
**SOUTH DAKOTA
PETROLEUM RELEASE COMPENSATION BOARD MEETING
Meeting Agenda – December 14, 2023
In-Person or On-Line
Matthews Training Center
Joe Foss Building**

The public may participate in-person, by live audio, or by streaming through a computer or other mobile device. The full board packet and directions for access to the meeting and live streaming can be found on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=73>

Thursday, December 14, 2023, 1:00 PM

- I. Call to Order and Declare Quorum
- II. Introduction of New Board Members
- III. Approve Agenda
- IV. Review and Approve/Disapprove Minutes of December 12, 2022, Board Meeting
- V. Public Comment Period
- VI. Report on the Financial Status of the Fund - *Tina McFarling (EFP)*
- VII. EPA Fund Soundness Review –*John McVey (EFP)*
- VIII. Annual Meeting with Representatives of the Insurance Industry
 - A. Purpose and preparations for meeting
 - B. Review of 2023 Annual Report
 - C. Review of written comments
 - D. Comments from the floor and discussion
 - E. Board discussion and recommendation
- IX. Underground Storage Tank Operator Training Update - *Dawna Leitzke (SDP₂MA)*
- X. Brownfields Underground Storage Tank Assessment Updates– *Kayla Fawcett (IC&R)*
- XI. Election of Officers
- XII. Schedule Future Meetings
- XIII. Adjourn

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

Petroleum Release Compensation Board Meeting

December 14, 2023

To listen live to the meeting, please visit <https://www.sd.net> and follow the link to the livestream.

For meeting participants, you have several options to participate remotely:

To participate via telephone (audio only, no video) please call:

605-679-7263

Enter Conference ID when prompted:

182 385 800#

To participate via both video and audio, use this link:

[Click here to join the meeting](#)

or enter the following information in the Teams app:

Meeting ID: 212 664 484 702

Passcode: qyxkzZ

or use a video conferencing device:

Video Conference ID: 118 852 774 1

Minutes of the
South Dakota Petroleum Release Compensation
Board Meeting

December 12, 2022

The South Dakota Petroleum Release Compensation Board Meeting was called to order by Chairman Dennis Rowley at 1:00 P.M. on December 12, 2022, and was held in the Foss Building, Matthew Training Center. A quorum was declared with board members present.

Members Present: Bert Olson Dennis Rowley and Jim Sachs.

Others Present: Mike Perkovich, John McVey, Kayla Fawcett, Andy Bruels, Terry Florentz and Vickie Maberry, DANR; Dawna Leitzke, South Dakota Petroleum & Propane Marketers Association and Stephen Gemar, Attorney General's Office.

Chairman Dennis Rowley requested a motion to approve the minutes of the December 13, 2021 meeting. A motion was made by Jim Sachs to approve the minutes. Bert Olson seconded the motion. Motion carried.

Mike Perkovich reported on the financial status of the fund and reviewed the October 2022 fund statistics report. The balance for October shows a balance of \$6,448,216. Any amount over \$6,000,000 gets transferred to the highway fund of South Dakota. The amount transferred was approximately \$2,136,000.

Discussion followed.

John McVey briefed the board on the Environmental Protection Agency's Annual Soundness Review and approval of the PRCF for state fiscal year 2021. For states that they have previously reviewed and don't have any problems with it is a light review. In the board packet, there is an email from EPA with the review information. The information submitted in the workbook does not raise any concerns about the SD Petroleum Release Compensation Fund in state FY 2021. This email serves as notification that your submission of the FY 2021 Fund Soundness Workbook and today's discussion closes out the 2021 review. Discussion followed.

Letters were sent in October to those in the industry that have expressed interest in the board's activities. A copy of the letter and mailing list were provided, along with a copy of last year's annual report. The letter received from Pat Rounds of Petroleum Marketers Management Insurance Company (PMMIC) was reviewed. Discussion followed by the board regarding coverage by the Fund versus private insurance. The consensus is that there seems to be no benefit to tank owners and the public to switch to private insurance, and the downside is that many situations covered by the Fund would not be covered by private insurance. The report must be sent to the Legislature by January 10th of each year. Jim Sachs made a motion to submit the annual report to the Legislature recommending that the PRCF be maintained as is. Bert Olson seconded the motion. All voted in favor of the motion.

Dawna Leitzke gave the board an update on the UST owner/operator training that is provided under contract with the PRCF, and the need for ongoing training. The total amount of people that were trained in 2022 is 140. This is the lowest since 2013 but credits DANR for getting people to attend seminars. Ms. Leitzke would like for the board to consider in the future to mandate people attend training once every three years. Right now, the training is only required once in a lifetime. The training continues to conduct trainings with the latest updated information for regulation. Discussion followed.

Kayla Fawcett discussed the Potential Brownfields Underground Storage Tank Assessment

For Brownfields sites EPA has altered their definition of assessment to include removal of underground storage tanks to determine petroleum impacts. The Brownfields program has funding available more so than they typically do, and the intention is to use those funds on eligible, temporarily closed sites. Eligible sites are those that have been closed by July 1, 2021 or earlier. They must be sites with no responsible party, meaning there is no owner or the person that currently owns the facility has not operated the tank system, and there is no pending enforcement against the facility. With the Brownfields 128A funding, the facility owner would need a city, county, or non-profit to sign the Brownfields application for the facility. A 1,425,000 grant application has been submitted for a Community Wide Assessment Grant for States and Tribes. With that grant if the award is granted in March of 2023 the money would be available in October of 2023. The states can get the tank removal forms signed and get access to the property and can consent to remove the tanks and not need someone to sign it on behalf of the current

owner. The importance of this for the board is that when the work is completed, there is no additional deductible expected. All eligible work that is done through this would count toward the \$10, 000 deductible. The assessment will be more than just tank removal. It will be a total assessment of the property through Brownfields, including asbestos, lead paint, solvents, etc. If there is soil contamination found adjacent to the tank when it is removed, the disposal of the soil even though it is cleanup would be considered part of the assessment costs for Brownfields purposes.

Election of officers: Bert Olson made a motion for Denny Rowley to continue to serve as the chairman and Jim Sachs serve as vice chairman. Jim Sachs seconded the motion. Motion carried.

The board set a tentative future meeting date of December 11, 2023.

Mike Perkovich informed the board that Don Meyers and Dave Kallemeyn's positions were up for re-appointment this year and they both declined. Replacement nominees have been sent to the Governor's Office and there has not been a response.

Meeting was adjourned at 2:00 p.m.

The meeting was digitally recorded and is available, along with the documents referenced above 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 2023 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 2023	\$1,577,481
Amount of October 2023 Tank Inspection Fee Distributed to PRCF	\$265,490
PRCF Balance (November 1, 2023)	\$6,168,613
Average Payment Per Site - Regular Program Only	\$52,316
Average Payment Per Site- Abandoned Tank Program	\$3,817
<u>Current Involvement - Regular Program (Does not include Abandoned Tank Program Sites)</u>	
Active Cases	47 Sites
Active/Monitoring Cases	20 Sites
Pending Cases (spill report not yet filed)	16 Sites
TOTAL	83 Sites
<u>Past Involvement - Regular Program (Does not include Abandoned Tank Program Sites)</u>	
Closed-Active Cases	20 Sites
Closed-Inactive Cases (sites closed and all claims settled)	1,528 Sites
Closed-No Pymt Cases (sites opened, but closed without PRCF payment)	2,622 Sites
TOTAL	4,170 Sites
<u>Abandoned Tank Removal Program</u>	
Total Applications (includes 274 applications that have been withdrawn)	3,666 Sites
Completed Sites (tanks removed)	3,363 Sites
Total Paid to Date	\$12.8 million
<u>Projected Future Obligations</u>	
Amount of Claims in Office Pending Review (1 claims)	\$1,924
Cost Remaining for Sites that have Received at Least One PRCF Payment	\$416,610
Projected Costs for Release Sites Where No Payment Has Yet Been Made	\$3,100,000
Estimated Remaining Costs for Abandoned Tank Removal Program	\$600,000
<u>This Past Month's Activity</u>	
Claims Received During Month (11 pay requests)	\$52,750
Claims Processed by Staff (12 pay requests)	\$131,171
Avg. Days in Office for Claims Processed in Past Month	9 Days
Amount Paid Since Fund Began (4919 sites)	\$94.2 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)	3,538	\$20,519,288
Commercial, Co-op	152	\$10,064,402
Commercial, Petroleum	650	\$41,172,526
Commercial, End User	322	\$11,437,015
Farmers	4	\$65,977
Federal Government	4	\$86,580
Local Government	150	\$5,283,930
State Government	84	\$5,302,644
Non-Profit	13	\$285,117
Residential	2	\$21,878
	4,919	\$94,239,356

South Dakota
Petroleum Release Compensation Fund
Third Quarter (July - Sep) 2023 Fund Statistics

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

Amount Paid Since Fund Began (4918 sites)	\$94.1 million
PRCF Balance	\$6,167,412
Amount of Tank Inspection Fee Distributed to PRCF last quarter	\$855,112
Claims Processed During Quarter (21 pay requests)	\$205,075
Avg. Days in Office for Claims Processed in Past Quarter	10 Days
<u>Current Involvement - Regular Program (Excluding ATP Sites)</u>	
Active Cases	43 Sites
Active/Monitoring Cases	20 Sites
Pending Cases (spill report not yet filed)	17 Sites
TOTAL	80 Sites
<u>Past Involvement - Regular Program (Excluding ATP Sites)</u>	
Closed-Active Cases	20 Sites
Closed-Inactive Cases (sites closed and all claims settled)	1,528 Sites
Closed-No Pymt Cases (sites reviewed, but closed without PRCF payment)	2,619 Sites
Total Regular Program Payments	\$81.3 million
Average Payment Per Site - Regular Program Only	\$52,272
<u>Abandoned Tank Removal Program</u>	
Total Applications (includes 274 applications that have been withdrawn)	3,664 Sites
Completed Sites (tanks removed)	3,362 Sites
Total Abandoned Tank Program Payments	\$12.8 million
Average Payment Per Site- Abandoned Tank Program	\$3,809
<u>Projected Future Obligations</u>	
Cost Remaining for Sites that have Received at Least One PRCF Payment	\$417,210
Projected Costs for Release Sites Where No Payment Has Yet Been Made	\$3,000,000
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)	3,537	\$20,490,036
Commercial, Co-op	152	\$10,062,144
Commercial, Petroleum	650	\$41,105,563
Commercial, End User	322	\$11,437,015
Farmers	4	\$65,977
Federal Government	4	\$86,580
Local Government	150	\$5,283,930
State Government	84	\$5,302,644
Non-Profit	13	\$285,117
Residential	2	\$21,878
	4,918	\$94,140,884



**DEPARTMENT of AGRICULTURE
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JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Mike Chrysler
Independent Insurance Agents of SD
305 Island Drive
Fort Pierre, SD 57532-7304

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

Dear Mr. Chrysler:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2023, starting at 1:00 p.m. CST. The public may participate in-person at the Matthew Training Center in Pierre, SD, by live audio, or by streaming through a computer or other mobile device. Those parties interested in participating remotely will be sent instruction on joining the meeting at a later date.

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 attending in person or remotely, 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 2024 Legislature in early January.

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 join the meeting so that instructions for participating can be sent. If you have any questions or would like additional information, please contact me at 605-773-4216.

Sincerely,

Tina McFarling, P.E.
Administrator
Environmental Funding Program

Enclosure



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Karlton Adam
SD Bankers Association
PO Box 1081
Pierre, SD 57501-1081

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

Dear Mr. Adam:

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Administrator
Environmental Funding Program

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**DEPARTMENT of AGRICULTURE
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JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Kris Jacobsen
SD Association of County Commissioners
211 E Prospect Avenue
Pierre, SD 57501

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

Dear Ms. Jacobsen:

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523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Yvonne Taylor
SD Municipal League
208 Island Drive
Fort Pierre, SD 57532

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

Dear Ms. Taylor:

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Sincerely,

Tina McFarling, P.E.
Administrator
Environmental Funding Program

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523 E CAPITOL AVE
PIERRE SD 57501-3182
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October 27, 2023

Pat Rounds
PMMIC
PO Box 7528
Urbandale, IA 50323-7528

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

Dear Mr. Rounds:

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Environmental Funding Program

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Eric Lehrer
Federated Insurance
121 E Park Square
Owatonna, MN 55060

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

Dear Mr. Lehrer:

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Environmental Funding Program

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523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Ruth Jones
NAIFA SD
3916 N Potsdam Avenue #2660
Sioux Falls, SD 57104

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

Dear Ms. Jones:

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Administrator
Environmental Funding Program

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523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Michelle Kleven
SD Association of Realtors
PO Box 1175
Pierre, SD 57501-1175

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

Dear Ms. Kleven:

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Administrator
Environmental Funding Program

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523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Christine Erickson
SD Trucking Association
PO Box 89008
Sioux Falls, SD 57109-9008

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

Dear Ms. Erickson:

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Sincerely,

Tina McFarling, P.E.
Administrator
Environmental Funding Program

Enclosure



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

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

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

Dear Ms. Zander:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2023, starting at 1:00 p.m. CST. The public may participate in-person at the Matthew Training Center in Pierre, SD, by live audio, or by streaming through a computer or other mobile device. Those parties interested in participating remotely will be sent instruction on joining the meeting at a later date.

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Tina McFarling, P.E.
Administrator
Environmental Funding Program

Enclosure



**DEPARTMENT of AGRICULTURE
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JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Brenda Forman
SD Association of Cooperatives
116 N Euclid Avenue
Pierre, SD 57501

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

Dear Ms. Forman:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2023, starting at 1:00 p.m. CST. The public may participate in-person at the Matthew Training Center in Pierre, SD, by live audio, or by streaming through a computer or other mobile device. Those parties interested in participating remotely will be sent instruction on joining the meeting at a later date.

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 attending in person or remotely, 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 2024 Legislature in early January.

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 join the meeting so that instructions for participating can be sent. If you have any questions or would like additional information, please contact me at 605-773-4216.

Sincerely,

Tina McFarling, P.E.
Administrator
Environmental Funding Program

Enclosure



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Krystil Smit
SD Farm Bureau
PO Box 1416
Huron, SD 57350-1416

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

Dear Ms. Smit:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2023, starting at 1:00 p.m. CST. The public may participate in-person at the Matthew Training Center in Pierre, SD, by live audio, or by streaming through a computer or other mobile device. Those parties interested in participating remotely will be sent instruction on joining the meeting at a later date.

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October 27, 2023

Nate Larson
Western Dakota Insurors
PO Box 1300
Rapid City, SD 57709-1300

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

Dear Mr. Larson:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2023, starting at 1:00 p.m. CST. The public may participate in-person at the Matthew Training Center in Pierre, SD, by live audio, or by streaming through a computer or other mobile device. Those parties interested in participating remotely will be sent instruction on joining the meeting at a later date.

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Sincerely,

Tina McFarling, P.E.
Administrator
Environmental Funding Program

Enclosure



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and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 27, 2023

Dawna Leitzke
SD Petroleum Marketer's Association
PO Box 1058
Pierre, SD 57501-1058

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

Dear Ms. Leitzke:

The South Dakota Petroleum Release Compensation Board will be holding its annual meeting with industry officials on December 14, 2023, starting at 1:00 p.m. CST. The public may participate in-person at the Matthew Training Center in Pierre, SD, by live audio, or by streaming through a computer or other mobile device. Those parties interested in participating remotely will be sent instruction on joining the meeting at a later date.

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Sincerely,

Tina McFarling, P.E.
Administrator
Environmental Funding Program

Enclosure

November 27, 2023

RECEIVED

NOV 30 2023

Dept. of Agriculture
& Natural Resources

Tina McFarling, PE
Administrator
Environmental Funding Program
Department of Agriculture and Natural Resources
Joe Foss Building, 523 Capitol Ave
Pierre, SD 57501-3182

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

Dear Tina,

Thank you for the opportunity to provide input as you address the requirements of SDCL 34-A-13-48 which directs the Board to endeavor to integrate private insurance as a primary or secondary risk taker.

PMMIC is an AM Best A rated carrier that provides UST coverage that satisfies the federal financial responsibility requirements of 40 CFR 280. We specialize in the small business market. We welcome the opportunity to discuss options for the PRCF Board to integrate private insurance into your program.

Please consider risk transfer mechanisms including underlying coverage and reinsurance for active facilities, risk-based underwriting, technical compliance assistance, and loss control activities as cost-effective options for the integration of private insurance. Utilizing the private insurance market for one or all these tasks will allow you to access the ingenuity and skill of the environmental risk management professionals without negatively impacting your existing program. Integrating professional risk management insight can help to streamline environmental results and reduce long-term program costs.

Unfortunately, we are unable to attend the December 14, 2023 PRCF Board meeting. We would be happy to meet with you at another time to discuss options for you to share with the PRCF Board.

Please contact me if you have any questions or would like to pursue discussion of these concepts.

Sincerely,



Patrick Rounds
President

Board of Directors

Chairman, Ron Burmeister; Vice Chairman, Randy Meyer; Randy Woodard; Jeff Yurgae; Robert Renkes; Terry Handley; Kathleen Till Stange

2894 106th St., Suite 220 | P.O. Box 7628 | Urbandale, IA 50323
515-334-3001 | www.pmmic.com



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SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

2022 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 regulated tanks, the PRCF also covers cleanup costs for petroleum tanks such as farm, heating oil, and aboveground tanks that are not required to have a financial responsibility mechanism and would likely not have coverage in the absence of the PRCF.

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 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. In fiscal year 2023 the PRCF will receive \$0.0034 per gallon of the fee, or about \$2.9 million per year, with the balance going to the Capital Construction Fund (CCF) and Ethanol Infrastructure Incentive Fund. SDCL 5-27-6 transfers 64 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 2,900 people have attended the training.

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 on December 12, 2022.

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 Petroleum Marketers Management Insurance Company (PMMIC). The written comments from PMMIC indicate that they are interested becoming a primary or secondary risk taker in the South Dakota petroleum storage pollution liability market. PMMIC stated they are a licensed insurance carrier that focuses solely on petroleum tank liability coverage, and they provide coverage to six states. PMMIC also noted that private insurance is available for active tanks and that private insurance could be integrated by providing primary coverage for active tanks or by providing reinsurance to the State.

Discussion

Since its enactment in 1988, the PRCF has provided approximately \$93.6 million for corrective action for nearly 4,900 petroleum release occurrences in South Dakota. With guidance from the five-member citizen advisory board, the PRCF has accomplished this over the past 30 years while reducing annual cleanup costs from a high of nearly \$7 million to an annual average of about \$640,000, while reducing

staff from a high of 15 to the current staff of 3. Additionally, over this time period the revenue allocations to the PRCF have been reduced from a high of \$0.02 per gallon to \$0.0034 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. Over the past ten years 56% of the \$7.0 million spent by the Fund on cleanup has been for costs associated with sites that are not required to demonstrate financial assurance.

While there has been a significant reduction in claims since the early 2000's, the Petroleum Release Compensation board believes that this trend may reverse soon due to the age of the tank systems in South Dakota and new regulations for underground storage tanks. Currently the average age of 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 State began implementing new regulations for underground storage tank systems in October 2021. These regulations require many of the existing underground storage tank systems to upgrade certain components, which may result in the discovery of petroleum releases that are currently unknown.

In reviewing the letter from Petroleum Marketers Management Insurance Company, and considering discussion at its meeting, the Board recognizes that private insurance may be available for some tank owners who meet qualifications of the insurance companies. 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. The Board expressed concerns that dual coverage, risk selection practices and the uninsured sites would likely place a greater burden on some operators while shifting proportionally higher financial liability for the higher risk sites to the State. The Board concluded there was no reason to change its recommendation from previous years and saw no advantage to the public or tank owners going to private insurance to meet the financial assurance requirements for underground petroleum tank owners.