

## Minnesota Pollution Control Agency

### Proposed Amendments to Expedited Rules Relating to the Dry Cleaner Environmental Response and Reimbursement Account (Dry Cleaner Account Rules)

#### Memorandum Regarding Amendments to Chapter 7152

The purpose of this rulemaking is to amend the chapter 7152 Minnesota Dry Cleaner Reimbursement Account rules to ensure consistency and compliance with state statutes and rules by updating the reimbursement rates for consultant and contractor services for environmental response action costs. This expedited rulemaking is needed to adjust the maximum reimbursement rates in Minn. R. 7152.0500 and 7152.0600. The Minnesota Pollution Control Agency (MPCA) is proposing to adopt into rule the reimbursement rates that reflect the same recent reimbursement rate adjustments approved by the Petroleum Tank Release Compensation Board (Board).

The reimbursement rates are applied when the MPCA processes invoices submitted by owners and operators of Minnesota dry cleaning facilities. Invoices for work done July 1, 2022, or later, cannot be processed at the adjusted higher reimbursement rates until the chapter 7152 rules have been amended to reflect the new rates. A delay in reimbursement will result in economic hardship for operators of dry-cleaning facilities as the majority are small business owners.

#### I. Background

The Minnesota Legislature, working with the Minnesota Cleaners Association (the dry cleaner trade association) and the MPCA, established the Dry Cleaner Environmental Response and Reimbursement Account (Dry Cleaner Account) in 1995 (Minn. Stat. §§ 115B.47 to 115B.51). The law provides conditions supporting the application of that account and a means to reimburse owners and operators for the cost of cleanup of soil, groundwater and soil vapor contamination resulting from dry cleaning facilities. Under the Dry Cleaner Account, most dry-cleaning facilities that provided services to the general public may apply for reimbursement for their investigation and cleanup work.

In the 2016 legislative session, the MPCA and representatives of the Minnesota Cleaners Association cooperated to propose legislation authorizing the adoption of expedited rules to govern reimbursement from the Dry Cleaner Account. The Laws of Minnesota 2016, chapter 123, section 5, directed the MPCA Commissioner to conduct expedited rulemaking to adopt rules addressing reimbursement of eligible response action costs for owners or operators of dry-cleaning facilities.

#### ***Laws of Minnesota 2016, chapter 123, section 5. RULEMAKING; DRY CLEANER RESPONSE AND REIMBURSEMENT ACCOUNT.***

*(a) The commissioner of the Pollution Control Agency shall adopt rules using the expedited rulemaking process under Minnesota Statutes, section 14.389, including subdivision 5, to establish, with respect to Minnesota Statutes, section 115B.50, subdivision 2:*

- (1) what environmental response costs are to be considered reasonable costs and what costs are to be considered ineligible for reimbursement;*
- (2) appropriate application requirements for reimbursement; and*
- (3) a process to adjust payment reimbursement rates made for response actions.*

*(b) Rules adopted under this section:*

- (1) must be consistent with Minnesota Statutes, sections 115B.47 to 115B.51;*

- (2) *must be structured like rules governing applicable provisions of the petroleum tank response cleanup fund under Minnesota Rules, chapter 2890, as necessary to implement paragraph (a), clauses (1) to (3); and*
- (3) *must not reduce reimbursements as contained in Minnesota Rules, part 2890.0065, subpart 1, item C.*

In addition, Minn. Stat. § 115B.50, subdivision 4 provides the MPCA with the authority to make adjustments to the dollar amounts established in the rules through the expedited rule process.

**115B.50 RESPONSE ACTIONS.**

*Subd. 4. **Reimbursement adjustment rulemaking.** The commissioner may use the expedited rulemaking process under section 14.389 to adjust reimbursement dollar amounts contained in the rules established under subdivision 2.*

The MPCA adopted Expedited Permanent Rules Relating to Dry Cleaner Environmental Response and Reimbursement Account as published in the May 14, 2018, *State Register* (42 SR 1444). The rules address the legislative mandate of the 2016 Minnesota Session Law cited above; including the requirement that the rules be structured like the Petroleum Tank Release Cleanup Fund (Petrofund) under chapter 2890.

The Dry Cleaner Reimbursement Account rules at Minn. R. 7152.0900 require that when the Board makes adjustments to maximum charge dollar amounts under chapter 2890, the MPCA must use the expedited rulemaking process as authorized under Minn. Stat. § 115B.50, subdivision 4, to reflect the same adjustments in dollar amounts in Minn. R. 7152.0500 and 7152.0600. The Board increased the reimbursement rates by 10 percent, effective July 1, 2022, for all work performed after that date (see [Petrofund / Minnesota.gov \(mn.gov\)](https://mn.gov/petrofund/)).

**7152.0900 ADJUSTMENT OF DOLLAR AMOUNTS**

*A. When the Petroleum Tank Release Compensation Board makes adjustments to maximum charge dollar amounts according to chapter 2890 to reflect changes in the implicit price deflator for the gross domestic product, the commissioner must use the expedited rulemaking process in Minnesota Statutes, section [14.389](#), as authorized under Minnesota Statutes, section [115B.50, subdivision 4](#), to reflect the same adjustments in dollar amounts in parts [7152.0500](#) and [7152.0600](#).*

*B. If the Petroleum Tank Release Compensation Board does not make adjustments as required under chapter 2890, the commissioner must determine the adjustment rate using the process established in chapter 2890 and adjust the rates as required under item A.*

A process for the periodic adjustment of rates for inflation is established in the Petrofund rules. A periodic review of the implicit price deflator for gross domestic product, 1996 = 100, compiled by the United States Department of Commerce and implemented by the Petroleum Tank Release Compensation Board. Item A refers to the process established by the Petrofund rules and does not require that the Commissioner complete the same process of calculating inflation factors to determine when the rates must be adjusted. The rules require the MPCA to conduct expedited rulemaking to adjust rates whenever circumstances cause the rates established in the Petrofund rules to change. The MPCA believes this is an appropriate mechanism for responding to inflation that will be more efficient and understandable than trying to replicate the Petroleum Tank Release Compensation Board's rate adjustment process.

The rules reference the process for adjusting the rates only to the extent the rate changes reflect changes in the implicit price deflator for gross domestic product. If the Petroleum Tank Release

Compensation Board adjusts the rates for reasons other than inflation changes or for reasons specific to petroleum releases, the proposed rules do not require the commissioner to make corresponding rate changes to the Dry Cleaner Account.

The MPCA must conduct expedited rulemaking to adjust the rates established in the rules. The Petrofund rules are implemented through a Board that provides a public process for notification and discussion of rate changes. There is no corresponding Board for the implementation of the Dry Cleaner Account, so the rules provide a public forum before adopting rate changes. As stated above, the use of the expedited rulemaking process for this purpose is specifically authorized by Minn. Stat. § 115B.50, subdivision 4.

## II. Proposed Rule Amendments

The MPCA is proposing amendments to Minn. R. 7152.0500 and 7152.0600 with the purpose of complying with state statutes and rules governing the Dry Cleaner Reimbursement Account rules. These rule amendments update the maximum reimbursement rates for consultant and contractor services for environmental response action costs consistent with the chapter 2890 reimbursement rates. When the proposed rules are adopted, the reimbursement rates are effective retroactively from July 1, 2022.

The proposed rule amendments are not expected to result in additional costs to dry cleaner facilities or the state. The Dry Cleaner Account is funded by registration and solvent fees paid by drycleaner operators (Minn. Stat. § 115B.49, subdivision 4). Though the statute does not explicitly state that fees will not increase as a result of an increase in hourly rates for consulting services, the Dry Cleaner Account fees are adjusted annually to generate \$650,000 in income (Minn. Stat. § 115B.49, subdivision 4b). These fee adjustments are unrelated to consulting hourly rates. Therefore, these fees will not increase as a result of an increase in hourly rates for consulting services and no fiscal impact is expected with this rulemaking.

### PART 7152.0500 MAXIMUM HOURLY RATES

Change to part 7152.0500, item C, subitems (1) to (6)M

Part 7152.0500 establishes the maximum hourly rates for specific levels of consultant services. These are the maximum rates that will be reimbursed, even if a higher rate is agreed to in the contract or if a subsequent five percent increase exceeds the maximum rates. The proposed amendments revise the reimbursement rates in item C, subitems (1) to (6) as follows indicated by strikeout and underline text.

Part 7152.0500, item C

*A. After the applicant accepts a consultant's or contractor's written proposal for services at the response-action site, hourly rate charges for subsequent services performed at the site by that consultant or contractor that exceed the hourly rates listed in the written proposal for services at the response-action site are prima facie unreasonable.*

*B. Notwithstanding item A, hourly rate charges that exceed by a maximum of five percent per year the hourly rates listed in the written proposal for services at the response-action site are not prima facie unreasonable when at least one year has passed since the applicant approved the proposal in writing.*

*C. Notwithstanding items A and B, hourly rate charges for consultant services in excess of the following are prima facie unreasonable:*

- (1) senior-level professional at ~~\$173~~ \$190 per hour;*
- (2) midlevel professional at ~~\$128~~ \$141 per hour;*
- (3) entry-level professional at ~~\$94~~ \$103 per hour;*

- (4) *field technician at ~~\$87~~\$96 per hour;*
- (5) *draftsperson at ~~\$74~~\$81 per hour; and*
- (6) *word processor at ~~\$53~~\$58 per hour.*

These revisions are needed to update the reimbursement rates to reflect the same adjustments in dollar amounts provided for in the Petrofund rules. As explained above in Section I, the Petrofund rules at Minn. R.2890.1900 and 2890.3900 include provisions that allow for periodic adjustments of the maximum costs for consultant and contractor services to allow for economic inflation or deflation. Item C establishes that regardless of what is agreed on or what annual increase is allowed, no more than the maximum rates for consultant services will be reimbursed. With the revisions to item C, subitems (1) to (6), the proposed amended rates are the same as provided in the Petrofund rules, effective July 1, 2022.

#### **PART 7152.0600 MAXIMUM TRAVEL AND PER DIEM CHARGES.**

Change to part 7152.0600, item C

Part 7152.0600 establishes the maximum travel and per diem charges for consultant services. This is the maximum rate that will be reimbursed to both consultants and contractors for per diem expenses. The proposed amendments revise the reimbursement rate in item C as follows indicated by strikeout and underline text.

Part 7152.0600, item C

*The cost for travel time, vehicle mileage for consultant services, or per diem is prima facie unreasonable when the cost exceeds the amount specified in the proposal for consultant services or contractor services or the maximum cost specified in items A to C, whichever is less:*

*A. travel time has a maximum cost of the maximum hourly rate charge specified for the traveler's level of professional expertise required for the required task to be performed;*

*B. for consultant services, vehicle mileage has a maximum cost of the standard mileage rate for business established by the Internal Revenue Service; and*

*C. per diem has a maximum cost of ~~\$180~~\$198 per day.*

**EFFECTIVE DATE.** *The amendments to Minnesota Rules, parts 7152.0500 and 7152.0600, are effective retroactively from July 1, 2022.*

This revision is needed to update the reimbursement rate to reflect the same adjustment in dollar amounts provided for in the Petrofund rules. As explained above in Section I, the Petrofund rules at Minn. R.2890.1900 and 2890.3900 include provisions that allow for periodic adjustments of the maximum costs for consultant and contractor services to allow for economic inflation or deflation. With the revision to item C, the proposed amended rate is the same as provided in the Petrofund rules, effective July 1, 2022.

The proposed rules also identify the date the reimbursement rates become effective retroactively. As stated above, the Board increased the reimbursement rates by 10 percent, effective July 1, 2022, for all work performed after that date. The MPCA proposes that the July 1, 2022, date reflect the same date the Board identified as the effective date for the increased reimbursement rates.

### **III. Conclusion**

As discussed in this memorandum, the MPCA believes that the proposed rule amendments are consistent with the requirements of Minn. Stat. § 115B.50, subdivision 4; and meet the intent of Laws of Minnesota 2016, chapter 123, section 5, to adopt rules to adjust the maximum costs for consultant and contractor services.