

STATE OF MINNESOTA

Department of Public Safety - Division of Emergency Management
444 Cedar St. Suite 223 St. Paul, MN 55101

MINNESOTA DUTY OFFICER

Report #: 70937 Report Date: 5/9/2005 Report Time: 7:56 DO#: 50

CALLER INFORMATION

Contact: Charles Bisek Company: American Engineering - St. Paul
Address: 550 Cleveland Ave. North

City: St. Paul State: MN Zip: 55114-

Phone: (651) 659-1310 Ext: Alt phone: Ext:

Have local police and/or fire been notified?

ENTERED MAY 2 0 2005

NARRATIVE

Caller reporting results of phase II done on property. Caller also reports a private well exists that was used in the production process on property (former 7up bottling). Soil test results: DRO 280 ml/kg, Arsenic 15 ml/kg

INCIDENT REPORT: TANK**RESPONSIBLE PARTY/PROPERTY OWNER**

Name: John Bell

Company: Klodt Inc.

Address: 50 Groveland Terrace Suite A

City: Minneapolis

Phone: (612) 374-8282 Ext

Alt. phone: Ext

State MN Zip 55403-

City: MINNEAPOLIS

County HENNEPIN

Zip: 55406

SITE LOCATION

Name: Former Tiro Industries

Address: 3612 E 44th Street

SITE INFORMATION

Discovery date: 2/4/2005 Discovery time: 12:00

Previously reported site? YES

Leak #: 5538

TANK INFORMATION

Number/Size of Tank(s)

Tank Contents

Age of Tank(s)

Type of Tank

Native soil type: Granular

Surface water nearby? No

Cause of Release Discovery? Phase I or II

Site water source: Municipal

Contaminated soil excavated? No

Able to dig out contamination?

Ground water encountered? No

Depth to ground water: 25-30 feet

Free product found? No

Stained soils? No

Petroleum odors? Yes

Highest vapor reading: 24.5 ppm

Analytical results: see narrative

If this incident involves an A.S.T. Is there secondary containment around the tank?

If not tank related, specify Release Source and Product Type: Minor spills from past production processes on property ~ ASTS in 8100

MPCA Project Manager: JMC

Leak Number: 16076

ANY QUESTIONS - PLEASE CONTACT THE MN DUTY OFFICER AT 651-649-5451 OR 800-422-0798

#14551 removed 10k UST gas '90
temp closed 10k other UST
(alcohol)

- Chuck stated on 5/17 - also had ASTS
inside the bldg

- Proposing residential development → DRAP



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, MN 55155-4194 | 651-296-6300 | 800-675-3843 | 651-282-5332 TTY | www.pca.state.mn.us

June 5, 2007

Mr. John Bell
KK – Five Corporation
50 Groveland Terrace, Suite A
Minneapolis, MN 55403

RE: Petroleum Tank Release Site File Closure
Site: Former Tiro Industries / Hiawatha Flats, 3612 East 44th Street, Minneapolis
Site ID#: LEAK16076

Dear Mr. Bell:

We are pleased to let you know that the Minnesota Pollution Control Agency (MPCA) Petroleum Remediation Program (PRP) staff has determined that your investigation and/or cleanup has adequately addressed the petroleum tank release at the site listed above. Based on the information provided, the PRP staff has closed the release site file.

Closure of the file means that the PRP staff does not require any additional investigation and/or cleanup work at this time or in the foreseeable future. Please be aware that file closure does not necessarily mean that all petroleum contamination has been removed from this site. However, the PRP staff has concluded that any remaining contamination, if present, does not appear to pose a threat to public health or the environment.

The MPCA reserves the right to reopen this file and to require additional investigation and/or cleanup work if new information or changing regulatory requirements make additional work necessary. If you or other parties discover additional contamination (either petroleum or non-petroleum) that was not previously reported to the MPCA, Minnesota law requires that the MPCA be immediately notified.

You should understand that this letter does not release any party from liability for the petroleum contamination under Minn. Stat. ch. 115C (2004) or any other applicable state or federal law. In addition, this letter does not release any party from liability for non-petroleum contamination, if present, under Minn. Stat. ch. 115B (2002), the Minnesota Superfund Law.

Because you performed the requested work, the state may reimburse you for a major portion of your costs. The Petroleum Tank Release Cleanup Act establishes a fund, which may provide partial reimbursement for petroleum tank release cleanup costs. This fund is administered by the Department of Commerce Petro Board. Specific eligibility rules are available from the Petro Board at 651/297-1119 or 651/297-4203.

Mr. John Bell
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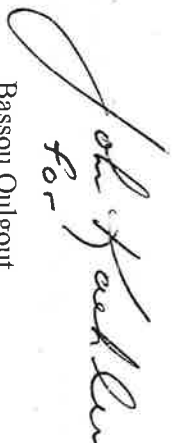
If future development of the site or the surrounding area is planned, it should be assumed that petroleum contamination is present. Property with petroleum contamination to soil or ground water may cause on-site vapor risks to future occupants. The MPCA can assist you with environmental risk and development plan review. The Petroleum Brownfields Program will review and approve plans for property development. If petroleum contamination is encountered during future development work, the MPCA staff should be notified immediately.

For specific information regarding petroleum contamination that may remain at this leak site, please call the Petroleum Remediation File Request Program at 651/297-8499. Thank you for your response to this petroleum tank release and for your cooperation with the MPCA to protect public health and the environment. If you have any questions regarding this letter, please call Mark Koplitz at 651/296-7999 or site hydrogeologist Bassou Oulgout at 651/297-8597.

Sincerely,



Mark Koplitz
Project Leader
Petroleum Brownfields Program
Petroleum and Closed Landfill Section
Remediation Division



Bassou Oulgout
Hydrogeologist
Petroleum Brownfields Program
Petroleum and Closed Landfill Section
Remediation Division

MK:tf

cc: Josh Goplin, City Environmental, Minneapolis
Bonnie Blekachek, Fire Chief, Minneapolis
Dave Jaeger, Hennepin County Solid Waste Officer
Chuck Bisek, American Engineering Testing, Inc., St. Paul
Minnesota Department of Commerce Petrofund Staff



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, MN 55155-4194 | 651-296-6300 | 800-675-3843 | 651-282-5332 TTY | www.pca.state.mn.us

May 25, 2007

Mr. John Bell
KK - Five Corporation
50 Groveland Terrace, Suite A
Minneapolis, MN 55403

RE: Completion of Voluntary Response Actions for Petroleum Contamination
Site: Former Tiro Industries / Hiawatha Flats, 3612 East 44th Street, Minneapolis
Site ID#: LEAK16076

Dear Mr. Bell:

The Minnesota Pollution Control Agency (MPCA) Petroleum Brownfields Program (PBP) staff has reviewed the following documents describing your management of petroleum impacted soils and/or groundwater as part of voluntary cleanup work completed at the above-referenced site:

- "Response Action Implementation Report" dated April 17, 2007, prepared by American Engineering Testing, Inc.

Based on the information provided, MPCA staff have concluded that soils and/or groundwater were managed as proposed in the development plan approved by MPCA PBP staff. Thank you for your participation in the Petroleum Brownfields Program. If you have any questions regarding this letter, please call me at 651/296-7999.

Sincerely,

for
Sharon Decker

Mark Koplitz
Project Leader
Petroleum Remediation Program
Petroleum and Landfill Remediation Section
Remediation Division

Bassou Oulgout

Bassou Oulgout
Hydrogeologist
Petroleum Remediation Program
Petroleum and Landfill Remediation Section
Remediation Division

MEK:BO:tf

cc: Chuck Bisek, American Engineering Testing, Inc., St. Paul



Minnesota Pollution Control Agency

April 12, 2006

Mr. John Bell
KK – Five Corporation
50 Groveland Terrace, Suite A
Minneapolis, MN 55403

RE: Approval of Voluntary Response Actions for Petroleum Contamination
Site: Former Tiro Industries / Hiawatha Flats, 3612 East 44th Street, Minneapolis
Site ID#: LEAK16076

Dear Mr. Bell:

The Minnesota Pollution Control Agency (MPCA) Petroleum Brownfields Program staff has reviewed the following documents regarding your intent to manage petroleum contaminated soils and/or ground water at the above-referenced site:

- Response Action/Development Response Action Plan” dated March 24, 2006, prepared by American Engineering Testing, Inc.
- “Phase I Environmental Site Assessment” dated January 19, 2005, prepared by American Engineering Testing, Inc.
- “Phase II Environmental Site Assessment” dated February 4, 2005, prepared by American Engineering Testing, Inc.
- “Phase II Environmental Site Assessment” dated March 25, 2005, prepared by American Engineering Testing, Inc.
- “Supplemental Report of Phase II Environmental Site Assessment” dated April 27, 2005, prepared by American Engineering Testing.

Based on the information provided, the MPCA staff are approving the above-referenced plan with the following modifications listed.

1. Petroleum contaminated soils encountered at the site, at or greater than 200 parts per million (PPM) (PID), should be excavated and properly managed at an MPCA approved off-site treatment/disposal facility.
2. Petroleum contaminated soils encountered at the site, less than 200 PPM (PID) may be used as controlled fill and **thinspread** under newly constructed roadways and parking surfaces.
3. Petroleum contaminated soils may not be used as on-site fill material.

Mr. John Bell
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4. Petroleum contaminated soils at or greater than 10 PPM (PID) encountered during the installation of underground utilities should be removed and properly managed as part of the development plan. If PID readings are above 10 PPM, a vapor barrier should be installed.
5. Petroleum contaminated soils that exhibit PID headspace readings in "green space" areas should be removed and properly managed. A minimum four-foot buffer of clean soil should exist in all "green space" areas, along with a vegetative cover.
6. Appropriate permits for the discharge and treatment of petroleum contaminated ground water should be acquired, if necessary.
7. Please define the extent of petroleum contamination following Petroleum Remediation Program guidance. Please refer to guidance document 4-02, "Potential Receptor Surveys and Risk Evaluation Procedures at Petroleum Release Sites."
8. Follow-up soil sampling should be conducted, upon the completion of petroleum contaminated soil excavation.

Approval assumes that an implementation report will be provided to the MPCA summarizing the voluntary cleanup work once completed. If subsequently obtained information indicates that the proposed activities are inappropriate or inadequate, the MPCA may request modifications in the proposed work.

This letter does not apply to other types of contamination if present at the site. Approval of this plan does not suggest that any of the costs incurred will be eligible for reimbursement from the PetroBoard.

If you have any questions regarding this letter, please call me at 651/296-7999.

Sincerely,



Mark Koplitz
Project Leader
Petroleum Remediation Program
Petroleum and Closed Landfill Section
Remediation Division

MEK:tf

cc: Chuck Bisek, American Engineering Testing, St. Paul



Minnesota Pollution Control Agency

April 12, 2006

Mr. John Bell
KK – Five Corporation
50 Groveland Terrace, Suite A
Minneapolis, MN 55403

RE: Petroleum Storage Tank Release Liability
Site: Former Tiro Industries / Hiawatha Flats, 3612 East 44th Street, Minneapolis
Site ID#: LEAK16076

Dear Mr. Bell:

Under Minn. Stat. § 115C.021 (2004), the general rule is that a person is "responsible" for a release from a tank if that person owned or operated the tank during or after the time of the release. As the Minnesota Pollution Control Agency (MPCA) interprets this rule, if a person comes into possession of property after the tanks have been removed that person is not a "responsible person" and cannot be ordered to take corrective action under Minn. Stat. Ch. 115C (2004).

Liability is further limited for lenders. Minn. Stat. § 115C.021, subd. 4 (2004) provides that mortgagees that foreclose or receive a deed in lieu of foreclosure may not be responsible persons even if the tanks are present, provided they do not operate the tanks or aggravate a release. However, the definition of "owner" implies that a mortgagee that forecloses on property with tanks may be considered a responsible person if the mortgagee operates the tanks or fails to complete the cleanup as a "volunteer." See Minn. Stat. § 115C.02, subd. 8 (2004).

Chapter 115C created a fund that can be used by responsible persons and "volunteers" to help fund the cost of corrective action (the Petroleum Tank Release Cleanup Account or Petrofund). A volunteer is a person who has legal or equitable title to the contaminated property (tank release contaminated property) but who is not a responsible person [Minn. Stat. § 115C.09, subd. 3b (2004)]. A responsible person or a volunteer who takes corrective action can receive reimbursement for 90 percent of corrective action costs up to \$1,000,000. As a result, it is fair to say that, unless there are compliance or cooperation issues, the liability of a responsible person, volunteer, or a lender will usually be limited to 10 percent of the costs of cleanup. Some costs are ineligible, and certain cost control requirements must be complied with. See Minn. R. ch. 2890 (rules of the Petroleum Tank Release Compensation Board or Petro Board). The Petroleum Tank Release Cleanup Account is continually funded. See Minn. Stat. § 115C.08, subd. 2 (2004).

Mr. John Bell

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April 12, 2006

This letter represents the views of the MPCCA and is based upon information disclosed to the MPCCA as of the date hereof. Depending on your circumstances, it may or may not be construed as releasing any person from liability under state or federal laws. If you have questions concerning your particular situation, the MPCCA recommends that you discuss your concerns with your legal counsel.

If you have any questions pertaining to this letter please call me at 651/296-7999.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Koplitz', written in a cursive style.

Mark Koplitz
Project Leader
Petroleum Remediation Program
Petroleum and Closed Landfill Section
Remediation Division

MEK:tf

cc: Chuck Bisek, American Engineering Testing, St. Paul



Minnesota Pollution Control Agency

May 31, 2005

Mr. John Bell
Klodt Inc.
50 Groveland Terrace, Suite A
Minneapolis, MN 55403

RE: Storage Tank Release Investigation and Corrective Action
Site: Former Tiro Industries, 3612 East 44th Street, Minneapolis, Hennepin, 55406
Site ID#: LEAK00016076

Dear Mr. Bell:

Notice of Release

The Minnesota Pollution Control Agency (MPCA) has been informed that a release has occurred or contamination has been encountered from storage tanks and/or storage tank facilities that you own and/or operate. The MPCA appreciates your timely notification so this site can be handled in an efficient manner.

Legal Obligations

Federal and state laws require that persons legally responsible for storage tank releases notify the MPCA of the release and/or discovery of contamination, investigate and, if necessary, clean up the release(s)/contamination. A person is considered legally responsible for a petroleum tank release if the person owned or operated the tank either during or after the release, unless specifically exempted under the law. For releases of other substances, a person is considered legally responsible if the substance discharged was under the control of the person at the time of the discharge or release or if the person was an owner or operator of the storage tanks and/or tank facility at the time the release occurred. If you believe that you are not legally responsible for this storage tank facility release, please contact the project manager listed below.

Request to Take Corrective Action

The MPCA requests that you take steps to investigate and, if necessary, clean up the release(s)/contamination in accordance with the enclosed MPCA guidance documents. The site investigation must fully define the extent and magnitude of the soil and/or ground water contamination caused by the release(s)/contamination. For petroleum release sites, the MPCA has guidance documents that will help you or your consultant properly investigate the release and report the results to the MPCA. Unless your site is considered "high priority" (see below), you must submit a report to this office which details the results of the investigation or concludes that excavation was sufficient to clean up the release within 10 months of the date of this letter. The MPCA reserves the right to reject proposed corrective actions if the requirements of the site investigation have not been fulfilled. Refer to the following web site for related guidance documents and information, http://www.pca.state.mn.us/programs/just_p.html. For sites contaminated by pollutants other than petroleum, the MPCA requests that you or your consultant contact the MPCA project manager listed to discuss the investigation and reporting timeline that will be required for your site.

The MPCA considers sites with "free product" (free-floating petroleum) that have affected or that threaten to affect drinking water supplies, sites where pollutants are being released to surface waters such as lakes or wetlands, sites where petroleum or other vapors have been detected within structures or that pose fire or explosion hazards, to be high priority for staff review. If one or more of these situations apply to your petroleum or non-petroleum facility, an Investigation Report Form (refer to guidance documents) must be submitted within 90 days. The MPCA reserves the right to reject proposed corrective actions if the requirements of the site investigation have not been fulfilled. In addition, if you know or discover that there is free product in a well, excavation, or borehole, you must notify the MPCA within 24 hours and IMMEDIATELY begin interim free product recovery (refer to guidance documents). If you have any question as to whether your site is high priority, please contact the MPCA project manager listed below.

Please review your insurance plan and contact your insurance carrier immediately after receiving this letter. Your insurance may cover this release. However, your insurance coverage may be affected by how quickly you notify your carrier.

Mr. John Bell
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Reimbursement for petroleum sites:

In 1987, the legislature established the Petroleum Tank Release Compensation Fund (Petrofund) to reimburse some responsible persons and volunteers (property owners not responsible for releases) who take corrective action for a portion of their costs. The Petrofund is administered by the Petroleum Tank Release Compensation Board (Petro Board), which is part of the Minnesota Department of Commerce. If the release at your site is a petroleum release, the MPCCA encourages you to learn more about the Petrofund reimbursement program by contacting Petrofund staff at 651/215-1775 or 1/800-638-0418 (in greater Minnesota only), or by reviewing the information that is available at the following website, http://www.pca.state.mn.us/programs/lust_p.html. Because there are rules governing eligible costs of cleanup, the MPCCA strongly encourages you to familiarize yourself with the enclosed proposal and invoice forms and the other program requirements in order to maximize the available reimbursement. Please note that final decisions regarding the amount of reimbursement are made by the Petro Board, not the MPCCA.

If you have not already done so, the MPCCA recommends that you hire a qualified environmental consulting firm to help you investigate and clean up the contamination on your site. To be qualified, the consultant should have experience in performing investigations of contaminated sites and in developing and implementing corrective actions. For petroleum investigations, the consultant must be registered with the Petro Board if you wish to have your costs considered for reimbursement. A list of registered contractors is available from the Petrofund staff. Please note that, under the Petro Board's rules, (see Minn. R. ch. 2890), you must solicit a minimum of two written competitive consultant proposals on a form prescribed by the Petro Board to incur costs eligible for reimbursement, and a minimum of two written competitive contractor bids must also be obtained for each contractor service. Again, the MPCCA strongly encourages you to contact Petrofund staff for answers to all of your questions about bidding and the other Petrofund reimbursement program requirements.

Required Response

The MPCCA requires that you respond to this letter within 30 days to indicate whether you intend to proceed with the requested work. If you do not respond within this time frame, the MPCCA will assume that you do not intend to comply, in which case the MPCCA Commissioner may issue you an enforceable order that will require you to take corrective action. Failure to cooperate with the MPCCA in a timely manner may result in reduced reimbursement from the Petro Board, see Minn. R. ch. 2890. If you do not cooperate, the MPCCA has the option of taking the corrective actions on your behalf and recovering its costs from you.

If you have any questions concerning this letter or need additional information, please contact me at 651-297-8318. Please reference the above LEAK # in all correspondence. If you are calling long distance, you may reach the MPCCA by calling 1-800/657-3864.

Sincerely,


Jim McCann

Project Leader
Petroleum and Landfill Remediation Section
Remediation Division

JMC:ais

Enclosures

cc: Josh Gopin, Minneapolis Pollution Control Division
Denise Bryn, Minneapolis Hazardous Waste Inspector
Dave Jaeger, Hennepin County Solid Waste Officer
Charles Bisek, American Engineering, St. Paul