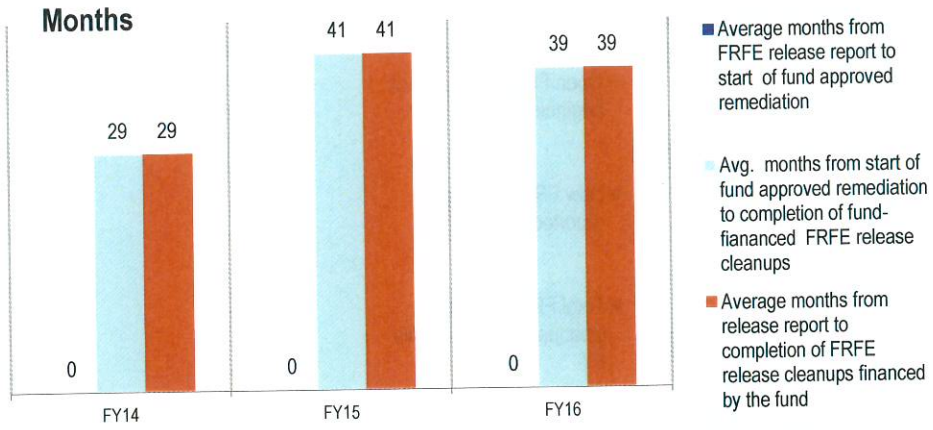
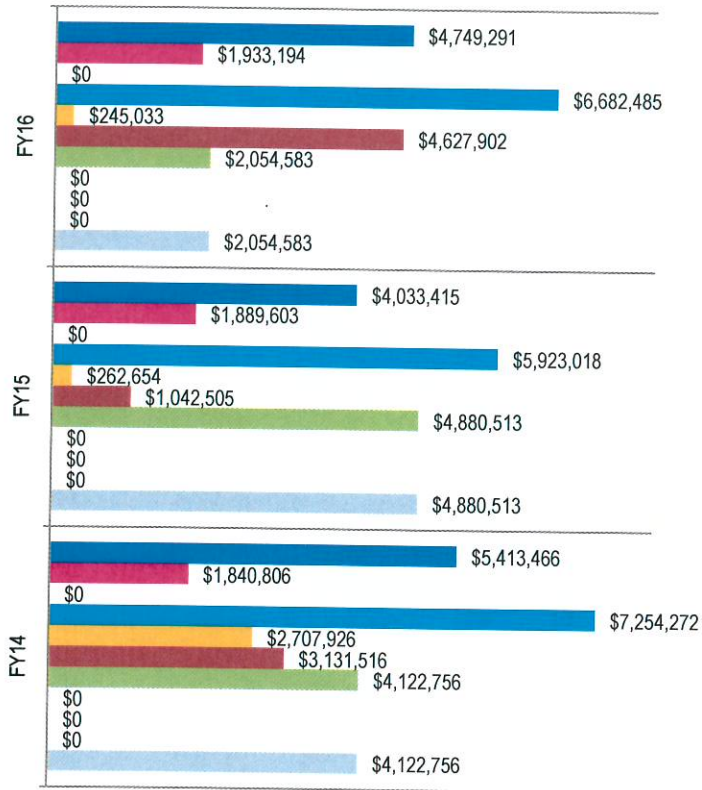
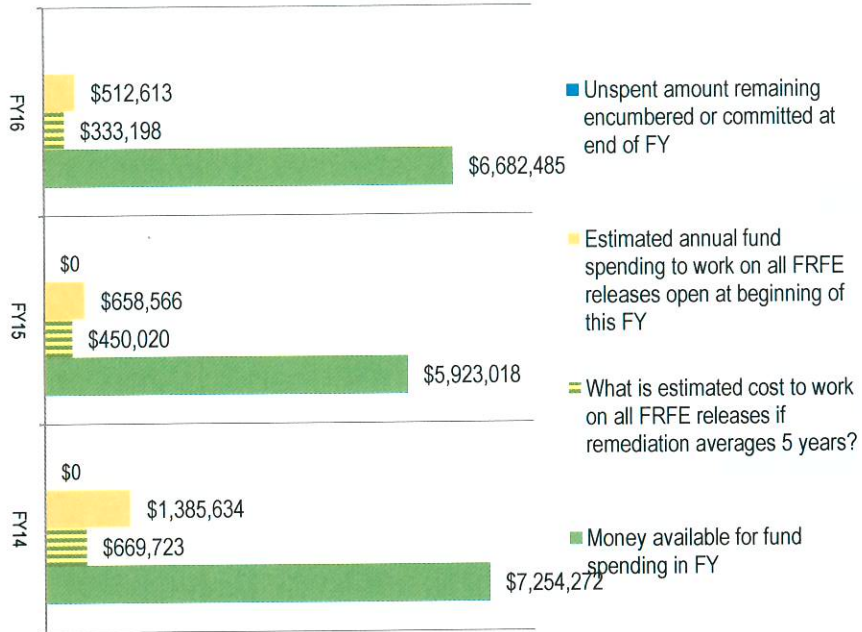


Chart 6. Balance, Income and



- Cash balance at beginning of year
- Total fund income
- Total dollar value of controls on fund spending during this FY
- Money available for fund spending in FY
- FRFE cleanup reimbursements and direct payments to FRFE cleanup contractors
- Total spending
- Unspent balance at end of year
- Unspent amount remaining encumbered or committed at end of FY
- Additions to end of year balance
- Reductions to end of year balance
- Adjusted end of year balance

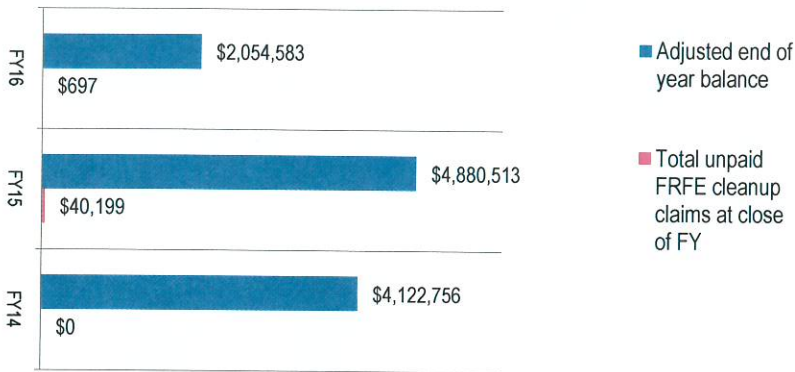
7. Available Funding And Estimated Annual Funding To Address All Open FRFE Sites Concurrently



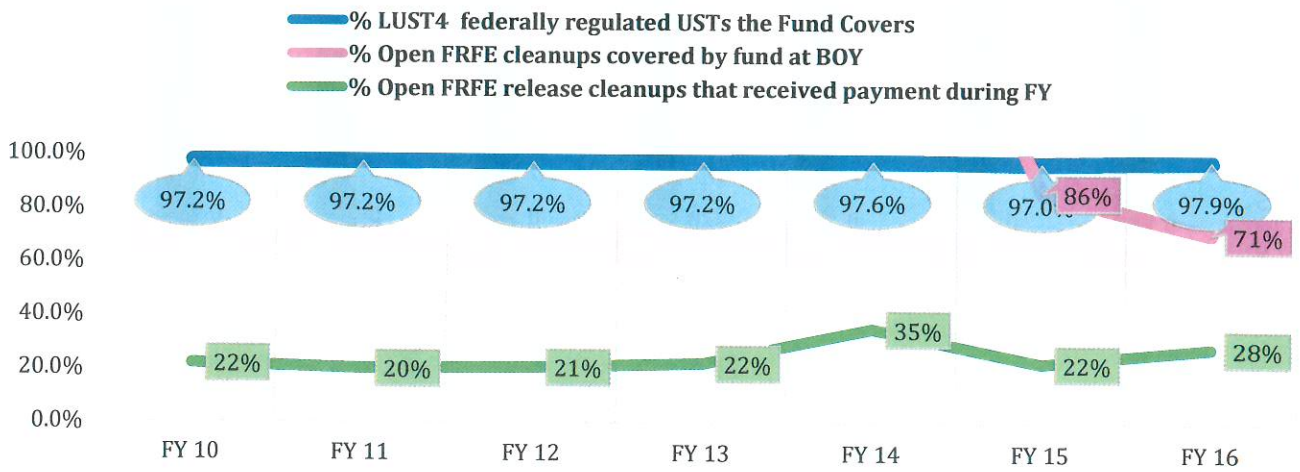
7a. Average cost of fund-financed FRFE release cleanups completed this FY



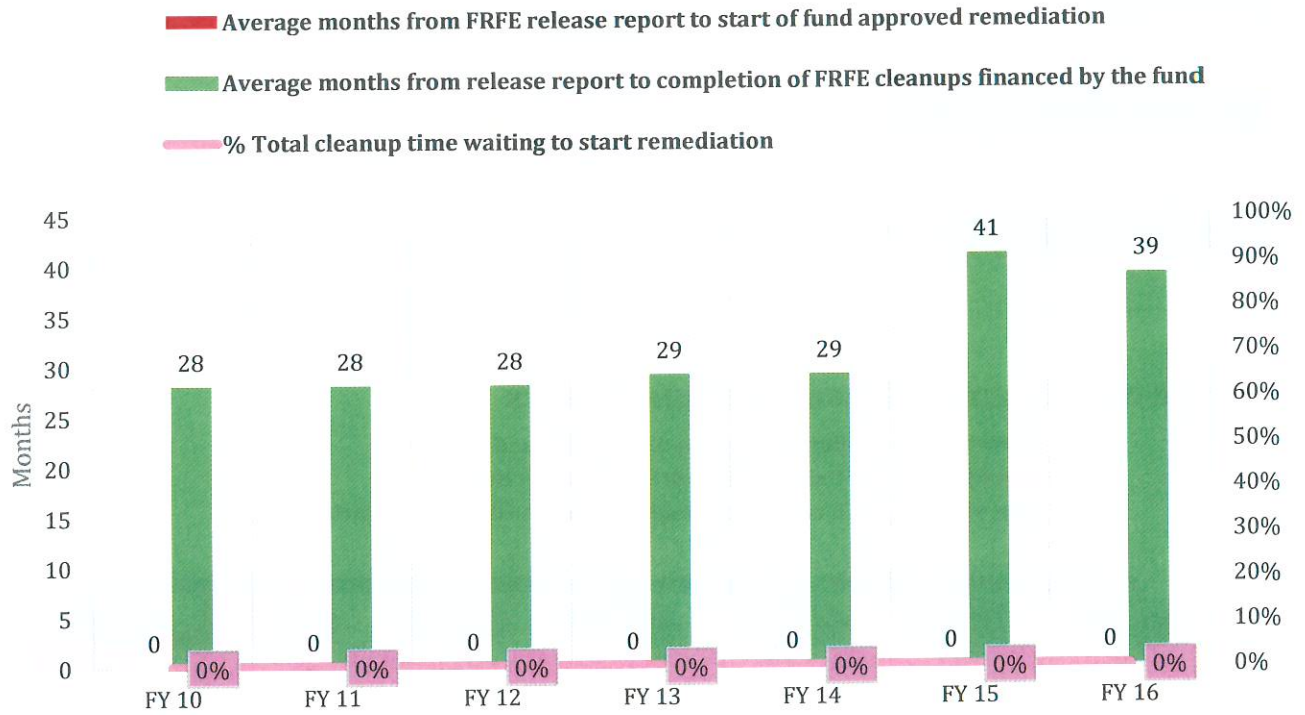
8. EOY Cash Balance And Unpaid Claims



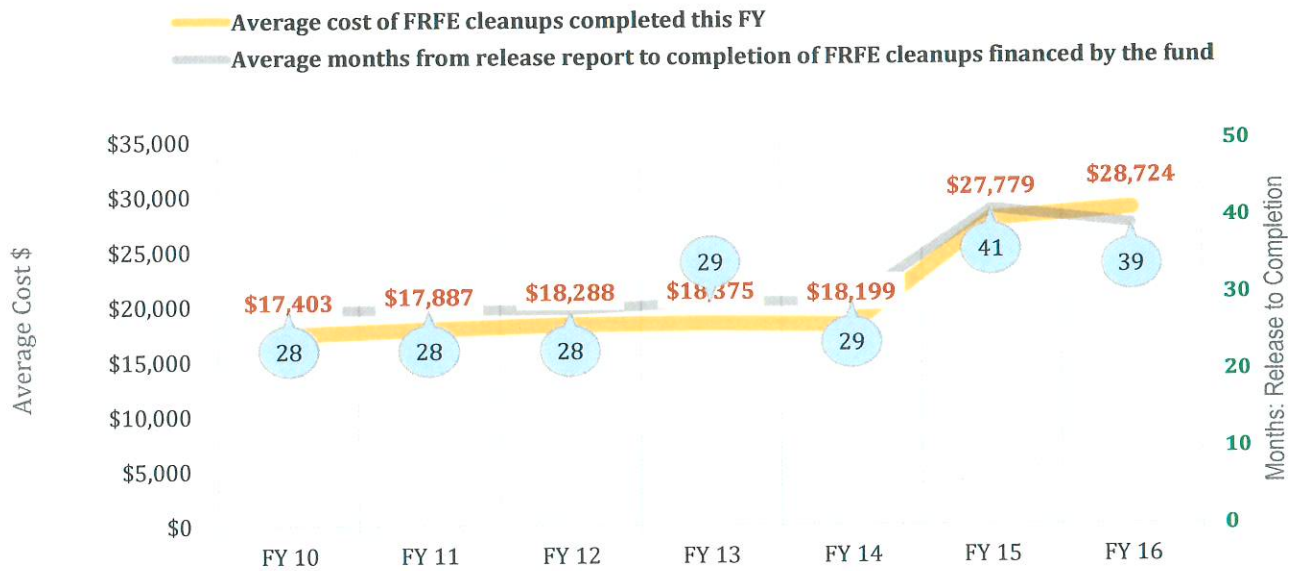
9. Share of USTs and Releases the Fund Covers



10. Backlog Reduction: Time to Start and Complete FRFE Cleanups



11. Cleanup Cost and Time



Appendix 2: Background

What the South Dakota State Fund covers.

The South Dakota Petroleum Release Compensation Fund covers USTs, used oil tanks, heating oil tanks, above ground storage tanks (ASTs), abandoned tanks, and farm storage tanks. UST owners and operators are responsible for a deductible of \$10,000. The South Dakota State Fund covers the following: labor, testing and use of machinery; materials and supplies; authorized professional services; compensation for third-party damage claims; costs incurred by order of a federal, state, or local government; and any other expense found to be reasonable and necessary for remediation.

Eligibility requirements and determination of eligibility.

An UST owner/operator must be in substantial compliance with all requirements to receive reimbursement from the South Dakota State Fund.

Organizational setting and structure of the South Dakota State Fund.

The SD DENR administers the South Dakota State Fund. The South Dakota State Fund was created to assist in the cleanup of certain petroleum releases, to investigate reported releases, to determine the amount of reimbursement due to responsible parties for corrective actions they have taken, to provide a financial assurance mechanism that will comply with the federal and state financial responsibility requirements for regulated petroleum tank owners, and to report to the Governor and Legislature. The reimbursement limit is \$1 million per occurrence and \$1.99 million annual aggregate per responsible party per fiscal year. Reimbursement for a single release site can never exceed \$990,000, unless it is determined that a new release has taken place and claims for all prior releases have been established or settled.

Sources and path of South Dakota State Fund income.

The South Dakota State Fund is financed with a 10.65 percent of a \$0.02 per gallon fee on petroleum products that is deposited into the South Dakota State Fund. Additional sources of funding revenue include cost recovery and interest on the investment of money in the South Dakota State Fund and money received as gifts to be used by the South Dakota State Fund.

Payments are suspended on Abandoned Tank Program sites, except at high-risk sites, when the South Dakota State Fund balance falls to \$2 million or less. The use of risk-based corrective action criteria determines which sites are considered "high-risk." In addition, if paying out claims would cause the cash balance in the South Dakota State Fund to fall below \$100,000 for any week, all claims payable that week will be pro-rated (reduced by a percentage equal to the shortfall of \$100,000 in the South Dakota State Fund).