
**SOUTH DAKOTA
PETROLEUM RELEASE COMPENSATION BOARD MEETING
Meeting Agenda – December 13, 2018
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 13, 2018 1:30 PM

- I. Call to Order and Declare Quorum
- II. Review and Approve/Disapprove Minutes of June 14, 2018, Board Meeting
- III. Public Comment Period
- IV. Code of Conduct & Conflict of Interest Policy
- V. Report on the Financial Status of the Fund - *briefing by Alan Bakeberg (PRCF)*
- VI. EPA Fund Soundness Review – *briefing by John McVey (PRCF)*
- VII. Annual Meeting with Representatives of the Insurance Industry
 - A. Purpose and preparations for meeting
 - B. Review of 2017 Annual Report
 - C. Review of written comments
 - D. Comments from the floor and discussion
 - E. Board discussion and recommendation
- VIII. Underground Storage Tank Operator Training Update - *briefing by Doug Miller (Tanks Section) and Dawna Leitzke (SDP₂MA)*
- IX. Other Business
- X. Election of Officers
- XI. Schedule Future Meetings
- XII. Executive Session – Litigation Update
- XIII. Adjourn

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

June 14, 2018

The South Dakota Petroleum Release Compensation Board Meeting was called to order by Chairman Dennis Rowley at 1:30 P.M. on June 14, 2018, and was held in the Foss Building, Matthew Training Center via conference call. A quorum was declared with four board members present.

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

Others Present: Alan Bakeberg, Nayyer Syed, Kim McIntosh and Vickie Maberry, DENR; Craig Eichstadt, Office of Attorney General; Dawna Leitzke, South Dakota Petroleum & Propane Marketers Association; and, Daniel Lupton, Taylor & Mulder.

Chairman Dennis Rowley requested a motion to approve or disapprove the minutes of the March 22, 2018 meeting. A motion was made by Bert Olson to approve the minutes, and seconded by Dave Kallemeyn.

Alan Bakeberg reported on the financial status of the fund from the April 2018 fund statistics report in the Board packet.

Daniel Lupton with Taylor & Mulder Property and Casualty Consulting Actuaries explained their actuarial analysis of the Petroleum Release Compensation Fund and the results presented in their draft report dated June 11, 2018. Discussion followed regarding the results of the actuarial analysis and the impact that the recent changes to the UST rules may have on future costs.

Dawna Leitzke gave an update on the UST Owner/Operator Training they are providing under contract with DENR.

Alan Bakeberg and Craig Eichstadt informed the board of House Bill 1172 that changes SDCL 1-25-1 to require all meetings by public bodies after July 1, 2018, to provide a period for public comment during every official meeting. The board asked that a public comment period be added to the meeting agenda following review and approval of minutes.

Future meeting dates are tentatively set for September 13, 2018 and December 13, 2018.

A motion to adjourn was made by Dave Kallemeyn and seconded by Bert Olson. The meeting was adjourned at 2:30 pm.

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

Dennis Rowley, Chairman

Code of Conduct and Conflict of Interest Policy for Use By State Authority, Board, Commission, and Committee Members

Purpose

The purpose of this code of conduct and conflict of interest policy (“Code”) is to establish a set of minimum ethical principles and guidelines for members of state authorities, boards, commissions, or committees when acting within their official public service capacity. With the exception of those under the purview of the Unified Judicial System, this Code applies to all appointed and elected members of state authorities, boards, commissions, and committees (hereinafter “Boards” and “Board member(s)”). A Board may add provisions to, or modify the provisions of, the Code. However, any change that constitutes a substantive omission from the Code must be approved by the State Board of Internal Control.

Conflict of Interest for Board Members

Board members may be subject to statutory restrictions specific to their Boards found in state and federal laws, rules and regulations. Those restrictions are beyond the scope of this Code. Board members should contact their appointing authority or the attorney for the Board for information regarding restrictions specific to their Board.

General Restrictions on Participation in Board Actions

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing or potential employment relationship with a party involved in the proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in an official action of the Board depends upon the type of action involved. A Board’s official actions are administrative, quasi-judicial or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of an application for a license or permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member’s interest or relationship creates a potential to influence the member’s impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future in effect. An example is rule-making. If the official action involved is quasi-legislative in nature, the Board member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to the disposition of the action.

Administrative actions involve the day-to-day activities of the Board and include personnel, financing, contracting and other management actions. Most of the administrative official actions of a Board are done through the Board's administrative staff. To the extent Board members are involved, the conflict of interest concern most frequently arises in the area of state contracting which is addressed in more detail below. If issues arise that are not directly addressed by this Code, the Board member should consult with the attorney for the Board.

"Official action" means a decision, recommendation, approval, disapproval or other action which involves discretionary authority. A Board member who violates any of these restrictions may be subject to removal from the Board to which the member is appointed.

Contract Restrictions

There are federal and state laws, rules and regulations that address conflict of interest for elected and appointed Board members in the area of contracts. As an initial matter, a Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in SDCL Chapter 3-23 and are required to make an annual disclosure of any contract in which they have or may have an interest or from which they derive a direct benefit. The restrictions apply for one year following the end of the Board member's term. The Boards impacted by these laws are enumerated within SDCL 3-23-10. For more information on these provisions, see the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: <http://atg.sd.gov/legal/opengovernment/authorityboardcommission.aspx>.

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded or administered the contract. With the exception of employment contracts, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to Board members who serve without compensation or who are only paid a per diem. See SDCL 5-18A-17 to 5-18A-17.6. For more information on these restrictions see the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at: <http://bhr.sd.gov/forms/>.

Other federal and state laws, rules and regulations may apply to specific Boards. For general questions regarding the applicability of SDCL Chapter 3-23 or other laws, a Board member may

contact the attorney for the Board. However, because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

Consequences of Violations of Conflict of Interest Laws

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowingly uses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See SDCL 3-16-7, 5-18A-17.4, and 22-30-46.

Retaliation for Reporting

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. SDCL 3-16-9 & 3-16-10.

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See SDCL 20-13-26.

Anti-Harassment/Discrimination Policy

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex, pregnancy, age, ancestry, genetic information, disability or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or another Board member. This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

- Unwelcome physical contact such as kissing, fondling, hugging, or touching;

- Demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- Swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or
- Calendars, posters, pictures, drawings, displays, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

Confidential Information

Except as otherwise required by law, Board members shall not disclose confidential information acquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

Reporting of Violations

Any violation of this Code should be reported to the appointing authority for the Board member who is alleged to have violated the Code.

This Code of Conduct and Conflict of Interest Policy was adopted by the State Board of Internal Control pursuant to SDCL § 1-56-6.

**South Dakota
Petroleum Release Compensation Fund
October 2018 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 2018	\$1,486,410
Amount of October 2018 Tank Inspection Fee Distributed to PRCF	\$294,309
PRCF Balance (November 1, 2018)	\$2,751,697
Average Payment Per Site - Regular Program Only	\$51,531
Average Payment Per Site- Abandoned Tank Program	\$3,442
 <u>Current Involvement - Regular Program (Does not include Abandoned Tank Program Sites)</u>	
Active Cases	30 Sites
Active/Monitoring Cases	20 Sites
Pending Cases (spill report not yet filed)	6 Sites
TOTAL	56 Sites
 <u>Past Involvement - Regular Program (Does not include Abandoned Tank Program Sites)</u>	
Closed-Active Cases	37 Sites
Closed-Inactive Cases (sites closed and all claims settled)	1,496 Sites
Closed-No Pymt Cases (sites opened, but closed without PRCF payment)	2,536 Sites
TOTAL	4,069 Sites
 <u>Abandoned Tank Removal Program</u>	
Total Applications (includes 266 applications that have been withdrawn)	3,514 Sites
Completed Sites (tanks removed)	3,222 Sites
Total Paid to Date	\$11.1 million
 <u>Projected Future Obligations</u>	
Amount of Claims in Office Pending Review (0 claims)	\$0
Cost Remaining for Sites that have Received at Least One PRCF Payment	\$249,300
Projected Costs for Release Sites Where No Payment Has Yet Been Made	\$2,000,000
Estimated Remaining Costs for Abandoned Tank Removal Program	\$600,000
 <u>This Past Month's Activity</u>	
Claims Received During Month (8 pay requests)	\$123,023
Claims Processed by Staff (8 pay requests)	\$123,023
Avg. Days in Office for Claims Processed in Past Month	1 Days
Amount Paid Since Fund Began (4748 sites)	\$89.7 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)	3,397	\$18,772,270
Commercial, Co-op	151	\$10,008,456
Commercial, Petroleum	622	\$40,007,854
Commercial, End User	321	\$11,377,174
Farmers	4	\$65,977
Federal Government	9	\$121,519
Local Government	150	\$5,272,966
State Government	79	\$3,792,140
Non-Profit	13	\$285,117
Residential	2	\$21,878
	4,748	\$89,725,350

**South Dakota Petroleum Release Compensation Fund
Annual Soundness Review
Fiscal Year 2017**

March 27, 2018

Observations

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) 2017 annual review and assessment of the South Dakota Petroleum Release Compensation Fund (South Dakota State Fund) follows below. The 2017 review is limited in scope and provides observations only. A more detailed analysis of the South Dakota State Fund will take place in FY 2019.

The South Dakota State Fund Soundness Workbook Charts displaying the data the EPA has considered are in Appendix 1 and are based on South Dakota's fiscal year July 1, 2016 through June 30, 2017.

Summary of Findings

The data presented in the *South Dakota FY 2017 Fund Soundness Workbook* did not raise any concerns about the SD State Fund during FY 17. The data trends analyzed by EPA from 2012-2017 show that South Dakota is making progress reducing its backlog of open releases, and decreasing the time to cleanup releases. However, 25 new releases reduced the net reduction of cleanups to three. During State Fiscal 2017, the South Dakota State Fund completed 28 fund-eligible federally regulated (FRFE) cleanups. In addition, the median age of FRFE cleanups completed was 5 months.

2017 Comments and Observations

Findings and Next Steps

In 2017, the number of Federally Regulated Fund Eligible (FRFE) USTs decreased from 2,994 tanks to 2,977. There were 88 open releases from all federally regulated USTs and 47 of these were fund eligible. As stated above, there were 25 new FRFE releases and 28 fund-financed FR cleanups completed during State Fiscal 2018. The SD State Fund ended the year with a net reduction of three open FRFE cleanups (after accounting for 25 new FRFE releases).

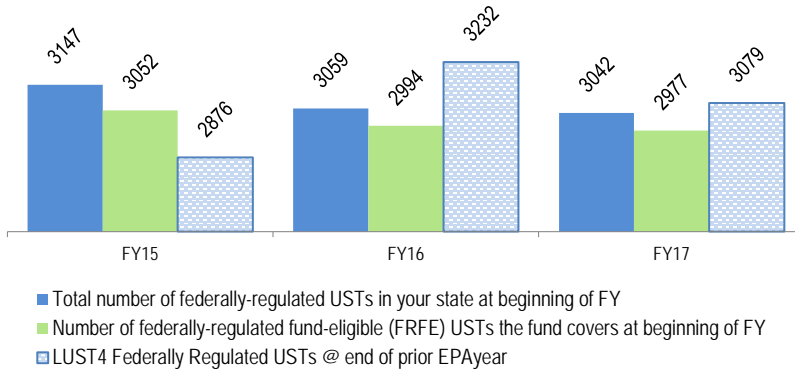
At the end of FY 17, South Dakota reported payments on 24 FRFE releases. According to South Dakota, the estimated FRFE cleanups completed in FY 17 that never received a payment from the State Fund is 39.

In the 2017 EPA State Fund workbook, EPA replaced the Cleanup Pipeline chart with two new charts. The first, Chart 5a (line 29 of workbook) is the median age of FRFE cleanups *started* in the current year. This measure provides a sense of how quickly the SD State Fund addresses *new* releases. The second chart, 5b (line 30 of the workbook) is the median age of FRFE cleanups *completed* this year. This measure provides a sense of how quickly the South Dakota State Fund has completed cleanups that started *years* ago. Line 30 shows the median age of FRFE cleanups started in FY 17 was only five months. The average cost of SD State Fund financed FRFE release cleanups that were closed in FY 17 was \$7,743.

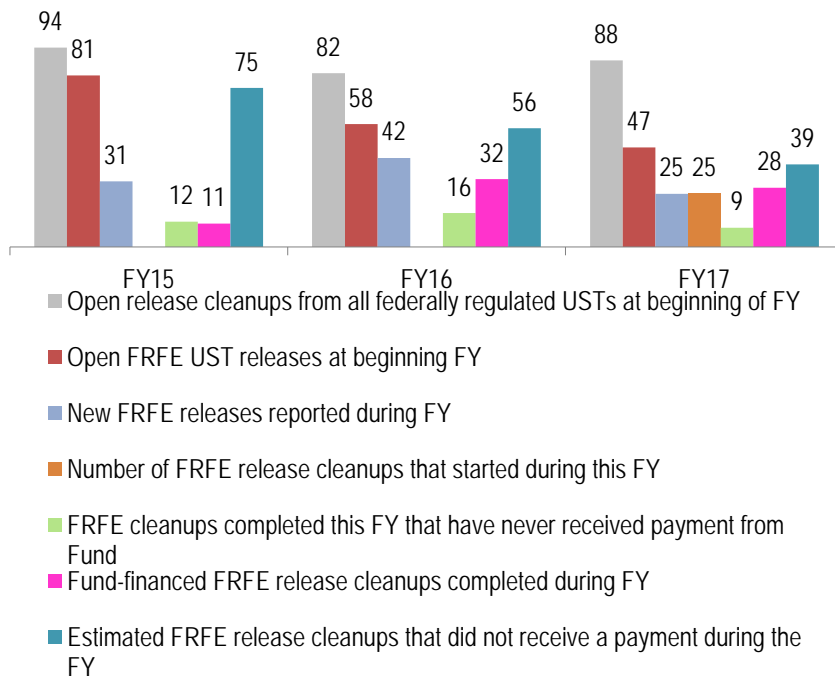
Appendix 1: Data and Charts from South Dakota State Fund

FY 2017 Soundness Workbook

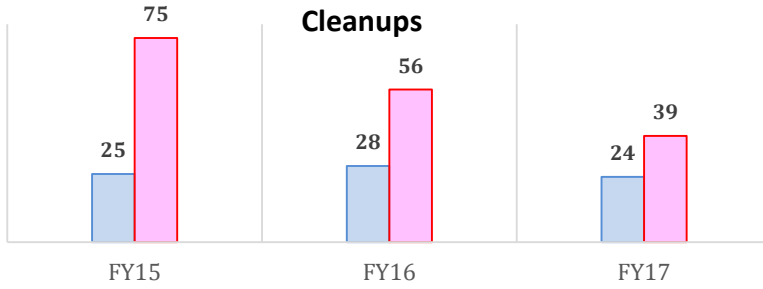
1. USTs Covered By The Fund



2. Fund's Share Of All Open FRFE UST Release Cleanups

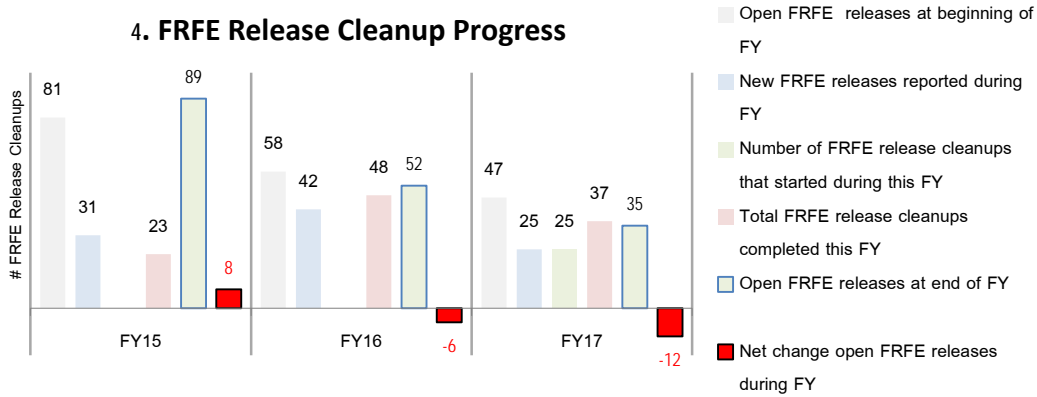


3. Paid & Estimated Unpaid FRFE UST Release Cleanups

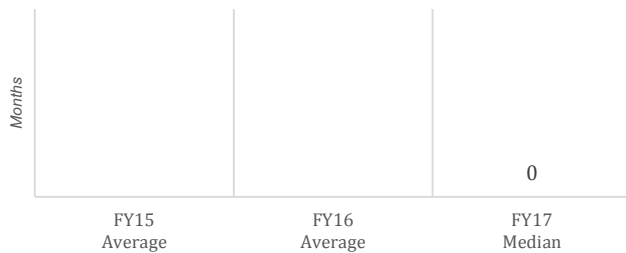


- Number open FRFE release cleanups that received payment from the fund during this FY
- State-refined estimate of unpaid FRFE cleanups

4. FRFE Release Cleanup Progress



5a. Time to Start New FRFE Cleanups Median months from release report to new remediation start



**5b. Time to Complete Ongoing
Cleanups**

*Median months from release
report to cleanup closure.*

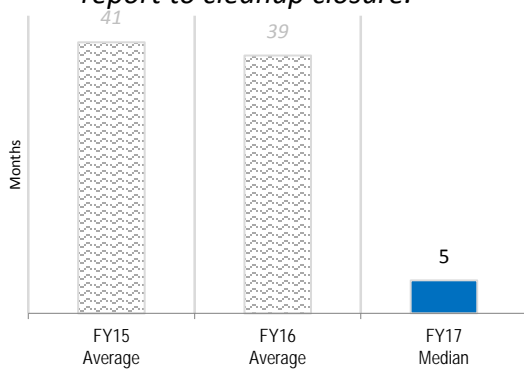
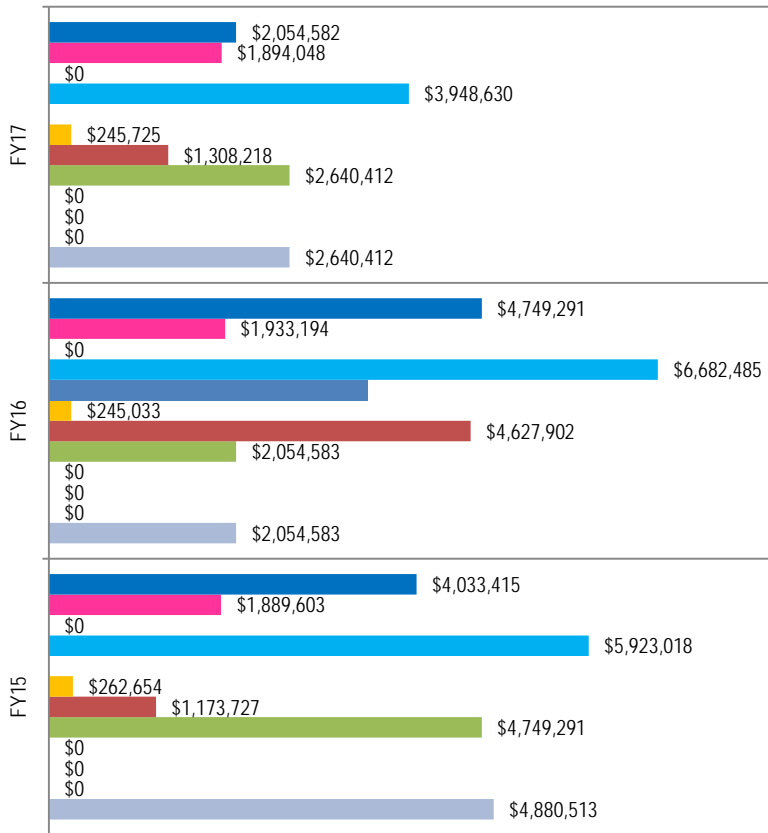
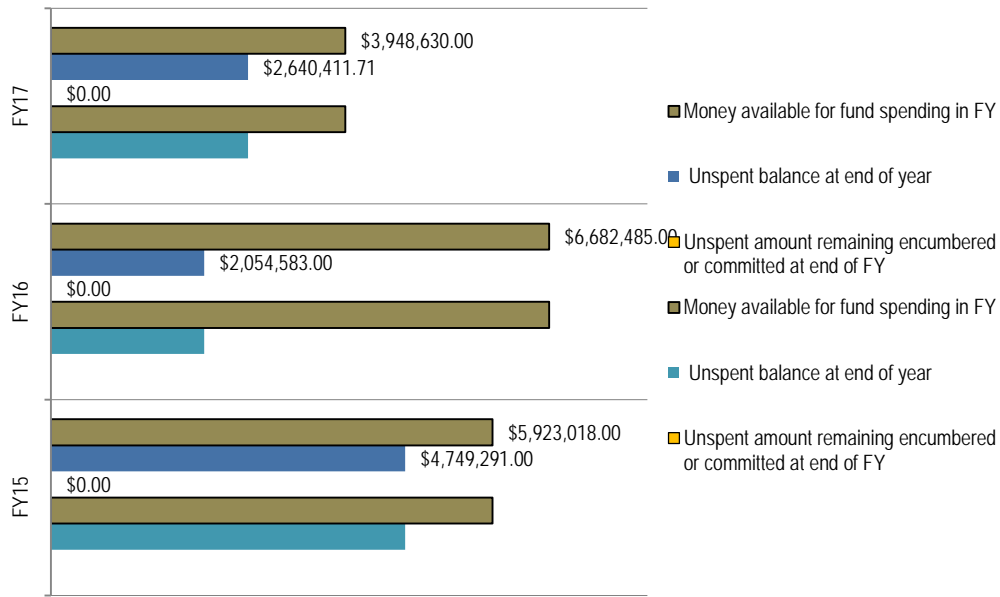


Chart 6. Balance, Income and Spending

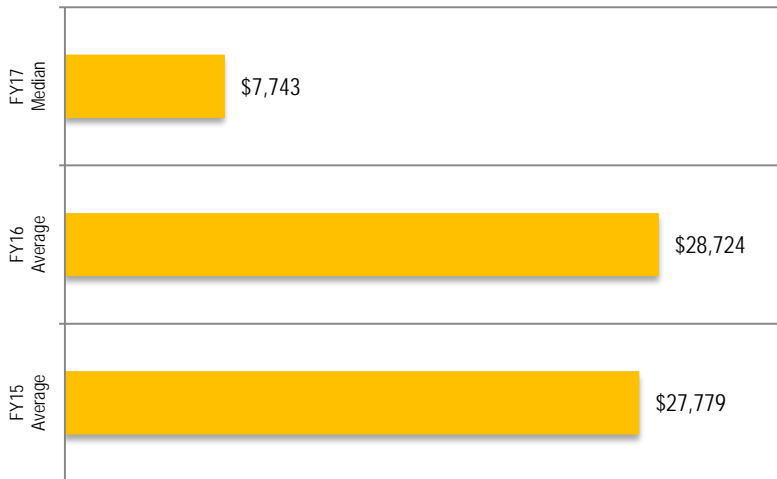


- Cash balance at beginning of year
- Total fund income
- Total dollar value of controls on fund spending during this FY
- Money available for fund spending in FY
- Transfers out of the fund during this FY
- FRFE cleanup reimbursements and direct payments to FRFE cleanup contractors
- Total spending
- 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

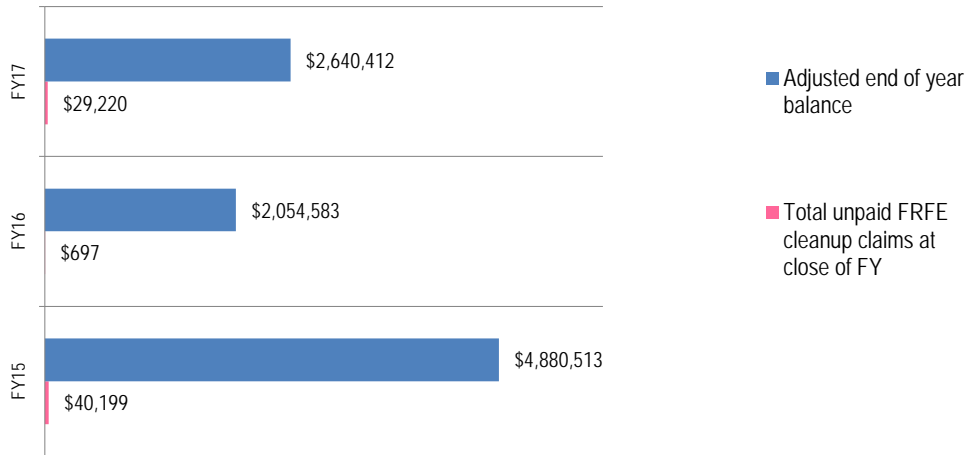
7. Money Available for Spending, Unspent Balance at EOY and Unspent Amount Remaining Encumbered at EOY



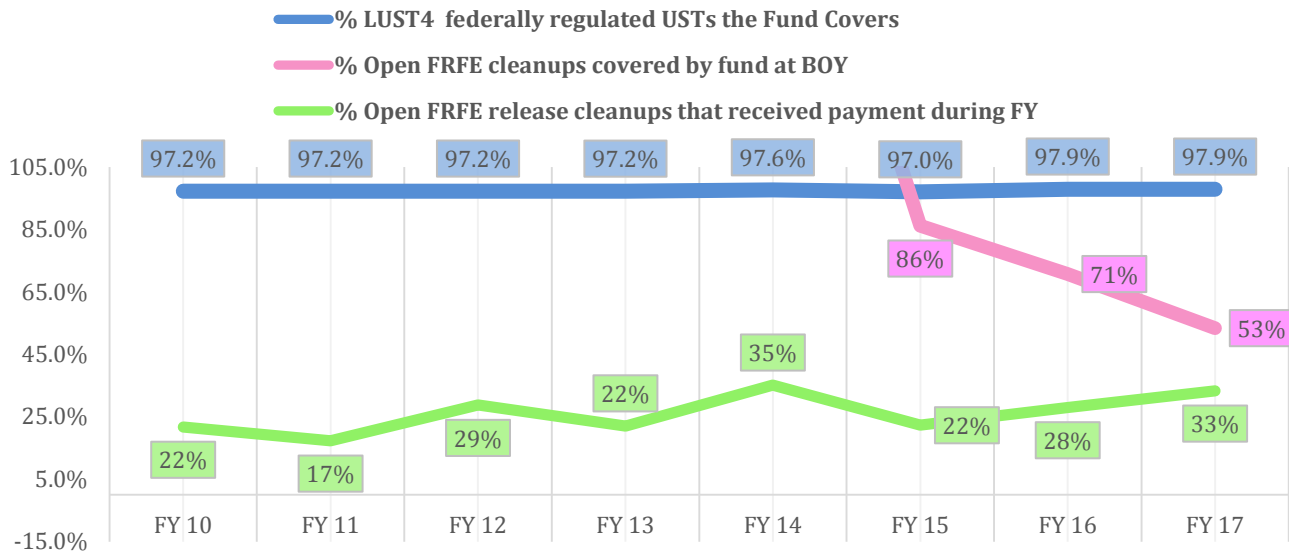
7a *Median* cost of fund-financed FRFE release cleanups completed this FY



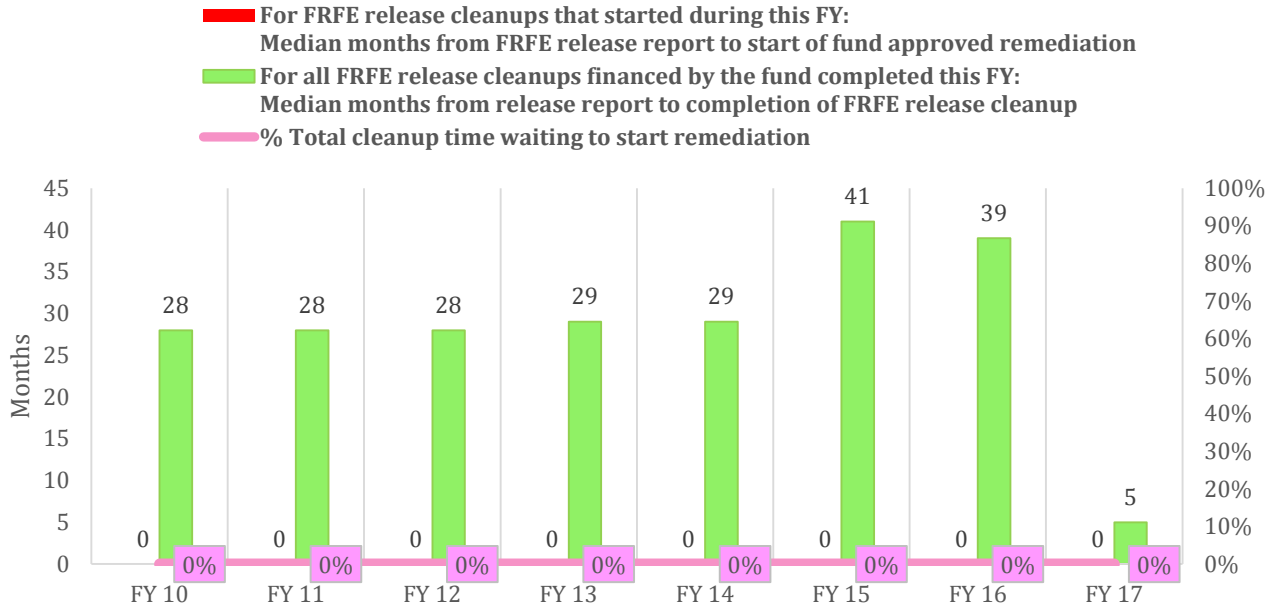
8. EOY Cash Balance And Unpaid Claims



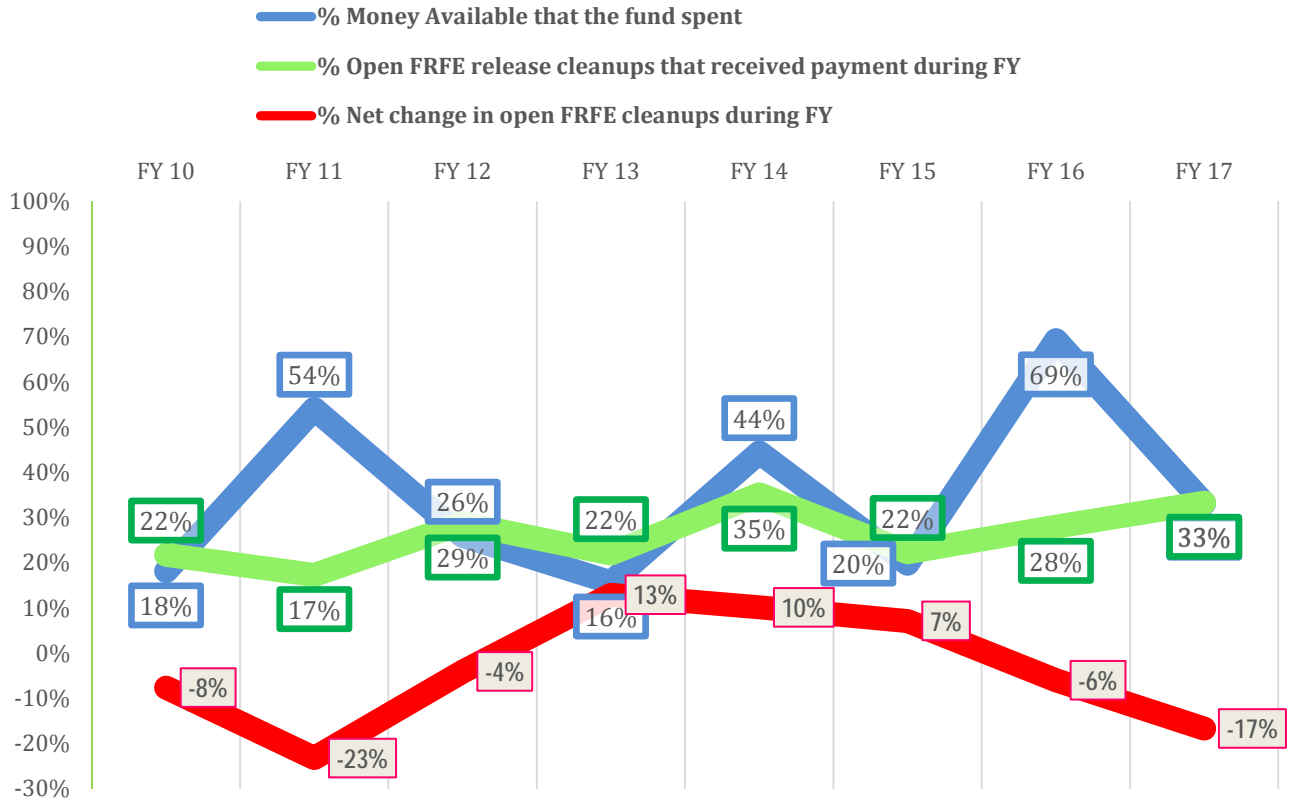
9. Share of USTs and Releases the Fund Covers



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



11. Backlog Reduction, Money Available and Spending



34A-13-48. Private insurance as risktaker--Annual report identifying potential companies. The board shall endeavor to integrate private insurance as the primary or secondary risktaker. 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.

Source: SL 1990, ch 292, § 31A.

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
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Curt Everson
SD Bankers Association
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Michelle Kleven
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204 N Euclid Ave
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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 7, 2018

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 13, 2018. 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 2019 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**

2017 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 56% of the nearly \$6.6 million spent by the PRCF on cleanups has been for petroleum releases at sites that are not required to demonstrate financial assurance. The Board also recommends that an actuarial study of the program liabilities be done.

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 2,000

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 14, 2017.

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 (PMMIC). 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 PMMIC 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. Pat Rounds with PMMIC also recommended to the Board that an actuarial study be conducted of the liabilities of the program to determine if current reserves and dedicated revenues are adequate to cover the known and anticipated losses. The actuarial study is an attempt to quantify the number of and potential costs associated with leaking tanks that have not yet been reported.

Discussion

Since its enactment in 1988, the PRCF has provided \$89 million for corrective action at more than 4,700 petroleum release sites 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 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, more than 56% of the nearly \$6.6 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.

SFY	Non-Regulated Tanks		Federally Regulated Tanks		Total
	Amount	%	Amount	%	
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
2017	\$550,546	68.8%	\$250,235	31.2%	\$800,781
Totals	\$ 3,718,599	56.5%	\$ 2,858,066	43.5%	\$ 6,576,665

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 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 the discovery of petroleum releases that are currently unknown.

In reviewing the letters from Federated Insurance and Petroleum Marketers Management Insurance Company, and considering testimony and discussion at its 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 its 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.



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PETROLEUM RELEASE FUND

November 21, 2018

Alan W. Bakeberg
Petroleum Release Compensation Fund
Joe Foss Building
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, Primary Source Insurance, and utilizing carriers such as Great American, Berkley and AIG. We also partner with brokers and their carriers 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 black ink, appearing to read "E. Lehrer". The signature is fluid and cursive, starting with a large "E" and ending with a long, sweeping tail.

Eric Lehrer
Agency Manager

EL/lwp