Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 151st MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD
February 19, 2014

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Stephen Hightower
Cheryl Hilvert
Bruce Kranz
Don Kuchta

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce
Chris Geyer, representing Interim Director Craig Butler, Ohio Environmental Protection Agency
Bob Field, representing Josh Mandel, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Dave Gram	Environmental Claims Analyst, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Britanya Poe	Office Assistant, PUSTRCB
Carla Dowling-Fitzpatrick	Assistant Attorney General
Will Latt	Speedway, LLC
Ryan Sabol	Speedway, LLC
Dan Adams	Cardno ATC
Nick Campanella	Hylant Group, Inc.

Minutes submitted by:

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Jonathan Maneval
Administrative Coordinator

Call to Order:
Immediately following the 10:00 a.m. public hearing regarding the Board's proposed rule amendment, Chairman Rocco convened the one hundred fifty-first meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, February 19, 2014.

The following members were in attendance: Jim Rocco; John Hull; Stephen Hightower; Cheryl Hilvert; Bruce Kranz; Don Kuchta; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; Chris Geyer, representing Interim Director Craig Butler, Ohio Environmental Protection Agency; and Bob Field, representing Josh Mandel, State Treasurer of Ohio.

The following member was not in attendance: Tom Stephenson.

Minutes:
Chairman Rocco asked if there were any comments or questions regarding the minutes from the January 15, 2014 Board meeting, and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

BUSTR Report:
Chairman Rocco called upon Bill Hills, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations (BUSTR) report.

Mr. Hills stated that two temporary service employees had been assigned to BUSTR for the remainder of the fiscal year for the purpose of scanning and indexing files, including the files that have been requested by the Board's Executive Director.

Mr. Hills reported that the application process for the Revolving Loan Fund is in its final review, and will be ready in early spring. He said no Revolving Loan Fund monies will be disbursed until July 1, 2014. However, BUSTR hopes to open the application process for funding approval in March or April 2014.

Mr. Hills reported that BUSTR was awarded $98,000 in additional LUST (leaking underground storage tank) grant monies for fiscal year 2014. He said that files had been distributed to five vendors that will be performing responsible party searches of properties with petroleum UST releases.

Mr. Hills reported that BUSTR had scheduled a UST installer course for February 10-14, 2014 and a UST inspector course for March 3-7, 2014. He stated that these courses are being offered to fire departments with delegated authority from the State Fire Marshal.

Mr. Hills reported that for the week ending February 8, 2014, there were 79 new inspections performed for a total of 2,127 inspections for the three-year inspection cycle ending June 30, 2016. He said that five NFAs (no further actions) were generated during this same time period for a total of 211 for the grant cycle ending September 30, 2014.

Mr. Hills stated that roughly 22,000 USTs have been registered, and there were about 3,700 owners of 7,500 registered facilities.

Financial Report:

Chairman Rocco called upon Don Leasor, Chief Fiscal Officer, to present the financial reports.

Mr. Leasor reported that the Auditor of State released the Board's audit of its financial statements on February 3, 2014, and a copy was provided to each of the Board members with the other meeting materials.

Mr. Leasor stated that he is working with the Auditor of State's Office to issue a request for proposal (RFP) for the selection of an Independent Public Account for the next five-year audit cycle. He said that the Auditor's Office anticipates placing the RFP on its bid list on March 1, 2014.

December Financials

Mr. Leasor said the December financials were emailed to each member. He asked if there were any questions or concerns regarding these reports, and there were none.

Mr. Leasor reported that, as of February 18, 2014, the unobligated balance was $18.8 million. He said this included $12.8 million in STAR Ohio and the $6 million invested in US treasuries and US agency callable bonds. He reported that the balance in the obligated account, as of February 18, 2014, was approximately $5.3 million.

Mr. Leasor stated the claims expense for December was approximately $773,000, and as of February 18, 2014, $3.7 million has been paid for claims for fiscal year 2014.

Mr. Leasor reported that, as of December 31, 2013, approximately 98% of the budgeted revenues net of refunds, have been collected. He said information on refunds and fee collections would be presented with the compliance and fee assessment report.

Mr. Leasor reported that a $6,000 unearned loss on the investments was recorded for December. He said that this represents the decrease in market value of the investments from the previous month. He noted that even with this decrease, the investments increased $17,500 in market value during the period of July 1, 2013 through December 31, 2013.

Mr. Leasor stated that the total operating expenses for December were $126,000. He said that, as of December 31, 2013, postage expense was 69% of the amount budgeted. He said this is due to postage fees for the final quarter of fiscal year 2013 being paid in August of fiscal year 2014. He said these charges include fees for the annual fee statement mailing which is sent by certified mail.

Mr. Leasor said all other expenses were where they should be at this time in the fiscal year.

Compliance/Fee Assessment Report:
Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the compliance and fee assessment report.

Ms. Esquivel reported that $15,690 in refunds had been paid since the January Board meeting, for a total of $69,115 in refunds paid for program year 2013. She noted that refunds had been paid to 68 owners.

Ms. Esquivel stated that a total of $164,449 has been collected by the Attorney General's Office and Special Counsel since July 1, 2013. She said after deducting the collection costs of $44,972, the net amount received by the Board was $119,477. She reported that 193 accounts were certified to the Attorney General's Office for collection since the Board's January meeting, for a total of approximately $1.1 million certified for program year 2013.

Ms. Esquivel noted that at the January Board meeting, she reported a cumulative total of $19.2 million had been certified to the Attorney General's Office for collection. She said this amount consists of $7.6 million in annual per-tank fees and $11.6 million in late payment fees. She reported that of this amount, $3,248,916 has been collected by the Attorney General's Office. She noted that due to the collection costs assessed by that office, the actual amount remitted to the Board was less than this amount.

Ms. Esquivel stated that six Orders Pursuant to Law were under appeal. She said five are under review and one settlement agreement is pending. Ms. Esquivel said that two Determinations to Deny a Certificate of Coverage are also under appeal. She said one is under review and one hearing is scheduled.

Ms. Esquivel reported that 30 Certificates of Coverage were issued since the Board's January meeting for a total of 3,115 Certificates of Coverage issued for program year 2013.

Ms. Esquivel stated there were no other significant changes since the January Board meeting.

Claims Report:
Chairman Rocco called on Cindy Duann, Claims Supervisor, to present the claims report.

Ms. Duann reported that 1,783 claims were pending review, which is a decrease of 16 claims from the Board's January meeting. She said a total of 22 claim settlement determinations are under appeal.

Ms. Duann reported that a total of 100 claims were settled in the month of January and during the same month, a total of 90 claims were received. She said as of February 18, 2014, a total of 31 claims had been received, indicating the number of claims ultimately received for the month of February may be lower.

Ms. Duann stated that the total claim settlement offer for the last seven months was $3.56 million, with an average claim payout of 75% of the net value. She said the payout average was slightly higher in comparison to previous years' statistics.

Ms. Duann reported that in the past seven months, 28 eligibility applications had been received, and during this same time period, 50 eligibility determinations had been issued. She said 90% of these determinations were approvals. She said that, as of February 3, 2014, there were seven eligibility applications pending review and three eligibility determinations under appeal.

Ms. Duann said in January, 13 requests for cost pre-approval had been received, and in this same month, 16 cost pre-approval notifications had been issued. She said that the average number of cost pre-approval requests has decreased by 20% in comparison to previous years' statistics.

Ms. Duann reported that 37 cost pre-approval requests were pending review as of February 3, 2014.

New Business:

Hardship Applications

Chairman Rocco called upon Starr Richmond, Executive Director, to present the hardship applications.

Ms. Richmond stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated by accelerating the review of the claim, it reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. She said, once granted, the hardship status remains in effect for a one-year period and at that time, the owner may reapply for hardship status.

Ms. Richmond stated that in determining hardship status, the application and a minimum of two years of income tax records are reviewed. She said, in addition, a U.S. Environmental Protection Agency (EPA) financial capacity test is used to evaluate the owner's cash flow and determine if the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

Claim # 4358-0001/06/18/97, Owner – George W. Yano and Rita Yano Revocable Trust dba Yano's Automotive Service Center, Inc.

Ms. Richmond said Yano's Automotive Service Center, Inc. is the responsible person for a 1996 program year release that occurred on Lake Shore Boulevard in Willowick, Ohio. She said Christine Felice, the trustee for the George and Rita Yano Trust, submitted the application for hardship status, and that this was the second application for hardship status received from Yano's Automotive Service Center, Inc.

Ms. Richmond said that to date, the Fund has reimbursed about $19,000 for corrective action costs for the release, and a cost pre-approval request in the amount of $114,000 was pending review.

Ms. Richmond stated that based on the U.S. EPA financial capacity test, and the information submitted with the hardship application, there is less than a 50% probability that Yano's Automotive Service Center, Inc. can afford $114,000 in corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Yano's Automotive Service Center, Inc. Vice-Chairman Hull so moved and Mayor Kuchta seconded.

Mr. Hightower questioned whether both the assets of the trust and the individual were reviewed when determining the owner's financial ability to carry debt. Ms. Richmond explained that only the financial information for the responsible person is considered during the review. She said that for this release, the responsible person is the corporation, which is within the trust because the owners of the corporation are deceased.

Chairman Rocco asked if there was any other discussion and there was none. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 18344-0001/10/26/98, Owner – Red Stripe Associates, LLC dba Ohio Valley Plaza Exxon

Ms. Richmond said Red Stripe Associates, LLC is the responsible person for a 1998 release that occurred on National Road in Saint Clairsville, Ohio. She said that Gary Glessner is the owner of the LLC and he submitted the application requesting the Board grant hardship status to Red Stripe Associates. She noted this was Red Stripe Associates' 13th request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed approximately $214,000 for corrective action costs for this release. She said there is currently $23,000 in corrective action costs that has been preapproved for work that is to be completed within the next six months.

Ms. Richmond said BUSTR has approved a RAP (remedial action plan) and that cost is estimated at $150,000. She noted that to date, a cost pre-approval request for the RAP had not been received.

Ms. Richmond said the property and business were sold to Sober Systems LLC at a loss in November of 2008. She said that Red Stripe Associates provided financing for the new owner, and that the final payment was received from Sober Systems in November 2013.

Ms. Richmond said no additional funds are being generated by Red Stripe Associates. She noted Red Stripe Associates remains responsible for the corrective actions at the site and they are continuing the work.

Ms. Richmond reported that based on the U.S. EPA financial capacity test, and information submitted with the application, there is less than a 50% probability that Red Stripe Associates can afford $23,000 in corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Red Stripe Associates, LLC. Mr. Hightower so moved and Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Certificates of Coverage – Ratifications:

Chairman Rocco called upon Ms. Richmond to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Richmond said that behind Tab 8 are listings of facilities that, since the January Board meeting, have been issued or denied a program year 2013 Certificate of Coverage. She stated no 2012 program year Certificates of Coverage had been issued or denied since the Board's January meeting.

Ms. Richmond said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and, the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said if these requirements are met and if the tanks existed in previous years, a certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that if deficiencies or compliance issues are discovered, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

She said the Board's rules and the Revised Code make provisions for an appeal of the determination. Ms. Richmond said that throughout this process, the Board's staff works with the owner to correct the fee statement record and if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2013 program year Certificates of Coverage for the 33 owners of the 120 facilities included on the list behind Tab 8.

Vice-Chairman Hull moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities listed. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2013 program year Certificates of Coverage for the 37 owners of 45 facilities included on the list behind the Tab 8 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2013 Certificates of Coverage listed. Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mayor Kuchta seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hightower, Hills, Hull, Kranz, Kuchta and Rocco. There were no nays. The motion passed.

Prior to moving into executive session, Chairman Rocco requested to be recused from the executive session. Chairman Rocco turned the meeting over to Vice-Chairman Hull.

Reconvene Meeting
The Board adjourned from executive session and reconvened the public meeting.

Chairman Rocco called on Carla Dowling-Fitzpatrick, the Board's Assistant Attorney General, to comment on the Chevron mediation that was held on February 3 and 4, 2014, in Washington, DC.

Ms. Dowling-Fitzpatrick stated that during the mediation, Dennis Pantazis representing the team of individuals that serve as Special Counsel to the Board in the double-dipping litigation and former federal judge Layn Phillips worked aggressively to negotiate a settlement with Chevron.

Ms. Dowling-Fitzpatrick said that she, Special Counsel, the Vice Chairman and the Executive Director believe strongly that because of the facts and uniqueness of the Chevron case, a settlement in an amount between $2.8 and $3.0 million would be reasonable for the Board and Ohio's underground storage tank owners. She said that in light of this recommendation, she was requesting the Board move forward with a motion to authorize the execution of a settlement agreement.

Mayor Kuchta stated that consistent with the authorization given to the Vice Chairman and the Executive Director on June 12, 2013, he moved to authorize the Vice Chairman and the Executive Director in consultation with the Assistant Attorney General to do all things necessary to implement a settlement agreement, including drafting and executing any and all appropriate documents, between the Petroleum Underground Storage Tank Release Compensation Board and Chevron in an amount between $2.8 and $3.0 million in exchange for a mutually agreed upon release of liability pursuant to the issues covered within the mediation of February 3 and 4, 2014.

Following a short discussion concerning the terms of the settlement agreement, Mayor Kuchta called the question. A vote was taken and the following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hills, Hull, Kranz, Kuchta and Rocco. Mr. Hightower was not present for the vote. There were no nays. The motion passed.

Confirm Next Meeting and Adjourn:
Chairman Rocco stated that the next Board meeting will be held on Thursday, March 20, 2014, at 10:00 a.m.

The Finance Committee will be meeting at 9:00 a.m. prior to the Board meeting, and the Rules Committee will be meeting at 12:30 p.m. following the Board meeting.

Vice-Chairman Hull made a motion to adjourn the meeting and Mayor Kuchta seconded. All were in favor.