

Petroleum Tank Release Cleanup Fund

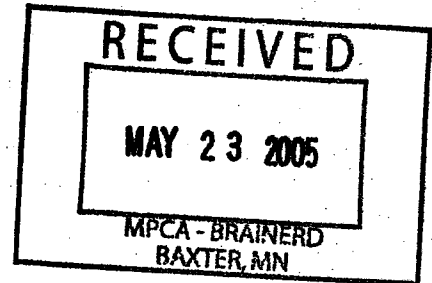
Memorandum

May 19, 2005

To: Don Milless
Pollution Control Agency

From: Felix McGovern 
Petrofund Market Examiner

Re: Leak site #89, Wally's Oil, Wilton, Minnesota



Estimated Cost to Complete Site Closure: \$500,000*
Estimated Reimbursement by the Petrofund: \$375,000**
Requested Cost Recovery from Responsible Party: \$125,000**

I have reviewed the statement of financial condition of Wally's Oil Company, Inc. and Wally's Convenience Store, Inc. as of 12/31/02, and the related statement of income and expenses, retained earnings and cash flow for the year ending 12/31/02. I also reviewed the federal income tax returns of Wally's Oil Company, Inc. for the years 2002, 2001, 2000, 1999, and 1998. Wally's Convenience Store, Inc., because it is an S-corporation, does not file a corporate tax return.

Based on the above financial statements, Wally's Oil Company, Inc. has sufficient net assets to fund payment of the estimated **\$125,000** non-cooperation penalty requested by the MPCA. Wally's Convenience Store, Inc. does not have sufficient net assets or income to fund any payment.

This Recommendation Includes the Following Findings:

- ❖ The leak site is the location of a wholesale and retail petroleum business with petroleum storage tanks that were the source of petroleum contamination at the leak site.
- ❖ The wholesale business is operated by Wally's Oil Company, Inc. and the retail business is operated by Wally's Convenience Store, Inc.
- ❖ The current petroleum contamination at the leak site is the result of two or more releases of petroleum. The initial petroleum release was discovered on November 10, 1986.
- ❖ As the owner or operator of petroleum tanks at the leak site, **Wally's Oil Company, Inc. and Wally's Convenience Store, Inc.** are a responsible party under Minn. Stat. §115C.021, Subd. 1, and are eligible for reimbursement by the Petrofund, under Minn. Stat. §115C.09, Subd. 3, of the eligible petroleum cleanup costs incurred.

Petrofund Reimbursements to Wally's Oil Company, Inc.

MPCA Leak site #89*
Responsible Party: Wally's Oil Company, Inc.
Highway 2 & County Road 14, Wilton, MN

	\$17,137.77	\$12,340.36
	49,795.60	35,965.76
	15,960.92	11,463.25
	12,482.78	8,520.37
	24,542.95	18,197.29
	48,123.92	34,741.28
	32,740.93	29,718.30
	12,344.92	11,642.52
	34,801.96	34,632.67
	1,886.27	796.75
	25,152.93	22,442.83
	39,581.96	32,450.85
	40,982.83	37,643.98
	229,698.99	222,826.38
	89,146.68	81,946.03
	60,418.66	47,929.41
	30,687.05	28,813.13
	76,329.10	70,371.80
	17,491.32	0.00
	94,538.29	84,976.49

*Leak site #89 was reimbursed at the rate of 100% of eligible costs because a residence is located on the leak site. An applicant can continue at the 100% reimbursement rate, as provided by Minnesota Statute §115C.09, Subd. 3(a).

In July 2003, the MPCA took over (from Wally's Oil Company, Inc.) the site cleanup responsibility; consequently the MPCA is eligible for the reimbursement of its cleanup costs incurred.

**Beginning on 5/10/01, the reimbursement was reduced by a 25% non-cooperation penalty requested by the MPCA to be imposed on Wally's Oil Company, Inc. The total non-cooperation penalty imposed for these six reimbursements is \$40,409.42.

The MPCA has requested that the responsible party continue to pay for a portion of the future cleanup costs by applying the 25% non-cooperation penalty to the future estimated cost of the cleanup.

Analysis of Funds Available

A. Business Operating Income

Neither Wally's Oil Company, Inc. nor Wally's Convenience Store, Inc. generate a gross margin that is sufficient to provide funding for all ordinary and necessary business expenses and the \$125,000 share of the estimated future petroleum cleanup cost, due to the imposition of a 25% non-cooperation payment penalty.

1. For the five years 1998 through 2002 Wally's Oil Company, Inc. had a cumulative net operating loss before taxes of (\$4,543). In addition, for the years 1991, 1992, 1994, 1995 and 1997, the company has a total net operating loss carryover of (\$293,683) that may be used to offset future taxable income if any.
2. Wally's Convenience Store, Inc. incurred a net loss before taxes of (\$31,230) for the year ending 12/31/02. The company has a negative retained earnings balance of (\$249,940) resulting from net losses incurred in previous years.

B. Business Assets

1. As of 12/31/02, Wally's Oil Company, Inc. has sufficient net assets (total assets less all outstanding liabilities, and excluding stockholder equity) to fund 25% of the \$500,000 estimated cost to complete closure of the site.
2. As of 12/31/02, Wally's Convenience Store, Inc. does not have sufficient net assets to fund any amount of the projected cost of the cleanup. In addition, because of its accumulated losses, negative working capital, inadequate capitalization and earnings, there is substantial doubt that the company can continue operating as a going concern.

Additional Findings and Recommendations:

- ❖ This analysis and recommendation is based on financial statement disclosures as of 12/31/02 and for the year ending 12/31/02, which may not be a fair representation of the current financial condition and operations of Wally's Oil Company, Inc. and Wally's Convenience Store, Inc.
- ❖ Wally's Oil Company, Inc. does not have sufficient cash assets to pay cost recovery. Therefore, the company's ability to pay may depend on an orderly liquidation of current assets and fixed assets over time, or on the company's ability to obtain additional financing.
- ❖ It is recommended that Wally's Oil Company, Inc. be notified of its right to appeal the cost recovery payment penalty in accordance with Minn. Stat. §115C.12, Subd. 1.

If you have any questions about this recommendation or analysis please contact me at the address above, at (651) 297-4017, or via e-mail at felix.mcgovern@state.mn.us.

cc: Jim McCann, Minnesota Pollution Control Agency
Arlene Furuseth, Minnesota Pollution Control Agency
James Pearson, Executive Director, Petrofund